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**The legal status  
and employment conditions  
of local authorities' staff in the countries  
of central and eastern Europe**

Local and regional authorities in Europe, No. 62

# **The legal status and employment conditions of local authorities' staff in the countries of central and eastern Europe**

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## **PART 1: GUIDELINES FOR THE DRAFTING OF LEGISLATION COVERING THE STATUS AND WORKING CONDITIONS OF LOCAL AUTHORITY STAFF**

Three kinds of factors have to be taken into consideration by anyone drafting legislation on the status and working condition of local authority staff. They are the basic principles on which policy decisions should be based, the demands which must be met regardless of the approach adopted and, lastly, the criteria which may be useful when a choice is to be made between the various models and when these are adapted to suit the context in the country concerned.

### **I. The basic principles**

An analysis of the situation of local authorities' staff in the countries of central and eastern Europe and a study of experiences in Belgium, France, the United Kingdom, Finland and Germany in this field show that, however wide the differences between the adopted or envisaged solutions, all seem to stem from the same idea, that of how best to reconcile local authorities' organisational independence with the uniform protection of certain rights of local authority staff for the sake of equal treatment.

The point at which a balance is struck between these two principles differs from one country to another and indicates a preference for a greater or lesser degree of co-ordination but it does not seem possible to find satisfactory solutions by adopting one and not the other.

#### ***Organisational independence***

The organisational independence of local authorities is an expression of the principle of subsidiarity, taken up in Article 4.3 of the European Charter of Local Self-Government, according to which: "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."

There is a very specific reason for organisational independence: it is essential so that each authority can make its administrative structures appropriate to its own management requirements and particular tasks.

This is clear from Article 6.1 of the European Charter of Local Self-Government, which states that: "Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management."

As can be seen from the models described in part 2, this principle clearly underlies the solution adopted in Belgium, where local authorities are allowed very wide room for manoeuvre in respect of not only the definition of administrative structures but also the employment conditions of their officials.

The situation is similar in the United Kingdom, where local authorities have virtually as much freedom as private employers in determining their contractual relationship with the members of their staff.

In Finland, the social partners at local level have extensive powers to agree at local level on terms diverging from the national collective agreements. Moreover, the flexibility required at local level is provided by many clauses of the national collective agreements as well.

In Germany, local authorities' freedom, for organising their staff and for administrative matters (e.g. appointments, promotions and dismissals) is one of the central issues of the local self-government system. Besides, most of the local authorities' staff members in Germany have an employment relationship governed by collective agreements between the associations of public employers and the workers union, which belong to the private law.

In France, a willingness to take account of particular local features was demonstrated by the amendments made to the local government service regulations by the Act of 27 December 1994 (including the extension of the management framework through the lifting of the threshold for the affiliation of municipalities to departmental management centres, the adoption of less complex recruitment procedures and the new opportunities for recruiting part-time staff). Furthermore, even within the framework of a single local public service, the local authorities are responsible for defining their own administrative structures.

It thus seems, whichever approach is adopted, that the principle of organisational independence plays a key part in the regulations relating to local authority staff.

This finding tallies with the pattern observed in all the countries of central and eastern Europe studied for the purposes of this document. Some currently have a contract-based model, obviously giving great freedom to the local authorities, but in every case, it is these authorities which determine how their administrative structure is organised and are responsible for staff administration.

### ***Equal treatment and the uniform protection of certain rights***

Organisational independence is not unlimited, being exercised within a general legislative framework which guarantees the uniform protection of certain fundamental rights and consequently ensures that, at least in some respects, the staff members of the various local authorities receive equal treatment.

It has to be stated from the outset that the scope of equal treatment is broader where a large number of detailed general provisions exist and where local authorities have limited room for manoeuvre.

The principle of equality underlies the French statutory model to the point at which there is a "single" local/departamental/regional government service; in addition, equal treatment also applies between local/departamental/regional and national government service (so France has been able to dismantle barriers and build bridges between the various administrative departments). The employment conditions of local authority staff are substantially the same as those of central government staff in several countries of central and eastern Europe, making their model close to that adopted in France.

The equal protection of certain rights is the proper aim of all labour legislation, and the contractual freedom of local authorities in countries where the situation of these authorities' staff is governed by labour law, ends where such protection begins.

Moreover, experiences in England and in Finland have clearly shown that the collective bargaining process may have the effect of extending or strengthening, if not the uniformity, then the harmonisation of employment conditions, through the setting of standards intended to influence the terms of individual contracts.

Such an effect is more obvious when the principal employment conditions set up by collective agreements have been adapted to civil service law, as is the case in Germany.

Even in Belgium, which has different kinds of public service with various regulations, equal treatment is a basic principle, particularly in respect of citizens' access to their local government service, welfare coverage, legal protection and trade union rights.

So general rules are regularly adopted, covering certain aspects at least, to set limits to the independence of local authorities where the status and employment conditions of their staff are concerned.

This does not conflict with the principle of subsidiarity, which is a principle that has to be put into practice in conjunction with other principles relating to the organisation and functioning of the state, particularly that of the consistency and unity of application of public policies for the benefit of all citizens.<sup>1</sup>

## **II. The demands which must be taken into consideration**

In spite of the difference between approaches, most of the situations studied revealed a common concern to comply with certain requirements. These demands therefore deserve careful consideration when the legal status and employment conditions of local authority staff are defined.

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<sup>1</sup> Cf. Recommendation No. R (95) 19 of the Committee of Ministers to member states on the implementation of the principle of subsidiarity.

### ***The independence of local authority staff***

The first aim is a guarantee of the independence of local authority staff vis-à-vis central government. Such independence is a corollary of the principle of autonomy and is given concrete form through an exclusive hierarchical link between the staff and the local authority, the latter holding the power to appoint staff. There should be very few exceptions to this rule and, if possible, none at all, and very few appointments of senior officials by central authorities.

### ***The permanence and impartiality of local authority staff***

The next step is to guarantee the permanence and impartiality of local staff in the face of political change. This is where the provisions governing the exercise of the power to appoint come into play. It may be noted that, in many countries, recruitment involves competitive or public examinations and that employment is of unlimited duration; promotion is (or should be) usually based on merit.

There is no doubt that these tendencies deserve support, for a local authority which appointed staff on the basis of "partisan" decisions would likely be less efficient and unable to act consistently.

Appointments based on personal considerations (such as those of members of the mayor's personal staff) and the freedom of a new political majority to replace certain senior officials of a local authority (this is allowed in France) are accepted in exceptional circumstances. These should be justified only if they are necessary to ensure that administrative action is consistent with the political aims of the elected majority.

The impartiality of local authorities' staff is also the aim of the incompatibility provisions and the restrictions on the exercise of the duties of elected local representatives. The question which arises is that of whether and to what point, it is acceptable for members of a local authority's staff to hold at the same time elective office within the same authority.

Some of the possible solutions are more stringent than others. All are based on the need to avoid conflict of interest, and the selection of one rather than another may be shaped by certain details such as, in particular, the size and membership of the local authority staff (which may, for example, include teachers and nurses).

As far as possible, the holding of a local elective office and of a post as a member of the staff of the authority concerned should be declared absolutely incompatible. At the very least, there should be such incompatibility where the staff concerned are directly in the service of the organs of the authority or are responsible for implementing their decisions.

Furthermore, wherever such combinations of offices are allowed, safeguards should exist to prevent conflicts of interest from arising, which certainly means an obligation for the elected representatives concerned to refrain from taking part in the debate and voting whenever such a conflict is possible, as well as a system of penalties to ensure that this obligation is complied with.



Similar rules should of course exist in order to avoid a local authority staff member dealing with a file which directly or indirectly concerns their own interests or the interests of their relatives.

### ***Supervision to avoid loss of control and arbitrariness***

A third requirement, all the stronger in local authorities which have greater freedom of action, is for supervisory procedures ensuring that control is not lost and arbitrariness does not occur, particularly where wage costs are concerned.

In this context, the applicable legislation must set limits to local authorities' discretion and state which bodies are empowered to carry out the said supervision. This task may, as in Belgium and France, be carried out by the ordinary supervisory body or by an agent or agency with specific powers in this field, such as the "district auditor" in the United Kingdom.

### **III. The criteria to be used when a model is to be chosen**

The question remains of whether or not it would be preferable to adopt a uniform system. This depends on the actual situation in each country. However, a position may be adopted on a number of points.

It should first be noted that allowing status to differ is consistent with the idea of strong local autonomy and does afford local authorities an opportunity to define the system for their staff in the light of specific local features.

This option may, however, lead to malfunctioning, if not all local authorities are in a position - perhaps because of inadequate financial resources - to fulfil properly their responsibilities in this field.

In short, the granting to local authorities of extensive powers relating to the status and employment conditions of their staff may be recommended rather as the culmination of a process to strengthen local autonomy; it may be less appropriate during a transition which is difficult to manage, especially in those countries which face a pressing need for co-ordination.

The alternative of a uniform system not only fully implements the principle of equal treatment, but also makes possible the joint organisation of vocational training, the spreading of good management practice and mobility between administrative departments of different authorities.

Uniform employment conditions can also help to ensure that public services provided at local level are homogenous throughout the country. Finally, it is only if the system is uniform that a general status can be created for both local and regional authority staff and that local and regional government service can be co-ordinated.

On the other hand, a uniform system may result in an unwieldy administrative system and make it more difficult to take account of the particular features of each authority.

A uniform system does not necessarily mean the adoption by the legislator of a status for local government service. A slightly altered centralised negotiations-based model may have similar results: this requires, *inter alia*, the conditions defined during collective bargaining to be binding.

A status fixed by law, nevertheless, has some advantages: it reduces the risk of conflict between local authorities and their staffs as well as that of disagreement within the parties, not all local authorities being in the same situation and therefore not all having the same interests; it makes the solution adopted more stable, since it is laid down by law, whereas negotiated solutions may be called into question again in each round of negotiations; it is, all in all, easier to set up.

In the context of political and economic transition, these advantages should not be overlooked.

In any case, the approach to be adopted (i.e. the choice between a uniform model and a non-uniform one) is not necessarily the same for every category of staff: some degree of integration may seem more appropriate for managerial and senior managerial staff than for secretarial and stores handling staff.

It should also be stated that the choice of a uniform status may just as well be made in a unitary state as in a federation; in the latter, uniformity may be sought within each state of the federation. In a state divided into regions, the same could apply within each region.

Finally, uniformity can - and should - be sought without calling into question local authorities' organisational independence, and they should be guaranteed sufficient room for manoeuvre to be able to adopt solutions appropriate to their own needs and possibilities. Only if they retain this independence can a uniform system foster rationalisation of administrative structures.

This implies the definition of three "areas of intervention": the first has to be taken up by the legislation which guarantees equal treatment and must contain the elements which it seems appropriate to make uniform at either national or, where appropriate, regional level (i.e. within a federated state or a regional authority); the second corresponds to the rules and regulations which are intended to harmonise certain employment conditions, residual discretion being allowed to local authorities; the third is that in which local authorities enjoy organisational independence.

#### **IV. Elements which it seems appropriate to make uniform through the adoption of national, or possibly regional, legislation**

It has already been pointed out that the existence of rules and regulations of general scope covering local authority staff status and employment conditions is not exclusive to the countries which have opted for a uniform statutory model. Equal treatment plays an important role, even where the model adopted is a non-uniform statutory one or a contract-based one. The only thing which varies is its scope.

It is therefore necessary to single out those elements which, as a general rule, should be covered by the equal treatment principle (at least at regional level), whichever of the uniform statutory models available is selected.

### ***Minimum scope of equal treatment***

There are fields within which equal treatment in relation to employment conditions should in principle have no exceptions. The first are those of certain fundamental rights:

- nationals' right of access to local government service;
- the right to fair employment conditions (including remuneration and minimum rest periods);
- the right to safe and healthy working conditions;
- the right to welfare coverage (sickness, maternity, disability, death, old-age, unemployment);
- the right to legal protection (guarantee of a judicial remedy) and to fair procedures;
- trade union rights.

There follows certain essential obligations, particularly the duty of impartiality and the obligation to refrain from any action incompatible with an official's functions or loyalty to state.

Last come the liability arrangements (civil, criminal) and accountability of staff members vis-à-vis their official department or third parties, and the arrangements in respect of incompatibility with elective public offices at local level.

### ***The scope of the equal treatment principle in the context of a uniform statutory system***

The coexistence of the principle of equal treatment with that of local authorities' organisational independence implies that, even within a uniform system, staff employment conditions in different authorities are not absolutely identical. The situation of each country may also justify a greater or lesser degree of uniformity. There is no set point at which the two principles are in balance.

Taken to its extreme limit, uniformity leaves local authorities no scope at all beyond the minimum discretion which is required if they have organisational independence (see point VI below), but a situation of this kind is not to be advocated in every case. In contrast, it will frequently be preferable to have harmonisation and co-ordination of certain elements of local authority staff status (see point V below).

It nevertheless seems appropriate, in the context of a single local government service, for the elements listed below, at least, like those referred to above, to be made uniform:

- basic conditions for access to the various parts of local government service (education, professional experience, training, age, etc);
- level of guaranteed welfare benefits and of the corresponding compulsory contributions which officials are required to make;
- classification of posts according to duties and pay scales;
- disciplinary arrangements;

- arrangements for mobility between local authority services and, where applicable, arrangements for moving between these services and national or regional government service (the latter being possible where the whole of government service is governed by general regulations).

It should be pointed out that, in the event that a model governed by differing regulations is preferred, the importance of the above elements at least justifies some degree of harmonisation. In other words, even where the system is non-uniform, it would be useful for a general set of rules and regulations to limit local authorities' power over these matters.

#### **V. Elements which it seems appropriate to harmonise through the adoption of a set of national or regional rules and regulations**

It is possible to make a uniform system more flexible by providing that certain elements are to be laid down by local provisions, which, however, have to comply with a set of rules and regulations adopted at national or regional level. The aim would be to allow local authorities to adapt these elements in the light of their specific situation, thus making the system adopted more flexible, but without leaving any scope for major differences to prevent the system from being a genuinely single one.

The rules and regulations would lay down the level of harmonisation (through, for example, standards, prohibitions, obligations or minimum requirements ...) depending on the circumstances and, in particular, on the differences which exist between local authorities, their needs and their difficulties.

Among the elements which could usefully be harmonised (rather than made uniform), the first which might be mentioned are the selection, organisation and management of recruitment procedures. The rules and regulations on this subject could indicate alternatives (for example competitive examinations or tests) and require certain principles to be complied with (such as equal opportunities for men and women, appropriate advertising of vacancies, anonymity of written tests), supplementing the provisions relating to the basic conditions which have to be met in order to hold local government office. Within this framework, it would be possible for local authorities to decide which posts to open to competition, the timing and nature of the tests, the selection and assessment criteria, etc.

Some working conditions, such as working hours, extra duties, leave and vocational training also seem to lend themselves to a similar harmonisation exercise. The general rules and regulations, for example, might set total weekly and/or monthly working hours, lay down a ceiling for extra duties which may be required and specify the number of days of ordinary leave and the minimum number of days of training per year. Local authorities would be able to lay down permissible daily start and finish times, regulate opportunities to work part-time, set conditions under which staff may benefit from special leave or training periods, and so on.

Lastly, within certain limits, the level of remuneration may also not be made uniform, enabling local authorities so wishing to introduce merit-based pay systems, for example.

## **VI. The areas in which local authorities have absolute organisational independence**

Scope for setting local authority staff employment conditions at national or regional level has to be brought into line with the principle of the same authorities' organisational independence. The minimum scope of the latter principle should therefore be indicated, i.e. those elements which seem an integral part of the concept of organisational independence and which, in any case, local authorities ought to be free to define.

The first such element is the shape of the organisation chart (identifying administrative departments and, in respect of each category and grade, the staff necessary to run them). The regulations may require the administrative structures to include certain senior officials with specific responsibilities (such as the municipal secretary and deputy secretary, the treasurer, the chief accountant), but these apart, local authorities should have sole power to establish these structures according to their own situation.

Local authorities' power to appoint should also be recognised. This does not simply mean the taking of the formal decision to appoint a public servant to a post, but also the granting to local authorities of discretionary power limited only by the principle of lawfulness and the prohibition of arbitrary or improper use of this power. It is doubtless superfluous to point out that the power to appoint relates not only to recruitment, but even more so to transfer and promotion procedures, the organisation and management of which should be a matter for the authorities concerned.

The same should apply to disciplinary power. Where there is a single local government service status, this power must be exercised within the framework of the system decided at national or regional level; it will, however, be for the local authority to set up the machinery needed for this purpose and to apply penalties.

Closely linked to the exercise of the power to appoint and, more generally, to career progress, merit assessments also come under organisational independence. What is more, unless they have sufficient room for manoeuvre in this field, local authorities so wishing would be unable to introduce a merit-based pay system.

It is also consistent with the principle of organisational independence to leave it to local authorities to evaluate their own staff's training needs, enabling them to give real substance to the right to training, while taking into account the need to improve the efficiency of their service.

Finally, it is self-evident that organisational independence encompasses the possibility of rearranging the operation of services, by, for example, laying down the days and hours at which services are open to the public.

## **PART 2: THE SITUATION OF LOCAL AUTHORITIES' STAFF IN WESTERN EUROPEAN COUNTRIES**

### **I. The experience of Belgium**

Initially local government staff in Belgium were employed on a statutory basis. The local authorities subsequently found they needed to take on non-permanent staff. At first these were called temporary staff and their status was based on that of temporary employees working for the state. The status comprised elements of private law (law on employment contracts) and elements of public law (unilateral decision making on appointments; same rules as for statutory staff concerning salary). At a later date, new categories of staff were recruited on a contractual basis. Their employment contracts differ from those concluded between employers and staff in the private sector. In fact no real agreement is concluded between the parties; it is a *sui generis* contract, the substance of which is governed by the law on employment contracts.

In recent years a new category of contract staff, on subsidised contracts, has swelled the ranks of the local authorities. Their contracts are subsidised by the regional authorities with a view to creating new jobs for the unemployed.

In certain municipalities staff hired on such subsidised contracts make up 50% of total local authority staff, so generous are the subsidies the authorities receive to take on unemployed people in a wide variety of capacities.

The Belgian Constitution has enshrined the principle of independent self-government at the provincial and municipal levels, a principle hammered home by provincial and municipal law, *inter alia*. Under the provisions of these laws, provincial and municipal authorities are responsible for decisions concerning the administrative status of their staff. This has given rise to a multitude of different statuses.

Of late, however, the Regions have been trying to use their powers over the municipalities to gradually iron out these differences in the status of local authority employees. A deliberate policy to harmonise statuses is being pursued in every region of the country.

These guidelines on the status of local authority employees laid down by the regions are not an attempt to undermine the independence of the local authorities. The regions provide the local authorities with substantial financial aid in a variety of areas (public works, environment, spacial planning, etc.). The regions also provide the municipalities with an annual grant to be incorporated into their budget and used at their discretion. It is only natural, therefore, that in exchange the regions should recommend a degree of moderation in local authority spending, particularly on staff.

Generally speaking it can be said that the foundations have been laid in the regions for a partnership between regional and local governments. A partnership whereby both partners undertake to keep spending within reason, to avoid the burden of excessive debt.

### ***The legal framework***

Under federal law the local authorities have the power to lay down rules governing the organisation of their own services and the status of the staff in their employ.

The constitution guarantees equal access to government service and the right to form trade unions to all Belgian nationals. The subject of trade unions is also governed by a federal Act of 19 December 1974 and by royal implementing decrees.

There is also federal legislation governing the municipal disciplinary system and setting the salary scales for municipal secretaries, their deputies and municipal collectors of taxes. Royal decrees lay down the conditions for the recruitment and promotion of emergency services staff and the financial arrangements.

Regional regulations complement federal legislation in certain fields. In the region of Flanders, for example, a decree of the Flemish Council governs the procedure for appeals against disciplinary decisions. The same region has sectoral agreements binding on local authorities; supervisory bodies ensure that these are complied with.

### ***Overview of the legal situation of local authority staff***

The description which follows relates particularly to the Flemish and Walloon regions.

Under the terms of the federal law on municipal government, municipal councils are responsible for the administrative framework and status of their staff and for their salaries. At the provincial level these matters are the responsibility of the provincial councils.

During the general review of salary scales the regions used their regulatory powers to recommend new organisational structures for local authority services. *Inter alia* the reorganisation affected the grading system of local authority staff. The regions also set upper and lower limits for local government salary scales.

The general review of salary scales negotiated with the unions led to slightly different situations in the Flemish and Walloon regions.

The sectoral agreement concluded on 18 June 1993 in Flanders settled the following issues:

- number of levels<sup>1</sup>;
- number of grades per level<sup>2</sup>;
- salary scale for each grade;
- minimum qualifications required for access to the different grades (diplomas, experience);
- the right to training;
- the minimum number of hours' training;
- the principle (and certain minimum procedural rules) of assessment;

Local authorities are at liberty (within the limits set by the supervisory authority) to determine:

- further conditions of access;
- the organisation and content of tests and competitive examinations;
- the content of training;
- assessment systems and procedures;
- other aspects of administrative status (leave, availability).

In the Walloon region the sectoral agreement concluded on 27 May 1994 regulates the same issues, with the exception of the minimum number of hours' training. As for the other powers of the local authorities, it should be noted that in the Walloon region training content and assessment systems and procedures are determined by the regional authority.

Recruitment procedures are organised by each municipality, the municipal council holding the power to appoint. Recruitment involves "competitive examinations" or "tests" and is based on the pattern described below:

- the municipal council decides on recruitment conditions;
- vacancy notices are published in the press;
- once applications have been received, examinations or tests are organised;
- after examinations or tests have taken place, lists of candidates considered suitable are drawn up and the posts are filled.

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1 Local authority staff in the region of Flanders are divided into five categories (A, B, C, D and E) according to entry qualifications (a full course of university study being required for admission to category A); within every category except E, different grades are allotted according to levels of responsibility (four grades within category A and two in each of B, C and D).



The order in which candidates are placed on the list following a competitive examination has to be respected, whereas there is no need to place successful test candidates in order, and the listing order does not have to be followed if the competent body has compared candidates' "qualifications and merits" and given reasons for its selection. These decisions are monitored by the supervisory authority.

Transfer and promotion conditions and procedures are laid down in rules adopted by municipal councils. A test has to be taken by candidates wishing to change category. The supervisory authority's only role in this respect is to make sure that the general principles are complied with.

Pay is the responsibility of local authorities, which enjoy a broad measure of independence in this sphere; supervision is exercised by the region solely to avoid financial excesses.

Public servants' wages are based on scales according to grade. There may be more than one scale for a grade. Advancement depends on seniority, training and an appraisal of merits (professional abilities). Apart from advancement of this kind, wage increases depend solely on seniority, and are given every two years in principle. Wages are also indexed to the cost of living, an increase being automatically triggered when the reference index rises by 2%.

Pay also includes allowances and bonuses to cover certain expenditure incurred in the work context (such as official travel expenses) or to compensate for non-standard service (overtime, night work, performance of duties of a higher grade, etc).

Public servants are covered by the general health insurance scheme, with the employer contributing 3.80% of gross wage and employees paying 3.55%. They are also covered by the general family allowance scheme, into which their employers pay a contribution equal to 5.25% of their gross wage.

In the event of sickness, the municipality is obliged to pay wages in full for a period based on seniority, following which the wage is gradually reduced over a second period, at the end of which the official is placed on the inactive list and receives no pay.

Public servants are entitled to old-age pension. The employer is obliged to ensure that pensions are paid, either by contributing to the general fund (contributions to which are 21% for the employer and 7.5% for the employee), or by organising an in-house fund. A pension is paid in the event of permanent disability.

When public servants' rights are challenged or disciplinary measures taken, the supervising authority is obliged to check the procedure and declare it void if a procedural defect is found, so it may even take action "ex officio". Public servants believing that they have suffered as a result of an administrative decision may also apply to the administrative court (Conseil d'Etat) for the decision concerned to be stayed and declared void.

Public servants are entitled to set up trade unions and enjoy the right to strike. The Act of 19 December 1974 regulates relations between authorities and unions, which play a very important role. *Inter alia*, local authorities must negotiate with them about provisions relating to pay, pensions and disciplinary procedure, although they are not under an obligation to reach an agreement.

Regulations governing what local authority staff should and should not do are fairly limited (possible incompatibility with commercial activities, ban on all commercial activities). How these duties and incompatibilities are interpreted is largely a question of legal precedent.

## **II. The experience of France**

France's local/departmental/regional government service (comprising over 1 370 000 officials) is based upon the principles of unity and parity with the central government service, although it does have some specific features of its own.

### ***Unity of the local/departmental/regional government service***

Act No. 84-53 of 26 January 1984 (most recently amended on 27 December 1994) was intended to create a single status for the staff of municipalities, departments, regions and the public establishments.

This unity is guaranteed by the existence of a single joint body for all public servants who work in local/departmental/regional government, the "Conseil supérieur de la fonction publique territoriale", on which every category of local/departmental/regional authority is represented by elected members and where local/departmental/regional government staff are also represented.

The barriers to moves between authorities have also been removed, so that public servants' career continuity is now guaranteed in any of the authorities or local public establishments (although family commitments in practice also stand in the way of mobility).

The unity of the local/departmental/regional government service is not negated by the existence of statutory provisions covering each specific branch, including those relating to:

- the administrative branch (Decrees of 30 December 1987);
- the technical branch (Decrees of 6 May 1988 and 9 February 1990);
- the cultural branch (Decrees of 4 September 1991);
- the sport branch (Decrees of 3 April 1992);
- the health and social branch (Decrees of 30 August 1992);
- the municipal police branch (Decrees of 24 August 1994).

### ***Parity with the central government service***

Legislation exists to place the local/departmental/regional government service on an equal footing with the central government service. Local/departmental/regional authority officials are subject to Part I of the general rules governing public servants (Act No. 83-634 of 13 July 1983), under which they enjoy the rights guaranteed by the law to all public servants (freedom to hold opinions, right to remuneration, entitlement to leave, disciplinary guarantees) and have the same obligations (such as the obligation to act impartially, to refrain from activity incompatible with their functions or loyalty to the state and to obey their superiors).

Like central government servants, local/departmental/regional officials are divided into three categories at different levels (A, B and C), according to level of recruitment and the nature of their duties; they enjoy a career system based upon the principle that grade and post are separate.

Recruitment is usually through competitive examinations, either external (open to applicants holding the specified qualifications) or internal (open to public servants already having a certain length of service). The anonymity of candidates taking the written tests is guaranteed.

New or vacant posts have to be advertised before competitive examinations are held. Local/departmental/regional authorities may then appoint to a post an internal candidate who has applied for it, through transfer, secondment or - where appropriate and if the duties are those specified by the applicable set of rules - internal promotion and advancement of grade.

Generally speaking, recruited staff undergo a probationary period before being established in post.

Wages depend on rank and grade, and bonuses may be payable. Allowances are tending to be reduced and incorporated into wages, so that they can be taken into consideration for pension purposes.

Staff move to a higher rank, bringing a wage rise, on the basis of seniority and merit; advancement of grade is achieved either after an assessment of the official's merit or on the basis of selective testing.

Should public servants lose their post, they continue to hold their grade, remain in local/departmental/regional authority service and may be assigned to any post corresponding to their grade; where a local authority is unable to offer such a person a new post, specific structures exist to deal with the case (see below).

The abolition of the statutory "partitioning" which existed prior to 1984 has made possible not only transfers from one local/departmental/regional authority to another, but also moves from local/departmental/regional to central government service; moves in the opposite direction are more frequent, however.

***The specific nature of local/departmental/regional government service as compared to central government service***

Local/departmental/regional government service nevertheless has some specific features, the main one being the large number of employers (50 000, ranging from the smallest municipality of under 100 people to large departments and regions), so the statutory rules need adapting accordingly, but within the unitary government service framework.

There is also a national jointly managed public establishment known as the CNFPT (national centre for local/departmental/regional government service) which deals with local/ departmental/regional authority staff training and is responsible for staff movements and competitive examination coordination (categories A and B) and for the pay of staff without posts and the reclassification of officials unsuited to their posts (category A only).

Departmental management centres perform the same tasks in respect of the other categories of public servants, except for the organising of competitive examinations for the largest municipalities (employing over 350 full-time public servants), which may opt not to affiliate. For these unaffiliated municipalities, they also run the joint administrative commissions and draw up lists of suitable applicants.

Competitive examinations are organised by the CNFPT, management centres and unaffiliated municipalities. Successful candidates are placed on a list of suitable applicants in alphabetical order, from which a local authority may select its future officials. There is no order of preference to be respected.

It also has to be noted that the Act lists a number of management posts to which officials may be assigned on secondment and from which local/departamental/regional authority staff may be removed in certain conditions for which the law provides.

When new mayors are elected, for example, they have six months to decide whether they wish to keep the senior officials in post or replace them. Public servants not confirmed in post are relieved of their duties and dealt with by the CNFPT (to which the municipality removing them has to pay the equivalent of 150% of their wage for a specified period). The CNFPT finds and offers them new assignments in posts of their own grade. The employment of any who refuse three offers is terminated.

Finally, the Act of 27 December 1994 considerably expanded the scope for recruitment on a part-time basis.

Contract-based employment is exceptional and is for a fixed period. Mayors of major municipalities recruit their private office on a contractual basis, but their members do not enjoy the guarantees associated with public servant status.

While central government servants are affiliated to the general Social Security scheme for health insurance, local government servants are not, but have to be provided with the same guarantees by the local authorities. Large municipalities organise mutual insurance schemes, while optional private insurance schemes for small municipalities have been set up at departamental level. A national retirement pension fund exists, financed by employers' and employees' contributions.

In the disciplinary sphere, a departamental disciplinary board with joint membership was set up in 1987; since 1994 this has been chaired by an administrative magistrate.

### III. The experience of the United Kingdom (England)

In England, local authorities are responsible for staffing their operation. Employees of local authorities are not "civil servants" and, although there are some points of resemblance, central government staff (civil service) and local government employment regimes should be regarded as separate and distinct<sup>1</sup>.

The Local Government Act of 1972, section 112, deals with the appointment, and terms and conditions of the staff of local authorities. Subject to the exception established by law<sup>2</sup>, local authorities are empowered, under subsection 112 (1), to "appoint such officers as they think necessary for the proper discharge (...) of their functions". Moreover, subsection 112 (2) provides that any officer appointed under subsection (1) "shall hold office on such reasonable terms and conditions, including conditions as to remuneration, as the authority appointing him think fit".

This means that, subject to the constraints of national statute law on employment, individual local authorities have wide discretion in the recruitment, appointment and employment of their staff.

#### *Overall framework for local authorities' administration*

Local authorities negotiate the terms of individual contracts of service within the framework of employment protection legislation.

The Employment Protection (Consolidation) Act of 1978 regulates, *inter alia*: the obligation to give written particulars of terms of employment to the employees; trade union memberships and activities; rights of female employees in connection with pregnancy and confinement; minimum period of notice; right to itemised pay statements; right not to be unfairly dismissed; redundancy.

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1 It can be noted however, that both central and local government have recognised the importance of close co-operation and good working relationships and have, in recent years, developed an expanded secondment programme (now being extended to include the private sector).

2 Subsection 112 (4) of the Local Government Act of 1972 lists certain chief officers as statutory appointments. There is also a duty on local authorities under section 151 of this Act to secure that one of their officers has responsibility for financial administration. Section 4 of the Local Government and Housing Act of 1989 requires local authorities to designate one of the officers as the head of their service. Section 5 of the same Act requires the designation of a «monitoring officer», who has to report to the authority whenever a proposal, decision or omission contravenes any enactment, rule of law or code of practice, or is likely to lead to maladministration or injustice.

The Local Government and Housing Act of 1989 provides that every appointment of a person to a paid office or employment under a local authority shall be made on merit. That provision is expressly stated to apply to all appointments made by, or by any committee of, a local authority. The 1989 Act also enables the Secretary of State by regulations to require local authorities to incorporate such provisions as may be prescribed in the regulations in standing orders relating to their staff, including provisions regulating the appointment of persons or the dismissal of persons.

Other acts which may affect terms and conditions of service are the Equal Pay Act of 1970, the Sex Discrimination Act of 1975 and the Race Relations Act of 1975.

Moreover, the wording of subsection 112 (1) of the Local Government Act of 1972 does not give local authorities unfettered discretion: conditions of service must be "reasonable". Concerning in particular pay conditions, the District Auditor has the right to challenge remuneration which he considers unreasonable.

Although local authorities are free to negotiate the terms of the contracts of service — subject to the legal framework - , pay and conditions of service for local government employees are generally agreed in negotiations between local government and the employees. The main Local Authority Associations band together (operating for this purpose through a joint organisation called the Local Government Management Board) in order to negotiate with unions representing the employees.

National Schemes of Conditions of Service for Manual Staff ("the White Book") and for Administrative, Professional, Technical and Clerical Staff ("the Purple Book") are drawn up jointly by the Associations and Trade Unions, which meet in National Joint Councils of employers and employees. Central government is not a party to these joint councils.

These conditions of service are both comprehensive and detailed in their coverage and are constantly updated to take account of developments. The key chapters focus on appointment and promotion, salary and grading provisions and official conduct.

It is nevertheless open to individual local authorities to make their own agreements outside these arrangements if they so wish; and about 40 councils, mainly in the south and south-east of England, have opted out of the national negotiations and reached local settlements instead.

Arrangements for deciding the pay of teachers are different. Teachers' pay and conditions are governed by Act of Parliament. The School Teachers' Review Body advise and make recommendations annually on the remuneration of teachers. The Secretary of State for Education is not obliged to accept the recommendations but will generally do so, unless there are compelling reasons to the contrary, and usually makes an order giving effect to the recommendations.

With regard to incompatibility and restrictions on elective offices, persons who are employed by a local authority are, under the Local Government Act of 1972, disqualified for election to, and becoming a member ("representative") of, that local authority. The same Act disqualifies a council member ("representative") from being appointed to any paid office by his council. In addition, by virtue of the Local Government and Housing Act of 1989, a local authority employee holding a post which has been determined to be "politically restricted" for the purposes of that Act is prevented from standing for election to, or otherwise becoming a member ("representative") of, any local authority.

### ***Overview on the terms of employment of local authorities' staff***

Local Government as a whole is one of the biggest employers in the country. In June 1995 there were some 1.41 million full time equivalent staff in general services in local authorities in England.

The Council (i.e. the elected members) have responsibility for the organisation of the local authority's business, and for the appointment and employment (including disciplinary matters) of staff to discharge those responsibilities. In practice, the senior officers of the local authority take responsibility for most of these matters.

Recruitment (which is normally based on open competition, posts being advertised in the national and specialist press), transfer and promotion of staff are matters for individual local authorities, which determine categories and levels of responsibilities of staff and jobs (subject to statutory appointments). Broadly the main categories of staff are: administrative, professional, technical, clerical, manual and craft.

In accordance with arrangements recommended by the National Joint Councils, the main elements of remuneration consist essentially of basic pay plus a variety of allowances and bonuses. Extra remuneration may be paid where an officer is asked to perform different services from those he is obliged to carry out, or extra services in respect of a specified job undertaken on the understanding that the amount of special remuneration will be determined when the work is complete. Only a minority of authorities operate PRP (performance related pay) schemes.

Many local authorities grade non-manual employees by the use of job evaluation schemes. There is a national job evaluation scheme for the grading of manual workers.

Traditionally annual increments have been paid in accordance with a pre-determined scale. There is, however, now a tendency to move away from this system towards a system of merit pay (i.e. performance pay). Increases directly related to indexes (e.g. cost of living index) have largely been abandoned. Most general increases follow direct negotiations, between the local authorities and the unions representing the employees, often carried out at national level. Promotions do not lead automatically to higher remuneration, although in practice most of them do have such a consequence. Local authorities have discretion to increase remuneration for individual members of staff, but are subject to scrutiny by the external Auditor.



With regard to the insurance scheme for sickness, membership of the national scheme is automatic for all eligible local authority employees, except casual employees who may elect to join, unless they say in writing that they do not wish to belong. The contributions payable by an employee are 6% (officer) or 5% (manual worker) of remuneration.

Apart from the state insurance benefits, the conditions of service for local employees include an occupational sick pay scheme and a compensation scheme for death or disablement in service. These provisions would not apply once employment ceased.

With regard to the pension scheme, eligible local authority employees are covered by the Local Government Pension Scheme (LGPS) but it is entirely up to each employee to decide whether or not they wish to be a member of the scheme. They can choose instead to make their own pension arrangements with an alternative pension provider. On the other hand, a local authority employer is statutorily required to provide and maintain the LGPS for their employees. The provisions of the scheme are laid out in the Local Government Pension Scheme Regulations 1995.

Local authority staff are entitled to join a trade union. The right to strike is recognised within the framework of the relevant statute. There is, however, no legal obligation for an employer to recognise the union. The National Joint Councils for administrative, professional, technical, clerical and manual workers recommend employees to join a trade union and recommend employers to recognise them at local level.

Disputes about employees' statutory employment rights can be pursued through the Industrial Tribunals procedure; contractual issues are dealt with in the civil courts.

### ***Planned reforms***

The main reform planned is the introduction of single table bargaining and single status employment for white collar and manual workers in local government. The national employers envisage the identification at national level of common core conditions and locally variable non-core conditions. Examples of core conditions would include working time, leave, sick pay, maternity arrangements and the principles of employee conduct and of equal treatment. Non-core conditions could be decided entirely at local level or could be locally decided modifications to national model provisions. Examples would include premium rates for working "non standard" hours, or allowances, like car or subsistence allowances, designed to reimburse expenditure incurred on the authority's behalf.

#### **IV. The experience of Finland**

For local government purposes, Finland is divided into local authorities when the autonomy of residents is safeguarded in the Constitution. Local authorities provide many services, including elementary and vocational education, health and social services, energy and water distribution, firefighting, local planning and building. The local authorities and joint municipal boards employ 395 000 people altogether. The private sector employs about 1 400 000, and the State about 156 000.

The local government personnel system is regarded separate and distinct from the other sectors. According to the Local Government Act persons employed by a local authority shall have a civil service relationship with, or be under contract of employment to, the local authority.

A civil service relationship means a service relationship under public law in which the local authority is the employer and the officeholder is the employee. Offices are created for the local authority's official functions. The council or some other municipal organ specified in the standing order shall decide on the creation or termination of offices. Some 56% of all those employed in the municipal sector are municipal officials. Any stipulations needed on the terms of officeholders' service relationship in addition to the current legal provisions and collective agreements on the civil service shall be issued in official regulations approved by the municipal council concerned.

The employment relationship between the local authority and the employee is based on a mutual employment contract. The legislative background for the municipal employment relationship is provided by the Employment Contract Act which is applied in the private sector as well.

##### ***Centralised negotiations and collective agreements***

The Finnish model of collective bargaining in the local government sector is characterised by high union density and a centralised employer activities.

The Commission for Local Authority Employers (KT) watches over the interests of local authorities and joint municipal boards. KT is part of the Association of Finnish Local Authorities and its position is regulated by a special act.

KT negotiates and agrees on the terms of employment for municipal officials and contract employees on behalf of the local authorities and joint municipal boards. Under the law, all these local government units are required to observe the collective agreements made by KT. KT also issues recommendations on general matters related to the service relationship, on the effectiveness of service provision, and on the quality of working life.

KT's authority is exercised by a delegation. This has eleven members who are appointed according to the relative breakdown of political parties in local government, while also ensuring proper regional and language (Finnish/Swedish) representation and taking into account the size of individual local authorities.

Trade unions of the municipal sector have formed four nation-wide negotiating bodies with which KT negotiates and agrees. Negotiations in the municipal sector are independent of other sectors including the State sector. Collective agreements made by KT do not require State approval. Neither is the Civil Servants Act applied in the local government.

Under the Act on Collective Agreements for Municipal Officials (1970), the terms of an officeholder's service relationship can be laid down in an agreement of this kind. However, a collective agreement may not lay down principles for the constitution of government departments and agencies or arrangement of the official organisation, the establishment or termination of an official post, the duties of an authority or its internal division of labour, work management, working methods, and the creation of a civil service or comparable service relationship or its termination, with the exception of notice periods and grounds for dismissal. Likewise, collective agreements may not agree on the qualifications required, or a post, the duties of officeholders, pensions or use of municipal assets.

Concerning the employees a collective agreement can be defined as an agreement to be observed in employment contracts (Collective Agreements Act, 1946). This implies that there are two distinct systems of collective agreements, one for municipal officials and one for municipal employees (contract employees). The terms of employment of officeholders and other employees have been harmonised in the relevant collective agreements, and are currently largely the same.

The main provisions in collective agreements concern pay, working hours, annual holiday and paid sickness and parental leaves, etc.

The pay agreements for the various sectors are usually valid for 1-2 years. As the end of this period approaches, negotiations on a new agreement get under way in good time. At the moment, there are five national collective agreements in force affecting municipal officials and employees (a general collective agreement and separate agreements for education, technical sector and for doctors and the hourly-paid).

### ***Local deviation from centralised agreements***

Since January 1993, the social partners at local level have extensive powers to agree at local level on terms diverging from the national collective agreements. This procedure was opened by the Main Agreement between KT and the main negotiating bodies. The flexibility required at local level is provided by many clauses of the national collective agreements as well.

### ***The content of collective agreements and the role of legislation***

Under the general collective agreement for municipal officials and other employees, pay comprises remuneration for the work in question (basic pay), personal supplements (for experience, and languages and an incentive bonus, and service increments), and a productivity bonus.

The agreement lays down the basic rate of pay in Finnish marks for various job groupings (i.e. upper and lower limits). The pay scale takes account not only of the job description and duties, but also of qualifications, and the cost-of-living within the local authority.

In addition to the Hours of Work Act (1996) working time is regulated by national and local collective agreements. The same applies to the annual holidays where both Act on Annual Holidays (1973) and collective agreements are relevant.

In several other areas of social protection of officials and other employees the social legislation has a more decisive role. This concerns for example sickness security and pensions, safety and health at work. On the other hand the legislation may have been complemented by collective agreements even in these areas. Co-determination between employer and personnel and the procedure to be followed in it has been agreed upon as is provided concerning the conclusion of collective agreement on municipal civil service and contracted employment.

From the most recent developments the proposal for an Act on Employment Security of the Municipal Officials has to be mentioned. This act would largely harmonise the preconditions of dismissals of officials and contract employees. The Local Government Act will also be changed in the near future to protect mayors against dismissals.

## V. The experience of Germany

About 6 million persons are employed in the public service in Germany, out of which 1.8 million employees alone work for towns, municipalities, counties (there are three types of local authorities in Germany: *Städte* (towns), *Kreise* (counties) and *Gemeinden* (municipalities)). 176 000 persons, i.e. a little less than 10%, are public officials appointed by local authorities, the remaining 90% are workers or employees (as at 30 June 1996). In 1995 the staff costs of towns, counties and municipalities amounted to approximately 30% of the total expenditure of the budgets of local authorities.

As a rule, the administrative body of municipalities, towns and counties are headed by mayors or the chief executive official of a municipality (*Gemeindedirektor* or *Stadtdirektor*) (in counties the chief executive official is called "*Landrat*" or "*Kreisdirektor*"). He has the right to take organisational decisions for the entire administrative body. He is assisted by professional deputies called "*Beigeordnete*" (a *Beigeordneter* is a full time professional deputy to the chief executive official) (*Beigeordnete* are also called *Dezernenten* meaning a high-ranking full-time professional local government official who is responsible for a group of functions). The departments (*Dezernate*) which are the areas of responsibilities of the professional deputies called "*Beigeordneten*" are a combination of several functions in a larger department. The area of responsibility of the departments of the professional deputies and thus also the number of departments are determined by the council in the departmental distribution plan.

### *Local authorities' officials*

Mayors, chief executive officials of counties and towns (*Landräte*, *Stadtdirektoren*, *Kreisdirektoren*) and professional deputies are local authority officials elected for a specific term of office (so-called "*Wahlbeamte*"). They have a special status among public officials in the civil service. They are appointed to public official status for a specific term, which reflects the particular importance of the agreement between the local decision-taking bodies, such as the town council (*Rat der Stadt*), municipal council (*Rat der Gemeinde*), county council (*Rat der Kreistag*) and the chief executive officials to the administrative body.

The employment as public official in the public service, also in local authorities, is the type of employment which is distinctively different from the private sector of the economy. Legally the relationship between employer and public official is principally based on an employment for life, which is characterised by specific features:

- the remuneration of public officials is meant as alimentation and not as a monetary equivalent for the work performed. It is the state's obligation to take care of the welfare of public officials and the remuneration is intended to guarantee public officials a subsistence appropriate to their status. Only for this reason it is justifiable that also the marital status and other living conditions are taken into account in determining the remuneration;

- the educational background is the primary restriction for the admission to the status of public official. Consequently, there are four separate career structures, in which the admission to the lowest position of each functional hierarchy depends above all on different education preconditions. Apart from the post of entry to a career structure, there are as a rule four graded posts with different remuneration to which an official may be promoted within the four career structures of sub-clerical service, intermediate service, higher intermediate service and senior executive service.

The Basic Law of the Federal Republic of Germany defines that the civil service relationship is one of "service and loyalty... and governed by public law". Article 33, paragraph 5 of the Basic Law demands that "public service shall be based on the traditional principles of the professional civil service" submitting the characteristic features of the civil service law described above. The long-term employment relationship of public officials working for towns, counties and municipalities results in the need for flexible deployment of public officials to posts in different groups of function in local authorities.

The influence of local authorities on the public service law is rather limited by legal provisions. This results from the fact that the public service is to contribute to homogeneous action by the administrative bodies on the national level. Therefore, the staff policy of local authorities responds to a large extent to the rules set by the state. Local authorities are free to plan their staff requirements only with respect to the administrative aspects, such as selection, appointment, internal transfer, promotion and dismissal of public officials. The sovereignty of local authorities in personnel planning is considerably restricted by provisions on the ceiling of posts. These provisions determine with binding force the number of posts with a possibility for promotion within the career structures of the intermediate, the higher intermediate and the senior executive service of the public service and among others, they are to ensure a uniform method of application for the evaluation of posts nationwide.

### ***Local authorities' employees***

By far, most of the persons employed in local authorities in Germany, are employees and - only to a minor extent - workers. The prototype of a public official in the public service dates back to the time when it was a typical function of the state to exercise its power by means of intervening administrative authorities, whereas in the meantime the totality of services has to an increasing extent become the characteristic feature of the functions of local authorities. With the ever-increasing totality of services the number of public officials has decreased in the public service of local authorities.

Persons whose employment is governed by collective agreements have an employment relationship under private law similar to the one in the private sector of the economy. The Basic Law also proceeds from the assumption that there are sovereign as well as non-sovereign tasks in the public service. This is expressed in Article 33, paragraph 4 of the Basic Law; according to this provision, the so-called "functional reservation" rules that the performance of sovereign tasks is as a rule to be reserved for public officials.

There are more similarities within the employment relationship of the group of persons employed under private law than there are fundamental differences. Whether a person is employed as worker or employee depends on the tasks which are to be performed. These tasks are stipulated in the Collective Agreement for Federal Employees (*Bundesangestelltentarifvertrag* - BAT) or in the Outline Collective Agreements on Working Conditions for Workers (*Manteltarifverträge für*

*Arbeiter* - BMT - G). In general, the type of tasks performed by workers are usually tasks carried out on instructions rather than managerial tasks, these tasks are more manual than administrative tasks and in general, they are remunerated with a lower average income and comprise less opportunities for promotion in the public service of local authorities.

The most important items of employment governed by collective agreements have been adapted to the civil service law:

- section 53 of the Collective Agreement for Federal Employees stipulates a long period of notice which is graded according to the length of employment. After fifteen years of employment, however, at the earliest upon completion of the 40th year, an employee is permanently employed, i.e. his or her contract may not be terminated by notice. A similar provision for workers is stipulated in Section 52 of the Outline Collective Agreements on Working Conditions for Workers. The collective agreements for the new Federal *Länder* of the Federal Republic do not yet comprise a corresponding provision;
- the "principle of position" applies to the remuneration of employees and workers. According to this principle, remuneration of employees and workers is based on the tasks actually performed by them;
- at present, the remuneration of a public official increases automatically every two years by one incremental point until after a maximum of thirty years the final incremental point is reached. This increase in remuneration is granted regardless of promotion to a higher post. In conformity with the incremental point for public officials, remuneration of employees and workers increases by stages according to age;
- by means of a supplementary pension scheme the old age pensions of employees and workers in the public service are adjusted to the old age pensions of public officials, i.e. by collective agreement on the old age pensions of persons employed by local authorities and enterprises which in the meantime has also been extended to the new Federal *Länder*. After thirty-five years of employment, persons employed in the public service receive, as a rule, 75% of the entire portion of the remuneration which serves as basis for calculating the old age pension. Before that, workers and employees received after forty years of employment on the average little over 60% of their net income as old age pension;
- elements of the public service law have also been included in the employment relationships governed by collective agreements. The Collective Agreement for Federal Employees comprises provisions on the duty of employees not to disclose confidential information, on accepting rewards and presents as well as on secondary activities and liability.

Municipalities and associations of local authorities do not exercise autonomously their sovereignty to act as party to a collective agreement, instead they have voluntarily joined employers' associations, which are organised as an association for the region of a Federal Land. Nationwide these associations are united in the Association of Employers' Associations of Local Authorities (*Vereinigung kommunaler Arbeitgeberverbände - VKA*) which as leading organisation pursues collective bargaining policies and concludes collective agreements in its own right.

The councils have certain unrenounceable powers with respect to the personnel of municipalities, towns and counties. The council may not delegate the election of the professional deputies (*Beigeordneten*) (cf. the corresponding provisions of local government laws. Each Federal *Land* enacts its own laws for the organisation of local authorities). This does not apply to employment, form and contents of contracts of employment and dismissal/transfer of other persons employed by local authorities. The local government laws authorise the council to provide for the corresponding provisions in the standing orders. The local authorities make use of this authorisation - depending on the appropriateness of such provisions and the size of the respective local authority. This ensures on the one hand, that the council is only occupied with the most important decisions concerning personnel and on the other hand, that, in particular, larger administrative bodies have a more flexible personnel management.

To a certain extent, the staff of local authorities have the right of participation. These rights are laid down in the Staff Representation Acts of the individual Federal *Länder*. A guiding principle in this connection is that the head of the respective authority and the staff council should cooperate on a trustful basis in the best interest of the respective authority and its staff. The Staff Representation Acts ensure a large variety of possibilities for participation for the staff council and its representatives. Concerning the extent of participation one differentiates between hearing, participation and co-determination. In principle, the administrative body of a town represents one authority, however, especially councils of towns with a large administrative body define sections of the administrative authority as an "independent authority". This may increase the proximity between employer and the persons employed and may lead to a more efficient representation of staff interests within the agency. In this case, individual staff councils are to be elected for the independent sections of the authority and a so-called overall staff council is to be elected for the administrative body as a whole.



## **PART 3: THE SITUATION OF LOCAL AUTHORITIES' STAFF IN CENTRAL AND EASTERN EUROPEAN COUNTRIES**

### **I. General**

#### *Composition of local authority administration*

Local authority administration may be undertaken by seconded central government staff or by staff - whether or not they enjoy public servant status - who do not form part of the national civil service. The latter case applies to local authorities in **Bulgaria, Czech Republic, Estonia, Hungary, Lithuania, Poland, Romania, Russian Federation, Slovak Republic, Slovenia and "the former Yugoslav Republic of Macedonia"**.

#### *Statutory texts*

The legal status and conditions of employment of local authorities' staff are generally laid down by law and by government implementing decrees which ensure that standard rules are applied throughout the country even though there may be some differences where local authorities are given some degree of room for manoeuvre.

In **Bulgaria**, the 1991 Local Self-Government and Local Administration Act confers on municipal employees the status of public servants. Their conditions of employment are laid down in the Labour Code which applies generally to all employees except where there are special provisions to the contrary.

In the **Czech Republic**, the Act on Municipalities (No. 367/1990 as amended) lays down the administrative framework for the staff of municipal offices. Employment conditions are governed by the Labour Code (Act No. 65/1965, amended in 1994) and by implementing Government Decree No. 108/1994. Remuneration is governed by the Act No. 143/1992 (changes: No. 590/1992, No. 10/1993, No. 40/1992) and the Government Decree No. 253/1992 (changes: No. 78/1994, No. 142/1995 and No. 71/1996).

In **Estonia**, Article 154 of the Constitution lays down that all local affairs are the responsibility of the local authority. Article 160 provides, *inter alia*, that local shall be organised in accordance with the law. This was achieved with the adoption of the Local Government Organisation Act of 2 June 1993. Chapter 7 of this Act concerns the basic principles of local government service, while Section 54 (1) provides that local government service is to be governed by both this Act and the Public Service Act, which entered into force on 1 January 1996. Finally, the 1992 Employment Contracts Act is also applicable, but for technical staff only.

In **Hungary**, the Act No. 23 of 1992 on the status of civil servants lays down the legal status and conditions of employment of local authorities' staff. However, this Act does entitle local authorities to introduce more favourable provisions by decree, particularly as regards working conditions and working hours.

In **Latvia**, in the absence of specific legislation on local authority staff, this subject is governed by several pieces of legislation: as well as the Local Government Act and the State Civil Servants Act, the Labour Code and the Acts governing retirement, maternity leave and sick leave apply. Also applicable are the government recommendation on the statutory models of local government and the regulations on state civil servants' remuneration and on employment contracts.

In **Lithuania**, arrangements in this area are governed by several Acts, including those on labour contracts, on civil service and on local authorities.

In **Poland**, the Act of 22 March 1990 on local authorities' staff is the main text governing the status and conditions of employment of local civil servants. It lays down a series of exceptions to the general provisions contained in the Labour Code. Other laws also apply in this area, in particular the law of 16 September 1992 on state civil servants and the law of 8 March 1990 on local authorities. Decrees issued by the Council of Ministers govern matters relating to remuneration and the organisation of disciplinary boards. Certain specific questions, such as periodical staff assessment, are covered by statutes and regulations adopted by the local authorities themselves.

In **Romania**, the legal status and the conditions of employment of local authorities' staff are governed by Law No. 69/1991 on local public administration and Government Decision No. 103/1992 on the functioning of Local Councils.

In the **Russian Federation**, the Labour Code regulates the employment conditions of local authority staff, which do not enjoy the status of civil servants. Nevertheless, the Federal Act of 31 July 1995 on the fundamentals of national civil service applies to some extent, in particular in prohibiting participation in strikes. The Federal Act of 28 August 1995 on general organisational principles of local authorities in the Russian Federation has broadened the rights of the municipalities which are now free to determine the conditions of organisation of the municipal services. Municipal status deal with some matters.

In **Slovakia**, local authority staff employment conditions in general are laid down in the Labour Code (Act No. 65/1965).

In **Slovenia**, various laws contain provisions on local authorities' staff, particularly the laws on local self-government, on the staff of state bodies, on the conditions of employment and on pay scales of public institutions and local authority bodies. The implementing provisions affecting central government staff, particularly those relating to working conditions and remuneration, also apply to local authorities' staff.

In "**the former Yugoslav Republic of Macedonia**", in the absence of legislation on local government, and, more crucially, on local authority staff, the Labour Code applies in respect of relations between local authorities and their staff.

### *Comparison between local authority and central government staff*

In most of the cases under consideration there is no difference between the conditions of employment of local authorities' staff and those of central government staff. This is the situation in **Bulgaria, Estonia, Lithuania, Romania, Slovakia and Slovenia.**

In **Croatia**, a number of differences exist between local authorities' staff and central government staff. They concern recruitment procedures, remuneration, working time and disciplinary rules and result from the local authority's competence to regulate these matters in the respect of national legislation, namely the Law on administration and the Labour Code.

There are minor differences in the **Czech Republic**. However, the Labour Code assigns central government staff special obligations which are not applicable to local authorities' employees, so the former have components added to their wages representing a 25% difference over the basic salary of local authority staff.

In **Hungary**, some differences can arise as a result of the room for manoeuvre accorded to local authorities in the areas of working conditions and working hours. In addition, the authorities may alter the salary scales provided they have enough funds at their disposal to cover the extra expense involved. Basic salaries therefore vary according to the financial resources of local authorities.

In **Latvia**, the Government Service Act relates only to central government officials. Consequently the Labour Code applies, and within its limits local authorities enjoy great freedom as regards the status of their staff. As a result, considerable differences exist between local authority staff and central government servants (not the same as the staff of the state administration, who do not have public servant status). There are differences in structure, recruitment procedures, remuneration, welfare coverage and disciplinary system.

There are also some differences in **Poland**. In particular, the employment regulations for local authorities' staff do not prohibit them from joining a union or require them to submit a statement on their financial situation when appointed; the administrative courts have no jurisdiction in cases concerning the employment conditions of local authorities' staff and the latter cannot benefit from the secondment possibilities or from financial advantages for which central government staff are eligible, but, in practice, their situation is generally more favourable than that of national public servants.

In the **Russian Federation**, at present, the legal status and employment conditions of local authorities' staff differ from those of central government staff (civil servants), the status of which is provided for in the Federal Act on the fundamentals of the national civil service.

In "**the former Yugoslav Republic of Macedonia**", specific legislation applies to local authority staff. As a result, there are differences between the latter and state staff in respect of recruitment procedures, remuneration and bonuses and disciplinary rules.

***Authority responsible for establishing the administrative framework***

As regards the authority responsible for establishing the administrative framework, it is the responsibility of the local authorities themselves to define the mode of organisation and operation of their services, whilst of course complying with the legislation and regulations in force.

In **Poland**, local authorities are free to manage their staff within the limits laid down by law. Within each authority, it is the municipal council which appoints the mayor, secretary and treasurer, as well as the administrative committee. This committee is responsible for appointing and dismissing heads of unit and heads of other departments. Responsibility for appointing the rest of the staff is laid down by statute (usually being held by the mayor). Disciplinary authority is held by the disciplinary committees of first and second instance.

In **Slovakia**, in accordance with the law, it is the mayor who bears responsibility within the municipality for administrative questions. He is empowered to prepare and sign the employment contracts of municipal staff in accordance with the Labour Code.

In **Lithuania**, it is the executive body of the relevant local authority (either the committee, the mayor or the chief executive) which decides.

In **Bulgaria**, decisions concerning the structure and general organisation of services are a matter for the municipal council, while the mayor in person (or the district mayor, depending on the circumstances) holds the power of appointment and is responsible for the day-to-day management of services.

In **Croatia**, the general framework is established by the representative body of the local authority and in the respect of natural legislation and its implementation, particularly the internal organisation of staff is the responsibility of the executive body and the heads of the administration departments.

In the **Czech Republic**, the structure and setting up of municipal services is the responsibility of the elected bodies of the local authorities, which, depending on the circumstances, are: the municipal council, the municipal board or the mayor in smaller towns. Where the appointment of staff is concerned, heads of department are appointed directly by the municipal board, while other staff are appointed by the secretary - or by the mayor, where there is no secretary.

Similarly, in **Estonia**, the municipal council, when adopting the municipal statutes, establishes the administrative units and specifies how they are to be organised. In accordance with Section 55 of the Local Government Organisation Act, the municipal secretary manages the municipality's administrative activity. The secretary is appointed by the leader of the municipality or mayor and is always a person who has legal training. It is the mayor who is responsible for preparing proposals on changes to the structures, functions and composition of local government.

Similarly, in **Hungary**, municipal councils hold organisational powers. It is also the municipal council which appoints the general secretary, over whom it exercises disciplinary control while the general secretary or heads of public establishments are responsible for appointing their own staff and applying the disciplinary system to them. In some cases, the consent of the mayor is required prior to the appointment or dismissal.

In **Latvia**, municipal councils are responsible for both the structure and organisation of the authority's administrative services. For this purpose, they may draw on the statutory model of local government advised by the government, but as the State Officials Act is not applicable to local authority staff, the latter have a considerable degree of freedom. The municipal council also appoints the executive director of the local administration, as well as the heads of municipal institutions and enterprises. The chairman of the municipal council or executive director, depending on the circumstances, is personally responsible for appointing the remaining staff.

In **Slovenia**, in keeping with the law on local self-government, in the light of proposals made by the mayor, the municipal council defines the mode of organisation of services and questions within the ambit of the municipal authorities. Regulations concerning appointments is a matter for the mayor. In conformity with these regulations, the recruitment of staff is the responsibility of the mayor, or by delegation, of the municipal secretary, with the exception of certain posts, such as deputy mayors and municipal secretaries, who are recruited by the municipal council, the mayor acting in an advisory capacity.

In **Romania**, it is also the municipal council which, on a proposal from the mayor, establishes the status of staff, the organisation chart and the number of staff to be employed.

One special case is that of "**the former Yugoslav Republic of Macedonia**", where powers in this field are shared between the municipal council and the mayor. In particular, the latter holds the power of appointment, the exercise of which is problematic where the mayor appoints fellow members of a political party. This means that every change of government brings a change of local authority staff. Disciplinary power is held by a disciplinary committee, the members of which are also appointed by the mayor.

## **II. Local authorities' staffing structure**

### *Staff categories and/or levels*

In all the countries questioned the categories and/or levels of staff functions reflect the nature of the work and the qualifications required.

In **Bulgaria**, the typical functions are: municipal secretary, head of division, chief architect, chief accountant, senior legal adviser, deputy head of division, head of department, senior specialist and specialist. There are five to fifteen functional levels depending on the size of the local authority, divided into five groups according to population size. The category covering specialists without a university qualification is divided into four levels: the lower two are regarded as posts for auxiliary staff, the third as posts requiring a particular qualification and the fourth as posts for which a full secondary education is required.

In **Croatia**, there are five categories of staff depending on qualifications: staff with a university degree (two categories); staff with college degree; staff with secondary school degree; employees performing tasks of administrative and technical support.

In the **Czech Republic**, staff are divided into three categories: secretary, head of department and other, at ten functional levels. The first category (levels 1 to 3) covers staff with auxiliary jobs which require only a primary or secondary education. The second category (levels 4 to 7) covers specific tasks for which a complete secondary education is required. The third category (levels 8 to 10) covers conceptual activities and complex administrative tasks in local authorities with a population of over 20 000. For level 8 a BA or complete university degree is required; for levels 9 and 10 a complete university degree is essential.

In **Estonia** the functions in medium-sized towns or major rural districts are: municipal secretary, advisers in various fields (e.g. social affairs, land, public order, economic development, etc.), specialists in specific areas (e.g. road management, water supply and sewage treatment, etc.), bookkeepers and secretaries. In small municipalities the same officer can perform a number of different functions.

In **Hungary**, civil servants are divided into four categories according to their academic qualifications and experience: staff with a university degree or a higher education belong to the first category; those with a complete secondary education come into the second category; and the third and fourth categories are made up of secretarial and technical staff. Executives form a separate category and special provisions apply to them in respect of recruitment, appointment, dismissal, remuneration and leave.

In **Lithuania**, local authorities' staff are divided into two categories. Category A is made up of civil servants whose conditions of employment are governed by specific statutes ("controllers", "deputy controllers" and executive heads). Category B covers employees who work under an ordinary contract of employment (administrative staff).

In **Poland**, in the absence of a genuine local government service, local authority staff may be classified according to method of recruitment: election (mayor, deputies and members of the administrative committee), appointment (holders of posts of responsibility and other managerial staff as specified in the regulations), nomination (secretary and treasurer), employment contract (other staff).

In the **Russian Federation**, in the absence of specific legislation concerning local authorities' staff (a federal law on this subject is currently under elaboration), the issues related to categories and grades are not properly regulated. It can be noted that the rural township administration has almost no staff (generally, it is composed of the head of administration, the accountant-cashier and technicians); in towns, in addition to the head of administration and his/her deputies, staff is composed generally of an architect, 1st and 2nd category specialists, technicians; staff in provincial cities is greater in number: it also includes heads of division, heads of department and experts.

In **Slovakia**, neither levels nor categories/functions are explicitly codified, but there are ten levels, and public servants may be divided into three categories: senior managers, experts and administrative staff.

In **Slovenia**, local authority staff are divided into four categories: functionaries (mayor, deputy mayor, municipal secretary), senior executives (advisers and senior advisers), executive staff, and administrative and technical staff. Mayors and municipal councillors are elected every four years by direct suffrage; the municipal secretary, deputy mayor and senior executives are appointed by the municipal council, acting on the advice of the mayor. A university degree is needed to qualify for a senior executive post.

In "**the former Yugoslav Republic of Macedonia**", local authority staff may be grouped in the following categories: managerial, administrative, executive and community services staff.

### ***Recruitment procedures***

As far as recruitment procedures are concerned, practices vary a great deal.

In **Bulgaria**, the general principles relating to recruitment are set out by the law. Specific provisions, on the other hand, are established by the municipal councils and the mayor; these provisions usually relate to academic qualifications, professional experience, age, languages and/or other special skills.

The law provides for competitive examinations as the ordinary procedure for filling local government posts.

- The vacancy notice must be published in the local press (or, if necessary, the national press) by the mayor. The notice must include the name of the municipality, the nature and location of the job, the requirements to be met (age, educational background, professional experience, special skills, etc), details of the procedure (the type of test), any documents required, the address and closing date for applications. All the applicants receive a job description before the test.
- Selection of applicants eligible to take part in the tests is carried out by a board appointed by the mayor. Applicants who are rejected at this stage may appeal to the mayor, whose decision on the matter is final.
- The mayor also appoints the members of the board responsible for procedure, which is made up of experts qualified to assess the skills and knowledge of the candidates in relation to the job. This committee ensures that the tests are conducted in accordance with what was advertised, assesses the candidates and announces the results. The employment conditions applied to candidates selected in this way are of a statutory nature.

In cases where recruitment is based on an interview, the mayor selects staff in consultation with the appropriate heads of department. Employment conditions are governed by a contract to which the mayor is a party.

The contract of employment can be for an indefinite or fixed period. In practice the use of fixed-term contracts is not always justified.

In **Croatia**, local authorities' staff is recruited following a public job advertisement in the national Official Journal or in local newspapers. The actual procedure is defined by the advertisement and it may include pre-selection, exams, interviews and possibly a reserve list.

In the **Czech Republic**, the municipal secretary is appointed by the municipal board, with the approval of the head of the district office. Where other managerial staff are concerned, a system is gradually being set up under which vacancy notices are published locally and interviews held. Reserve lists may also be drawn up.

In **Estonia**, recruitment is based on assessment of a written application accompanied by a curriculum vitae and supporting documents. The mayor comes to an irrevocable decision based on this information.

In **Hungary**, government decrees lay down the conditions for admission to the various offices. Recruitment is conducted by the general secretary usually without a competitive examination, except for the post of general secretary itself, which is the subject of a competitive examination after publication of a vacancy notice; job vacancies may nevertheless be advertised in the press.

In **Latvia**, in the absence of specific legislation, the Labour Code applies, and staff are recruited on the basis of a contract between employer and employee.

In **Lithuania**, category B staff are recruited in accordance with general labour law provisions through public competitions or on the basis of examination results. The provisions governing these procedures are approved by the government. Recruitment procedure involves publication of a vacancy notice locally, pre-selection, anonymous tests and interviews. Successful candidates may be placed on reserve lists.

In **Poland**, the law does not specify procedures for recruiting local authority staff, merely laying down the conditions for the various posts. Each local authority is therefore free to adopt its own recruitment arrangements. However, apart from the secretary and treasurer, who are appointed by the municipal council, staff recruitment is often conducted by means of a competitive examination or an interview procedure.

In **Romania**, the secretary of the municipal or city council is appointed by the prefect following a competitive examination. The secretaries of the municipal and district councils of Bucharest must also pass a competitive examination but they are appointed officially by the Department for Local Public Administration. Other staff are appointed by the mayor or the chairman of the district council.

In the **Russian Federation**, staff (excluding elected officials) are recruited in general on the basis of labour legislation: applying for vacancies, presenting (as appropriate) documents, confirming the qualifications (e.g. for architects). Recruitment is formalised in the labour contract and respective act (decree) on recruitment issued by the head of administration.



In **Slovakia**, senior managers and other specific staff are recruited through personal selection following a public advertisement. Candidates submit a job application form, a curriculum vitae and their educational certificates. The next step is the signing of an employment contract. Other staff are recruited through enquiries, advertisements, notices, written applications and through placement offices following interview.

In **Slovenia**, civil servants may only be recruited by public competitive examination, except where the law provides otherwise. The procedure is laid down in the relevant regulations, which deal in particular with the advertising of posts, the selection of candidates, appointment or recruitment and trial periods. Appointment or recruitment of local authority staff is supervised by the mayor or, on his or her authorisation, by the secretary.

In "**the former Yugoslav Republic of Macedonia**", local authority staff are recruited in accordance with the Labour Code and with the "local authorities" section of the Procedure Act. The recruitment procedure involves pre-selection by a board and an interview.

### *Transfers and promotions*

Broadly speaking, it is possible to identify two different approaches in the matter of transfers and procedures: either these procedures are established under general provisions with which the local authorities comply, or it is up to the local authorities themselves to regulate this matter.

The latter approach is adopted in **Bulgaria**, where these procedures are governed by provisions at local level and the local authorities (usually the mayor) can lay down the conditions governing local authorities' staff careers. It is not unusual for mayors to grant promotions at their own discretion without any specific procedure being followed (by the mayor or the council). However, in all cases it is necessary for:

- the post to be vacant;
- sufficient funds to be available to cover the salary increase;
- the job to be included in the organisation chart approved by the council;
- the candidate to meet the requirements stated in the job description.

Transfers and promotions may be performed by competitive examination or direct selection. Competitive examinations (which are conducted in the same way as for initial recruitment) are only held if the council or the mayor so decides. The direct selection process is organised in accordance with conditions laid down by the mayor, who can either select staff directly or appoint a committee to assess the candidates.

In **Croatia**, transfers are possible at the staff's request within the same local authority or to another local authority. By decision of head of administrative department's order transfers are only possible within the same local authority. Similarly, promotions can only be granted in the same local authority on the basis of merit and service time.

In the **Czech Republic**, there are no specific provisions governing transfer or promotion procedures. Therefore the Labour Code applies, and in this context, regulation is the task of the local authorities themselves. According to the Act on Municipalities, special qualification requirements and exams are imposed for the staff performing delegated State responsibilities (State administration).

In **Estonia**, promotion and transfer procedures are governed by local provisions, and local authorities are able to lay down their staff's career conditions. It is possible to move from central to local government.

In **Hungary**, there are no legal obstacles to staff mobility from one local authority to another. The administrative body and the staff member in question can negotiate a temporary or permanent transfer to another department. Staff can be promoted in rank or grade. This depends both on length of service and on merit. To be promoted in grade, a local government officer must:

- be deemed "suitable" for the post;
- have passed the examination provided for by law;
- fulfil the conditions laid down by his or her superiors.

In **Latvia**, transfers and promotions are governed by the Labour Code. However, municipal councils may set additional conditions. Transfers at the request of the person concerned are possible, either within the same service or to other local authorities. Promotion is awarded in the light of merit and seniority.

In **Lithuania**, transfers from a staff member's department to one in another local authority are possible only at the request of the person concerned. Promotion is possible only within a department and on the basis of seniority and merit.

In **Poland**, transfers and promotions concern only "appointed" local government officers (they are not possible for "elected" or "nominated" staff: secretary and treasurer). Transfers can only be temporary and automatic. The new job must correspond to the officer's qualifications (remuneration cannot be reduced). Changes in the conditions of employment of contract employees are governed by labour law. Staff can be promoted to a new post or to a higher step (on the salary scale). Promotion to a new post can only occur if the officer has the qualifications (training and length of service) established by a decree of the Council of Ministers.

In the **Russian Federation**, in most cases, transfers and promotions of staff members are regulated by the labour legislation. As a rule, transfers are possible only with the agreement of staff members concerned. The exceptions are specified in the legislation (a temporary transfer arising from the practical necessity, etc). Promotions are possible if vacancies are available. Due attention is paid to many factors (the length of service, performance appraisal, qualifications, etc.). Competitive examinations are also practised. It should be noted that under the current legislation the employment period in local authorities' administration is included in the length of service taken into account for certain benefits and guarantees. This allows local authorities' staff members to request employment in governmental bodies.

In **Slovakia**, in accordance with the Labour Code, an authority may, in a range of specified cases, transfer a member of staff to another post by a unilateral decision, provided that the new post is appropriate to the abilities and skills of the staff member concerned. The employment conditions laid down in the employment contract are binding on the body and the staff member, and any amendment must be by mutual agreement. An employment contract may be amended by: transferring an employee to a different post, reassigning him or her to another place of work or temporarily seconding him or her to another body.

There are no special provisions governing the promotion procedure. The usual criteria applied are: career record, administrative skill, level of education and the ability to perform higher duties.

In **Slovenia**, transfers are possible at the request of the person concerned or automatically through a decision of the mayor or the secretary (when the latter is empowered to do so). Promotions are governed by the law on salary scales in public institutions and in state bodies and local authorities, and by regulations on the promotion of state administrative staff. The criteria for promotion are seniority, additional knowledge, independence, creativity and good performance over a prolonged period. Staff assessment reports are drawn up every four months.

In "**the former Yugoslav Republic of Macedonia**", transfers are possible within a department, either at the request of the person concerned or automatically. Transfers to another local authority are possible only at the request of the person concerned. Promotions are possible only within a department and are based on merit.

### **III. Remuneration**

#### *Structure of remuneration*

In **Bulgaria**, remuneration of local authorities' staff is composed of a payroll salary, additional pay for length of service (experience), for holding more than one job (internal replacement), overtime, etc., and compensations, in cases of: temporary disability due to sickness, accident, pregnancy, birth, maternity, quarantine, taking care of an ill member of the family, etc.; single aid - with births, deaths, funerals, etc.; monthly allowances for children and other compensations - for business trips, termination of the employment contract without notice, for non-taken paid annual leave, illegal dismissal, etc.

The level of the payroll salary is linked to the functions performed and position held. A unified lower level of remuneration is established for positions of the same type within the groups of municipalities in accordance with the size of population and the metropolitan municipality is separated in an individual group. A decree of the Government also fixes the upper level of maximum monthly remuneration which is up to 50% higher than the starting remuneration for each position.

Individual remunerations of municipal employees are determined within the limits of the "salaries fund" whose size is determined by the municipal council at the mayor's proposal. In addition, municipal council after mayor's proposal defines the average gross remuneration per person for the municipal administration and its sub-units employees.

Individual remuneration (basic monthly salaries, fixed in individual employment contracts) is defined as follows: by the municipal council for the mayoralties; by the mayor of municipality for secretary and all employees of the municipal administration except for those assisting the functions of mayors of districts and mayoralties; by mayors of districts and mayoralties for employees of the municipal administration assisting their functions. The basic criteria for determining individual remuneration are related to the requirements for the position held - educational background, experience, qualification, additional training, etc., and to the specific functions and tasks performed.

Bonuses to local authorities staff can be provided once annually at the end of the year. The total fund for bonuses is defined within the limits of realised economies from the "salaries fund", as approved by the municipal council, and realised expedient economies from other expenditures of the municipal budget. The Government fixes annually by a decree the upper level of the amount of individual bonuses. Thus, in 1995 the maximum amount of such a bonus is up to two monthly gross salaries per person.

In **Croatia**, remuneration comprises a basic salary that may be supplemented with a bonus payment linked to output and overtime.

In the **Czech Republic**, salary range for local administration staff is determined by the Act No. 143/1992 and by the government decree No. 253/1992, both as amended. By salary all components of the remuneration are understood, i.e. the base salary according to the respective tariff, bonuses for supervising, bonuses for substituting, night work and weekend work bonuses, special and performance bonuses, bonuses for split shift work, overtime and holiday work, 13th and 14th salary, and premiums. Remuneration is based on the character of the job, education, number of years in service, and relevant experience. The said criteria serve to determine placement in one of the tariff groups, and in one of the ten salary slots within each of the groups. In this manner, the base pay is established to which the employee is fully entitled.

In addition, the employer may choose to offer an employee, whose results are superior or who undertakes more work than others, a personal performance bonus of up to 40% of the salary of the highest salary slot within the employee's tariff group, or a personal performance bonus of up to 100% of the salary to an employee who is an outstanding expert and is placed in the highest salary slot. There is no legal entitlement to receive performance bonus, and it is entirely at the discretion of the employer to grant, increase or decrease such a bonus in line with the performance described above.

By a decision of the municipal board, local authority staff may be granted the use of official accommodation.

In **Estonia**, remuneration consists of a basic salary for the post in question. Other forms of remuneration are: premiums (once or twice a year), holiday pay, travel allowance, overtime pay and additional pay for performance of extra duties.

In **Hungary**, local authorities' staff are entitled to a remuneration comprising: a basic salary, complementary bonuses and allowances. The basic salary is established in view of the post (category of the servant). The staff working for the central administration and the offices of the President of the Republic, the National Assembly, the Constitutional Court, the Audit Court or the Prime Minister are entitled to a complementary bonus of service of 35% of the basic salary. The complement for the staff working for the territorial administration is 10% of the basic salary. Finally, the staff working under difficult or dangerous conditions or holding a foreign language certificate are also entitled to an allowance.

In **Latvia**, local authorities decide on their staff's wage levels. Staff may receive, as well as their basic monthly wage, allowances for specific duties, for arduous work, for good performance, for overtime and in the event of a fatality.

In **Lithuania**, the remuneration of local authorities' staff consists of a basic salary and other additional payments provided for in the law for overtime, the carrying out of specific duties and performance. It is paid from municipal budgets.

In **Poland**, local authorities' staff are entitled to an "adequate" remuneration according to their post and qualifications. This remuneration comprises: basic salary, post bonus, service complement, increase due to seniority, premium (only for service workers), difficult conditions of work or night or overtime bonuses. In addition, local authorities' staff are also entitled to retirement pension and bonuses.

The actual amounts of the basic salary and the post bonuses are established by decree issued by the Council of Ministers depending on the post, qualifications and grade (category within the professional hierarchy).

In **Romania**, the remuneration of local authorities' staff is composed of basic pay.

In the **Russian Federation**, the remuneration comprises a basic salary, special benefits, efficiency bonuses and medical allowances (to be paid as a lump sum before each annual leave). A basic salary is primarily determined by the number of inhabitants in the municipality (that applies in the first place to cities and towns).

In **Slovakia**, municipal officials are paid according to the Wage and Remuneration Act for exceptional work and (subject to the consent of the municipality) according to the government decree on the wages of the staff of budgetary bodies.

Staff are assigned to a wage category and draw the corresponding wage. Provision is also made for extra payments and bonuses for night work, Saturday and Sunday work, work during holidays, work other than a staff member's own and exceptional duties. A bonus is also paid for overtime, and time off in lieu is given.

In accordance with the aforementioned decree, municipal staff may also receive a bonus for management and supervisory tasks or for standing in for another staff member, a special bonus and extra personal pay and bonus. Similarly, a staff member who performs well may be promoted by the municipality to a higher wage category.

Nevertheless, none of the bonuses mentioned are an entitlement, and they are granted on the basis of different criteria.

In **Slovenia**, local authority staff's remuneration is composed of a basic salary, successful work performance premiums, allowances and benefits. The basic salary is determined according to the scale for the calculation of wages (this is the starting salary of the first tariff category, determined with the collective agreement for non-commercial activities) and quotients defined by law. Additional duty payments may also total up to 50% of the basic wage. Senior management staff are entitled to a bonus of 15% of their wage.

In keeping with the law on salary scales in public institutions and in state bodies and local authorities, the coefficients used to calculate base salaries depend on how difficult the job is, and range from 4.20 to 9.00 for municipal functionaries and from 4.00 to 4.70 for senior municipal executives. The quotients for the determination of basic salaries for other employees are classified in tariff categories with regard to the level of professional qualifications required and with regard to the level of difficulty of the job. Within these groups, the quotients are divided into payment categories with the titles of individual jobs within payment categories.

In addition, employees are entitled to benefits during their absence from work (due to illness, annual holidays, education, retraining, etc.).

The starting gross salary for individual tariff categories is determined according to their ratio to the lowest starting salary and is defined in the collective agreement for non-commercial activities. The amount of the starting salary is determined or increased every three months with an annex to the collective agreement for non-commercial activities with regard to the growth of retail prices on the escalation scale. This scale can be replaced with the escalation scale of the social pact or the scale of the collective agreement for the commercial sector, if these are more favourable.

In "**the former Yugoslav Republic of Macedonia**", the basic wage may have added to it allowances for overtime and for specific duties, as well as temporary performance bonuses. Increases in the basic wage are linked to promotion.

### *Wage adjustments*

In **Bulgaria**, various pay adjustment mechanisms have been applied during the last several years, generally reduced to compensation for a certain share of the inflation growth, i.e. application of fixed coefficients to the remuneration defined by the employment contract at certain intervals. In 1995 a new approach was adopted. The average gross salary of a municipal administration employee, as proposed by the mayor and approved by the municipal council, is adjusted in relation to the growth of consumer prices each quarter following a country unified scheme. Thus, the total amount of the working salaries fund is up-dated. Using additional funds from such up-dating to increase remunerations under individual employment contract remains the competence of local authorities.

Each change in the level of the minimum working salary for the country leads to an automatic change of the remuneration of these municipal employees who receive pay at the level of the starting monthly salary for the respective position.

Existing mechanisms for adjusting the pay in relation to inflation and other variations cover not only basic working salaries but also compensations and allowances. The principle applied is basically covering a certain portion of the inflation growth.

Annually, parallel to defining the minimum working salary, the monthly allowances, including child allowances, are up-dated and an automatic adjustment is envisaged for the next quarters depending on the growth of consumer prices. The adjustment for the third and fourth quarters of 1995 is planned at 85% of estimated growth of consumer prices or coefficients of 1.043 and 1.065.

The financial capacity of the state and municipalities play a primary role for the implementation of established adjusting mechanisms.

The overall shortage of financial resources at both national and municipal tiers seriously curtails the possibilities to adjust remuneration of municipal servants in correspondence with the rising cost of living.

In **Croatia**, automatic wage increases are linked to length of service (with a total limit of 20% of the basic salary) and promotions. Other automatic adjustments may be decided by the executive organ of the local authority. Non automatic adjustments can be negotiated.

In the **Czech Republic**, automatic adjustment mechanisms in wage are linked to the length of the service, promotion and higher qualification. Non automatic adjustments are also possible depending on available financial sources. Finally, the Government may decide by decree to amend wage adjustment due to the increases in the cost of living.

In **Estonia**, the adjustment of salary to the cost of living is not automatic, but depends on the local possibilities. Adjustment usually follows pay rises made for the state government officials within the limits set by the state government.

In **Hungary**, every year the Parliament establishes the reference salary rate on the basis of which is calculated the staff's remuneration, considering the opinion of the social sector concerned. In any case, the reference salary rate cannot be lower than that of the previous year.

In **Latvia**, there is no automatic adjustment machinery. Non-automatic increases may be given following contractual or discretionary negotiations, within the limit of available funding.

In **Lithuania**, the Government regulates the adjustment of basic monthly salary in relationship to the cost of living and financial climate.

In **Poland**, the adjustment of salaries to the cost of living is done by means of regulation and depending on inflation, reference salary, etc. There is also an automatic adjustment in the light of seniority. Increases under this heading come into play with effect from the 5th year of service, and the increase is of 5% of the basic wage, rising by 1% per year to a maximum of 20%.

In **Romania**, the criteria for adjusting pay are established by law.

In the **Russian Federation**, remuneration is closely related to the minimum wages which are established by law: the rise in the minimum salary of the civil servants generates higher salaries for local authorities' staff.

In **Slovakia**, wage adjustment depends on certain criteria (such as the number of years of service, improvement of educational level) and on the funds voted by the municipal council. Cost-of-living variations are taken into account through changes to pay categories on the basis of an amendment to the decree approved by the government.

In **Slovenia**, automatic wage adjustment machinery exists on the basis of promotion and seniority. The additional payment for length of service represents an annual rise of 0.5% of the wage for all staff. Women with over 25 years' service are entitled to an annual rise of 0.75% of their wage which is added to the rise of 0.5%. Non-automatic adjustments are possible following negotiations.

#### **IV. Social protection**

In **Bulgaria**, local authorities' staff have to be covered by the general insurance scheme for sickness, temporary invalidity, long-term invalidity and death, as well as by the general pension scheme. The right to benefit for temporary disability is acquired after three months' service. The amount is calculated according to the length of service and the last month's pay. Benefit payments continue even after termination of the employment relationship if the state of temporary disability continues. If the disability occurs within two months after the end of the contract, the claimant is entitled to benefit for a maximum period of 75 calendar days.



Local authorities' employees who are declared disabled are eligible for a pension at a rate in keeping with the extent of the disability and the period of service completed. Length of service is not taken into account if the disability is the result of an accident at work or an occupational disease. In the event of death a lump sum is paid to the deceased employee's family and any dependents have the right to a pension.

The right to an old-age pension is acquired after 25 years' service by men at the age of 60 and by women after 20 years' service at the age of 55.

In **Estonia**, in general, the same rules apply as to central government officials. The retirement age is 65, and the amount of pension depends on length of service.

In **Lithuania**, local authorities' staff are affiliated to the general social security scheme and are entitled to compensation in the event of disability or death for work-related reasons. The sum paid to the employee's family in the event of death amounts to two and a half times the employee's annual wage, calculated on the basis of his or her last salary. In the event of disability the amount depends on the extent of the disability and ranges from one year's pay to two and a half times the annual salary, calculated once again on the basis of the last month's salary. The Law on Civil Servants guarantees their right to a pension calculated according to the general provisions applied in this area.

In **Poland**, local authorities' staff are affiliated to the general social insurance scheme, which covers them even after their retirement. They are also covered by the general pension scheme. The right to a full pension is acquired at the age of 65 for men and the age of 60 for women (in certain circumstances, these ages are reduced to 60 and 55 respectively).

In the **Russian Federation**, local authorities' staff are covered, during employment and retirement, by a general scheme. Moreover there are special funds in case of incapacity, disablement or death.

In **Slovakia**, local authorities' staff are affiliated to a general insurance scheme covering sickness, disability and death during and after their working careers. They are thus covered by a general pension scheme during and after their working lives.

In **Slovenia**, local authority staff are affiliated to a general insurance scheme covering sickness, disability, retirement and death during and after their working careers, and also to a general unemployment insurance scheme. Staff of local authorities may also affiliate to a private health insurance scheme.

The right to an old-age pension is acquired after 20 years' service by men at the age of 63 and by women at the age of 58. Men acquire the right to a full pension at the age of 58, after 40 years' service, while women acquire full pension rights at the age of 53, after 35 years' service.

Affiliation to the general social insurance scheme is also the rule in **Croatia, the Czech Republic, Hungary, Latvia, Romania** and in "**the former Yugoslav Republic of Macedonia**".

Staff contribute to the funding of social protection schemes in **Hungary** (6% for pension scheme and 4% for the rest), **Latvia** (12%), **Russian Federation** (1% for pension scheme), **Slovakia** (17.7%), **Slovenia** (21.5%, i.e. 7.5% for sickness insurance and 14% for pension scheme) and in "**the former Yugoslav Republic of Macedonia**".

Employers' contributions amount to 33% in **Estonia**, 44% in **Hungary**, 38% in **Latvia** and 48% in **Poland**.

## V. Trade union rights

In **Bulgaria**, according to the Constitution, the conditions under which public servants in general can participate in trade unions, as well as the exercise of their right to go on strike are established by law. In the absence of an act on public servants, the Labour Code applies. Thus, local public servants can freely form trade unions and participate in them (Article 4).

In the area of local public staff, there are four major trade unions, the most representative of which is the "Federation of Independent Syndicates of State Government and Organisations".

In addition, according to article 6 of the Labour Code, employees serving the same municipality can, at a general meeting (assembly of the "proxies"), elect one or more representatives to protect their common interests.

In **Croatia**, local authorities' staff as all public servants enjoy full trade union rights according to the Constitution and the national laws.

Similarly, in the **Czech Republic**, trade union rights for local authorities' staff do not differ from those of other employees. These rights encompass the right of association (for which Article 27 of the Charter of Human Rights and Freedoms which is the Preamble to the Constitution provides, and developed by the Labour Code and Act 23/1990 on associations) and the right to strike.

In **Estonia**, local authorities' staff are entitled to form trade unions. However, at present there are no special trade unions for local authorities' staff. For this reason this staff affiliates, in case they do, to the trade union of civil servants.

In **Hungary**, local authorities' staff may freely create trade unions and participate in them. The managers of civil servant trade unions enjoy a legal protection greater than that of other members of trade unions. Civil servants' trade unions are part of a consultative body, the so-called "Forum for the Conciliation of Civil Servants' Interests" which comprises, in addition to representatives from these trade unions, representatives from the Government and the local authorities' associations, and the Chamber of Public Administration as an observer.

Concerning the right to go on strike, local authorities' staff can exercise this right in accordance with the agreement between the Government and trade unions.

In **Latvia**, local authority staff have trade union rights, although trade unions play a very minor role.

In **Lithuania**, local authority staff's trade union rights are dealt with by the Public Servants Act. They encompass only the right of association, the right to strike being prohibited.

In **Poland**, local authorities' staff have the right to create trade unions and participate in them. However, they do not enjoy the right to go on strike. However, in practice it can be said that trade unions have little importance in local authorities.

In **Romania**, local authorities' staff are not entitled to establish trade unions.

In the **Russian Federation**, local authorities' staff have the right to form trade unions. This right is guaranteed by the Federal Act on Trade Unions. Strikes are prohibited. The trade unions protect the right of their members to remuneration without any discrimination, represent and protect the interests of their members in labour conflicts and ensure their social protection.

In **Slovakia**, the constitution guarantees local authority staff's right to join a trade union. The main role of the trade unions is in the field of pay and social issues.

Thus the act which covers collective bargaining gives trade union activists the right to bring into play various interests which are legally protected by collective agreements. In this context, mention must be made of the Slovak public service union, a national umbrella group covering local authority staff unions, among others.

In **Slovenia**, according to the law on State Bodies Staff and the collective agreement for non-commercial activities, local authorities' staff are entitled to establish trade unions and participate in them. However, local self-government reforms not yet having been carried out, trade unions for local authorities' staff are only envisaged at a later stage.

In "**the former Yugoslav Republic of Macedonia**", local authorities' staff enjoy trade union rights, including the right of association and the right to strike. There are also local authority staff trade unions.

**Table 1: Trade union rights  
of local authority staff**

	<b>Right of association</b>	<b>Right to strike</b>
Bulgaria	•	•
Croatia	•	•
Czech Republic	•	•
Estonia	•	
Hungary	•	•
Latvia	•	•
Lithuania	•	
Poland	•	
Romania		
Russian Federation	•	
Slovakia	•	•
Slovenia	•	•
"the former Yugoslav Republic of Macedonia"	•	•

## **VI. Legal protection**

### *Administrative Review*

In **Bulgaria**, control of compliance with labour legislation is exercised by the General Inspectorate of Labour of the Ministry of Labour and Social Welfare. Other governmental bodies and agencies may also exercise such control as well, by virtue of an act from the Parliament or a ministerial decree. These supervisory bodies may enforce administrative measures in order to prevent or terminate violations of labour legislation.

In **Croatia**, Local authority staff can refer any issues concerning recruitment or career to the head of the administration department by means of formal complaint. Disputes concerning disciplinary procedures may be referred to the disciplinary commission in appeal.

In **Latvia**, labour disputes are, within the local authority structure, a matter for the administrative committees set up by the local authority, as employer, and for the trade unions.

In **Lithuania**, unlawful decisions may be reviewed by the heads of the authority in question.

In **Poland**, the representatives of local authorities' trade unions have the necessary legal capacity to negotiate with the local authority on collective disputes.

In **Slovenia**, local authority employees may appeal decisions of the first instance concerning their rights, obligations and responsibilities. The appeal is lodged with the author of the decision, which examines it and delivers a second decision.

In "**the former Yugoslav Republic of Macedonia**", appeals may be made to a higher administrative authority in respect of any matter relating to decisions connected with career and disciplinary measures.

### *Judicial Review*

In **Bulgaria**, all disputes between employees and their employer concerning their employment relationship and collective bargaining agreements can be challenged before the courts, according to the Civil Proceedings Code. The lawsuits resulting from this relationship are free of charge for employees.

In **Estonia**, the administrative courts are competent to decide on disputes concerning staffs' statutory rights.

In **Croatia, Czech Republic, Hungary, Lithuania, Poland and Slovakia**, disputes between employer and employees are a matter for the ordinary courts.

In **Romania**, local authorities' staff are protected by law. As a result any decisions adversely affecting them may be challenged before the courts under the provisions of the Administrative Disputed Claims Procedure.

In the **Russian Federation**, labour conflicts are settled through commissions on labour conflicts, conciliatory commissions, labour arbitration or courts of general jurisdiction.

In **Slovenia**, if the employee is not satisfied with the decision handed down on appeal, or if no decision is forthcoming within 30 days of the appeal being lodged, disputes over rights, obligations and responsibilities may be taken before the labour courts. Administrative decisions not subject to appeal (such as the appointment of functionaries and senior executives) fall under the jurisdiction of the Supreme Court.

In "**the former Yugoslav Republic of Macedonia**", judicial review, through the civil courts, exists for any dispute relating to recruitment procedures, decisions relating to careers and disciplinary measures.

## VII. Planned or current reforms

In **Bulgaria**, the legal status of local authorities' staff is envisaged in planned or current reforms in several fields, namely: an act on Public Servants should introduce, in 1996 at the earliest, the general framework for central and local authorities' staff; administrative-territorial structure and local self-government, the reform of which started in 1995; and in the social field. As a result of these reforms, the new position, role and conditions of local authorities' staff will be gradually defined.

In the **Czech Republic**, a global public administration reform is envisaged.

In **Latvia**, the government wishes to regulate local government service, but local authorities are opposed to this. A fundamental decision needs to be taken: a single scheme for staff working for regions and municipalities or a unified scheme.

There are several problems standing in the way of the adoption of a specific scheme for local authority staff: the definition of the status of authorities and their administrative departments, harmonisation of the staffing structure of local authorities in accordance with the national classification of occupations and clarification of the role of the Chair of the municipal council as the leader of local administration.

In **Lithuania**, the Government envisages the preparation of draft legislation implementing the law on Civil Servants.

In **Poland**, draft legislation concerning the status of local authorities' staff was prepared in 1994 and is actually considered by the Committee on local authorities. This legislation aims at improving and updating the existing legislation according to the new labour legislation and draft legislation on State public service. Among other things the draft legislation includes the reinforcement of the municipal Secretary's position, the replacement of the current disciplinary procedure with a preliminary instruction procedure and continuous professional training of the staff.

In **Romania**, the Government is currently working on draft legislation concerning the status of Civil Servants.

In the **Russian Federation**, a special federal law and statutes of the subjects of the Russian Federation are needed to regulate many issues, namely: the list of municipal posts and their classification by group, procedures for financing municipal services, the guarantees, responsibilities and remuneration of local authorities' staff, other issues such as recruitment, performance appraisal, termination of service, etc.

In **Slovakia**, an Act on public service is being drawn up and is due to be adopted by 1998 at the latest. This act will provide all public staff, including local authorities' staff, a general framework comprising: public service definition, status, recruitment procedure, working conditions, wage and bonuses and pension schemes.

In **Slovenia**, the reform of local self-government is still under way. For this reason concrete implementation such as that of conditions of employment of local authorities' staff is only foreseen at a latter stage.

In "**the former Yugoslav Republic of Macedonia**", an act on local government is being drawn up, and when it has been adopted, an Act on local government service will be able to be drawn up, in order to make sure that changes of government no longer mean changes in the staff employed by local authorities.

With this in mind, the government wishes to introduce a system of competitive examinations, so that appointments are made on the basis of merit and a professional local government service is created.