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SUPERVISION AND AUDITING OF LOCAL AUTHORITIES' ACTION

Local and regional authorities in Europe, No. 66

Supervision and auditing of local authorities' action

Report by the Steering Committee on Local and Regional Democracy (CDLR)
prepared with the collaboration of Prof. Juan Santamaria Pastor and
Prof. Jean-Claude Nemery

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FOREWORD

This publication contains:

- Recommendation No. R (98) 12 of the Committee of Ministers to member states on supervision of local authorities' action, and
- the report of the Steering Committee on Local and Regional Democracy (CDLR) on supervision and auditing of local authorities' action, including eight national reports.

The CDLR study covers the institutional relationship between the different tiers of government, but also the control exercised over local authorities' action by courts or by independent organs, as well as the internal relationship between local authority bodies.

The interest of this study is not limited to the scope of the analysis which deals with solutions adopted in several national legal systems, largely representative of the situation in the member states of the Council of Europe.

This interest is also due to the ambitious and original objective which it follows: dealing with the different mechanisms of control (political, legal, financial and management) as a whole and providing keys to evaluate how they operate as components of a system, with a view to development.

Recommendation No. R (98) 12 and the guidelines proposed to member states are the result of this work. This recommendation was prepared by the CDLR and also takes account of the point of view expressed by the Congress of Local and Regional Authorities of Europe (CLRAE).

RECOMMENDATION No. R (98) 12

**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES
ON SUPERVISION OF LOCAL AUTHORITIES' ACTION**

*(Adopted by the Committee of Ministers on 18 September 1998
at the 641st meeting of the Ministers' Deputies)*

The Committee of Ministers, having regard to Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage, and to foster their economic and social progress;

Considering that, as provided for by Article 4, paragraph 3 of the European Charter of Local Self-Government (hereinafter referred to as "the charter"), "public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen";

Considering that, when local authorities have, as provided for by Article 3 of the charter, the right "within the limits of the law, to regulate and manage a substantial share of public affairs", these authorities become accountable to the citizens – electors and taxpayers – and the state;

Considering that compliance with the principles of the rule of law and with the defined roles of various public authorities, as well as the protection of citizens' rights and the effective management of public property, justify the existence of appropriate controls;

Considering that the nature and scope of controls over local authorities' acts must normally be differentiated depending on whether they are tasks implemented on behalf of superior authorities or acts carried out within their "own" competencies;

Considering that a possible lack of clarity in local self-government statutes, and in particular in the definition of competencies, constitutes one of the main threats to self-government and can result in exorbitant control over local authorities' acts;

Considering that the principles enshrined in Article 8 of the charter on the administrative supervision of local authorities' activities also apply to administrative sanctions concerning local authorities' elected representatives;

Considering that, under Article 11 of the charter, "local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers", which implies the possibility of recourse against improper exercise of supervisory powers;

Considering that transparency is the best guarantee that public authorities carry out their acts in the interests of the community, that it is an essential prerequisite for effective political supervision by citizens and that, therefore, strengthening it allows the reduction of other forms of supervision;

Considering that the experience of many member states shows that it is possible to make the systems of supervision evolve in a way favourable to local self-government without endangering their effectiveness;

Having regard to Recommendation 20 (1996) of the Congress of Local and Regional Authorities of Europe on monitoring the implementation of the European Charter of Local Self-Government;

Having regard to the report of the Steering Committee on Local and Regional Democracy on supervision and auditing of local authorities' action,¹

Recommends to the governments of member states that they:

1. adopt the appropriate measures to:

– extend the application of the principles enshrined in Article 8 of the charter to all forms of supervision of local authorities' action;

– recognise the essential role of political supervision by citizens and to foster the implementation of this supervision, through, *inter alia*, the use of the instruments of direct democracy considered appropriate;

– strengthen the transparency of local authorities' action and to ensure, in general, the public nature of decisions which engender financial costs to be borne by the community, as well as the real possibility for citizens and legal persons concerned to have access to these decisions in conformity with the procedures established according to the law;

– in accordance with Article 7, paragraph 1, of the charter, allow administrative sanctions concerning local authorities' representatives (suspension or dismissal of local elected representatives and dissolution of local bodies) only exceptionally, to accompany their use with the appropriate guarantees, in order to ensure their compatibility with the free exercise of local electoral mandates, and to give preference to procedures where the supervisory authority, or a named *ad hoc* authority, intervenes in the place of the authority at fault, thus reducing cases where administrative sanctions could be adopted against the latter;

– provide procedures that local bodies can themselves initiate for solving their internal conflicts, and envisage the intervention of the supervisory administrative authorities only when these procedures achieve no result;

1 Study series on "Local and regional authorities in Europe", No. 66.

2. Undertake, if necessary, the appropriate legislative reforms in order to improve consistency between the systems of supervision and the principle of subsidiarity, and the effectiveness of these systems, taking into account the guidelines appearing in the appendix to this recommendation.

Appendix to Recommendation No. R (98) 12

Guidelines on the improvement of the systems of supervision of local authorities' action

I. Guidelines on the scope of administrative supervision

- To provide that, unless the contrary is provided for by law, local authorities exercise their own competencies.
- To favour the attribution of “own” competencies over the delegation of competencies, resulting in a reduction of expediency supervision.¹
- To enumerate clearly, in statutory provisions, the acts subject to supervision.
- To limit compulsory *ex-officio* administrative supervision to acts of a certain significance.
- To reduce *a priori* administrative controls (those where the involvement of a government authority is necessary for a local decision to take effect or be valid).

II. Guidelines on the development of alternative mechanisms to administrative supervision

- To strengthen the dialogue between central and local authorities.
- To strengthen the function of advising and assessing, which some bodies (whether independent of central administration or part of this administration) may have, in particular in the financial and management fields.
- To strengthen the role of independent bodies such as ombudsmen and mediators.
- To strengthen internal mechanisms of supervision, in particular in the financial and management fields.

¹ The Netherlands delegation recalls that the Government of the Netherlands, when ratifying the European Charter of Local Self-Government, indicated that it did not consider itself bound by Article 8, paragraph 2, of the charter. Likewise, this particular guideline could only be followed by the Netherlands Government where it does not bring into question the extent of the supervisory power given to the Crown in the legal system of this country.

III. Guidelines concerning the supervisory procedures

i. Judicial procedures

- To deny courts the power to replace the local authority in evaluating the expediency of an act: where such evaluation is necessary, this should be a task for administrative supervisory authorities.
- To give the courts the power to adopt interim measures, when these measures are justified by their urgency and/or the risk of irreparable damage.
- To provide for appropriate measures in order to ensure the full and immediate execution of courts' decisions concerning the legality of the act subject to supervision, including the procedures for substituting the authorities at fault.
- To provide for appropriate measures in order to reduce the time taken to examine cases brought before the court, as the length of judicial procedures runs counter to legal security and may prejudice the usefulness of the supervision.

ii. Supervisory procedures before the administrative authorities

- To provide, if possible, that there is only one first instance supervisory authority; where the intervention is required of specialised supervisory authorities (depending on the content of the act subject to supervision), to define precisely the respective spheres of competence of these bodies, in order to avoid uncertainty over which authority actually has to carry out the supervision.
- To set, in statutory texts, the time limit granted to the supervisory authority in order to perform the *a priori* supervision and to provide that the absence of any decision within the given time limit signifies agreement.

iii. Financial supervision and supervision of management

- Minimise the effects of financial supervision and supervision of management in so far as these can bring into question the expediency of choices made by local elected representatives.
- To organise these two kinds of supervision in order to foster good accounting practices and the effectiveness of management, prevent financial imbalances, monitor financial rehabilitation of local authorities which encounter financial difficulties and enlighten citizens with complete and objective information.

IV. Guidelines on the prevention of the risk of informal supervision

- To prevent, as a general rule, local authority staff members being dependent on authorities other than the ones that employ them, when taking decisions as part of their duties.

- To avoid relations between local authorities and central government departments working with them which lead to the replacement by unofficial “technical” control, of official supervision, the level of which is lowered.

Report by the Steering Committee on Local and Regional Democracy on supervision and auditing of local authorities' action

prepared with the collaboration of Prof. Juan Santamaria Pastor
and Prof. Jean-Claude Nemery

INTRODUCTION

The position of local authorities in states' administrative structures is closely linked to the political thinking prevailing at any given time. Proof of this lies in the fact that systems of local government are a perfect epitome of the great tensions and balances which gave form to our modern states.

The shaping of local government has therefore been closely bound up with the political struggles of the last two hundred years, and with the clashes between conflicting theories about the unity or plurality of government, the concentration or dispersal of its functions and centralisation or decentralisation of power. In a nutshell, the history of local government has been a constant dialectic to and fro between the idea that local authorities should be subordinate to central government and the idea that they should manage their own affairs.

As this century draws to a close, it is a generally recognised fact that the centralised model of the state is undergoing a crisis, which goes hand in hand with a vigorous rebirth of lower-tier local government authorities and with widespread recognition of the need to respect their autonomy. However, the decentralising reforms introduced by various European states in recent decades (France, Germany, Italy, Spain, Sweden, and, to a lesser degree, the United Kingdom) have differed in their scope and their nature.

Widespread recognition of the principle of self-government is, moreover, not devoid of problems. Firstly, there is the very ambiguity of the concept. The difficulty of precisely defining the concept of "self-government", now regarded as the cornerstone of local government, is exacerbated by the complexity and diversity of the theories in which it has its origins, including in particular:

- the theory put forward in late eighteenth-century France of "municipal power" as a "fourth power", whereby municipalities were responsible for affairs within their own territory;
- the German theory of "municipal association" (*Genossenschaft*), which emphasised the corporative nature of local society, as a people-based community exercising authority over a territory;
- the theory of "self-government", which is Anglo-Saxon in origin and had its golden age in the eighteenth century;
- and, lastly, the theory of decentralisation, which was initially a reaction to the excesses of the bureaucratic, hierarchically structured centralism of the Napoleonic era.

Nowadays, local self-government in the broad sense entails entrusting the administration of local affairs to the representative bodies of the communities directly concerned by those affairs, a function which they carry out under their own responsibility and, therefore, usually without instructions or orders from higher local government authorities.

The principle of local self-government therefore seems to be founded on three core ideas: local authorities should adopt their own administrative structure, be vested with their own powers and, lastly, freely administer their own affairs, which rules out subordination to other bodies and the use of methods associated with the principle of hierarchy.

As a general rule, constitutions recognise the importance of local self-government in the administration of local interests, without defining those interests or what form they take. This latter task is usually left to the legislature, which must, in any case, respect local authorities' right to play a part in matters which directly affect their interests.

It is the legislature which will define local interests at its own discretion, in keeping with the Constitution, and establish their scope by granting local authorities the powers needed to administer those interests.

Ultimately, constitutional and/or legal recognition of local self-government must serve as a basis for organising relations between administrative authorities in such a way that the role conferred on local government reflects the fact that it is in a privileged position to fulfil certain public functions.

It is from this angle that we should approach the issue of supervision of local authorities' administration of their own affairs. The concept of self-government draws on the idea that power should be limited and non-absolute in nature. Systems of control exist to prevent overstepping of the limits and to guarantee preservation of the balance between the public interest, the community interest and individual rights, struck by the authors of the Constitution and of ordinary law.

This justifies the existence of supervision, but at the same time provides a yardstick for setting its limits, as any supervision which is not necessary to the above purpose should be abolished and any means of supervision going beyond what is reasonable to achieve that purpose should be reviewed.

Article 8.3 of the European Charter of Local Self-Government (hereafter designated the charter) merely reasserts this principle in respect of a specific kind of supervision, administrative supervision, in that it provides:

“Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.”

It is with particular regard to this principle that this report discusses the systems of supervision existing in a number of member states and assesses, firstly, the nature and extent of the supervision of local authority action and, secondly, the conditions under which such supervision is exercised and its consequences.

I. NATURE AND EXTENT OF SUPERVISION OF LOCAL AUTHORITY ACTION

1. The various types of supervision of local authority action and their purposes

The limited nature of local autonomy, the fact that in most countries different authorities co-exist within the same territory, and the potential impact of local activity on public, but also individual, interests justifies the legislature's involvement in setting up the supervisory machinery applicable to local authorities. In fulfilling this task, parliament usually enjoys considerable discretion, since hardly any constitutional texts lay down precise rules on the supervisory measures that may be taken in respect of local authorities.¹

Local authority action is in fact subject to numerous controls, each of which has its own *raison d'être*. Studies often tend to deal separately with the different kinds of supervision, probably because each poses its own specific problems.

Nevertheless, where the aim is to assess to what extent supervision affects the exercise of local self-government, it becomes important to have a general picture of the different controls and the purposes they serve.

In this report the controls to which local authorities are subject are classified according to three categories: legal supervision, financial supervision and auditing, and political supervision. Each of these major categories covers a complex state of affairs, the main features of which are described below.

a. *Legal supervision*

The term "legal supervision" immediately brings to mind the idea of supervision of local authority action with the aim of verifying its compliance with the framework of laws determining the limits of local self-government and the conditions under which it is exercised. It is therefore a matter of ensuring that local authorities do not overstep their powers and that those powers are used in accordance with the law. Where powers have been delegated, this supervision sometimes extends to assessing decisions' consistency with the objectives being pursued (expediency).

The concept of legal supervision encompasses a number of forms of supervision, which must be clearly distinguished.

Firstly, there is the supervision exercised by central or, where applicable, regional government, which can be termed "administrative supervision" by a "supervisory authority".

Then there is the supervision exercised by domestic courts (administrative and/or civil) where proceedings are instituted against a local authority.

¹ The Italian Constitution of 1948 is an exception since Article 130 provides "A regional body, constituted in accordance with a law of the Republic, shall review the lawfulness of decisions taken by the provinces, municipalities and other local authorities. In cases specified by law, a review of expediency may be carried out."

The different kinds of legal supervision do not end there, since an important role may be played by non-judicial bodies which are, nonetheless, manifestly independent from central (or regional) government.

Some states have, for instance, set up the office of ombudsman or mediator, with responsibility for carrying out investigations (Scandinavian countries) or examining complaints of injustice suffered through maladministration by local authorities within their territorial jurisdiction. In the United Kingdom the latter role is fulfilled by the local government ombudsman, an office set up under the 1974 Local Government Act.

b. Financial supervision and auditing

The financial supervision and auditing with which we are concerned here primarily consists in checking accounts and liquid and other assets.¹ In most countries both processes are mainly based on the rules of public accountancy and aim to enforce compliance with those rules and to ensure that accounts are properly kept. However, they may also extend to a comprehensive review of how an authority manages its financial affairs, i.e. its efficient, economic use of its resources.

A distinction may be made between financial control and auditing with regard to who is responsible for the operation; an audit assignment may in some cases be entrusted to an independent expert, responsible for taking stock of the local authority's financial situation and advising it on future financial decisions. In this case, the audit cannot really be considered a form of financial supervision or a verification of the accounts, but is more an aid to decision-making.

It should also be noted that in some countries *de facto* financial supervision may be exercised by financial institutions, some of which may be state owned, when an authority borrows money.

c. Political supervision

Political supervision may take place at two levels.

Firstly, within an authority, local executives may be answerable to elected assemblies empowered to debate local affairs and take decisions on them.

Article 3.2 of the charter moreover states that councils or assemblies composed of members elected by universal suffrage may "possess executive organs responsible to them".

The political answerability of local executives may take different forms in the legislation of member states which have introduced the principle.

In Poland, a council may decide to replace a municipality's executive body or the mayor alone within a month of receiving a report from the Regional Chamber of Accounts.

¹ This report does not, however, deal with local finance controls which aim to restrict or set guidelines for expenditure through tax measures or a grants policy.

In Sweden, since 1 January 1995, a local assembly may revoke the mandates of all the members of a committee (the executive and others) when the political majority of the committee is no longer the same as in the assembly, or when changes are made to the organisation of committees.

In Finland, the majority of the municipal council has the right to dismiss the executive body, committees and other bodies, nominated by the council, by passing a vote of no confidence.

Other states have provided for the possibility of tabling motions of censure, which, if passed, result in the overthrow of the local executive. This is the case in Luxembourg, where such a motion may be tabled by one third of council members if a draft budget is rejected. If the motion of censure is passed, the members of the college of burgomaster and aldermen are deemed to have resigned.

In Spain, there is a (little used) procedure whereby a council, following a so-called “constructive” motion of censure, appoints replacements to carry out executive duties.

In Finland, the Municipal Organisation Act of 1 July 1995 empowers a council to give a vote of no confidence in the different bodies it has elected and to bring about their resignation.

Bulgaria is a special case, since the Local Self-Government and Local Administration Act provides that municipal councils and mayors shall supervise one another. The councils are empowered to annul any measure taken by a mayor which runs counter to a council decision, and mayors may request a council to reconsider a decision which they regard as against the municipality’s interests or unlawful. Where the impugned decision is upheld, the mayor may refer the matter to the courts, which will rule on the decision’s lawfulness.

In other countries, including France in particular, there is no such answerability, even of a non-specific nature. Under the French model the executive wields considerable influence over local decisions. It derives its strength not so much from legal provisions governing the relations between the deliberative body and the executive body as from a wide range of differing sources (electoral mechanisms, local traditions, etc.).

At a second level, political supervision may be exercised by the public itself. The most direct form of this day-to-day supervision is voting in local elections. Article 3.2 of the charter expressly provides that political supervision by a council may be supplemented with supervision by the public through recourse to assemblies of citizens, referendums or any other form of direct citizen participation, where permitted by statute.

This provision of the charter echoes the familiar delegatory democracy versus participatory democracy debate. The idea that, apart from having the right to refer a dispute on the lawfulness of an administrative decision to the courts, members of the public should be allowed to exercise wider-ranging political supervision over local affairs would seem to be gaining ground in Europe.

This form of political supervision may be exercised in different ways: citizens may be granted the right to refer a matter to a mediator or ombudsman, to request a local referendum or to ask the council to conduct an inquiry to sound out public opinion.

2. Subject of supervision

A distinction is usually made between supervision of decisions and supervision of bodies and persons. These two forms of supervision do not raise the same problems, which is a good reason to deal with them separately. It should nevertheless be pointed out that the subject of the supervision is the local authority's action: in most instances the sanction attaching to unlawful or otherwise improper action only affects the decision embodying that action, although in some more serious cases a penalty may be imposed on the bodies or persons responsible for the decision.

a. *Supervision of decisions*

It is difficult to pinpoint general rules in the vast range of legislation on local government existing in the different states, apart from the fact that the method of supervision differs according to whether it concerns a local authority's own powers or powers delegated by another administrative body (central or regional). In this connection, as we shall see below, administrative supervision of the expediency of local authority action is, in principle, only permissible where it is exercised by higher authorities over tasks delegated to local authorities.

The distinction between "own" local functions and "delegated" state functions corresponds to the traditional French model, which has clearly left its mark on modern-day systems of local government in continental Europe. However, such an approach is foreign to the United Kingdom system, where local authorities only exercise powers expressly attributed to them by statute, albeit exercising them as own functions and never as delegated functions.

- i. Supervision of functions relating to supra-local interests, administration of which is delegated to municipalities by higher authorities

In the systems following the French model, when the time came to regulate the exercise of such functions the national parliament opted for one of the following solutions:

- regard the local authority as a component or organ of the state or region, as the case may be, and therefore subject to the latter's hierarchical authority;
- regard the local authority as an autonomous entity, not subject to any hierarchical supervision, although greater involvement of a higher authority is justified where the local authority fulfils functions delegated to it by that authority.

a. The first solution gives rise to what might be called a "functional duality": the representatives of local authorities act as representatives of the municipality and as "officials of the state" (or the region as the case may be). In these circumstances, which particularly affect the mayor, municipal employees ("on loan to the state", to use a particularly apt French expression) are hierarchically subordinate to state bodies, bound by orders issued by those bodies, and subject to their supervision and disciplinary authority.

This model can be found in the French system, where, in some spheres, the mayor is "under the authority of the state's representative within the *département*", whose orders he or she is obliged to follow (Articles 122 and 123 of the Municipalities Code).

Mayors in Italy are in a similar position. According to sections 30 to 38 of Law No. 142 of 1990, where a mayor fails to fulfil his or her duties as a government official, the prefect may appoint a commissioner to guarantee the performance of those functions.

Other countries which make a distinction between own powers and delegated powers allow the state authorities to review the expediency of use of delegated powers.

In Hungary, by express provision, the principle of self-government does not apply to delegated powers, which are exercised not by elected local authorities but by an official, the secretary of the local authority, who takes decisions in such matters without the municipal council having any right to intervene. An appeal against decisions by the secretary of the local authority in matters coming under the state's own authority lies to the head of the civil service (the state supervisory authority), who is empowered to annul, modify or reconsider such decisions.

It is not always easy to identify the administrative functions or spheres of public authority where municipal bodies must act as "agents of the state". The sectors usually cited as examples include activities relating to censuses and electoral rolls, recruitment of members of the armed forces, the issue of certificates and local policing.

Moreover, there is no consensus as to the consequences of a mayor's activity as a "government official". In principle, the municipal authority is subject to the orders, supervision and disciplinary authority of the government, which also has the right to take measures in its stead and is even empowered to determine appeals against a mayor's decisions lodged with a higher administrative authority. Logically, the ultimate responsibility should lie with the government (as in France, but not in Italy), which should also bear the expenses incurred (as in Belgium, but likewise not in Italy).

b. Greater respect for local self-government is shown by systems such as Spain's, which do not consider the mayor as an "official of the state" and rely to a large extent on the machinery of delegation of powers. Under such a system, although power is vested in a higher authority, the local authority, whose right to organise its own administrative structure must in any case be respected, can be given responsibility for managing the services in question (cf section 7 of the Spanish Local Government Act of 2 April 1985 – LRBRL)

According to section 27 of the LRBRL, a delegation of authority "must be accepted by the municipality concerned, unless it is mandatory by law, in which case the law shall provide for the corresponding financial resources to be made available". The delegation agreement must specify the scope, content, conditions and duration of the delegation, and the powers of supervision attributed to the delegating authority.

That authority's powers of supervision include the right to give orders concerning the provision of the services delegated, to suspend their provision, to issue general technical instructions, and to request information on their management by the municipality at any time. The authority may also send representatives and request that the municipality take the necessary measures to remedy any deficiencies noted.

Should the municipality fail to obey orders, to provide information or to comply with a request, the delegating authority may withdraw the delegation or itself exercise the authority delegated in place of the municipality. Lastly, the municipality's decisions may be challenged before the relevant bodies of the delegating authority. The Spanish Constitutional Court has nevertheless held that the allocation of general disciplinary authority to prefects is unconstitutional (Decision 4/1981).

This approach, whereby preference is given to delegation of authority, is also followed in Austria, where Article 119 of the Constitution provides for the delegation of powers, not only in relations between central government and the municipalities, but also between the *Länder* and the municipalities, and in Germany, where some *Länder* have moreover abandoned the traditional, controversial distinction between own functions (*Selbstverwaltungs-angelegenheiten*) and delegated functions (*Auftragsangelegenheiten*) by decreeing that municipal authorities always act as such under their own responsibility and (at the very most) accepting their subordination to the *Land's* orders solely where the law expressly provides that this shall be the case with regard to a specific field. This applies to North Rhine-Westphalia, Hesse, Baden-Württemberg and Schleswig-Holstein.

Nevertheless, whether the mayor is considered an "official of the state" or a "manager of delegated powers" the fundamental problem remains the same: striking the difficult balance between respect for local self-government and the need to guarantee that tasks and interests of greater than local concern will be properly taken care of.

ii. Scope of supervision and importance of decisions

Some states are tending to limit the scope of supervision of decisions according to their importance. However, that scope is not everywhere defined with the same precision.

Under the French system the lawfulness of an administrative decision by a local authority is subject to review when it is mandatory that the state's representative be notified of the decision. There is a precise, exhaustive list of such decisions, which include, *inter alia*:

- municipal council proceedings whatever their scope, whether regulatory or not, and the accompanying documents;
- decisions taken by a mayor on behalf of the municipal council in the areas and under the conditions specified in Article L 122-20 of the Municipalities Code;
- regulatory or individual decisions taken by mayors in the exercise of their police powers as defined, in particular, in Article L131-1 and subsequent articles of the Municipalities Code;
- regulatory decisions taken by mayors in all other areas which come under their authority according to the law.

In Hungary administrative supervision concerns the functioning of local authorities and their decisions in the form of bye-laws or resolutions.

Similarly, in Italy Law No. 142 of 1990 limited the scope of the compulsory preventive review of the lawfulness of decisions to council proceedings alone.

Law No. 172 of 1997 subsequently reduced the scope of this preventive review, which is now automatic only in respect of decisions concerning the authority's statutes, regulations coming within the local council's jurisdiction (excluding those relating to the organisation of the authority's own administrative structure and the keeping of its own accounts), balance sheets covering one or more years and management final accounts.

In Sweden a distinction is made between "mandatory activities" and "voluntary activities". Mandatory activities are defined by law; they are subject to greater supervision.

However, in other countries decisions subject to supervision are less precisely defined, and in some cases all decisions by local authorities are subject to administrative supervision.

In Poland supervision takes place under the Local Government Act of 8 March 1990. The Constitutional Court (judgement of 27 September 1994) has ruled that there must be supervision of all tasks of a public nature performed by local government where the purpose is to satisfy the needs of local communities (in the case of "own" tasks) or of society as a whole (in that of delegated tasks).

There is little precise information on the list of decisions subject to supervision except in financial matters, a field where there is a precisely defined list of financial decisions subject to the supervisory authority of the regional chambers of accounts.

In Switzerland, precise information on the nature of decisions subject to supervision mainly exists with regard to local authorities' obligations in the financial and accounting spheres.

In Turkey, administrative supervision by central government concerns "action by local authorities". Article 125 of the section on administration of the 1982 Constitution provides that "recourse to judicial review shall be open against all actions and decisions of the administration". As there is no clear distribution of public powers between local authorities and central government, it is difficult to identify which decisions are subject to review, except in financial and budgetary matters.

In the United Kingdom decisions subject to control are not defined as such. Control can relate to any local authority action, decision or conduct.

b. *Supervision of bodies and persons*

One of the rare characteristics common to all European legislation is that members of local government are elected.¹

Despite the particularities existing in comparative law at the level of the provinces (the most striking example being that of Turkey, which alongside the elected local bodies, the mayor and the council, has another body consisting of elected members and members appointed by central government), the elective nature of local government has fundamentally changed the systems of supervision applicable to local authorities.

It should be pointed out that, in the past, central government's most effective means of supervision was government appointment of local authorities, which usually went hand in hand with powers to sanction their members, suspend them or remove them from office, and even to dissolve the local authority.

This type of supervision, traditionally regarded as a sign of what is in substance authoritarian government, the expression of a certain hierarchical supremacy over the authority being supervised, is, as a rule, incompatible with a municipality's being able to organise its own administrative structure.

Nowadays almost all national parliaments not only provide for political supervision (by means of motions of censure) and judicial supervision (which generally concerns the criminal liability of their members), but have also introduced, albeit exceptional, administrative controls over local authorities.

The use of such measures, on which constitutions are silent, is clearly one of the most incisive forms of interference in local self-government. Consequently, the laws which provide for such measures must be interpreted in a rigorously narrow way.

For example, the Italian legislation on suspension or dissolution of the municipal or provincial council and suspension or removal from office of the mayor or of council members, the Spanish legislation on dissolution of local assemblies, and the similar legislation of some German *Länder* and Swiss cantons, are (despite the relative vagueness of the legislation's references to management seriously detrimental to the public interest or to failure to fulfil constitutional obligations), regarded by legal writers and by the courts as necessary mechanisms to preserve the proper functioning of the democratic system within local government when it becomes paralysed by disagreements within an assembly itself. These measures are intended in the public's own interest, since the local authority's inability to function breaks off the democratic relationship between the public and the local authority, and in substance deprives the public of any possibility of governing itself through that authority.

In this respect, the French system is particularly unsure, in that there is no express provision concerning the circumstances in which the Cabinet may dissolve a local body. However, this method has rarely been used. The administrative courts regard it as legitimate in cases where the

¹ This requirement is incorporated in Article 3.2 of the European Charter of Local Self-Government, which provides that councils or assemblies shall be composed of members freely elected by secret ballot on the basis of direct, equal and universal suffrage.

malfunctioning of a municipal council, as a result of either negligence or the impossibility of securing a majority in favour of municipal decisions because of an insurmountable internal division, has jeopardised the municipality's administrative management.

The procedural safeguards imposed by the legislature to avoid arbitrary exercise of this power range from a requirement that the dissolution be decreed at the highest legislative level (presidential decree in Italy; decree issued by the Council of Ministers in Spain), with prior reports (to the Council of state in Italy and the National Commission for Local Government in Spain), to the seeking of a favourable opinion from the Senate (Spain).

Although these means of intervention are normally in the hands of the executive, mention must be made of an exception in the Polish law on local government, where the power to dissolve a municipal council and a local executive is conferred respectively on the national parliament and on local councils, neither of which takes such action of its own motion, but at the request of the Prime Minister, in the first case, and the voivode, in the second. Following a dissolution, it is the parliamentary bureaux (and not the executive authorities) that appoint the persons who are to take responsibility for local services until new elections can be held.

Unlike the German and the Spanish parliaments, the Italian legislature did not see any contradiction between the principle of self-government and the prefect's power to suspend local bodies from their functions as a preventive measure, not only for breaching the constitution or on serious public order grounds, but also for alleged offences under the anti-mafia legislation. In such cases, the law provides for the removal from office, by presidential decree, of members of a local or provincial council or executive body, including the mayor and the president of the province.

Bulgarian and Polish legislation is moving in the same direction, in that it confers authority to suspend municipal bodies simply on the ground that there has been no improvement in the functioning of a local authority, in which case management boards are appointed.

3. Scope of supervision

a. Supervision of the lawfulness of decisions

Supervision of the lawfulness of decisions is expressly covered in Article 8.2 of the charter, which provides that administrative supervision "shall normally aim only at ensuring compliance with the law and with constitutional principles".

The main reason for the existence of a legal supervision procedure is to ensure that local authority action is lawful. It can be said that such a review of the lawfulness of local authority action has its basis in the principle of the rule of law, a principle which local authorities must observe both in their relations with other public authorities and central government and in their dealings with the public.

The primary aim of all the systems of supervision set up throughout Europe is to ensure that this principle is observed. In most countries this is even the sole objective of the supervision exercised by the administrative and judicial authorities. Nevertheless, when it is a matter of

reviewing the lawfulness of their action, local authorities' situations differ, not only because of the multivarious nature of the supervision processes, but also because the apparently clear concept of lawfulness in fact does not necessarily have only one meaning.

a. Firstly, with regard to the supervision criteria, it can doubtless be assumed that the constitution and statute (at national and possibly regional level) count as sources of "lawfulness". The question then arises as to whether the supervisory authorities can review the lawfulness of local authorities' action in relation to other legislative sources. The answer of course depends on the rank given to the instruments in question in the hierarchy of sources of law.

Under the French system, the concept of lawfulness refers not only to the Constitution and statute, but also to decrees and ministerial orders. The concept is therefore extremely broad-based. It includes legislation and regulations, but excludes ministerial circulars. The French state has often succumbed to the temptation to govern local authority action by means of ministerial circulars, particularly in economic matters, but a law of 2 March 1982 put an end to such practices, which were scarcely in keeping with respect for local self-government. No circular can now be upheld against a French local authority in the context of a review of the lawfulness of its action.

In the United Kingdom, primary legislation, secondary legislation, case law and common law are all binding on local authorities. A final source of law, or quasi-law, may be deemed influential by the courts. This final source is central government circulars and guidelines, which local authorities are generally advised to follow.

In Germany, local authorities are in a more favourable situation in this respect. The Federal Constitution guarantees the right to self-government, and sovereign status is one of the traditional prerogatives of municipal self-government. In enacting municipal bye-laws, the local representative body functions as a municipal legislature. Any review of the lawfulness of local authority action is therefore solely based on the laws of the *Länder*, which are responsible for establishing the statutory framework of local self-government.

b. Secondly, the scope of such a review of the lawfulness of local authority action may differ depending on whether it is confined to the "procedural" or "apparent" lawfulness of a decision, or whether its "substantive" or "essential" lawfulness may to a greater or lesser extent be taken into consideration.¹ This distinction does not really come into play in the case of judicial supervision, but takes on full importance in that of administrative supervision.

In France, a review by a prefect deals with all aspects of lawfulness. In Italy, under Law No. 142 of 1990, the review also encompassed substantive lawfulness, in that the local authority's decision had to comply with the criteria of "proper functioning of the administration" and "impartiality" laid down in Article 97 of the Constitution and with the requirements of efficiency, thrift and openness mentioned in section 1, paragraph 1 of Law No. 241 of 7 August 1990 on the conduct of administrative procedures and the right of access to administrative documents.

¹ A review of procedural or apparent lawfulness consists in ensuring that the rules of jurisdiction and procedure have been complied with. Substantive or essential unlawfulness exists where the law has been breached and/or there has been an abuse of authority (or an *ultra vires* act.)

It should be pointed out that the inclusion of these requirements of openness, thrift and efficiency among the legal criteria governing administrative action made it possible for the supervisory authorities to regard a large number of legal flaws as direct breaches of the law, without having to apply the *ultra vires* doctrine. Broad application of those criteria could therefore have considerably reduced local authorities' margin of discretion. In Italy, Law No. 172 of 1997 now provides that a review of lawfulness shall solely concern matters of jurisdiction, form and procedure.

In the United Kingdom, there are separate provisions for local government in England, Scotland and Wales, although the principles behind those provisions are alike in each country. A statutory code approved by both Houses of Parliament lays down a number of recommendations on the conduct of local affairs. The recommended principles include correctness, fairness and transparency in local life.

Local authorities must be explicitly authorised by law to carry out an activity. Illegality and therefore abuse of power (*ultra vires* action) occurs when a local authority exceeds its legal power. However, it should be noted that the courts have traditionally ruled that local authorities are empowered not only to do things which they are expressly authorised to do, but also to carry out activities which can reasonably be held to be incidental to the doing of such things.

c. Lastly, the scope of a review of lawfulness also depends on the clarity of the legislation being referred to, in particular legislation defining the allocation of powers between the different tiers of government. Legislative loopholes may in some cases be to local authorities' advantage. For example, in Germany the principle of self-government means that a municipality is free to use the margin of discretion left open by the law. However, more often than not, insufficiently precise legislation engenders a risk that controls will tend to take the form of "indirect supervision" or even a review of expediency.

b. Supervision of the expediency of decisions

The supervision of expediency consists in examining the merits of the act. The supervisory authority not only verifies the conformity of the act to the law, but can also have regard to the scope and different elements of this act (such as people concerned, the content of measures adopted, the timing of the act, and so on) in order to assess, taking into account all the circumstances, the appropriateness of the act or the need to modify it.

Supervision of the expediency of local authorities' decisions is very often absent from the legislation and constitutions of the member states, especially those which recently acceded to the European Charter of Local Self-Government. This can be seen as an encouraging move towards greater respect for local autonomy.¹

In Finland, the court cannot review the expediency of a municipality's action. Moreover, state administrative authorities do not have the power to interfere in the expediency of municipal decisions (for the time being with one exception: town plans).

1 However, this optimism must be qualified, in particular as regards financial matters.

In general, supervision of expediency, where applicable, relates to those actions and tasks delegated to local authorities by higher authorities. This type of supervision is, moreover, provided for in Article 8.2 of the charter: “Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities”.

This is the case in Germany. Although, when exercising their own powers, municipalities are solely subject to a review of the lawfulness of their action, where powers are delegated to them under either federal law or the law of the *Länder* they are also subject to a review of expediency. The Local Government Acts of the *Länder* may provide for a third type of activity: supervised mandatory functions, in which case the Land retains the right to issue instructions to the municipality.

The distinction between own tasks and delegated tasks also applies in Poland, where the Local Government Act of 8 March 1990 provides for a review of expediency in the case of the latter. It should be added that the law is not sufficiently precise as to the criteria governing such reviews of the performance of delegated tasks, and this state of affairs involves a risk of serious interference in local self-government.

In some Swiss cantons a review of expediency may also be carried out with regard to activities coming under local authorities’ own powers. For instance, in the canton of Neuchâtel, the government, the main body supervising local authorities, not only verifies the lawfulness of municipal regulations and bye-laws, which must be submitted to it for approval, but may also withhold its approval where they are clearly against the public interest (the interests of the municipality, the region or even the canton).

In this connection, the Federal Court has confirmed that, even without any express provision to that effect, a cantonal authority may review a municipality’s assessment of the situation where regional or inter-municipal interests are at stake. Nevertheless, in the municipalities’ own spheres of authority, reviews of expediency are in fact carried out only to a very limited extent.

Turkey practices a fairly wide-ranging review of expediency. In this country administrative supervision often takes the form of a prior authorisation and central government enjoys huge powers to examine the way in which local authorities conduct their affairs.

c. Supervision of management and its results

As a general rule, supervision of management is based on local authorities’ main obligations with regard to financial commitments and accountancy and on auditing procedures. It may also involve a critical assessment of the results of the authorities’ financial management.

In Finland, the state authorities do not have the jurisdiction to supervise the municipalities’ management or bookkeeping. The municipalities appoint their own auditing committee and authorised auditors. As regards the functions and financial accounts, the municipalities have the obligation provided by law to deliver detailed statistical information to the statistical central authority and to some ministries.

In Bulgaria, financial supervision is based on a whole series of laws, including the 1995 law on the auditing of accounts, and on supervision of the implementation of municipal budgets. Local authorities are required to:

- a. observe the principles of lawfulness, thrift, efficiency and openness when preparing, adopting and implementing municipal budgets;
- b. allocate budgetary resources in accordance with the priorities laid down by law;
- c. allocate resources originating from the state budget to the implementation of government decisions and programmes;
- d. remain within the expenditure limits laid down;
- e. allocate non-budgetary resources according to the rules and conditions laid down by law or to the decisions taken by municipal councils;
- f. ensure efficient management of municipal assets in accordance with the law;
- g. keep proper and exact accounts.

It can be seen that items b and c are particularly interventionist and may entail some supervision of expediency by the state with respect to the self-governing authorities.

In France, the Act of 2 March 1982 on the rights and freedoms of *communes*, *départements* and regions made the budgetary decisions of local authorities and local public establishments subject to a review of their lawfulness comparable with that relating to administrative decisions as a whole. This act abolished all prior supervision of local authority decisions, including budgetary decisions. Such decisions are therefore subject to supervision after the event. However, because of their specific nature, they are also subject to their own particular form of supervision, budgetary supervision.

Budgetary supervision is carried out by the prefect in co-operation with the regional section of the Auditor General's Department. It relates to four points:

1. the date on which the original budget was voted and communicated;
2. whether the budget is really balanced;
3. inclusion and payment of compulsory expenses;
4. voting and balancing of the administrative account.

The outcome of the budgetary operations is recorded in two documents:

- the management account, which is drawn up by the accountant, voted by the local assembly and communicated not later than 1 June of the year following the end of the financial year;
- the administrative account, which is submitted by the mayor on behalf of a *commune*, by the president of the general council for a *département* and by the president of the regional council on behalf of a region.

In Italy, the Court of Audit, acting in its judicial capacity, verifies that local authorities' accounts have been properly kept. The law makes it mandatory for the local treasurer and accountants to communicate the accounts to the court, which may order any person held liable for improper accounting operations to pay the corresponding expenses.

Moreover, the Local Authorities Division of the Court of Audit is required to examine the balance sheets of all provinces and of municipalities with more than 8 000 inhabitants and to report to parliament on the outcome of its verification and its analysis of their financial management and good conduct of administrative affairs. To provide the division with the necessary information, local authorities must communicate their balance sheets within thirty days of their approval by the regional supervisory bodies, along with the board of auditors' report and any other documents requested.

The balance sheets of all municipalities that have incurred a loss or reported off-balance sheet liabilities, including those with less than 8 000 inhabitants, must likewise be audited. To this end, the Co.Re.Co. (regional supervisory boards) are required to communicate lists of local authorities whose balance sheets show such a state of affairs. This audit procedure is intended to allow early identification of cases of mismanagement and to prevent financial difficulties.

In addition, the Local Authorities Division is empowered by law to request copies of the management reports of all other local authorities, with the result that this division now has overall responsibility for providing parliament with information on the financial management and proper administration of all local authorities.

The audit does not cover every single point, such as proceedings of the council or the executive body, specific management decisions or programmes, and does not give rise to sanctions or to any interference in administrative activities.

As the Constitutional Court has recognised, it is a matter of the collection of information by a body representing parliament, to allow the latter to fulfil its function of political supervision, and of guaranteeing financial co-ordination between the state and local authorities.

Lastly, in addition to this external supervision, internal supervision is exercised by the boards of auditors and by internal audit departments or assessment units.

In Turkey, the Ministry of the Interior supervises the management of local authorities through the General Directorate for Local Authorities and the presidency of the Inspectorate. Furthermore, under Article 160 of the Constitution, the Court of Audit is responsible for auditing public bodies. It verifies local authorities' accounts, drawn up according to a standard layout, and approves or rejects those accounts and the authority's financial transactions. Its function is more to ensure that local affairs are managed in accordance with the law than to guarantee observance of the principles of efficiency, effectiveness, expediency and cost-effectiveness which are the foundations of financial auditing.

In the United Kingdom the accounting requirements for local authorities are set out in secondary legislation (The Accounts and Audit Regulations) and in a Statement of Recommended Practice (SORP). An audit must fulfil seven objectives, which tally with the main auditing objectives described above for the other countries. A novelty of the system is that public accounting practices have moved closer to a commercial style of accounting. An independent, central body, the Audit

Commission, appoints the auditors for each local authority and ensures that audits are up to standard. An auditor may make recommendations, issue a report intended for the general public and refer matters to the courts. Auditors therefore have a quasi-judicial role, but their own decisions are open to challenge in the courts.

4. Authorities exercising supervision

Another general characteristic of the law on local government in European countries is the co-existence of administrative and judicial supervision of local authority bodies and decisions.

Recognition by the legislature that there is a degree of inequality in the position of local government authorities, as a result of the different spheres with which they deal, has led to the law's giving significant powers of supervision to supra-local authorities.

The fact that all European states are governed by the rule of law, and that public authorities' action must therefore be lawful, in turn led to recognition of the courts' jurisdiction to review any administrative activity.

Guaranteeing that the activities of local authorities remain within the limits of the law is a function in which the administrative and judicial authorities can collaborate, and its substance does not differ, no matter which kind of authority exercises the supervision. In both cases, the supervision function entails three essential elements or stages: firstly, knowledge of the activity being supervised; secondly, assessment of whether it complies with the law; and thirdly, the measure taken by the supervisory authority. The principal differences between the two kinds of supervision as well as between national legislations are perceptible in the latter stages.

Apart from administrative and judicial supervision, mention must also be made of the supervision exercised by national or regional parliaments and of the authorities' own internal controls.

a. Supervisory administrative authorities

Article 8 of the charter, devoted to "administrative supervision of local authorities' activities", recognises that administrative supervision of the lawfulness of local authority action is permissible, under the conditions set out in constitutions and statutes. The article provides:

- “1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.”

The fact that it is left to the constitutions and statutes to determine the form of supervision has led to significant disparities between the various systems. These disparities can be seen to be even greater if it is borne in mind that, in many cases, the complexity of a state's administrative structure results in the existence of intermediate supervisory bodies, whose influence varies in each case, between central government and local authorities. Despite this diversity, two main models of regional influence over local authorities can be distinguished.

a. The first corresponds to countries traditionally administered on the French pattern, where decentralising reforms have recently been implemented but central government still has a dominant role, including in supervisory matters.

This is the case in Italy, where, by attributing control of local authorities' action to a regional body (the Co.Re.Co.), Article 130 of the Constitution has broken with the tradition of supervision's being the exclusive preserve of the state. In principle, it is for parliament to determine the form taken by these regional supervisory boards, their powers and the control procedures they apply. However, Law No. 142 of 1990 allows the regions to "organise the board by geographical sectors or subjects" (section 41.2), and to take a number of functional decisions (section 44).

But even where the powers conferred on regions are greatest, as in Spain, the state, which has sole authority to determine the fundamental principles governing relations between the different public authorities, takes a dominant role.

In the case of Spain, apart from the state's dominant role, an important particularity must be taken into account. The Constitutional Court has made it difficult to introduce additional supervisory measures, since it deems that the system of supervision established by the Local Government Act of 2 April 1985 is part of the so-called "constitutionality block", and has a finite, unchanging form, which parliament can only modify in accordance with constitutional reform procedures. In the final analysis, the regions or Autonomous Communities are only granted coincidental powers, intended to operate within a rigid legal framework defined by the state.

Paradoxically, it is only in Portugal, where regional authorities' powers are normally extremely limited, that the autonomous island regions (Madeira and the Azores) are strongly involved in the supervision of both local authority decisions, as in Italy and Belgium, and local bodies (Article 229 *g* and *h* of the Constitution and Article 33 *b* of the Statute of the Azores).

Systems of local government as different as those of France and the United Kingdom also follow a pattern of direct relations between central government and local authorities (without any involvement of regional authorities, where they exist). In France, although significant limits have been placed on the powers of prefects (who no longer have the final say since they cannot on their own authority set aside local government decisions which they consider unlawful), their role is still of key importance to local authorities, in so far as it is in their power to avoid unnecessary judicial proceedings.

A significant reorganisation effort has in fact been made by the Ministry of the Interior and Decentralisation following the introduction of a new system of supervision, which has entailed a comprehensive reform of the prefectures, endowing them with specialist supervision departments, special town-planning units and, in the larger offices, their own budgetary control departments. The

task of these bodies is to ensure that uniform supervision criteria are applied and to prepare and deal with referrals to the courts, while responsibility for the first level of activity, involving supervision of municipal decisions and negotiation with local authorities, has, as a rule, been decentralised to the sub-prefectures (circulars of 1 July 1983 and 26 March 1984).

A similar system of administrative supervision of local authorities has been set up in Hungary, in Poland and in Turkey. In Hungary, (Law LXV of 1990), control is exercised on behalf of the government by the Minister for the Interior through the offices of public administration (which examine all decisions by local authorities). There are twenty local offices of public administration (nineteen in the counties plus one in the capital), whose heads are appointed by the Prime Minister, upon the proposition of the Minister of Home Affairs, for an indefinite period of time. In Poland (section 86 and subsequent sections of the Act of 8 March 1990), administrative supervision is exercised through the Prime Minister and decentralised officials, the voivodes. In Turkey, one of the most striking features is the express reference in the constitution to administrative supervision (Article 127), involving a pyramid-type, hierarchical system of control (minister, regional governor, prefect or governor at provincial level, sub-prefects and directors at municipal level).

A particular feature of the United Kingdom system is that the country does not have a single structure of satellite agencies to carry out central government activities. As a result, administrative supervision of local authorities is exercised through government departments, which may intervene in the activities of local authorities in a large number of ways (powers of inspection, granting authorisations and approvals, taking measures in local authorities' stead and even dealing with appeals against local authority decisions). This sharing of supervisory powers, which are allocated among the government departments according to their remit, can be regarded as a common feature of the United Kingdom's plural systems of local government, which differ in Scotland, Wales, England and Northern Ireland.

It should be pointed out that such sharing of powers is also to be found in other systems of local government such as Sweden's, which combines this form of supervision exercised by the National Health and Welfare Board, the National Data-Processing Board and the National Education Board (which in principle only issues recommendations) with the traditional form of supervision exercised by outlying central government agencies.

In Finland, according to the Municipal Act, the Ministry of the Interior must exercise general follow-up of the municipalities' activities. This obligation does not, however, include the right to issue binding instructions to municipalities. Other ministries as well as some central agencies also have to ensure a follow-up of municipal activities concerning their sector of jurisdiction, with the aim of co-ordinating, without the right to issues instructions.

b. The second model corresponds to federal states, where the most important role is apparently taken not by the state, but by the *Länder* (in Germany) or the cantons (in Switzerland).

Central government has absolutely no legislative or practical role in such matters. Administrative supervision is not exercised by satellite central government agencies, but by organs of the regional or federated-state governments (usually heads of department in the regional Ministry of the Interior), or by those government's own outlying agencies.

In Germany, for example, the supervisory relationship between the *Land* authorities and local authorities usually revolves around a Land official (the *Regierungs Präsident*) enjoying general powers. The powers, sphere of action and even the existence of this official (which is only provided for in certain *Länder*: Baden-Württemberg, Bavaria, the Rhineland-Palatinate and Lower Saxony) depend on the options taken in the region's actual legislation. In Switzerland, a similar situation applies to prefects, who act as decentralised cantonal agents in the districts and are empowered to exercise supervision over the municipalities. There are also sectoral supervisory bodies covering spheres such as town-planning or education.

This therefore corresponds to a chain of relationships where the regional level (the *Land* or canton) can be seen to be the only local administrative link with central government and, at the same time, provides the institutional basis for the entire local government system. Conversely, in the systems patterned on the French model, even where there are strong regional powers, central government tends to preserve significant direct means of contact with local authorities, thus placing itself at the centre of what has been depicted as a star-shaped web of relationships, in which relations between central government and local authorities form a clearly separate field from relations between central government and the regions.

b. The courts

In traditionally centralised states the new supervisory framework made necessary by recognition of the principle of local self-government has entailed changes in the relations between central government and local authorities on such a scale that the implementation of this reform has been a real challenge both for the government authorities (who have had to learn new rules of the game, letting go of some of their traditional powers) and the courts, which have been assigned the role of arbiters of the new decentralisation policy.

In fulfilling this role, the courts usually conduct a strict review of a decision's lawfulness and are not empowered to vary, by applying criteria of expediency, a decision freely taken by a local authority in a sphere where that authority enjoys a margin of discretion

This judicial review process must moreover relate to local authority decisions, not to mere statements of political intent, which do not affect the public's legal situation. As representative bodies of their respective communities, local authorities may issue statements of intent (expressions of wishes, protestations, etc.) in which they propose or follow policy directions different from those of central government. In such cases there is no breach of the law, but merely a divergence of a political nature between the state's opinion and that expressed by local representatives.

Therefore, the main area of activity of the courts is reviewing the lawfulness of decisions. In some countries, courts are the sole authorities empowered to do so. As an example, in Finland (where no state or other supervisory body can review the lawfulness of municipalities' decisions) control on lawfulness is a matter for the administrative courts; on the other hand, they cannot review the expediency of a municipality's decision.

There are only a few systems where the administrative courts are allowed to review the expediency of local authority action, if the law makes express provision for such a review.

This is the case in Sweden, where the administrative courts are permitted to apply expediency criteria in reviewing local authority decisions where the law expressly so provides. In such cases, the court not only sets aside the decision (the only possibility open to it when conducting a mere review of a decision's lawfulness) but is also empowered to dictate another decision, which replaces that which has been annulled.¹

The same applies sometimes to Switzerland, where the court, after setting aside a decision, may either order the local authority to follow a given line of action or take the decision directly in its stead. These are again examples of a lack of due regard for local self-government, since the legislature permits a situation where a local authority's decision, adopted in due legal form, can be varied by another authority, merely applying expediency criteria.

In the systems influenced by the French system, administrative decisions are presumed to be valid, subject to their reversal by the courts if they find that an impugned decision is legally flawed (on grounds of lack of jurisdiction, improper form, a breach of the law or *ultra vires* action) or if the authority has acted *extra vires*, by taking a decision which is "illegal", "unreasonable", "procedurally flawed" or "disproportionate".

c. National or regional parliaments

Attention must be drawn to the supervisory role played in some cases by a national or regional parliament.

As a general rule, a parliament's role is confined to enacting legislation defining the conditions under which administrative supervision of local authorities is exercised. In practice, parliament intervenes in supervision procedures only in exceptional cases. However, there are exceptions to the rule. In Poland, for example, parliament is empowered to dissolve a local council by addressing a resolution to the Prime Minister, where the constitution or a statute has been infringed.

d. Bodies within local authorities

Mention has already been made of one important form of internal control: political supervision exercised by a local assembly over its executive (and vice-versa in some cases). One sphere in which internal control takes on full importance is that of financial supervision and auditing.

In Germany there are two forms of audit: local audits and supra-local audits. Local audits are carried out by the local authorities themselves at their own initiative. The body responsible for the audit is the municipal council or a board of auditors. In municipalities with over 20 000 inhabitants, appointment of an independent panel of auditors, which must ensure compliance with the law, is mandatory.

¹ Decisions which are subject to a review of expediency are all clearly defined by law. Most of these decisions relate to benefits and rights of individuals or to the exercise of public authority within the mandatory sector.

In Hungary, in view of the separation of powers and the fact that local authorities are self-governing, the Local Self-Government Act enshrines the principle that responsibility for managing local assets lies with the municipal council, as regards their security, and the mayor, as regards the lawfulness of the management methods. A local authority is liable for losses incurred in managing its assets, and the commitments entered into by a local authority can in no way be covered from the state budget.

In Sweden and Finland, local authorities are audited by auditors elected on a political basis by the local assembly. As auditors they are in a position of trust. Neither central government, nor any body dependent on central government takes a role in the audit or in supervising locally elected auditors.

In Turkey, an internal audit of financial commitments and accounts is carried out. Section 63 of the Municipalities Act provides that a municipal council may set up a sub-committee to audit the municipal accounts whenever it deems necessary. This sub-committee may hire outside consultants (independent private auditors) to assist it in its auditing activities. After consultation with the mayor, the sub-committee's report is submitted to the council. Another means of carrying out an internal audit of accounts is to call in the municipal inspectors.

Internal audits of local authorities are very important in Italy, where financial management is subject to the scrutiny of both a board of auditors and an internal control department.

The board of auditors is a body which, although it is a part of the local authority, tends to take an impartial view. Its three members are appointed by the council, one (the chair) from a register of duly qualified auditors, the second from a list of councillors holding a diploma in economics and the last from a register of chartered accountants. They are appointed for a three-year term and cannot be removed from office, except for failure to fulfil their duties. They may be re-elected just for a second term of office.

By law financial audit responsibilities cannot be exercised by members of the local authority's organs, or anyone who held such office in the financial year preceding the year of appointment, members of the regional supervisory body, the secretary or other staff members of the local authority or of regions, provinces, mountain municipalities and associations of municipalities having some form of link with local authorities in the relevant territorial jurisdiction.

The board of auditors ensures that the accounts are properly kept and that the local authority's finances are correctly administered and certifies that the management report gives a true account of the management results. It may make observations and submit proposals to improve efficiency, productivity or cost-effectiveness.

The internal control department, or assessment unit, is responsible for making comparative analyses of costs and returns to ensure that the objectives are being achieved, that public resources are not being squandered that there is a lack of bias and that the administrative activities are being properly managed. At least once a year the department or unit determines the control criteria to be applied.

Unlike the audit bodies, which are compulsory in all local authorities, each local authority must not necessarily have its own assessment unit or internal control department. Where such services are needed, a local authority may, under the terms of an ad hoc agreement, rely on a unit or department already set up by another authority.

Local authorities find this possibility particularly useful, since it avoids the creation of a large number of small internal control departments and encourages the development of highly-qualified internal control departments within larger public authorities, which compete with each other to sell their skills elsewhere.

These departments are independent, answerable solely to the political organ (the council) issuing instructions, and employ a number of local civil servants, although they may also resort to specially appointed employees. They are made up of officials of the highest level and experts, who may even come from outside the civil service.

II. CONDITIONS AND CONSEQUENCES OF SUPERVISION OF LOCAL AUTHORITY ACTION

1. Time of supervision

As to the timing of supervision, the general view is that greatest respect for local self-government is, in principle, shown in the case of *a posteriori* supervision, which is carried out after a decision has taken effect without the approval of another authority, independent of the local authority, being required. However, although it is true that *a priori* or preventive controls (those where the involvement of a government authority is necessary for a local decision to take effect or be valid) are usually regarded as exceptional, that does not necessarily mean that they are systematically incompatible with the freedom of local authorities to manage their own affairs. Where justified by the interests at stake, the legislature may provide for *a priori* supervision, subjecting local decisions to leave or approval from central government authorities.

a. *A priori* supervision

Prior permission is normally necessary where a decision involves a major financial commitment. Examples are raising funds through public issues of loan stock, issuing certain bonds or notes abroad, the sale or transfer of certain assets, and acquiring an interest in the capital of a company which does not provide public services or have a public interest activity.

It is likewise normal that supervisory authorities' permission, clearance or approval should be required where supra-local interests are at stake or where powers are shared. This may apply to town planning matters, decisions affecting cultural assets or environmental protection measures.

Another more subtle form of *a priori* supervision takes place where a report from a supervisory authority is required, which in fact means that that authority takes part in the local decision-making process where such a report is mandatory and binding.

Lastly, it is the national parliament which determines what aspects of local affairs necessitate preventive supervision, whether the aim is to ensure standard treatment in a given sector (for example taxation), or to safeguard an interest which is more than just local (for example budgetary balance, which could be jeopardised if there were no limits on borrowing).

A priori supervision must be clearly distinguished from the requirement to provide information, for example the requirement under the French system to notify local authority decisions to the state representative. Notification of the decision, which entails not only its communication but also acknowledgement of receipt of the communication by the state representative, is an automatic procedure, which must be followed, if the decision is to become enforceable, but cannot be used by the representative as a right of veto with a view to suspending or even setting aside the decision.

Similarly, where internal controls are carried out by a local authority official, it cannot be said that this is *a priori* supervision.

A priori supervision exists in Bulgaria, where public prosecutors conduct a general *a priori* (but also *a posteriori*) review of the lawfulness of administrative decisions.

In Germany, the supervisory authorities in the *Länder* may carry out preventive supervision involving the prior approval of municipal decisions.

Prior approval is a widespread practice in Switzerland (where the cantonal government may refuse to approve a decision) and in Turkey.

In Italy, current regulations governing the supervision of local authorities still provide for “preventive supervision of lawfulness”, but only in a very small number of cases.

b. A posteriori supervision

A posteriori supervision is carried out either in addition to *a priori* supervision or on its own.

Supervision takes place as soon as a decision has come into force. The administrative supervisory authorities may solely have jurisdiction to refer a decision to the relevant court, in order to have it quashed. On the other hand, the authority itself may be empowered to suspend or annul the decision in question without resorting to the courts.

In Bulgaria, the Local Self-Government Act empowers regional governors to suspend unlawful decisions on the part of municipal councils and to refer such decisions to the regional courts within a month of their notification. They cannot themselves set aside or vary a decision. The chairs of municipal councils are required to notify council decisions to regional governors, as a matter of course, within a month of their adoption.

In France, all forms of *a priori* supervision were banned by the Act of 2 March 1982, and supervision is therefore carried out after a decision has become enforceable.

Decisions must be notified to the state representative. They become enforceable as soon as they have been made public or served and the state representative has confirmed receipt of the notification. Such acknowledgement of receipt is automatic, and the representative may not use it as a right of veto.

Where the state representative deems a local authority decision to be unlawful, he or she may refer it to the administrative court to seek its annulment. The administrative court therefore has sole jurisdiction to set aside local authority decisions.

Although it offers the maximum guarantee that local self-government will be safeguarded, this system entails a disadvantage for the public in that it prolongs the time needed to have an unlawful decision set aside, given the fact that the administrative courts are overloaded with work. To alleviate this problem, the Act of 2 March provided for a stay-of-execution procedure. The conditions on which a stay of execution may be granted are particularly strict. The courts therefore only rarely take such action.

As in France, in Finland too, all *a priori* supervision has been abolished. *A posteriori* handling of municipal decisions only can be exercised by a court based on an appeal of a person/legal entity affected by a decision. Administrative complaints can be considered by the Ombudsman of the Parliament and the Provincial State Office.

In Germany, *a posteriori* supervision takes place at the request of a person affected by a decision or of an auditing body, or *ex officio*.

In Hungary, the lawfulness of decisions is reviewed *a posteriori*, and any prior interference in a proposed decision is prohibited.

In Poland, the mayor and the chair of the municipal council are required to submit every decision to the supervisory body within seven days. Within thirty days of notification of the decision, the supervisory body decides whether the decision is wholly or partly null and void. Its decision is declaratory in nature and is applied retroactively.

In the United Kingdom, legislation may reserve specific powers to the relevant Secretary of state to intervene in the activities of local authorities after the event. More generally, any government department may challenge a local authority through the courts if it considers that the authority has acted unlawfully. Lastly, the Ombudsman may investigate a written complaint lodged by a member of the public, where the latter considers that an injustice has occurred as a result of an act or omission by a local authority.

In some cases, the same bodies may intervene both *a priori* and *a posteriori*. This is the case in Sweden, especially with regard to the supervision exercised by the county administrative boards, the Parliamentary Ombudsmen and the Chancellor of Justice.

2. Initiation of the supervision procedure

A supervision procedure may be initiated in three different ways: automatically, at the request of the supervised authority or at the request of a third party.

One does not rule out the other. For instance, there is nothing to prevent a decision's being approved in advance, either automatically or at the request of the supervised authority, and then being reviewed after it has come into effect at the request of a third party alleging to have been harmed by it.

a. Automatic supervision

Automatic supervision may be mandatory (where the law itself provides that the lawfulness of certain decisions or types of decisions shall be verified) or optional (where the supervisory authorities have discretion to decide whether a decision should be verified).

More often than not, such supervision is exercised by a supervisory administrative authority, whether a part of central government (the governors in Bulgaria and Turkey, the prefects in France, the voivodes in Poland, the offices of public administration in Hungary) or not (the regional supervisory boards in Italy, the cantonal government in Switzerland, auditors in the United Kingdom, etc.).

In some cases, supervision is exercised by the judicial authorities. In Bulgaria, for instance, the public prosecutors automatically implement a general review of the lawfulness of administrative decisions. In Italy the accounts drawn up by local authority treasurers and accountants must obligatorily be

submitted to the Court of Audit. Moreover, the Local Authorities Division of the Court of Audit mandatorily examines the balance sheets of the provinces and of municipalities with more than 8 000 inhabitants, as well as any municipal balance-sheet showing a loss or off balance-sheet liabilities. It may also examine *ex officio* the management reports of all other local authorities.

Where supervision is obligatory, it is mandatory for the local authority to notify decisions to the relevant supervisory body. This is the case in Bulgaria, where the chair of the municipal council automatically submits municipal decisions to the regional governor, who then has one month in which to refer a decision to the courts.

It should be noted that in Bulgaria, in addition to supervision by the regional governor, which is compulsory, optional supervision by central government bodies has been introduced to cover cases where municipal authorities exercise powers which have been delegated to them in a particular field.

In Poland, the mayor and the chair of the municipal council are required to notify any decision to the supervisory authority within seven days. The authority then has thirty days in which to rule on the decision. Once this time limit has expired, an unlawful decision may only be quashed by the courts, but they must give judgement not later than one year after the adoption of the impugned decision.

In France, the Act of 2 March 1982 includes a list of decisions covered by the notification requirement; the prefect or state representative may refer a decision to the administrative court within two months of such notification if he or she deems it unlawful. Referral to the court is discretionary.

In Italy, decisions subject to a prior review of their lawfulness must be notified to the Co.Re.Co. within five days of their adoption, failing which the decision lapses. The Co.Re.Co. must adopt and notify its own decision within thirty days. Once this time limit has expired, the decision subject to review takes effect.

The supervisory systems of a number of countries, including France and Italy, have been moving, *inter alia*, towards a reduction in mandatory administrative controls. Such simplification of administrative supervision, which probably reflects a change in the relationship between central government and local authorities and greater respect for the latter's autonomy, can also be justified on grounds of efficiency.

In view of the growing number of administrative decisions taken by local authorities and those decisions' complexity, all-round supervision is no longer possible and it is necessary to select decisions which are of special importance given their scope or nature. Failing this, the system of supervision will become overloaded, making it materially impossible to perform all the necessary controls properly and within a reasonable time.

This curtailing of the decisions subject to mandatory administrative supervision is (or may be) offset to some extent not only by allowing third parties, and local authorities themselves, to request administrative or judicial supervision of decisions not subject to mandatory supervision, but also by developing financial supervision of municipalities' accounts and of the way in which they manage their affairs.

This trend is, however, not yet omnipresent. In some countries, it is the general practice that the lawfulness of local authority decisions should be reviewed by a supervisory administrative authority; where mandatory controls are not only numerous, but also carried out in advance, there is a risk of unjustifiable hindrance of local authority action.

b. Supervision requested by the supervised authority

Supervision at the request of the authority concerned offers obvious advantages from the point of view of local self-government, since such supervision ensures full respect for local autonomy while at the same time making it possible to avoid the risks inherent in the adoption of unlawful decisions. Such supervision is *a priori*, since it is carried out either before the decision is adopted or after it is adopted but before it takes effect.

In Italy Law No. 127 of 15 May 1997 amended the system of supervision “on request” set up by Law No. 142 of 1990. Under the new rules, apart from those decisions which are subject to mandatory supervision, a prior review of lawfulness is implemented in the following cases:

- proceedings of the *Giunta*, where the latter takes the initiative of submitting them to the regional supervisory board;
- proceedings of the *Giunta* and the municipal or provincial council concerning firstly awards of public procurement contracts for amounts exceeding the community interest threshold and secondly recruitment of staff, organisation charts and their amendment; supervision is carried out where requested by one quarter of the councillors of a province or a municipality with more than 15 000 inhabitants, or one fifth of the councillors of a municipality with less than 15 000 inhabitants.

It should be noted that in the latter case the supervisory body (which is still the Co.Re.Co. until the office of municipal or provincial mediator, as the case may be, is set up) is not empowered to set aside the decision, but merely to ask that it be re-examined. Where it does so, the decision only takes effect if it is upheld by an absolute majority of council members.

Law No. 127 also provides for the creation within the Co.Re.Co. of advisory services, which local authorities could consult before adopting decisions that were particularly complex or concerned new aspects of their remit. The law makes it incumbent on the regional parliament to enact regulations governing the organisation and supply of such services.

In some countries, supervision requested by the authority concerned may also take the form of an audit.

In Poland, under the Act of 7 October 1992 the regional chambers of accounts are empowered to perform auditing tasks and issue opinions on various matters. In practice, municipal bodies seek the regional chamber’s opinion on all kinds of budgetary, financial and tax questions.

Similarly, in the United Kingdom auditors’ advice is often sought by local councils.

c. Supervision requested by a third party

The preamble to the European Charter of Local Self-Government recognises the “right of citizens to participate in the conduct of public affairs”. It naturally follows that any member of the public may take the initiative of instituting an administrative or financial supervision procedure.

A distinction must be made between action taken by members of the public as part of the supervision procedures prior to judicial review and their right of appeal to the courts against decisions by local authorities which affect them.

The latter remedy is available everywhere, as access to the courts is a fundamental right and is inherent in the principle of the rule of law. Nevertheless, differences do exist with regard to the types of decisions which may be challenged, admissible grounds of appeal, the effects of lodging an appeal, etc.

In the Scandinavian countries it is for a member of the public to refer a matter to the relevant court, as the supervisory authority is merely empowered to draw attention to a decision’s unlawfulness.¹ Other countries have adopted a mixed system, whereby members of the public have a right of appeal, in conjunction with administrative supervision by the state representative.

In Bulgaria, Article 120 of the Constitution provides “Natural or juristic persons shall be free to challenge any administrative decision in the courts, except those expressly excluded by law.”

Under the French system a member of the public may request the state representative to refer a local authority decision to the administrative court if he or she considers the decision to be unlawful or irregular. In such cases state representatives may themselves request the local authority to modify or cancel its decision, refer the matter directly to the court or refuse to act.

Under this approach, the supervisory administrative authority can make a finding of unlawfulness at the request of a third party, but it cannot itself put an end to the situation. The administrative supervision then changes into judicial supervision.

In France a member of the public who decides to challenge a local authority decision directly in the administrative courts must prove he or she has *locus standi*, that is an “interest in bringing the case”. A financial interest suffices for the court to recognise the litigant’s *locus standi*. However, this right of appeal is not a general, unlimited right.

The reference to the “interest in bringing the case” is well known by the different laws on civil and administrative procedure. The concept does not necessarily have the same significance in all the systems, but, in general, rules out the possibility of an action being brought by any member of the public, whether or not concerned with the case, (or an action in the public interest).

¹ In Finland, state authorities have the right to appeal only if the state is an injured party in the case.

This is the case in Italy, where a matter may be referred to the administrative court only by a person (natural or juridical) with a direct, tangible, present interest in the annulment of an administrative decision. It should be pointed out that, in Italy, it is possible to challenge a local authority decision even where the decision in question has already been subject to a prior administrative review of its lawfulness. This confusion of administrative and judicial controls is not devoid of problems, but it is difficult to avoid it, if the prior administrative controls are to be preserved. This is an additional reason for limiting the scope of such prior supervision, as the Italian Parliament has done.

In Germany, anyone can bring a matter before the supervisory authority. Persons who are affected may appeal to the administrative courts, seeking the annulment of a decision which they regard as unlawful. Before they can appeal, they must first lodge a complaint with the local authority concerned. The complaint must be lodged within one month of the decision. If the authority considers the complaint justified, it may vary its decision. If it keeps to its position, the complainant must refer the matter to the administrative court within one month. A complaint generally results in a stay of execution of the decision, except in cases where the public authorities may order its immediate enforcement.

3. Powers of supervisory authorities

a. Interim measures

European legislation on the regulation and suspension of local agreements and decisions by authorities exercising supervision over local government lacks uniformity, notwithstanding a stay of execution is a well-known procedure in cases where an impugned decision is referred to the courts.

In Bulgaria, public prosecutors are empowered to stay the execution of decisions that they regard as unlawful, pending a ruling by the competent body.

In France, a prefect referring a decision to the courts may request a stay of execution, which the administrative court may allow where there is a risk that any prejudice caused may be difficult to repair and one of the grounds relied on appears to be serious and of a nature to justify the decision's annulment. The court is normally required to reach a decision within one month, but an expedited procedure exists, making it possible for the prefect to obtain a ruling within forty-eight hours where the impugned decision is such as to encroach upon a public or individual freedom.

In Germany, a complaint to an administrative authority usually results in a stay of execution: the impugned decision cannot have binding effect in respect of the complainant for as long as the dispute remains unresolved. In some instances, the public authorities are empowered to rule out a stay of execution by ordering the decision's immediate enforcement, although the complainant may seek provisional judicial protection against such a measure, in which case the court may restore the complaint's suspensive effect in full or in part. Where the administrative decision involves the granting of permission or a licence, the complainant may obtain a provisional court order.

A special case is that of Spain, which, as a rule, does not allow suspension of local authority decisions by other public authorities. The only exception is that provided for in section 67 of the Act of 2 April 1985, which allows the government delegate to the Autonomous Community to suspend decisions which seriously jeopardise Spain's general interests. Nevertheless, the law makes it compulsory for the government delegate (who is a central government official) to challenge the decision in question in the administrative courts within ten days of its suspension.

Moreover, the Spanish Constitutional Court has ruled that the ban on suspension of local authority decisions by other administrative authorities (whether belonging to the state or to the Autonomous Communities) applies not only to decisions adopted by local authorities in wielding their own exclusive powers, but also to situations where the municipalities may be exercising delegated powers or powers of management and execution shared with the state or the Autonomous Communities.

If it is also borne in mind that the Constitutional Court deemed the supervisory measures instituted by the state's basic legislation (the LRBRL of 2 April 1985) to be a finite, closed, single system, not permitting any additional measures or any adaptation to the special features of each subject dealt with in sectoral legislation, the result may appear to be rather unwieldy. By ensuring, perhaps with unnecessary zeal, that the principle of self-government prevailed over supervision of the lawfulness of local authority decisions, Spain deprived its system of local government of a protective measure, the stay of execution, which could be useful in such sensitive areas as town-planning, the environment or administration of public property.

b. Investigatory powers

These powers have already been referred to, particularly as regards financial supervision, a sphere where they are much wider than in that of supervision of administrative decisions *stricto sensu*.

Both in systems where the courts have a monopoly on annulment of decisions and in those where the government may declare a decision null and void and an appeal then lies to the courts, it can be seen that, with the very aim of guaranteeing the effectiveness of reviewing a decision's lawfulness, the authority empowered to exercise such supervision is granted a right to obtain information on all local decisions adopted. This right to information is the basis for making it mandatory that local authorities notify their decisions to representatives of the state and, where applicable, the regions.

Having been notified of the decisions and obtained additional information, the supervisory authorities will be in a position to fulfil their important duties as a source of guidance and advice, the final aim being to avoid unnecessary litigation. This pre-litigation work is facilitated where (as is often the case) the supervisory authority is free to notify the local authority of the ways in which the impugned decision is legally flawed before taking any further action. This notification usually takes the form of a "request to re-examine the decision" or a preliminary application.

As is the case in Italy, a request for additional information may suspend the time limit within which the supervisory authority is required to give a decision.

c. Powers of decision and sanction

Apart from the powers to impose sanctions on bodies and persons already described above, the most controversial measure is the annulment of local authority decisions by another authority, which is possible under some European laws. The difficulty of reconciling such power with the principle of local self-government has made it the most hotly debated issue in this sphere.

In Spain, Sweden and France, the courts alone have jurisdiction to set aside local decisions which are deemed to be unlawful. A supervisory authority seeking a decision's annulment must challenge it in the courts.

In France, this principle was not accepted without a fierce struggle; the decentralisation reform of 1982 led to a confrontation between two schools of thought concerning the concept of "administrative supervision" provided for in Article 72.3 of the Constitution. This was not a mere organisational issue devoid of political significance: the Senate (where the conservative parties were in the majority) considered that solely recognising the power to challenge unlawful decisions amounted to reducing the state's representative's position in the courts to that of a mere member of the public; the National Assembly took the view that making the implementation of local decisions conditional on supervision exercised by a representative of the state entailed preserving an unacceptable degree of central government interference in the legal review process. In the end, the Constitutional Council attempted to strike a balance between the two positions by accepting that the principal local decisions should not be enforceable unless they were notified to the state's representative, but that the latter should not be vested with authority to cancel such decisions.

Conversely, in Italy, Poland, Bulgaria, Turkey, as well as in the German *Länder* and, sometimes in certain Swiss cantons, the law on local government allows the supervisory administrative authorities to cancel local decisions. In such cases, the local authority has the right to challenge the cancellation decision in the courts, if it considers that decision unlawful.

The system the most in keeping with the principle of local self-government is obviously that where the only avenue open to the supervisory administrative authority is to refer a decision to the relevant court and, in the most serious cases, stay its execution. There is far greater infringement of this principle in systems where the supervisory administrative authority is free to cancel the local decision and thus clearly assumes overriding authority to solve a dispute as it sees fit.

An even greater threat to local self-government is posed in systems where the administrative authority is free to cancel the local decision on grounds of expediency and the local authority is unable to challenge the cancellation decision.

In almost all European countries, legislation on local government provides for the possibility of taking measures in a local authority's stead. Such provisions are intended to guarantee that the obligations imposed by law on local authorities will be met, since they can be fulfilled directly by central government (or the Autonomous Community, *Land*, canton or region).

This is an exceptional procedure, and before it can be used the local authority must be asked to fulfil its obligations within a given time limit. In some cases, provision is even made for special commissioners to be appointed to such functions.

In the United Kingdom's legislation on local government, several laws allow secretaries of state to assume the functions of local authorities if, after an appropriate investigation or hearing, it is proved that these functions have not been fulfilled or have been improperly carried out. A clear example is the Town and Country Planning Act, 1990, which allows the Secretary of State for the Environment to assume or transfer to another planning body the functions of drawing up and submitting a local plan, where the department of the local authority originally responsible has not done so. In that case, the authority which has failed to act bears the costs of the ancillary work.

4. Local authorities' remedies against decisions by supervisory authorities

a. Administrative remedies

The term "administrative remedy" should be understood to mean an application by the local authority to the authority hierarchically above the supervisory authority, seeking the amendment or cancellation of the latter authority's decision. Such applications are possible under the German and Bulgarian systems.

b. Judicial remedies

Article 11 of the charter provides: "Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the Constitution or domestic legislation."

The concept of judicial recourse adopted by the authors of the charter is broader than the usual acceptance of the term. It can be seen from the explanatory memorandum that the term may encompass recourse to non-judicial bodies.¹ It is nonetheless clear that recourse to the courts is the general rule.

This right of access takes on special importance where the local authority must take action against what it regards as improper administrative supervision, especially since Article 8.1 of the charter provides: "Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the Constitution or by statute." This right of access becomes essential where the supervisory administrative authority is empowered to annul a decision or to sanction local government bodies, as in Italy.

¹ But such bodies must, in any case, be established by law and independent.

Under Italian law local authorities may lodge an appeal with the administrative court against an annulment decision by the Co.Re.Co. (a “negative supervisory decision”) and, at a more general level, in the event of unlawful exercise of supervisory powers. An appeal also lies against a decree dissolving the council or removing a member of the council from office, where that decree is clearly unreasonable or does not contain any grounds.

Lastly, it should be pointed out that, if a judicial remedy is to be effective, the court must be empowered to cancel the impugned decision with universally binding effect, or it must at least be mandatory for the authorities to set aside their own decision, where the court has found it to be unlawful, and there must be the possibility of taking measures intended to ensure their compliance with this obligation.

CONCLUSIONS

The principle of local self-government and supervision of local authorities' action

The setting-up of systems of control on local authorities' action, the scope of this control and the mechanisms for its implementation are closely related to the recognition of the principle of local self-government and the definition *in concreto* of this self-government by Constitution and law.

The need for control, and thus for mechanisms aiming at ensuring its effectiveness, arise when the state is no longer the sole public entity and as a result the exercise of public functions is partly entrusted to self-governed authorities.

As soon as the management of local affairs is given over to local elected representatives, they should become responsible towards their electors and mechanisms of political control by citizens should be established.

Moreover, the recognition of local self-government as a sphere of defined powers implies that the use of these powers should neither run counter to the exercise of state (or possibly other tiers of government) competencies, nor to the exercise of rights which are granted to the citizens by law. This justifies the introduction of administrative and judicial controls in order to safeguard the legally defined roles of the various public authorities and to ensure compliance with the principles of the rule of law.

Thus, controls are not in contradiction with the principle of self-government. Nevertheless, this statement does not answer the question as to the nature, scope and methods of controls, i.e. as to what extent the implementation of controls results in an unjustified restriction of local self-government and therefore becomes incompatible with it.

The express recognition of the principle of local self-government within the Constitution and the possibility of claiming the violation of this principle before the court, on the basis of the constitutional norms, constitutes a guarantee for local authorities and allows them to challenge possible decisions by the national parliament which might endanger their autonomy.

A second guarantee for the principle of local self-government results from the setting-up by the Constitution and/or parliamentary acts of methods of control of local authorities' action.

Where rules in the Constitution are insufficiently precise, it is for the parliament to determine: the definition of local tasks as "own" or "delegated", the admissibility or otherwise of controls of the expediency and the timing of the control. This is an attempt to avoid possible legislative interference by the national executive in local authority decision-making. However, this goal will not be achieved if methods of delegation are improperly used.

Where several tiers of governments exist it is also for the parliament to determine the scope of the measures which may be adopted by the tier(s) of government of the higher level(s).

A possible lack of clarity, or even ambiguity, of legislation on local self-government is one of the main dangers for this self-government and may generate extensive supervision of local authorities' acts.

The defence of local self-government cannot result only from political declarations of principle; it should be based on precise definitions of cases and forms of possible control. This will allow courts to check the legality of the supervision actions at the request of the supervised authorities.

Overall assessment

The analysis of the systems of control in the countries which are the subject of the present study shows that territorial organisation (particularly the existence or lack of intermediate authorities) and the structure of the subnational tiers of government (e.g. the existence of separate executive bodies and their relationship with the respective councils) are factors with a determinant influence when conceiving and implementing these systems.

Differences in culture and legal tradition are also of a great importance when setting up the systems of control, and when the question of their modification arises it is appropriate to take these differences duly into consideration.

The extent of administrative control on local acts varies depending on whether they form part of the exercise of supra-local delegated functions, or of local authorities' "own" competencies. It therefore becomes necessary to state clearly in the legislation the specific own tasks and powers which authorities exercise freely within the limits of their autonomy and those they carry out on behalf of higher authorities.

To guarantee fully the principle of local self-government, the classification of certain tasks as tasks of "general administration" (i.e. initially entrusted to the higher territorial administrations) and of municipal bodies as "agents of the state", should be exceptional. This classification is to be made by the law; in the absence of opposing provisions, there must be a presumption that the local authorities are implementing their own competencies.

The view of the local authority as an "agent of the state" has justified the application of traditional hierarchical techniques, more suited to highly centralised administrations where the higher body can impose its criteria of legality and expediency on the lower body. Systems which apply management, co-ordination and control techniques (limited to ensuring consistent compliance with the law) to relationships between public authorities show greater respect for the principle of decentralisation, which is the foundation of local self-government.

It is in the area of the free management of their own interests that recognition of the principle of self-government is most effective and demands a restatement of the classical systems of administrative supervision characteristic of centralised and thus hierarchical states.¹

In this respect, it appears that the principles enshrined by the European Charter of Local Self-government have guided and continue to guide the work of reforming national parliaments.

In some countries, administrative supervision no longer exists. The state establishes the legislative framework of local authorities' action and adopts financial measures. For the rest, the intervention of central authorities is limited to a general monitoring of local authorities' action with an aim of fostering the consistency of this action, but without having the right to issue compulsory instructions and without the possibility of activating the judicial control, unless the state is an affected party.

Moreover, a noticeably favourable trend is emerging in many member states towards a progressive weakening of forms of administrative supervision (apart from the financial field perhaps) and – it is to be stressed – this phenomenon does not seem to have resulted in less effective systems of control.

This weakening, corresponds to the following trends, that are to be strongly encouraged:

- abolishing control of expediency over local governments' activities carried out in the exercise of their own powers and reducing this control in the case of delegated powers;
- reducing the scope of administrative control of legality, which is often compulsory depending on the particular importance of certain acts;
- replacement, to a certain extent, of administrative controls *ex officio* by administrative controls at the request of the concerned parties may be mentioned; the positive effects of this simplification should fully appear in particular when administrative control can only lead to a judicial appeal;

¹ Here the French example is highly significant. Supervision of local authorities, in French law, had developed historically through an intricate series of administrative controls including systems of prior approval and controls of expediency. Following the decentralising reform of 1982, the system only persists in relation to activities carried out by local authorities on behalf of the state. However, activities performed in the exercise of its own powers are immediately enforceable from the date of publication or notification to those concerned. Only in a few cases will the effectiveness of local activities be subject to notification to the representative of the state.

Something similar has occurred in the Spanish system, where the administrative supervision exercised by the state is also an *a posteriori* supervision of strict compliance with the law and generally limited to the power of overturning illegal local activities in the courts, which alone have the power to annul; the mandatory submission of a copy of acts of local authorities to the state administration and Autonomous Communities does not impose conditions on the effectiveness of these acts.

- reduction of *a priori* or preventive administrative controls (those where the involvement of a government authority is necessary for a local decision to take effect or be valid); reduction of preventive supervision and preference given to *a posteriori* supervision, which is more respectful of local self-government, is justified, among other factors, by the fact that citizens that consider themselves affected have the right to appeal before the court, even when the act in question got through the *a priori* control;
- progressive changing of administrative controls in pre-litigation mechanisms, the effects of controls being limited to contesting the local authority act considered illegal, in the framework of judicial remedy.

This last tendency is consistent with the pre-eminence of judicial supervision over administrative supervision. Nevertheless, there are limits to judicial control and no system could function properly if appeal to courts were the only solution. Thus, the simplification of administrative controls goes hand in hand with the development of other types of control more in line with local self-government.

First of all, the administrative supervision itself evolves in the form of dialogue between central and local authorities. The idea that the systems of control arise out of antagonism between state administration and local self-governments should be abandoned once and for all.

In this respect, the function of advising and evaluating should be emphasised; this function may be assumed, mainly but not exclusively in the financial field, by bodies which are independent from central administration, or even by central administration bodies, providing that their intervention does not result in practice in a concealed return to controls of expediency.

In the same way the importance in some countries of controls by independent bodies (which are not part of the central administration) should be emphasised, and the role played by ombudsmen, mediators and auditors in verifying the legality of local councils' decisions, a role which provides a boost for local democracy and the rights of the citizens without compromising the autonomy of the authorities concerned.

The setting-up of internal mechanisms of control may also be mentioned: good management and effective internal supervision reduce the need for central government control.

Measures to be taken for improving the systems of control

Certain elements, to which national parliaments should pay attention, emerge from the analysis of the various systems of control.

First of all, as regards political control by citizens, as mentioned before, local self-government implies that local elected representatives should become responsible towards their electors. The exercise of the right to vote is the first instrument of political control within a system of representative democracy; its significance and effectiveness should not be neglected.

Nevertheless, the increasing complexity of local authorities' role in the management of public affairs and the long-standing negative impact that certain decisions may have, make it difficult to be satisfied with elections as the only opportunity for questioning and sanctioning poor management. It would consequently seem appropriate to strengthen transparency and to make more use of the instruments of direct democracy as, for example, local consultative or decision-making referendums and popular initiatives at local level.

Transparency is the best guarantee that public powers are used to the benefit of the community; it is an essential condition for effective political control by citizens and consequently allows the reduction of other forms of control.

Therefore, it is necessary to grant all residents concerned by decisions taken by local elected representatives access to these decisions. In particular, all decisions engendering financial costs to be borne by the community should be public and local tax-payers should have the possibility of consulting them, following the procedures established according to the law.

As regards judicial control, it is essential that, in any system of control, courts have the power to have the final decision on the strict legality of local authority acts and that appropriate measures ensure the full and immediate implementation of their decisions.

On the other hand, the courts should not be able to replace the local authority in the evaluation of the expediency of an act; the control on management as a whole and especially political control by citizens fully compensates for this limitation of the powers of the courts, which is more justified than the corresponding limitation of powers of administrative supervisory authorities.

A well-known problem is the length of procedures: whether it is an *a priori* or an *a posteriori* control, all measures aiming to reduce the length of examination by the courts result in an improvement of the system of control and its effectiveness.

As regards the administrative supervision of acts and financial management:

- it is preferable to indicate clearly the acts which are subject to control and to avoid the use of general statements and broad notions which, as a final result, allow the control of all acts, whatever their nature or importance;
- it is appropriate not to increase the number of supervisory authorities, and the same act should not be submitted to multiple controls by different bodies at different times;¹
- when the control is *a priori* the time limit granted to the supervisory authority in order to take a decision should be as short as possible, and it should be established that the absence of any decision within the given time limit signifies agreement;

¹ Of course this does not refer to supervisory bodies of the upper administrative levels before which an appeal can be lodged.

- when the control is *a posteriori* and the administrative supervisory authority can annul the act which it considers illegal, the local authority affected shall be granted the right to a judicial remedy and, in general, the courts should be given the power to suspend the annulment decision where circumstances justify this; in the same way, the courts should be able, if necessary, to suspend the local authority act when an appeal is lodged by the supervisory administrative authority for the annulment of such an act;
- controls on management should not result in a control of the expediency of choices made by local elected representatives and should only aim at preventing financial difficulties or monitoring financial rehabilitation of local authorities which encounter such difficulties.

As regards the supervision of local authorities' bodies, in almost all countries these bodies are subject not only to political supervision (by means of motions of censure) and judicial supervision (which generally concerns the criminal liability of their members) but also to administrative supervision.

The elective nature of the members of local authorities, and the recognition of the power of self-management within the law, imply a limitation of the opportunities for control of local government by other authorities.

The appointment of the members of local authorities' councils by central government and the exercise of state disciplinary power over these bodies must be considered as conflicting with the principle of local self-government, due to the fact that the supervisory authority would act as a hierarchical superior of the supervised authority.

The control by the council over the local executive body (and vice-versa the control of the latter on the council, namely in the form of the request for a new examination) is to be fostered, as well as measures which make it possible to resolve political conflicts within local authorities by avoiding intervention by central or regional authorities.

Measures of suspension or dismissal of local elected representatives and dissolution of local bodies should only be acceptable – and exceptionally – in those cases established by law, if it proves necessary to preserve the proper functioning of the democratic system within the local authority.

In other words, administrative measures concerning local elected bodies should be reserved for the most serious failures in the democratic system, i.e. in those circumstances, clearly defined by law, where such measures appear to be the sole effective remedy.

Other conflicts regarding management of local affairs should be dealt with through mechanisms of control of the acts (whether judicial or administrative) so that the control focuses on the local authorities' activity and not the composition of their bodies.

Moreover, when the suspension, dismissal or dissolution is based on the illegality of acts adopted by elected representatives or bodies in question, the courts should be given the responsibility for establishing whether the conditions laid down by law are fulfilled, in order to justify the application of such measures.

Obviously this does not affect in any way the possibility of prosecuting offenders and the possibility of applying all the consequences of a criminal conviction, including those related to political rights.

National reports on supervision and auditing of local authorities' action

prepared respectively with the collaboration of Mr Stefan Todorov (Bulgaria), Mr Michel Bollé (France), Dr Gerd Treffer (Germany), Prof. Bogdan Dolnicki (Poland), Mrs Zelmin Åberg (Sweden), Mr André Rüedi (Switzerland), Mr Firuz Yasamis (Turkey) and Mr Guy Hollis (United Kingdom)

BULGARIA¹

I. LEGAL CONTROL

In Bulgaria, legal control – administrative or judicial – over local authorities’ action is essentially a control of legality. The system of control is based on the requirement of ensuring the compliance of the rule of law and the protection of rights and legitimate interests of individuals and legal persons.

A. Administrative control

According to Article 144 of the Constitution, “the central bodies of state and their local representatives shall exercise control over the legality of the acts of the bodies of local government only when authorised to do so by law”.

The control is exercised *ex officio* or upon request. In most cases, it is exercised *a posteriori*, but there are forms of *a priori* control.

1. Control “*ex officio*”

Regional governors

Regional governors control the legality of the acts and the action of all state bodies, state establishments, organisations and enterprises on the territory of individual regions.

The Local Self-Government and Local Administration Act also vests them with authority to exert control of legality over the action of local self-government. The chairman of the municipal council submits *ex officio* to the regional governors the acts of the municipal council within one month of their adoption. Regional governors dispose of one month to examine the act; if they consider that an act is illegal, they cannot repeal or amend it but have to refer the matter to the courts.

The acts of mayors are also submitted to regional governors, who are entitled to annul the unlawful ones where no other procedures have been envisaged in the legislation.

The central state bodies

When municipal authorities have been delegated specific powers within particular spheres (for example environment, territorial and settlement division, health care), the central state bodies may also exercise control over their decisions and action, pursuant to the relevant laws. The laws specify the rules and procedures, and the particular specialised bodies competent for control over delegated powers.

¹ This report is the synthesis of a study prepared under the direction of Mr Stefan Todorov by the following experts from the National Centre for Territorial Development and Housing Policy (NCTDHP): Roumen Bogdanov, Sava Popov, Toma Ghekov, Ginka Chavdarova and Christo Stanev.

Mayors

Mayors exercise control of legality over the acts and the action of mayoralty and district mayors when they exercise the powers assigned to them by the law. When mayors delegate to mayoralty or district mayors some of their own functions, they exercise control of legality over the performance of these functions.

Internal control

The Local Self-Government and Local Administration Act envisages a specific form of reciprocal control between the mayor and the municipal council.

Municipal councils are entitled to repeal the mayors' acts which contradict the decisions they have taken, within two months of the date of adoption. Nevertheless, municipal councils may not repeal the acts adopted by the Mayors within the powers assigned to them by law.

Mayors are entitled to exercise control over the action of municipal councils and may ask for a review of their decisions, should they deem the latter contradict the interests of the municipality or violate the law. They have to do this within seven days of the date on which the decisions have been adopted. The decisions are suspensive. If, upon re-consideration, respective municipal councils uphold the contested decisions by a majority of two thirds of the votes, mayors are obliged either to execute them, or to appeal against the decisions before the court.

2. Control upon request***Control upon request from the controlled authority***

These are *a priori* controls, which the local authority itself requests spontaneously. The draft decisions are submitted to the body competent for control, either for information or for opinion. The aim is, on the one hand, to improve the co-ordination within local authorities' action and the interaction between these authorities and the governor and, on the other hand, to avoid the final acts submitted for control being subsequently contested and possibly annulled.

Controls upon request from a third party

Administrative acts may be appealed against through administrative channels before the immediate higher authority. Thus, regional governors exercise control over the acts of the mayor and its administration, and mayors have authority over the acts of mayoralty and district mayors. Appeals may be lodged by citizens or organisations.

Administrative acts are not to be executed within seven days of their enactment (that is the usual term provided for appeals) unless the interested parties declare in writing that they are not going to appeal. Should an appeal be lodged, the execution of the administrative act is suspended.

These rules do not apply to administrative acts which are to be immediately executed pursuant to some specialised piece of legislation, or in cases where the administrative bodies that have adopted them have allowed execution in advance.

The authority dealing with the case hands down well-motivated rulings both when repealing the contested acts or rejecting the appeals. Should an administrative body be obligated to draw up an act refuse to do so, the higher authority may oblige it to do so within a fixed term.

If an irregular or unlawful act is to be replaced by a new one, the higher authority refers back all the documents to the body which has enacted it, with binding instructions. The higher authority body may adopt the new act itself, unless there are any provisions to the contrary.

Moreover, administrative acts that have become effective and have not been appealed against before the court, may be repealed or amended by the immediate higher authority. If there are none, the acts may be repealed by bodies which have drawn them up (e.g. the municipal councils). This is done under the provisions of Article 231 of the Civil Code of Procedures either upon request by the interested party, or on a motion by the public prosecutor.

Pursuant to the provisions of the Judiciary Power Act and of the Constitution, public prosecutors exercise control over legality: they may contest unlawful acts before the regional courts and request their rescission or amendment in accordance with the procedures established by law. They may suspend the execution of unlawful acts until the courts decide.

Cancellation of administrative acts under the above procedure may not violate the right gained by third parties.

B. Judicial control

According to article 120 of the Constitution: “Citizens and legal persons are free to contest any administrative act which affects them, except those listed expressly by the laws” and: “the courts shall supervise the legality of the acts and action of the administrative bodies”.

A large portion of judicial control over the acts and action of local authorities is carried out by district and regional courts. All cases outside the jurisdiction of other courts fall within the cognisance of the lowest level district courts. According to the Administrative Procedure Act, the regional courts are the principal courts of the first instance to settle disputes over local authorities’ acts. Article 36, paragraph 1 stipulates that all disputes but those over the acts adopted, approved or amended by government ministers or directors of other institutions directly subordinate to the Council of Ministers or regional governors within whose powers it is to rule on the appeals, come under the jurisdiction of regional courts.

Appeals or objections may be filed with respective courts upon trying all administrative remedies or when the term for the administrative appeal has already expired. Appeals or objections demanding the nullification of administrative acts may be filed at any time.

Article 125, paragraph 1 of the Constitution stipulates that the Supreme Administrative Court shall exercise supreme judicial oversight as to the precise and equal application of the law. Since this court has so far not been constituted, its functions have been assigned to the Supreme Court of the Republic of Bulgaria. Administrative acts for which specialised laws provide other procedures for administrative appeal, may also be appealed against before the court.

All appeals or objections filed with the court suspend the execution of administrative acts, unless the court rules otherwise. If respective administrative bodies have allowed the commencement of the execution of the acts, the court may suspend the execution upon request by the interested parties.

Appeals and objections are filed in writing through the administrative bodies that have adopted the acts. They have to submit the appeals or objections together with all relevant documents to the court within a term specified by law. If the administrative bodies fail to submit the documents to the court within the specified term, the applicants may submit a copy of the appeals directly to the court. Afterwards, the court demands the documents *ex officio*.

Appeals filed upon expiry of the term specified are sent back to the applicants. In particular circumstances, the latter may demand an extension of the term. The court rules on the requests and the rulings cannot be appealed against any further.

Appeals and objections are considered at court sittings in the presence of the public prosecutor. The court decides on the legality of the administrative acts in terms of competence, form, procedures and deadlines and in compliance with the aim of the law.

When the appeals or objections have not been referred for assessment to the administrative bodies and the nature of the act allows for doing it, the court may deliver judgement in the substance and amend or replace the illegal act. Apart from these cases, the court repeals the acts and sends the documents to the respective authorised administrative bodies with the relevant instructions as to how to settle the dispute in substance. If an administrative body has unlawfully refused to take a decision, the court orders it to do so without further instructions as to how the document should be applied.

The rulings of the court are final and may be repealed only under the extraordinary procedures stipulated in the Civil Code of Procedures, i.e. retrial and rescinding of decisions that have become effective.

Rulings that have already become effective are binding upon the parties, their heirs and successors, upon the court that has decided, and upon all other courts in the Republic of Bulgaria.

The acts imposing administrative sanctions, i.e. the punitive ordinances, may be appealed before the district court of the district where the irregularity has been established. District courts are entitled to uphold, amend or repeal punitive ordinances; they may also suspend their execution by a ruling which may not be appealed against any further.

The rulings of the district courts are final. They may be repealed under Articles 65 and 73 of the Administrative Irregularities and Sanctions Act through retrial under supervisory procedures or renewal of administrative punitive procedures on a motion made by the public prosecutor of the regional court.

Legal control over the acts adopted under the Territorial Division and Settlement System Act has got its own specific features. As a rule, these cases come under the jurisdiction of district courts, however, when it is difficult to assess the interest, they may be referred to respective regional courts.

II FINANCIAL CONTROL

1. Main requirements for local authorities concerning financial commitments and accountancy

Local authorities have to ensure:

- a. adherence to the principles of legality, economy, efficiency and transparency when municipal budgets are drawn up, adopted and laid out;
- b. laying out of budgetary funds by adhering to the priorities stipulated by the law;
- c. laying out of the funds from the state budget for the purpose of implementing governmental programmes and decisions;
- d. remaining within the scope of regulated expenses;
- e. laying out of extra-budgetary funds under the rules and conditions stipulated in the law, or in the decisions of municipal councils;
- f. the lawful and purposeful management of municipal property;
- g. correct and precise book-keeping.

2. Auditing bodies

The Minister of Finance exercises state financial control through the state financial control bodies. For that purpose, a unified structural unit has been established at the Ministry of Finance: the “State financial control” which has an independent budget and counts a headquarters and territorial offices.

The headquarters’ and territorial offices’ heads, their deputies, the heads of departments and the auditors are the bodies of state financial control. The powers of the bodies responsible for control are specified in the law. There are some requirements concerning the employees’ qualifications and incompatibility with the performance of specific functions. The state financial control bodies are independent in carrying out their official duties and in doing so, they comply only with the law.

Financial control is exercised by auditing local authorities’ action at least once every three years. Audits can also be carried out upon request from municipal councils at municipal expense.

3. Scope of the audit

The state financial control bodies audit:

- a. the legality of acquiring, keeping, managing, disposing of, and accounting for property;
- b. the legality and reliability of book-keeping;

- c. whether the commitments to the budget have been met;
- d. whether the state and municipality property interests in the privatisation process have been safeguarded;
- e. whether the relevant laws regulating the economic and financial activity of the audited units have been abided by.

The state financial control bodies exercise *a posteriori* control over the application of the relevant laws regulating local authorities' action in managing municipal property. Whenever it is established that property is lacking or has been misappropriated, they take specific steps to restore it.

4. The auditing procedure

The auditing begins by presenting to the audited local authority the written order for the audit and the identity papers of the body responsible for control. There are special provisions regulating access to the books, auditing of cash and property recorded in the books, auditing of other documents (within terms fixed by the control body), appointment of experts, etc.

The results of the audit are recorded in the auditing statement. Should there be any administrative irregularities, acts on these irregularities are drawn up. In the case of misappropriation of funds, the liable persons are obliged to hand in explanations in writing within a term specified by the control bodies. The term may not be less than seven days from the date on which the act establishing the irregularities has been handed in.

Should there be any objections, the control bodies are to express in writing motivated opinions which are attached to the auditing statements.

The drawing up of the auditing statement marks the end of the audit. In case of financial liability, the acts establishing the irregularities are filed with the court, pursuant to the provisions of the Civil Code of Procedures. Should there be any data indicating a crime, the corresponding acts are sent to the public prosecutor's office.

The Minister of Finance or persons duly authorised by him are entitled to issue instructions in writing to municipality mayors or to other authorities as to how established irregularities can be remedied. The instructions may not be appealed against through the court.

The Minister of Finance or persons duly authorised by him are entitled to offer suggestions to the authorised bodies to suspend action which may result in damages for territorial communities; to repeal unlawful acts, and to impose for irregularities disciplinary punishments stipulated in the Labour Code.

If the wrongdoing does not constitute a criminal offence, appropriate sanctions are imposed on the persons involved, depending on the gravity of the wrongdoing.

Local authorities are entitled to lodge objections with the financial bodies that have conducted the audits, or with the immediate higher authority bodies. They may also appeal against the auditing statements before the court.

Parliamentary acts and other documents regulating legal control and auditing of local authorities' action

Constitution of the Republic of Bulgaria (published in State Gazette No. 56/1991)

European Charter on Local Self-Government (published in State Gazette No. 28/1995)

Parliamentary acts

1. Local Self-Government and Local Administration Act (LSGLAA) – (published in State Gazette No. 77/1991, amended in SG Nos. 24, 49 and 65/1995)
2. Administrative Procedure Act (APA) – (published in State Gazette No. 53/1973, amended in SG No. 70/1995)
3. Administrative Irregularities and Sanctions Act (AISA) – (published in State Gazette No. 92/1968, amended in SG No. 12/1996)
4. Civil Code of Procedures (CCP) – (published in State Gazette No 12/1952, amended in SG No. 26/1996)
5. Judiciary Power Act (JPA) – (published in State Gazette No. 59/1994)
6. Act on Proposals, Warnings, Appeals and Applications (APWAA) – (published in State Gazette No. 52/1980, amended in SG No. 68/1988)
7. Auditing Office Act (AOA) – (published in State Gazette No. 71/1995)
8. State Financial Control Act (SFCA) – (published in State Gazette No. 12/1996)
9. Accountancy Act – (published in State Gazette No. 4/1991, amended in SG Nos. 26/1992, 55/1993, and 21/1996)
10. Constitutional Court Act (CCA) – (published in State Gazette No 67/1991)
11. Territorial Division and Settlement System Act (TDSSA) – (published in State Gazette No. 29/1973, amended in SG No. 15/1991)
12. Environmental Act – (published in State Gazette No. 86/1991, amended in SG No. 63/1995)

FRANCE¹

I. LEGAL CONTROL

A. Controls by administrative authorities

Act No. 82-213 of 2 March 1982 on rights and freedoms of municipalities, *départements* and regions, as amended by the Act of 22 July 1982, established new rules for the control of the acts of the relevant authorities.

The administrative acts of local authorities or of the authorities administering public institutions are subject to control of their legality. Control is exercised *ex post facto*, after acts have become enforceable, and is concerned with their legality. It involves the representative of the central government, i.e. the prefect, in the *département* or the region and, if need be, the administrative court, which is alone competent to set aside the acts of local authorities.

1. Scope of the control of legality

Control is exercised *ex officio* only on acts which must be communicated to the prefect (article 2 of the Act of 2 March 1982):

- the decisions of the municipal council whatever their scope, whether regulatory or not, and the documents appended to them;
- decisions taken by the mayor, acting on the authority of the municipal council, in the areas, and subject to the conditions, set out in Article L 122-20 of the Municipalities Code (*Code des communes*);
- regulatory decisions and decisions affecting individuals taken by the mayor acting in his capacity as a police authority, as defined by Articles L 131-1 and following of the Municipalities Code;
- regulatory acts or measures taken by the mayor in all other matters within his jurisdiction, under the law;
- agreements relating to public works, supply, loans and concessions or leasing of local public services of a commercial or industrial nature;
- personnel management decisions concerning individual officials, taken by the mayor with respect to appointment, promotion, salary steps (section 114 of the Local Government Service Act of 26 January 1984), sanctions submitted to the disciplinary board for its opinion, and dismissal;
- decisions taken by local semi-public companies under a prerogative right (right of pre-emption).

¹ This report is the synthesis of a study prepared by Michel Bollé, Chargé de mission, at the office of the Director General of Local Authorities.

2. Date on which acts become enforceable

Under the old system of control, a local authority decision only became enforceable after it had been approved by the prefect. It took effect retroactively on the date of his approval. Acts now become enforceable when they come into effect, except when the act itself specifies that it will come into force at a later date. Acts which must be communicated to the prefect become enforceable once communication has been effected, provided that suitable public notice or notification has been given.

Communication implies not only that the information has been sent, but also that it has been received by the prefect. The mayor must certify on his own responsibility the enforceability of the acts which have to be communicated to the prefect.

3. Examination by the prefect of the legality of the act

The control carried out by the prefect is concerned solely with the legality of the act, to the exclusion of any assessment of its expediency. All aspects of its legality are examined, both external (the jurisdiction of the author of the act, compliance with procedural rules) and internal (violation of the law, improper exercise of authority). When an act which need not be communicated to the prefect is nevertheless communicated, its legality will be examined in the same way.

In practice, where the prefect considers that an act is illegal, he may ask the local authorities to review it.

The local authority may consider either that the act is illegal and withdraw or repeal it or that the allegation of illegality is without foundation and decide to maintain the disputed act. It is then up to the authority responsible for control to refer the matter to the administrative court.

4. Reference to the administrative court by the prefect

Since the Act of 2 March 1982, only the administrative court is competent to set aside an act. Depending on whether the authorities of a municipality or a département or a region were responsible for the act, only the prefect of the *département* or of the region, and no other person, is empowered to refer the matter to the administrative court.

Informing the local authority in the event of an appeal

Section 3 of the above-mentioned act requires a prefect who refers an act to the administrative court to inform the local authority concerned without delay and provide it with full details of the illegalities alleged against the act being challenged.

However, the Council of State has held that the prefect's failure to provide information concerning the reference to the administrative court did not render it inadmissible.

Reference to the administrative court on the initiative of the prefect

In principle, the prefect has two months to refer the matter to the administrative court

In the case of acts which are subject to the communication requirement, the time limit runs as from the date of the communication; in the case of acts which are not subject to this requirement, the time limit runs as from the date of publication.

The two-month time limit is imperative and the appeal will be deemed inadmissible if it is not observed.

Reference to the administrative court on the initiative of an injured party

Under section 4 of the Act of 2 March 1982 as amended, a natural or legal person injured by the act of a municipality may ask the prefect to refer the matter to the administrative court.

Such requests may be made in respect of acts which are subject to the communication requirement and of those which are not. In all cases the request must be made within two months of the act's becoming enforceable.

A request concerning an act subject to the communication requirement cannot extend the time available to the prefect for referring such act to the administrative court, which runs from the receipt of the disputed act.

B. Judicial control

1. The competent administrative jurisdiction

The determination of which administrative court is competent to deal with a reference from a prefect is straightforward as the law accords jurisdiction to the administrative court,¹ which is the ordinary court for administrative proceedings.

“Save as otherwise stipulated in Articles R 50 to R 64 or in a special provision, the administrative court with territorial jurisdiction will be the court in whose district the authority which, either by virtue of its own power, or by delegation, has taken the disputed decision or signed the disputed contract, has its headquarters ...”.

2. Application for a stay of execution

Stay of execution is a procedure used in urgent cases whereby the administrative court declares the disputed administrative decision unenforceable, until a decision has been reached on the substance of the dispute.

Case law requires that stay of execution should be granted only if two conditions are fulfilled:

- execution of the act being challenged would cause damage to the applicant which it would be difficult to remedy;

¹ Sections 3, 46, 69 of the Act of 2 March 1982, amended.

- one of the grounds in support of the application should be “serious”, i.e. act, at the time the request for stay of execution is considered, providing good reasons for the court to grant it.

However, case law acknowledges that the administrative court has a discretionary power in this area as it may refuse to grant stay of execution even when the necessary conditions have been satisfied.

Finally, applications for stay of execution are subject to no time limit, provided that the application to have the act set aside is filed within the time limit for legal proceedings.

The Act of 2 March 1982 as amended provides for two staying procedures: the normal procedure and the exceptional procedure.

Normal procedure

Under section 3 of the above-mentioned act, “the prefect may also request a stay of execution when he makes his application to the court”.

This staying procedure may be implemented with respect to acts subject to the communication requirement and with respect to acts which are not subject to the requirement and which the prefect refers to the administrative court at the request of an injured party.

The decision to refuse or grant a stay of execution is taken by the administrative court. Since the Act of 6 February 1992 relating to the territorial administration of the Republic, the administrative court has one month to rule on such requests.

The Act of 2 March 1982 as amended introduced important innovations in relation to the ordinary procedural rules. In fact, stay of execution is granted *ipso jure* if “one of the grounds relied on in the application appears, as the case stands (at the time the court examines the application requesting stay of execution), such as to justify the setting aside of the act being challenged”. It follows that:

- in this case, the decision to grant stay of execution is not conditional on the existence of damage that would be difficult to remedy;
- nor does the court have unfettered discretion: the request will be granted provided that a serious ground is pleaded in support of the application.

The exceptional procedure

Section 3 sub-paragraph 4 of the Act of 2 March 1982, as amended, provides for an accelerated procedure allowing the prefect to obtain a very rapid decision on a request for a stay of execution.

The stay will be granted within forty-eight hours if the disputed act is liable to interfere with the exercise of a civil or individual liberty. An order refusing or granting the stay is issued by the presiding judge of the administrative court or by his representative.

The purpose of this procedure is to prevent the harmful consequences which might result from the enforcement of an administrative act affecting a particular freedom. To this end, the prefect, and no other person, is empowered to ask the presiding judge of the administrative court to stay the execution of any act likely to compromise a civil or individual freedom.

The only elements to be taken into account in deciding whether to resort to the exceptional procedure are, on the one hand, the nature of the act and its consequences for the exercise of a freedom, and, on the other, the obviousness of the illegality with which the act is tainted (serious ground(s)). Like all applications for stay of execution, the application for an exceptional stay must be made in support of an earlier or concomitant application to have the act set aside.

3. Appeals to the Council of State

With respect to the control of legality, the Council of State has jurisdiction to hear all appeals against decisions of the administrative courts.

Different situations in which an appeal may be lodged

An appeal may be lodged by the prefect, and no other person, in the following situations:

- when the administrative court has not granted the prefect's application for an act of a local authority to be set aside;
- when the administrative court or the presiding judge of the court has not granted the prefect's application for stay of execution. The judgement or the decision refusing the stay may then be appealed.

It should be made clear that an appeal against a judgement refusing to set aside an act may be accompanied by a request for stay of execution (normal procedure, exceptional procedure or ordinary law procedure, depending on the case): the application for such stay may be presented at any time, including for the first time in the course of appeal proceedings.

An appeal may also be lodged by the local authority whose act has been set aside or whose execution has been stayed, or by a third party intervening at first instance. In this case, the prefect is required to present the statement or statements of the grounds of defence requested by the Council of State in the context of the preparation of the case.

When should an appeal be made?

The appeal procedure should be used only where it is truly justified, for example in a case involving a question of principle which has not yet been decided by case law as at the day the administrative court's judgement is notified, or, more exceptionally, when the court seems to have failed to apply an element of law essential to the resolution of the case before it.

Presentation of and time limits for appeals

Under Article 43 of the Order of 31 July 1945 relating to the Council of State: Only the minister or ministers concerned may represent the state before the Council of State.

The Act of 2 March 1982, as amended, has, however, created an exception to this principle. It expressly provides that “appeals against judgements of administrative courts and against decisions relating to stays of execution delivered on the application of the prefect shall be presented by the latter”.

The time within which an appeal must be lodged varies depending on the circumstances in which the reference is made to the Council of State.

It is two months for an appeal against a decision refusing a request for the setting aside of act of a local authority and runs from the receipt of the notification of the judgement.

It is fourteen days for an appeal against a decision of the presiding judge or against a decision of a court refusing a request for stay of execution and runs as from the notification of that decision.

II. THE AUDIT OF LOCAL AUTHORITIES

A. The rule of budgetary control and auditing of the accounts

Act No. 82-183 of 2 March 1982 on the rights and freedoms of municipalities, *départements* and regions abolished all *ex ante* control over the acts of local authorities, including budgetary acts. These are now enforceable as a matter of law upon promulgation or upon notification and transmission to the prefect of the *département*.

However, the budgetary acts of local authorities and local public institutions are subject to a control of legality comparable to the *ex post facto* control exercised over all their acts. Because of their special nature, they are also subject to budgetary control, which is specific to them.

Budgetary control is carried out by the prefect, acting in liaison with the regional audit office. Its purpose is to ensure that certain rules of good management are respected. It differs from the ordinary law control of legality in that it may lead to the amendment of the act in question (original budget, supplementary budget, amending decision or administrative account), rather than to its being set aside.

Numerous provisions have been passed supplementing the Act of 2 March 1982 and strengthening budgetary control. Two recent acts are worthy of special mention: the General Principles (Territorial Administration of the Republic) Act No. 92-125 of 6 February 1992 and Act No. 94-504 of 22 June 1994 on budgetary and accounting practices of local authorities.

Under the Act of 2 March 1982, budgetary control concerns four matters:

- the date of vote and notification of the original budget;
- the real balance of the budget;
- the entry and orders for payment of the mandatory expenditure;
- the vote and balance of the administrative account.

The following rules apply to municipalities, *départements*, regions, local public institutions and public corporations managing certain public services (Act of 2 March 1982: section 7 applies to municipalities, section 51 to *départements*, sections 16 and 56 to local public institutions and section 83 to regions).

1. Closing date for the voting and the notification of the initial budget
(sections 7, 9.1 and 51 of the Act of 2 March 1982 and 83 by reference)

The budget must be voted by 31 March, or by 15 April in years when the deliberative assemblies are renewed (section 67 of the Act of 31 December 1982). If the state fails to provide the information needed to draw up the budget before 15 March, the municipal council will have fourteen days from the date of receiving the information to vote the budget. The list of the relevant information is set out in decree numbers 82-1131, 82-1132 and 82-1133 of 29 December 1982.

When the budget for the previous financial year was finalised *ex officio* by the prefect, the closing date for voting is deferred to 1 June (or to 15 June in years when municipal councils are renewed).

Should a new municipality and hence municipal council be created, the budget must be adopted within three months from the date of such creation.

Under Article 1639 A of the General Tax Code, prefects must inform the tax authorities of local authorities' decisions concerning the rates of or revenue from local direct taxes:

- as a general rule by 31 March;
- exceptionally, by 15 April in years when the local assemblies are renewed in whole or in part.

If the vote has not taken place by the prescribed date, the prefect refers the matter to the regional audit office without delay. The same applies if the prefect has not received the budget within fourteen days of the expiry of the time limit (section 9.1).

The regional audit office puts forward proposals for finalising the budget within one month. The prefect finalises the budget and brings it into force within twenty days of being notified of the opinion of the audit office (section 26 of the Decree of 22 March 1983); if he does not accept the audit office's proposals, his decision must be accompanied by an explicit statement of his reasons.

In addition, and in accordance with section 28 of Act No. 85-97 of 25 January 1985, any reference to the regional audit office regarding the implementation of sections 7, 9.1, 51 and 83 of the Act of 2 March 1982 results in suspension of the budgetary powers of the deliberative assembly until the budget has been finalised by the prefect.

When the authority does not have an adopted budget as at 1 January of the financial year, the powers of the commitments officer in the period from 1 January to the adoption of the budget are limited as follows:

- he may incur, settle and order payment of running expenses up to the amount entered in the budget of the previous financial year and arrange collection of the operating revenue;
- he may order expenditure for the repayment of the principal in each annual instalment of the debt coming to maturity before the budget is voted;

- until the budget is adopted or until 31 March if the budget has not been adopted before that date, he may incur, settle or order payment in respect of capital expenditure up to one quarter of the appropriations in the budget of the previous financial year, provided that he has received the prior authorisation of the deliberative assembly. The authorisation must also specify the amount and the utilisation of the appropriations.

In addition, with respect to the regional authorities (section 6.1 of the Act of 5 July 1972), when the capital expenditure section includes programme authorisations and appropriations, the commitments officer may, in the event of the budget not being adopted, settle and authorise expenditure corresponding to the programme authorisations voted in the previous financial years up to a total per head equal to one third of the programme authorisations voted in the course of the previous financial year. Once a programme authorisation has been voted, the expenses are deemed to have been authorised for several years, and further prior authorisation by the deliberative assembly is not necessary.

Under section 50 of the Act of 6 February 1992, codified in Article L 211-4 of the Municipalities Code, municipalities may vote programme authorisations and appropriations. The programme authorisations represent the upper limit of the expenditure which may be incurred to finance the investments. The decree setting out the conditions to be satisfied in order to apply this system is currently being examined by the Council of State.

Section 50.1 of the Act of 2 March 1982 extends the possibility of using programme authorisations and appropriations for investment purposes to the *départements*.

The appropriations for operations carried out in this way must be included in the budget when it is adopted or finalised.

When the budget is adopted, or as at 31 March, if the budget has not been voted by that date, a statement of the expenditure incurred must be drawn up by the commitments officer and sent to the accountant. The statement must also be attached to the budget when it is sent to the prefect.

If the appropriations in the budget are less than the total expenditure shown on the statement, the prefect may refer the matter to the regional audit office under section 8 of the Act of 2 March 1982.

If the budget has not been adopted by 31 March, the authorisations granted by the deliberative assembly cease to be valid after that date and the commitments officer may no longer incur the capital expenditure so authorised.

In accordance with sections 13 and 16 of Act No. 92-125 of 6 February 1992, local authorities and local public institutions must append a number of statements to the budget. Failure to do so will mean that the budget is deemed not to have been properly voted.

2. Balance of the budget (sections 8, 51 and 83 of the Act of 2 March 1982)

Under section 8 of the Act of 2 March 1982 the real balance of the budget is defined as a strict equality between revenue and expenditure in each of the two sections. These receipts and expenditure must be evaluated honestly. Repayment of the principal of any debt must be covered exclusively by the receipts which the authority is certain to receive.

These provisions were relaxed somewhat by section 19 of Act No. 88-13 of 5 January 1988. A budget whose operating section comprises or takes up a surplus, and whose investment section is truly balanced after the results from the previous financial year's administrative account have been carried forward for each section, is considered to be in balance.

Subject to the last-mentioned provisions, the prefect has thirty days from receipt of the budget to refer it to the regional audit office if it is not truly balanced. This has the effect of suspending the budgetary powers of the deliberative assembly until the conclusion of the proceedings which have been initiated. However, section 7 of the Act of 2 March 1982 will apply until the conclusion of the procedure to balance the budget. The local authority may incur, settle and order the payment of operating expenditure up to the amount of the appropriation in the original budget of the previous year, and capital expenditure up to one half of the appropriations under this head in the budget of the current year.

The regional audit office has thirty days to confirm that the budget is not truly balanced and, if need be, to propose the necessary adjustments to the authority concerned.

If the regional audit office finds that the budget is in balance, the procedure is terminated.

As from receipt of the proposals of the regional chamber of accounts, the authority has one month to take a new decision, which it must send to the prefect and to the audit office within seven days.

If the decision complies with the proposals of the regional audit office the procedure will be closed.

If no decision is reached, or if the decision includes measures deemed to be inadequate to re-establish the balance, the audit office has two weeks to respond and to ask the prefect to finalise the budget *ex officio*. If the prefect does not accept the audit office's proposals he must provide an explicit statement setting out his reasons.

Finally, section 36 of the Act of 19 August 1986 (Act of 2 March 1982, section 8, sub-paragraph 7), and section 45 of the General Principles (Territorial Administration of the French Republic) Act of 6 February 1992 (Act of 2 March 1982, section 8, sub-paragraph 6) have strengthened the control over the implementation of budgets *ex officio* by the prefect as, on the one hand, the prefect must send the supplementary budgets relating to the same financial year to the regional audit office and, on the other, the corresponding administrative account must be voted before the initial budget of the following financial year, so that any operating deficit of the previous financial year can be carried forward to the following budget as necessary. Finally, the prefect must send the initial budget for the following financial year to the regional audit office.

3. Entering and ordering mandatory expenditure

Local authorities must make appropriations for mandatory expenditure in their budget. The commitments officer must also authorise payment. section 11 of the Act of 2 March 1982 provides that: “in the case of municipalities, mandatory expenditure is only that which is necessary for the discharge of debts due and that which has been expressly qualified as such by the act”.

“Debts due” means:

- debts whose origin is certain;
- debts corresponding to effectively generated expenditure (execution of a contract, realisation of a loss);
- debts whose amount is known with exactitude.

When a mandatory expenditure has been omitted from the budget, the regional audit office, to which the matter may have been referred by the prefect, the accountant concerned, or any other interested party, formally records the authority’s failure to act and serves notice on it to enter the expenditure in the budget. If the notice has not been complied with within one month, the office will ask the prefect to enter the expenditure in the budget and may propose the creation of resources or the reduction of optional expenditures.

The prefect will therefore be able to enter an expenditure *ex officio* only if the regional audit office has recognised its mandatory nature and if the authority has not complied with the notice to enter the corresponding appropriation. Should that be the case, the prefect will have twenty days to finalise and make enforceable the amended budget. He may, however, choose not to accept the audit office’s proposals, in which case he must give explicit reasons.

The procedure whereby the payment of a mandatory expenditure may be ordered *ex officio*, as provided for by section 12 of the Act of 2 March 1982, only involves the prefect to whom the matter has been referred by the creditor. It may concern expenditures entered *ex officio* by the prefect in the budget of the authority, if the commitments officer has not ordered payment thereof, and expenditures for which appropriations have been entered in the budget but for which the commitments officer has nevertheless refused to order payment.

Therefore, if the order to pay a mandatory expenditure is not issued by the commitments officer, the prefect may make the said payment *ex officio*, after giving formal notice. With respect to mandatory expenditure resulting from a definitive judicial decision, the Act of 16 July 1980 introduced a special procedure for *ex officio* entering and ordering of payment which is implemented by the prefect, and no other person, without the involvement of the regional audit office. This procedure was confirmed in section 98 of the Act of 2 March 1982.

When a local authority is ordered to pay a sum whose amount is stipulated in the court decision itself, order for payment must be made within four months of the date of the notification of the decision. Failing this, the prefect will order payment thereof *ex officio*.

4. Acceptance of the accounts
(sections 9, 51 and 83 of the Act of 2 March 1982)

The results of budgetary operations are recorded in two documents:

- the management account drawn up by the accountant, which must be voted by the deliberative assembly then sent to the local executive no later than 1 June following the closure of the financial year;
- the administrative account presented by the mayor or the chairman of the council of the *département* or region. This must be voted after the assessment of the management account and before 30 June of the next financial year. It is accepted if it receives a majority of the votes in accordance with section 30 (for the municipalities) and 31 (for the *départements* and regions) of the Act of 25 January 1985 (Act of 2 March 1982, section 9, sub-paragraph 2). Once adopted the account must be sent to the prefect no later than two weeks after the closing date laid down for its adoption in sections 8 and 9 of the Act of 2 March 1982 as amended.

Failing this, in accordance with the procedure envisaged under section 8 of the Act of 2 March 1982, the prefect will refer the most recent budget voted by the municipality to the regional audit office in accordance with the new provisions introduced by section 46 of the General Principles (Territorial Administration of the French Republic) Act No. 92-125 of 6 February 1992 (Act of 2 March 1982, section 9.2, sub-paragraph 2).

When the budget for the financial year has been finalised *ex officio* under section 8 of the Act of 2 March 1982, the administrative account must be adopted before the initial budget of the following financial year, or at the same time, so that any deficit may be carried over as from this initial budget. Should this be the case, the initial budget and the administrative account must be voted by 1 June and transmitted by 15 June. If these provisions are not complied with, the initial budget is deemed not to be in true balance and not to have been adopted and must be referred to the regional audit office under section 8 of the Act of 2 March 1982.

Section 9 of the Act of 2 March 1982 instituted a special procedure for auditing the administrative accounts. In the event of a deficit, the prefect, who is not subject to any time limit, refers the matter to the regional audit office which, within one month, will propose measures necessary to restore the balance.

The matter is referred to the regional audit office when the deficit in the administrative account is:

- equal to or more than 10 per cent of the operating revenue in the case of municipalities with fewer than 20 000 inhabitants;
- equal to or more than 5 per cent of the operating revenue in the case of municipalities with 20 000 or more inhabitants and of *départements* and regions.

The deficit must correspond to the overall result of the financial year in question, so that the balances of the operations and investment sections offset one another. The results taken into consideration consist of outstanding revenue and expenditure balances, i.e. definite receipts which are not yet recorded in the accounts and committed expenditure whose payment has not yet been ordered. Under the Act of 22 June 1994, which sets out budgetary and accountancy provisions relating to local authorities, the prefect is authorised to check the probity of the entries in the administrative account and, furthermore, to ask for justification of the amounts and nature of the balances outstanding as at 31 December of the financial year for both revenue and expenditure (Act of 2 March 1982, section 9, sub-paragraph 3 and section 51, sub-paragraph 4). If irregularities are detected as a result of this control, the prefect may deduct the suspect items from the results posted in the administrative accounts and, if need be, refer the matter to the regional audit office under section 9 (or 51) of the Act of 2 March 1982.

When an administrative account in deficit is referred to the regional audit office, the prefect must send the initial budget relating to the following financial year to the office. If the office finds that the authority has not taken adequate measures to absorb the deficit, it will propose to the prefect within one month of receiving the initial budget such measures as are necessary to correct the deficiencies. The budget will be finalised *ex officio* and made enforceable by the prefect.

Sections 45 and 47.1 of the General Principles (Territorial Administration of the Republic) Act, known as "ATR" (Administration territoriale de la République), of 6 February 1992, introduced two new circumstances in which cases may be referred to the regional audit office.

The main feature of section 45, which amends section 8 sub-paragraph 6 of Act No. 82-213 of 2 March 1982, is to allow a degree of monitoring of local authorities in budgetary and financial difficulties, by the automatic transmission of certain of their decisions relating to their budgets, which need not necessarily be in deficit, to the regional audit office. The provision applies *inter alia* to supplementary budgets for a financial year whose original budget was finalised *ex officio* by the prefect, and to original budgets which have gone into deficit because of the deficit carried forward from the administrative account of the previous financial year.

Section 47, sub-paragraph 1, which supplements section 87, sub-paragraph 12 of Act No. 82-213 of 2 March 1982 allows the prefect, and the representative of the territorial authority, to carry out a preventive audit of an authority.

GERMANY¹

INTRODUCTION

Germany is a federal state within which responsibilities and functions are apportioned between the central government and the member states (*Länder*). Power to establish the statutory framework for local government law is vested in the *Länder*. Laws concerning the statutory structures of the municipalities (municipal bodies, rules of municipal procedure, etc.) are promulgated by the parliaments of the *Länder*.

Consequently Germany, having sixteen *Länder*, has as many different local government acts which diverge considerably in many matters (particularly as regards allocation of powers between the municipal council and the municipal administration). In the areas to be examined (oversight of municipalities in respect of the legality of municipal action, financial acts of municipalities, judicial control), the differences are fairly slight. References to the law of local government below generally relate to the text of the Local Government Act of the free state of Bavaria (*Bayerische Gemeindeordnung*).

Municipal autonomy – constitutional guarantee of local self-government

Article 28, paragraph 2 of the Basic Law (German Constitution) recognises the right of local authorities to manage all the affairs of the local community under their own responsibility and within the limits set by law. The right of self-government also belongs to the districts (*Kreise*) within the framework of their statutory functions and in accordance with the law.

It is not possible to give an exhaustive list of all the “affairs of the local community” which municipalities can and must settle under their own responsibility. In general, municipalities are competent for “everything” relating to the local community (principle of “universal municipal competence”). In accordance with the “subsidiarity principle” it is stipulated that as long as the Federation or the *Länder* do not expressly assume responsibility for a matter, under laws enacted either by the Federal Parliament (*Bundestag*) or by the *Land* parliaments (*Landtage*), it remains within the municipal sphere.

The guarantee of local self-government is replicated in the constitutions of the *Länder*. It prevents the Federal and *Land* legislators from depriving the municipalities of the functions forming the “core” of municipal action (*Kernbestand*) in their local sphere. According to a landmark decision by the Federal Constitutional Court (*Bundesverfassungsgericht*), the core component of local self-government is not undermined as long as the municipalities retain the bulk of the powers which, by their essence, are functions of the local community.

The municipalities settle these functions on their own responsibility either by municipal bye-law, or by individual decisions in the form of an administrative act with a certain margin of discretion.

1 This report is the synthesis of a study prepared by Dr Gerd Treffer.

“Sovereignty in respect of bye-laws” (together with sovereignty in respect of organisation, staff and finance) is part of the traditional prerogatives of local self-government. In enacting “municipal bye-laws”, the local representation (municipal council) functions as a local legislator. Depending on the type of “legislation”, it has varying scope for enactment and implementation (especially wide as regards land use and development plans).

Individual decisions of municipalities must in all cases comply with the law. However, few laws are so clearly worded as to leave no margin of discretion. The ability of municipalities to use this margin is part of self-government.

Municipal responsibilities and type of state supervision

The functions to be performed by municipalities are by legal definition “public functions” under public law. According to their legal status, they are divided into:

- a. primary functions or own competencies, which spring from the status of municipalities as primary territorial authorities, and can be voluntary (e.g. promotion of culture, sports) or mandatory (e.g. water and energy supply) depending on whether they must be performed by the municipalities in accordance with Federal or *Land* law or not; and
- b. state functions or delegated competencies (e.g. superintendence of works, civil status registries, law and order), delegated to the municipalities as executives of the state.

In the area of own competencies, the municipalities are subject only to review of legality by the competent *Land* authorities. Review is limited to verifying that municipal action does not overstep the limits of the law.

On the contrary, in the area of state functions, delegated to municipalities by law, by either the Federation or the *Länder*, municipalities are subject to review not only of legality but also of expediency by the competent supervisory authority, empowered to rescind or amend the municipal decisions.

The Local Government Acts of the *Länder* also provide for a third type of function –“supervised mandatory functions”. For these the state has the right to issue directives, but only where such a function is provided for in the local government acts.

I. LEGAL CONTROL

A. Administrative control

1. Administrative structure and supervisory authorities

A *Land* may (but must not necessarily) be subdivided into “administrative areas” (*Regierungsbezirke*), with an intermediate level authority which performs exclusively governmental administrative tasks within the *Land*. Whether a *Land* sets up such administrative areas or not depends, as a rule, on its size (area, number of inhabitants).

Administrative areas are purely governmental administrative units with no legal personality. There are *Regierungsbezirke* in Baden-Württemberg, Bavaria, Hesse, Lower Saxony, North Rhine/Westphalia, Rhineland-Palatinate, Saxony and Saxony-Anhalt. The *Land* government assigns the commissioner of the administrative area (*Regierungspräsident*) who is the top-level executive officer.

Local authorities in Germany include municipalities and towns on the one hand and districts (*Kreise*) on the other. Districts are “associations of municipalities”, i.e. local authorities having legal personality comprising the territory of the constituent municipalities and towns. Towns not forming part of a district (*kreisfreie Städte*) are on an equal footing with the districts. The districts’ administrative authority is the county hall (*Landratsamt*). At the same time it is the state’s lower tier administrative authority, which for example performs the governmental task of supervising municipalities and towns belonging to a district. The district is headed by a *Landrat* who is the chief executive officer. He is a local authority official and is directly elected by the citizens in the majority of the *Länder*, and elected by the county council (*Kreistag*), the representative body of the citizens, in the others.

In Germany, the federal constitution provides that the local authorities are part of the *Länder* which in their legislation lay down provisions governing the structure and working method of the local authorities, thereby respecting the guarantee of local self-government stipulated in the federal and *Land* constitutions. The *Länder* also have supervisory control over the local authorities.

- The supreme supervisory authority for all local authorities is the Ministry of the Interior of the respective *Land*. It directly exercises its supervisory control over the districts and towns not belonging to a district if there is no administrative district (*Regierungsbezirk*) in the respective *Land* (i.e. in Brandenburg, Mecklenburg-Western Pomerania, Thuringia and Schleswig-Holstein).

The *Land* Ministers of the Interior are also the ultimate body of appeal with regard to decisions taken by the lower supervisory bodies.

- Where the *Länder* have established administrative areas (*Regierungsbezirke*), supervisory control over the districts and towns not belonging to a district is exercised by these administrative areas. They are also the first body of appeal for supervisory measures taken by the districts *vis-à-vis* the municipalities and towns in their jurisdiction.
- Supervisory control over municipalities and towns rests with the county halls in whose territory they are situated.

2. Types of supervision and powers of the supervisory authorities

Where state supervision is concerned, two forms of state action are distinguished: *a priori* and *a posteriori* control.

A priori (or preventive) control operates at a stage where municipal acts have not yet acquired real legal force.

The most common method of preventive control is “prior approval”: certain decisions by the municipal council (e.g. drawing-up of land use plans or transfers of certain local public property to third parties) require the approval of the supervisory authority.

The supervisory authority merely ascertains whether the municipal act is in accordance with the law (e.g. drawing-up of land use plans) but it is empowered to take its own interests into consideration in the approval procedure: this is the rule where the function in question is shared between municipalities and the state.

A posteriori control operates after enactment of the measure and it is exercised *ex officio* or at the request of an interested party (citizen) in the event of litigation, or on the recommendation of an auditing body. There is no right (*Rechtsanspruch*) for a citizen to require intervention by the supervisory authority in respect of municipal action.

The supervisory authorities are empowered to issue reprimands (Article 112, Bay GO), directives (Article 116, Bay GO), decisions in place of the municipalities (Article 113 Bay GO).

Local authorities are free to appeal against the decision of the supervisory authority before the authority of the next highest level (commissioner of the administrative area or Minister of the Interior) in order to have the legality of this decision reviewed.

Article 108 Bay GO states that: “The supervisory authorities shall promote and protect the municipalities and give them every assistance in the performance of their functions, and shall enhance the decisional power and uphold the self-reliance of municipal bodies”.

The supervisory authorities are enjoined to avail themselves of coercive measures only in exceptional circumstances and are duty-bound to endeavour to persuade the local authorities to remedy their shortcomings. The supervisory authorities are expressly forbidden to take over the decisions and the responsibility of the municipalities. The relevant literature emphasises the impropriety of “interventionist” supervision of local affairs (*Einmischungsaufsicht*).

Supervision should be unerringly guided by the principle of subsidiarity. It must be “favourably disposed towards the municipalities” (in compliance with the principle of *Gemeindefreundlichkeit*). Under the terms of the Bavarian Local Government Act, the supervisory authority must refrain from any interference, whether legal, economic or of other kinds, in municipal action which the municipalities are themselves able to carry out (Masson/Samper, Article 108 Bay GO, note 9/1).

There is something of a debate among jurists as to whether the supervisory authority is compelled to intervene if it has found an infringement of the law (or whether it has a margin of discretion enabling it to condone such infringement). The Local Government Acts of the *Länder* stipulate that the supervisory authority “may” intervene.

B. Prelitigation procedure and judicial control

Persons who are affected by a municipal decision may appeal to the courts. Nevertheless, judicial review occurs only in the event of litigation.

1. Prelitigation (extra-judicial) procedure

The main remedy against municipal decisions is objection with a request for review (*Widerspruch*). This is an internal administrative procedure serving to investigate, before any appeal is made to a court, the legality and expediency of an “authorising administrative act” (*begünstigender Verwaltungsakt*) such as a trading licence, or a “constraining administrative act” (*belastender Verwaltungsakt*) such as an order to assist with construction of the road network (sections 68 and 69 VwGO).

Notice of objection must reach the local authority within three months following the adoption of the impugned act, whether in writing or by declaration officially recorded at the town hall.

If the local authority considers the objection justified, it reverses its administrative decision and awards the costs of the procedure.

If this is not the case and the local authority maintains its position, it makes a rejoinder embodying a decision on the objection (*Widerspruchbescheid*) directly in cases involving primary own competencies or through the higher authority (*Landratsamt* for the district or *Regierungspräsidium* for the administrative area) in cases which involve state delegated functions.

An objection to a measure (and likewise an application to have it set aside) is usually suspensive: the municipal act cannot take effect for the duration of the litigation. Where good grounds exist, the public authority is empowered to override the suspension by ordering immediate execution (section 80 (1-3) VwGO), against which measure the person affected may apply for “provisional judicial protection” (section 80 (5-7) VwGO) whereupon the court can restore the suspension in full or in part.

A person objecting to an “authorising” act may obtain a “provisional stay of execution” (*einstweilige Anordnung*).

2. Judicial review by the administrative courts

Within one month after dismissal of an objection, the objector may lodge a complaint with the administrative court, in order:

- a. to have the original decision set aside (*Anfechtungsklage*);
- b. to obtain a new decision (*Verpflichtungsklage*).

A complaint that the authority has failed to take the requisite action (*Untätigkeitsklage*) may be laid without other prior procedural formalities after three months of inaction on the authority's part.

Procedural costs are invariably awarded against the losing party.

Other remedies in administrative judicial procedure are:

- a. appeal to the administrative courts of appeal (*Oberverwaltungsgericht* or *Verwaltungsgerichtshof*);
- b. review by the Federal Administrative Court (*Bundesverwaltungsgericht*).

3. Judicial review by other courts

Complaints can be raised by and against municipalities before other bodies than administrative courts, in particular:

- a. civil courts: where there are civil law or public law claims that have been expressly referred to the civil courts, such as claims following an expropriation;
- b. labour courts: in the event of a dispute between the municipality and its workers (except civil servants);
- c. criminal courts: for review of a municipal decision entailing a penalty;
- d. tax court: in the event of a dispute concerning land or trade tax.

II. AUDITING

Local self-government (*Selbstverwaltung*) logically embodies the right of municipalities to settle their budgets on their own responsibility ("budgetary sovereignty" – *Haushaltshoheit*).

Municipalities are required to draw up a budget each year, to include estimated income and expenditure and balancing (accounting system). This budget comprises two parts: the administrative budget which specifies all operational expenditure items (such as staff expenditure, routine business and social welfare) and the investment budget which comprises the investments, particularly for building and purchase of property.

By contrast with the budget, which forecasts income and expenditure for the coming year, the annual accounts (*Jahresrechnung*) retrospectively record the actual expenditure and income for the past year.

There are two forms of auditing: local auditing (as a matter of self-regulation) and auditing at a supra-municipal level.

A. Local auditing

In local auditing the auditing body for local accounts is the municipal council or a municipal audit board (*Rechnungsprüfungsausschuss*) with three to seven members. It is mandatory in municipalities with over 5 000 residents, and is the only local body not chaired by the mayor personally or by a delegate of the mayor. The chairman is elected from among its members (Article 103, section 2 Bay GO). It assists the audit board in an advisory capacity only, but on the other hand the board is required to remain in close consultation with it.

In towns (belonging or not to a district) and in municipalities with over 20 000 residents (over 30 000 in Lower Saxony), it is mandatory to set up an audit office (*Rechnungsprüfungsamt*) which has an advisory function *vis-à-vis* the audit board.

The audit office is part of the municipal administration and its function is to keep a constant check on income and expenditure under the municipal budget.

Other municipalities may set up an audit office, and should do so where their expenditure remains suitably scaled to the dimension of their administration. The office functions under the direct supervision of the municipal council, which instructs it to carry out special audits (in certain *Länder*, such instructions may also be issued by the head of the administration). In the performance of its functions the office is independent and bound solely by law.

The independence of audit offices is secured in several ways: the director and deputy director of the office must be civil servants (with the very special status typical of civil servants in Germany). Dismissal against their wishes can be ordered only by a two-thirds majority of the municipal council's statutory votes, and only in the event of failure to discharge their duties properly (Article 104, section 2 Bay GO). Auditors may not be members of the municipal council, as this would be incompatible with their auditing function. Nor can they approve or execute payments on behalf of the municipality. They cannot be relatives of the administrative head or of the municipal treasurer (Article 104 Bay GO).

Auditing ascertains whether:

- a. the administration abides by the annual budget which the municipal council settles and which is approved in summary form as a "budgetary statute" by the supervisory authority (*Landratsamt* or *Regierungspräsident*);
- b. income and expenditure are substantiated and duly calculated, and the applicable regulations are observed;
- c. the annual accounts (*Jahresrechnung*) and the assets register (list of acquisitions made under the investment budget) have been properly established;
- d. the administration's action has been rational and thrifty, in particular whether it could have been performed more effectively with less staff and finance.

If the audit raises doubt, the department implicated has to provide the appropriate explanation. The result of the audit must be stated in writing (Article 103, section 2 Bay GO).

Detailed provisions as to the conduct and form of auditing (e.g. procedure for standing verification of funds or allocation of public works contracts) are made in the Local Government Acts (*Gemeindeordnungen*) and in the regulations of each municipal administration.

B. Supra-municipal auditing

The supra-municipal auditing (*überörtliche Prüfung*) reinforces local auditing which does not always ensure competent, complete and unbiased verification, and follows the local audit and the municipal council's decision on the annual accounts.

Where a municipality belongs to an auditing association (e.g. in Bavaria the *Bayerischer kommunaler Prüfungsverband*), the association carries out the supra-municipal audit. Elsewhere, this is the task of the institution exercising statutory oversight.

The supra-municipal auditing institutions hold no direct authority over the municipalities, least of all power to issue directives. Audits are not acts of oversight; the auditors inform the supervisory authorities of the results, and the latter are able to intervene in municipal affairs.

Only after the supra-municipal audit has been conducted is the municipal council able to take a vote discharging the administration from its financial responsibility.

Apart from their routine verifications, the supra-municipal supervision institutions may conduct special audits at the request either of the municipalities or of the authorities responsible for statutory supervision.

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POLAND¹

INTRODUCTION

Control over local authorities' action responds to the need to co-ordinate all public bodies whether self-governing or part of the state administration structure.

The control appears where decentralisation has taken place and control mark limits of supervised body independence. So, the system allows to keep relationships between centralised and decentralised structures in balance within the framework of the autonomy which decentralised structures are guaranteed.

The main purpose of state control over local governments is law guarding. The heart of control, especially supervising local government's own tasks, is ensuring that actions undertaken by local government bodies are in accordance with the law.

Nevertheless, the aim of state control is not only corrective and repressive, but also includes protection and support given to local government and in particular the fulfillment by supervisory authorities of an advisory function.

I. LEGAL CONTROL

A. Administrative control

The most important act concerning control is the Local Government Act of 8 March 1990 (LG Act).

Rules included in this act (mainly in chapter 10) often use the "control over municipal activity" expression. The meaning of this expression has been defined by the Constitutional Court as any kind of activity performed by local government and other bodies mentioned in the LG Act. For the court every task which belongs to local government has a public character, because it is connected with fulfilling the needs of local authorities (in case of its own tasks) or society as a whole (in case of delegated tasks).

The LG Act provides for the control of legality on local authorities' own tasks and, in addition, for the control of expediency on delegated tasks. Nevertheless, this act does not define precisely enough the criteria for supervision in the field of delegated tasks. Therefore, the possibilities of interference by the supervisory bodies are not precisely limited by law, and this may lead, in practice, to situations of very serious interference.

According to section 91, sub-paragraph 5 of the LG Act, rules of the Administrative Proceedings Code (APC) are applied in case of voivode control over municipal activity concerning delegated tasks.

The Regional Chamber of Accounts control over municipal activity concerning budgetary cases is considered *lex specialis* in the Regional Chamber of Accounts Act of 7 October 1992 (RCA Act) In cases not included in this Act, rules of LG Act and APC are applied respectively.

1 This report is the synthesis of a study prepared by Professor Bogdan Dolnicki.

1. Control bodies

According to section 86 of the LG Act supervisory bodies over local authorities' action are: Prime Minister, voivode and the Regional Chamber of Accounts in budgetary cases. However, a detailed analysis of section 86 of the LG Act reveals that some competence is in the hands of the parliament, (section 96, sub-paragraph 1), local council, (section 96, sub-paragraph 2; section 45, sub-paragraph 2) and the administrative court (sections 93 and 101).

These bodies are not part of a hierarchical structure. Each of them can interfere in municipal activity but only in cases strictly defined by the law.

Parliament

The only supervisory right of parliament is the possibility of municipal council dismissal. Parliament however cannot apply this measure by itself, but only upon the Prime Minister's proposal (section 96, sub-paragraph 1) establishing recurrent constitution or acts breaking by municipal council.

Local council

The local council may dismiss the local executive body if the Constitution or acts have been infringed. A local government resolution concerning dismissal of the executive can be passed, as an answer to the voivode's proposal with the absolute majority in the presence of at least a half of its members.

In case of dismissal of the executive, the local council's presidium is obliged to designate a replacement.

Further supervisory rights of the local council are stated in the LG Act. Managing some special kinds of goods (these are real estate of direct use, or direct fulfilment of common needs, objects of special, scientific, cultural, historical or natural value) as well as giving away parts of these goods free of charge, requires local council agreement if the voivode has reported objections.

Prime Minister

Section 88 of the LG Act gives the Prime Minister the right to request necessary information about a municipality's organisation and functioning. He can also visit municipalities and take part in municipal bodies' sessions. It should be noted that the right to information is announced in very general terms, virtually unrestricted. It may concern any kind of municipal activity.

The Prime Minister is authorised to undertake stringent control measures, i.e. suspending upon the voivode request municipal bodies and appointing a commissioner to manage in their place, in accordance with section 97 of the LG Act.

This is a measure of control on expediency based on the observation that local government bodies are not fulfilling their duties effectively and there is no chance of rapid improvement.

Using this measure is not an obligation, but rather a possibility. Either council or management of the local government may be suspended for a definite period (a maximum of two years) until new management is elected by a new term council.

Before applying the measure, the supervisory body instructs local government bodies to urgently submit a programme to rectify the situation.

If the attempt to remedy the situation fails, the voivode asks the Prime Minister to appoint a government commissioner. Before so doing, the Prime Minister asks the local council to express its opinion. Neither the voivode's request nor the local council's opinion are binding for the Prime Minister.

A particular control measure is the obligation for municipalities with a population of over 300 000 inhabitants to consult the Prime Minister on their statutes (section 3, sub-paragraph 2 in connection with section 89, sub-paragraph 1 of the LG Act).

Voivode

According to section 88 of the LG Act, the voivode enjoys the right to be informed about municipality activities, in analogous terms to the Prime Minister.

Minister

The competent minister has the specific supervisory rights on local government bodies (section 95, sub-paragraph 3 of the LG Act) in matters concerning the exercise of delegated competencies. These rights include giving a substitute order following the cancellation of a local government body's resolution by the voivode. The minister has also a right to information, concerning the voivode's control activities (section 95, sub-paragraph 2 of the LG Act).

2. Control of the exercise of local government competencies

Concerning local authorities own competencies, section 90 of the LG Act provides for an *a posteriori* and *ex-officio* control. The mayor and the president of the local council are required to submit each resolution to the suspension body within seven days. The aim of this control is to verify the legality of a resolution of a local government body. As stated in section 90 of the LG Act: any resolution undertaken against the law is invalid. The supervisory body decides within thirty days from receiving the resolution, if all or a part of the resolution is invalid. This decision has retroactive effect.

On the base of section 88, the voivodes may request any information from the local government which contributes to ascertain the legality or illegality of the resolution. Besides, the voivode may suspend the execution of the resolution if it could cause irreversible or difficult to correct legal consequences.

In the case of a minor violation of the law, he is not obliged to state the invalidity of the resolution; he may limit himself to pointing out that the resolution was passed in breach of the law, but that this has no influence upon its validity.

In a case where the supervisory body does not decide that the resolution was invalid within thirty days from receiving the resolution, the Administrative Court may decide on the matter at the request of the former. The latter will enjoy all the supervisory rights, including the possibility to suspend the resolution in question, supervision is not possible after one year from the enacting of the resolution except when the seven-day term of submission to the supervisory body has been infringed.

The resolution must be declared invalid within the one-year time limit. After this term, the declaration that the resolution was passed in breach of the law has only informative value and does not give rise to judicial consequences concerning the validity of the resolution. According to section 160 of the APC, administration shall compensate those who have been harmed as a result of an unlawful decision.

3. Control of the exercise of delegated tasks

Supervisory measures concerning local government's exercise of delegated tasks are implicit in section 95 of the LG Act and may be admitted as a specific and separate type, the reason being that control criteria other than legality are used, for example appropriateness, reliability and economy.

Suspension of the resolution

The voivode may suspend the application of local authorities' (council and management) resolutions on the grounds that they are illegal or not purposeful. The resolution is returned to local government for reconsideration within a given time determined by the control body.

Cancellation and substitution

If the voivode's opinion is ignored while the local government is reconsidering a resolution in question, the voivode may cancel it and make a substitute order. In this case the voivode is obliged to inform the head of the local council and the competent minister. The obligation towards the local council is merely to provide information, but the minister may decide differently before the enforcement of the voivode's substitute order. This order enters into force thirty days after signature.

Specific measures of a supervisory character are used by the voivode in cases of permanent breach of legal acts or the Constitution by the local executive body. In this case, the voivode calls upon the local executive body to apply all necessary measures. If the latter ignores the request, the voivode can ask the local council to dismiss the local executive body.

In the framework of the control procedure the voivode is entitled to propose a governmental commissioner.

B. Judicial control

Judicial control of local authorities' action is the competence of the administrative and civil courts.

1. Administrative courts

Administrative courts cannot be considered as a typical body for the supervision of local government. The legal basis for performing judicial control over administration is stated in the LG Act and the General Administrative Court Act of 11 May 1995 (GAC Act).

Complaints about resolutions of bodies responsible for municipality regulations and complaints about the resolutions undertaken in cases of the public administration field
(section 16, sub-paragraphs 1.5 and 1.6, GAC Act)

According to section 101 of the LG Act, everyone whose legal rights in the field of public administration have been violated may complain to the administrative court after an unsuccessful request for compensation. This complaint may either be by an individual or by a group of people. A request for damages is deemed to be unsuccessful if the local government body responsible for the resolution in question refuses to compensate or does not make any statement in this matter within a period of one month from the date of delivering the court order.

This applies also in cases where the local government body does not perform actions ordered by law or by the courts. The administrative court may order the supervisory body to undertake appropriate measures, at the municipality's expense. Taking into account the expression used, i.e. "cases of public administration field", it appears that questions being examined in the framework of individual administrative decisions or cases of civil law type are outside the scope of this article.

A second type of complaint about local government bodies' resolutions is that introduced by the supervisory body. If the invalidity of local government bodies' resolutions has not been declared by the voivode within a period of thirty days, the latter may lodge a complaint about the resolution before the administrative court. The court may, in urgent cases, suspend the application of the resolution in question.

Complaints against acts of supervision of local government bodies
(section 16, sub-paragraph 1.7 GAC Act)

The possibility of complaining against acts of supervising local government bodies is a measure for the protection of local self-government. According to section 98 of the LG Act, a supervisory body's decisions concerning local government, which are considered incompatible with the law, may be appealed against within thirty days from their delivery. A complaint may be lodged by the municipality or the municipal union concerned.

The complaint does not suspend the execution of the contracted decision. However, the court may order, at a party's request or by law, to suspend the execution of the decision in cases of urgency.

Complaints about another body's opinion, legally necessary for any settlements undertaken by the local government body

(section 98, LG Act)

According to section 89, sub-paragraph 1 of the LG Act, the validity of a local government body's decision may be subject to a compulsory opinion (given before or after the adoption of the decision) by a third body.

The supervisory body should express its opinion not later than fourteen days after the decision (or its project). After this term, it is assumed that the submitted decision has been accepted by the supervisory body.

If the local government body does not agree with the supervisory body's opinion, he may appeals to the court within thirty days from its delivery.

Judges' arguments about competency between local government bodies and local bodies of state administration

(section 18, sub-paragraph 1, GAC Act)

According to the rules of section 22, sub-paragraph 2 of the APC, conflicts of competence between local government bodies and local bodies of state administration are decided by the administrative court.

The court decides on these conflicts by indicating which body is competent in the case. If one party does not comply with the court's decision, the latter may impose a fine (section 31, sub-paragraph 1 of the GAC Act).

2. Civil courts

The civil courts system is established in an Act of 20 June 1985. Civil courts do not control the activity of local authorities in a direct way. However, they have a certain influence by means of decisions in criminal and civil cases.

Decisions in criminal cases

When deciding on cases of a criminal offence committed by local elected representatives or staff, the court decides on the behaviour of the accused, also taking into account criteria of administrative law rules. The court therefore considers the interpretation of these rules by the representative or the clerk.

When investigating cases of "resisting the actions of state administration bodies", the court decides if the actions were undertaken in accordance with the law.

Decisions in civil cases

If, during the trial, a party invokes the invalidity of an administrative act as being important evidence in the case, the court should decide on the validity of this act. The court may recognise the act, published by an incompetent body or without keeping procedural regulations, as definitely invalid.

If a body does not comply with an administrative court's decision and the non-compliance results in damages, the victim may claim compensation to the responsible body. The party which has not been given an answer to its claim for compensation within a term of three months or is not satisfied with the compensation proposes, may lodge a complaint to the civil court within thirty days from the day on which the decision should be or was submitted (section 31, sub-paragraphs 4 and 5 of the GAC Act).

II. FINANCIAL CONTROL

The study of the local authorities' financial audit is limited to the study of the function of the Regional Chambers of Accounts and the Chief Board of Control.

A. Regional chambers of accounts

Section 62, 1 of the LG entrusts the regional chambers of accounts (the chambers) with the financial control of local authorities. They are regulated in the Regional Chambers of Accounts Act of 7 October 1992 (RCA Act). Their task is namely to audit the financial situation of municipalities, municipal unions and other municipal subjects of law. They also supervise the municipal activity in the budgetary field. Finally they give their opinions on different matters.

Auditing

In the field of local government's own tasks, the RCA Act provides for an audit aiming to verify the compliance with legislation and sound book-keeping. In the field of state delegated tasks, auditing is performed using the criteria of appropriateness, reliability and economy as well as legality.

According to sections 8 and 9 of the RCA Act, the audit bodies establish a report in which they state and explain any errors they have found; moreover, they inform the Prime Minister and the body responsible for distributing grants to local authorities.

The regional chambers of accounts perform, at least once every four years, the audit of local government's financial situation in addition to specific audits on selected issues. Audits can also be carried out on the basis of, for example, signals from other state bodies, requests from local government bodies, errors noted during the year.

Control on the budget and its execution

The regional chambers of accounts fix the municipality's budget (not later than at the end of April of the budgetary year) in the field of obligatory own and delegated tasks, if the budget is not passed by local government's council by 31 March of the budgetary year (section 11, sub-paragraph 1, of the RCA Act).

Moreover, the chamber supervises the legality of local government's council budgetary resolutions which are to be reported to them by the mayor within seven days from the date of vote.

In the case of unimportant law violation in a budgetary resolution, the chamber does not state the invalidity of the resolution but suggests how to rectify the error.

In the case of important law violation, the chamber reports to the local council and indicates the way and the term of its rectification and orders that necessary expenses for obligatory own and delegated tasks for a budgetary resolution in the appointed time. If the local council does not perform the above-mentioned changes, the chamber may decide partial or global invalidity of the resolution. During the examination of the budgetary resolution, the chamber may also suspend its execution. The local government can lodge a complaint against the chamber's decision before the administrative court.

Local government management is obliged by law to submit six-monthly and annual budgetary reports to the local councils and regional chambers of accounts. These summary reports are based on individual reports delivered to local government executives by commitments, officers or tax offices.

The opinions

According to section 13 of the RCA Act, the chambers give opinions on different matters; the following could be mentioned:

- draft municipal budget and reports concerning the execution of the municipal budget;
- possibility of credit repayment by the municipality (at the request of the bank, which currently is not involved in the municipal budget services) ;
- intention of securities emission by municipalities;
- reports about the financial tasks plans in the field of state administration for which the local government has been made responsible.

In practice, municipal bodies ask the chambers for opinions concerning all cases connected with budget, financial situation and taxes.

B. The Chief Board of Control

The Chief Board of Control (CBC) is established by The Chief Board of Control Act of 1994. As the highest body of state audit, it is under parliamentary control.

The CBC audits state administration bodies, the National Bank of Poland, state corporation bodies and other state organisational units' activities. In addition it audits local government bodies, municipal corporation bodies and other municipal organisational units' activities, examining the execution of the national budget and other legal acts in the field of financial, economical, organisational and administrative work of these units in the most detailed way.

The CBC audit of local government takes place in the field of its own tasks in relation to legality, economy and reliability and in the field of delegated tasks, on the basis, additionally of appropriate criteria. Audit is undertaken on the parliament's or its own order, on the President of the Republic or the Prime Minister's request, or at the CBC's own initiative. Audits are carried out in the framework of periodical work schedules, (submitted to parliament) but may also be decided selectively.

The CBC Act regulates the auditing procedure in a very detailed way. CBC auditors have the right to:

- free access to objects and rooms subject to audit;
- access to all the documents connected with the audit;
- inspections of buildings, material components to carry out particular activities;
- calling and examining witnesses;
- request staff of audited units to give verbal and written explanations;
- use expert and specialist help;
- hold consultations with the staff of audited units.

CBC auditor submits the results of the audit in an official audit record. The audited unit's manager has a right to notify signing the motivated reservations concerning the conclusions included in the official record before signing it. In case of disregard for all or part of the reservations, the auditor includes his written opinion.

The audited unit's manager may, within seven days from receiving the opinion submit written reservations to the competent CBC unit director, who passes it to the revocatory commission for examination. This commission consists of a competent CBC unit director and two employees supervising the auditing procedure. The revocatory commission adopts a resolution, which needs to be confirmed by CBC President to be valid.

The CBC delivers the post-audit pronouncement to the audited unit's manager and, if necessary, to the manager of the higher unit and to the competent state bodies. The post-audit pronouncement includes the estimation of audited activity, resulting from the settlement of the official record of audit and in case of a statement of errors – opinions and conclusions, concerning their rectification. It may also include merit, pointing out that expressing the opinion by the person responsible for stated errors is groundless.

The recipient of a post-audit pronouncement is obliged to inform the CBC within fourteen days about the way of using the opinions, carrying out of deductions and actions undertaken or the reasons why the actions were not undertaken.

Both official records of control and post-audit pronouncements provide a basis for the CBC to prepare information about audit results, which are submitted to the Parliament, the President of the Republic and the Prime Minister. In addition, the CBC agency submits information about important audits concerning local government activity to competent voivodes, local councils and local government councils.

Audit, verification and inspection bodies acting in the state and local government field co-operating with the CBC are obliged to:

- submit the results of the audits carried out to the CBC on its request;
- carry out particular audits in co-operation, and under the CBC's leadership;
- carry out immediate audits at the CBC's request.

Evading or hindering CBC's audits is penalised by arrest, imprisonment or a fine.

SWEDEN¹

I. LEGAL CONTROL

A. Administrative control

Local authorities' activities can be divided into mandatory activities defined by law and unregulated voluntary activities. The monitoring of the local government actions is far more reaching in the mandatory sphere than in the voluntary sphere. This is very much reflected in the legislation often used as the basic instrument to steer municipal management of duties. Within the voluntary sphere the principle of local self-government is in a way a protection against too far-reaching state control.

Municipal activities are supervised by a number of state authorities. Their powers differ: some of them can insist upon or force corrections and even use fines, some mainly use the possibility to inform central government of discords and others can bring issues to court.

The power and the ways of supervising municipal activities is governed by special acts or ordinances. In this connection it can be mentioned that central government under certain circumstances has the authority to declare certain municipal decisions null and void. This is the case with decisions on aid to enterprises that the Commission or the European Court of Justice has considered to have a negative effect on trade between the member states of the European Union and is therefore breaking Article 92 of the treaty establishing the European Economic Community. It is worth noting that even municipal decisions that have gained legal force can be declared null and void.

1. The parliamentary ombudsmen

The ombudsmen are servants of the *Riksdag* (the national parliament). Municipal authorities are under the supervision of the parliamentary ombudsmen. The members of the municipal assemblies are however excluded from this supervision.

The ombudsmen are competent to verify whether a local authority's action infringes civil rights. They control whether the local authorities (their representatives and employees) act in conformity with acts, ordinances and other statutes and that they also fulfil all their obligations and in some respects also fulfil them suitably. The control, especially of the voluntary sector, has to be made under the consideration of the ways in which local self-government is practised.

The control procedure can be initiated *ex officio* or upon request. In addition, it can be *a priori* and *a posteriori*. The practice is that commonly control is carried out through complaints lodged by the public. These complaints deal mostly with the unsatisfactory state of things or the fact that an individual feels that he has been mistreated in some way. The ombudsmen also carry out *ex-officio* inspections and other investigations they consider necessary. Each year the ombudsmen collect their most important or interesting decisions in an official report formally handed over to the *Riksdag*.

¹ This report is the synthesis of a study prepared by Mrs Zelmin Åberg, Director, Ministry of the Interior.

The ombudsmen state whether a local authority, representative or employee has acted contrary to any statute or in any other way wrongly or unsuitably. They can also make recommendations with the purpose of promoting a correct and uniform application of the law. In some cases the ombudsman can act as a special attorney and take legal proceedings before the court.

The statements or recommendations made by the ombudsmen are very often referred to as part of case-law and, as such, they have a great influence on the authorities' management of their duties.

Because of their declaratory nature, there are no remedies available towards these statements or recommendations.

2. The Chancellor of Justice

The Chancellor of Justice plays in relation to municipalities and county councils a controlling role similar to and to a certain extent overlapping that of the ombudsmen.

The Chancellor has, among many other tasks, special supervisory tasks in the field of freedom of press and freedom of speech as laid down by the Constitution. He also has authority according to the Act of Automatic Data Processing. These fields are of special interest for the municipal sector.

The control procedure and powers of the Chancellor of Justice are the same as those of the parliamentary ombudsmen. Each year the Chancellor collects the most important or interesting decisions in an official report formally handed over to the government. As in the case of the ombudsmen, because of their nature, there are no remedies available against statements or recommendations made by the Chancellor which are commonly considered part of case-law.

3. State county administrative boards

According to the law, the county administrative boards with their special sections exercise supervision to ensure that municipalities fulfil their obligations as laid down in special acts regulating the compulsory sector. In addition, the boards have a co-ordinating role for many of the activities carried out within the geographic area of the county, e.g. regional planning.

The control procedure can be initiated *ex officio* or upon request and it can include both *a priori* and *a posteriori* control. The most common way of control is however *ex-officio* inspections. There is continuous dialogue between the boards and municipal authorities with a view to improve current management.

In some fields, i.e. environmental and health protection, the boards have the power to impose fines in order to terminate infringement and redress the situation. In more general terms, the boards can inform the central government of any unsatisfactory state of things.

Various special acts foresee the possibility of appealing against a board decision. In some cases it is possible to appeal to administrative courts and in other directly to the central government.

4. The National Education Agency

The National Education Agency is responsible for the supervision of municipalities' fulfilment of national goals of educational policy as decided by national parliament and statued by laws, ordinances, curricula and syllabus. It directs school activities towards these goals and evaluates the extent, conditions and result of the school activities.

The control procedure includes inspections or other forms of examination and actions taken after formal complaints. The supervision includes both *a priori* and *a posteriori* control. The agency makes recommendations and keeps continuous dialogue with municipalities. It is expected that the municipalities in this sector are very active in self-controlling their activities and this is organised in co-operation with the agency.

The agency makes recommendations but has no power to force the municipalities to actions. Nevertheless, it has the possibility to inform the central government about unsatisfactory conditions.

In this connection, it is stipulated in chapter 15, section 15 of the School Act (1985:1100) that the central government has special power against municipalities that do not fulfil their obligations. The central government has the authority to enjoin special prescriptions on the municipality in question or to adopt necessary corrective measures at the municipality's expense. Practically this is done by reducing state grants intended for the municipality.

As the agency has no decision-making power over the municipalities there are no rules about remedies. Neither, there are remedies against the mentioned state grants action taken by central government.

5. National Board of Health and Welfare

The National Board of Health and Welfare is the highest central government body responsible for social welfare, health service, medical treatment and dental service. A special activity is to survey the development in the mentioned fields and to evaluate it on the basis of the aspects of good quality, security and individual's rights. In addition, the board has special supervisory power over the staff working in the health-care and medical treatment sector.

The board publishes guidelines and recommendations in the various fields within its authority. These hints and directions have a great influence on how authorities act. Sometimes they even serve as guidance for the courts when they deal with issues in this field.

The control procedure can be initiated *ex officio* or upon request and it can include both *a priori* and *a posteriori* actions. The board has no power against the municipalities with the exception of the staff working within the health care and medical treatment sector, in the field of which the board has to report unsatisfactory situations to a special supervisory board (the National Medical Disciplinary Board). In addition, the board always has the possibility to report unsatisfactory conditions to the central government.

As the board has no decision-making power over the municipalities, there are no rules on remedies.

6. The National Data Inspection Board

The National Data Inspection Board is responsible for issues concerning automatic data processing. It gives permissions and issues licenses for using automatic processing for registers or databanks. It decides special and general statutes and makes recommendations on how to use automatic data processing. The Inspection Board is also responsible for the supervision over the use of data technology. A special duty is to control that the use of automatic processing of personal data does not lead to undue encroachment upon individuals' personal integrity.

The control procedure can be initiated *ex officio* or upon request and it can include both *a priori* and *a posteriori* actions. The control is normally carried out after complaints lodged by the public about some unsatisfactory state of things and through *ex-officio* inspections and other investigations which the Inspection Board finds necessary.

The Inspection Board is entitled to have access to municipal data processing services, as well as to documents dealing with the processing, and it can make arrangements for a run of the equipment. If the protection of data cannot be assured, the Inspection Board can forbid further processing or withdraw a given permission. It has the right to impose fines.

The Data Processing Act also contains provisions about punishment and damages. These matters are handled by attorneys and civil courts. Decisions made by the Inspection Board concerning municipalities can be applied against administrative courts.

B. Judicial control

1. The courts and their jurisdiction

Most decisions made by municipalities and county councils can be the subject of judicial control. In some cases the appeal is dealt with by an administrative court, in others by a civil court and yet in some cases by a special court of law. The decisions that can be the subject of judicial control are specified in the Local Government Act and in a huge range of special acts.

The various types of courts have dissimilar power to treat a municipal decision. If only the legality is examined the court is only competent to repeal that decision not to substitute it. On the contrary if the suitability is also examined, the court is entitled to substitute the decision with another decision. In some cases, for example actions for the recovery of damages the court can reduce the amount to be paid. Sometimes the courts can use fines during the procedure to sanction disobedience from a party. Under special circumstances the courts also have the right to defer the execution of a municipal decision.

The municipalities and the county councils have the right to appeal against a court decision. Appeals against decisions of the administrative courts are possible before the county administrative court, administrative court of appeal and the Supreme Administrative Court. Appeals against decisions of civil court are possible before the district court, Court of Appeal and the Supreme Court.

Administrative courts

A well-established administrative principle is that administrative courts may not manage cases unless their jurisdiction is expressly stated by law. This is done in many acts regulating the mandatory sector. The same principle goes for special courts of law that normally have been set up to manage cases within a specific subject field like for example the Labour Court and the Market Court. Their jurisdiction is therefore also regulated by special law.

Administrative courts examine either only the legality (assessment of legality) or both the legality and the suitability of a decision (administrative procedure). The procedure for the judicial control is established in the Administrative Litigation Act (1971:291)

Civil courts

The jurisdiction of civil courts is wide in the sense that they can manage a large number of different cases including criminal matters. The frame for criminal cases is defined indirectly through the regulation of crime. Civil cases are hard to point out completely in this context. A huge range of subjects of contention where the municipality is involved can be put forward to the court. The procedure for the judicial control is established in the Code of Judicial Procedure.

Special courts of law

The special courts of law manage special legal problems laid down in law in conformity with specific procedures.

In Sweden there is no constitutional court. Courts have the right to not apply acts that they find are contrary to the Constitution.

2. The main procedures

The assessment of legality

Chapter 10 of the Local Government Act is entitled "Assessment of legality". Section 1 stipulates that any member of a municipality or county council is entitled to have the legality of decisions taken by the municipality or the county council tested by appealing against them to the county administrative court.

If the court finds a decision unlawful it is repealed, but the court does not have the right to replace it with any new decision. The reason for this is that promulgating a new decision would violate the right of local self-government.

The assessment of legality is a kind of civil suit (*actio popularis*). The purpose of this procedure is to allow the members of a municipality or county council to control the legality of the public administration's action.

According to section 3, the provisions of chapter 10 do not apply if special provisions concerning appeals are made by statute or statutory instruments; in fact, there are many such provisions in special law.

Decisions that may be contested by appeal are decisions taken by the assembly, a committee or joint body which are not of a purely preparatory or executive nature, and decisions taken by the auditors (concerning their administration).

A contested decision shall only be quashed on the following grounds: it has not been made in due order; it refers to something which is no concern of the municipality or county council; the body which made the decision exceeded its powers; the decision is contrary to law or a statutory provision. If an error did not influence the outcome of the matter, the decision need not be quashed. The same applies if, as a result of subsequent events, the decision is no longer important.

In the examination of the appeal, no circumstances may be taken into account other than those referred to by the complainant before the expiry of the time limit for appeals. If a decision which has already been enforced has been quashed by a court, the body which has made the decision shall ensure that its effects are rectified insofar as this is possible.

If the administrative court decides against the complainant, only the complainant may appeal against the judgement. If the administrative court quashes a decision or forbids its enforcement, the judgement may be appealed against by the municipality or county council and by their members (section 14).

The administrative procedure

Administrative appeals mainly concern decisions based on legislation regulating the mandatory sector. These decisions involve the exercise of public authority and deal with the benefits and rights of individuals.

Within the administrative procedure the court has a greater freedom to intervene than in the case of an assessment of legality. It may examine and judge both the legality and the suitability of a decision. Another effect is that the court is free to substitute another decision to the one appealed against. From a municipal point of view this kind of appeal implies greater state control than local appeals.

There is no general right to appeal against such municipal decisions. In fact, only parties directly affected or concerned are allowed to appeal against the municipal decision and only the party who loses the case in the court is entitled to appeal against the court decision.

The civil case procedure

A municipality can act in three different roles: authority, legal person and employer. Civil case proceedings most often refer to the last two possibilities.

Thus, courts manage disputes about payment of municipal fees for services, demands for damages or contract disputes. In all these cases it is almost always a question of solving a legal dispute. The court is in some cases free to use fines and sometimes even to declare null and void an act or step taken by a party. Sometimes the parties come to a legal agreement that the court can confirm by a court decision.

In all these cases the municipality and the county council take the same stand in the process as any private party. This includes the right to appeal against a court decision.

Criminal procedures

According to the law a legal person cannot be punished as such. Thus, a municipality or a county council cannot be sentenced to imprisonment. Nevertheless the local elected representatives and the employees can be sentenced and punished personally for crimes they have committed in connection with their municipal mission or appointment. This is the case with economic crime like breach of trust, embezzlement, bribe or crime connected with the exercise of public authority (breach of duty/official misconduct). In all these cases it is possible to bring about a criminal procedure and it does not differ from criminal procedures in general.

II. THE AUDIT

A. General framework

1. Regulation on local authorities' financial discipline

Chapter 8 of the Local Government Act from 1991 deals with economic management. It includes provisions on goals of economic administration, administration of funds, the budget and the budgeting process, spending decisions during the fiscal year, mortgage prohibition, book-keeping and accounting.

According to its chapter 6, section 4, the financial management of the local authorities is the responsibility of the executive committee.

As a general goal, municipalities and county councils shall exercise a good economic management of their activities (section 1). This means for example that they shall manage their funds in a sound way so that requirements of a good return and adequate security can be catered for (section 2).

The council is required to issue regulations on the management of local funds. These include investment and borrowing rules. It should be borne in mind that the funds basically originate from the members of the municipality or the county council who presuppose that the funds are used for the financing of common benefits.

The main requirements for economic management are set in a very general manner in the Local Government Act. Therefore, these very general requirements are supplemented by the assembly (sections 3 and 23). It is common to pass bye-laws on for example financial transactions, investments, borrowing and risk margins. The municipalities and the county councils are also relatively free in keeping their accounts and presenting their annual report and contrary to the private sector there is no legal regulation on accounting. The Local Government Act sets only the framework for accounting.

According to section 4, the municipalities and the county councils are requested to draw up every year a budget for the next calendar year. This budget is a very important instrument for governing and following up the economic development.

The budget does not have to be in balance. It is not suitable however to keep the budget out of balance year after year. That is not in conformity with good economic management.

The budget shall contain a plan for activities and economic management during the fiscal year (section 5). The plan shall indicate the rate of taxation and funding allocations. It shall also show how expenditure is to be financed and what the economic status is expected to be at the end of the fiscal year. The budget shall also contain an economic plan for a three-year period and the fiscal year shall always constitute the first year of this period.

The budget must be adopted by the assembly before the end of November (section 8). If, for special reasons, this is not possible the assembly shall nonetheless fix the rate of taxation within this period. The budget shall then be adopted before the end of December (section 9). The assembly may then fix a rate of taxation different from that decided previously, if there are reasons for so doing.

If the assembly decides on an item of expenditure in the course of the fiscal year, the decision shall also include an indication as to how the expenditure is to be financed (section 12). This provision forces the assembly to always consider how to finance a decided expenditure and thus fulfils principles of good economic management in their activities.

As a matter of principle, municipalities and county councils may not mortgage their property as security for a claim (section 13). This is related among other things to the principle that Swedish local government may not go bankrupt – in any case not as long as it has the right to levy taxes. When acquiring property, however, they may take over liability for loans contracted previously on the security of the property.

2. Book-keeping and accounting

The executive committee and other committees shall keep continuous accounts of the funds which they administer (section 14). Book-keeping and accounting is not regulated in its details as far as the municipalities and the county councils are concerned and the Local Government Act only sets a framework. Nevertheless, municipal enterprises have to follow the same legislation on book-keeping and accounting as any private enterprise.

The executive committee decides the latest date by which other committees are to report to the executive committee on their financial administration for the previous fiscal year (section 15). After receiving the accounts of other committees, the executive committee shall conclude the accounts with an annual statement of account which is summarised in an annual report (section 16).

The annual report shall be presented to the assembly and the auditors as soon as possible and not later than 1 June of the year following the year to which the report refers (section 19). The annual report shall be approved by the assembly. This should not be done until the assembly has decided whether discharge from liability is to be allowed or refused (section 20).

The annual report shall make clear the outcome of the activities, their funding and the economic position at the end of the year (section 17). It shall provide the assembly with the necessary information on whether or not the committees have followed the general outlines and the political goals laid down by the assembly. Information shall also be supplied concerning securities pledged and other contingent liabilities.

The annual report shall also include municipal activities conducted in the form of a limited company, a foundation, an incorporated association, a non-profit association or a trading partnership and this constitutes a form of consolidated accounting. The reason for this is that the municipalities and the county councils and their municipal enterprises are practically seen as one and the same economic base for decision-making for which the assembly is utterly responsible both economically and politically. The local representatives must therefore be given the opportunity to make a global judgement over the total economic engagement.

The annual report shall be drawn up in accordance with generally accepted accounting principles (section 18) which are interpreted by an accounting committee created by the Swedish Association of Local Authorities and the Federation of Swedish County Councils. This committee decides on what is to be regarded as generally accepted accounting principles and its recommendations have so far been very good.

The development in the private sector has also influenced the accounting principles within the municipal sector. In fact an objective has been to emulate as closely as possible the legislation on accounting practises that apply to private business.

Looking at accounting principles for expenditures and revenues, evaluation of assets and liabilities, models for summarising financial status in the annual accounts by using income statements, balance sheets and statements of changes in financial position, local authorities apply the same set of rules and overall accounting principles as the private business sector. But in addition, they have a tax base at their disposal and thereby have a guaranteed flow of revenue.

Current developments include plans for a special law on book-keeping and accounting in the municipal sector in order to make the ways and routines more in conformity and consistent.

3. Legal base of the auditing

The auditing of local authorities is governed by the provisions set out in chapter 9 of the Local Government Act. These provisions are, just like the ones dealing with economic management, very general. The provisions are more or less a codification of the auditing practices that have evolved among the local authorities in recent years.

Section 18 stipulates that more detailed regulations may be issued by the assembly. The local authorities are free to adapt these bye-laws to local conditions as far as they are in conformity with the generally accepted auditing standards. The latter are not defined by law and give expression to long-time accepted auditing principles and practices among professional auditors within the private sector. In many ways these standards refer to the auditing standards defined by the Swedish Institute of Authorised Public Accountants and they evolve over time as they are the fruit of an interplay between auditing theories, practical application, legislation and adjustments to the individual municipalities.

The Swedish Association of Local Authorities and the Federation of County Councils have drafted a recommendation for local audit regulations based on generally accepted auditing standards and also expounded their interpretation of what are the generally accepted auditing standards. Almost all municipalities and county councils have followed these recommendations.

As far as municipal enterprises are concerned, their legally prescribed auditing is not stipulated in the Local Government Act. They are audited in accordance with the same rules as private companies. The local elected auditors, however, have to control that the annual reports in the municipalities and county councils include information concerning municipal activities conducted by municipal enterprises (chapter 8, section 17). Thus, the auditors have the authority to make some general statements about the enterprises in the audit report.

Local elected auditors are not automatically auditors for municipal enterprises. In this regard, according to chapter 3, section 17, the assembly has to appoint at least one auditor for each municipality – or county council – completely owned limited company or foundation, to act beside the auditors elected by the shareholders' annual general meeting. The assembly is free to appoint one of the local elected auditors to be that auditor. This allows the co-ordinated auditing for the municipality or the county council and its enterprises with the purpose of making steering and insight into the enterprises possible. This insight is necessary as the local government is outmost responsible both politically and economically for the activities carried out by the enterprises.

B. Accounts control

1. Auditing bodies

According to chapter 3, section 8 and chapter 9, sections 1 and 2, local authorities are audited by local government auditors who are elected on a political basis by the assembly, i.e.: they are recruited among the members of the municipalities, nominated by the political parties and elected by the assembly. When the general local elections have been held throughout the country, the newly elected assembly shall elect at least three auditors and the same number of replacements to inspect activities for a four-year (term of office).

All persons with the right to stand as a candidate in the local elections are eligible for this position, while top officials of the municipality or county council are not eligible (chapter 4, section 6). In practice, this is the case even for someone in charge of an administration belonging to the sphere of activities of a committee.

In addition, persons who are accountable to the municipality or the county council may not:

- be auditors or replacements for the inspection of activities for which they are accountable;
- take part in the election of an auditor or auditors' substitute who is to inspect such activities, or;
- take part in the transaction of business concerning discharge from liability for the activities (chapter 9, section 4).

This also applies to the spouse, cohabitant, parent, child or sibling of the accountable person or any other person closely connected with him.

The audit mission is a very special form of commission of trust. The auditors are together considered to be the assembly's right-hand authority for controlling the local authorities' activities. The auditors have always been regarded as a basic and important democratic element and part of local self-government. It is an internal instrument of local democratic control which sometimes has even replaced planned and discussed state control.

This system has a long-standing tradition in Sweden. This can be seen against the background of the principle of local self-government. Neither the state nor any state authority take any part in monitoring or supervising how the local elected auditors fulfil their mission.

The politically elected auditors comprise a separate body (separate authority) independent of other local government committees. To make the system work it is necessary that they can work independently and without any prejudices. It is also necessary for them to have enough economical resources of their own. The auditors are themselves responsible for the administration connected with their auditing assignment, unless otherwise determined by the assembly (section 12). The decisions made by the auditors concerning their administration shall be minuted (section 13).

The politically elected auditors are free to call for assistance from professional auditors. In fact it is very common that the local elected auditors call on auxiliary services from professional accounting or auditing firms.

As previously stated the assembly shall elect at least three auditors to inspect activities. It is not mandatory that the same three auditors inspect all activities. It is in fact possible for the auditors to take collective responsibility for the auditing of all committees or to limit some auditors mission to only some of the authorities. The auditing can, in a way, be "divided" among the auditors. The legal requirement is that for each and every activity that is going to be inspected there must be three auditors available to do so. This means in practice that the assembly may elect more than three auditors so that the auditors can divide the mission in the most suitable way as regards for example any possibility of disqualification.

Every auditor performs his task independently from his auditing colleagues (section 6) and has the right to state his or her own opinion in the annual report.

According to the Constitution the national parliament auditors have the right to audit the use of earmarked state grants. Nevertheless, nowadays, the majority of the state grants being of a general character, this right to inspect the use of the state grants is very limited. This inspection, however, never excludes that activity from the agenda of responsibility of the local elected auditors.

2. Scope of the audit

The auditing work is usually divided into financial audits (including auditing of accounting records) and management audits (operational analyses). The duties do not only involve the examination of figures but also the effectiveness. There is an increasing trend towards "value-for money auditing". A very important part of the auditors' mission is therefore to control the efficiency and that the activities are

carried out well adapted to their purpose. It is also important for the auditors to control the conformity between the activities and the powers of the municipalities and the county councils and the general goals set up by the assembly.

The duties of the auditors are specified in chapter 9, sections 7 to 9. The auditors inspect, to the extent demanded by generally accepted standards, all activities conducted within the committees' spheres of activity. They do not have the authority to audit the assembly or to carry out the legally stipulated auditing that is presupposed to take place in the municipal enterprises. Nevertheless they are free to comment on their situation in general terms.

The auditors investigate whether the activities have been conducted in an appropriate and economically satisfactory way, whether or not the accounts are true and fair and the control undertaken within the committee and the assembly drafting committees is sufficient.

Even though it is not stipulated in the Local Government Act that the auditors also have to control the legality of the activities – both mandatory activities and activities within the free sector, it is clear that this is something that lies within the mission.

The auditors' inspection does not include matters relating to the exercise of authority in relation to an individual person, except when the transaction of such matters has involved the municipality or county council in economic loss or when the inspection is undertaken from a general viewpoint. This inspection aims at controlling the routines of the management of matters, cases and such. The reason for this is that individuals always have the right to turn to the court if they consider a decision related to the exercise of authority to be wrong.

3. Frequency of control and audit procedure

Each and every calendar year is to be controlled one by one. The auditing is current and systematic during the whole year to get a total picture of the activities, accounting, efficiency, internal security and vulnerability in order to collect source material for the audit report. The separate inspections that take place during the year are most necessary for taking actions for changes at once. The final examination cannot be done before the annual report has been submitted to the assembly after the year to be examined. The result of all their inspections is presented to the assembly once a year in their audit report.

This annual report should contain a statement as to whether or not the auditors recommend the approval of the accounts. As previously indicated, there can be different opinions presented in the annual report. If a reservation is submitted, its reasoning shall be included in the audit report (section 15).

It is then up to the assembly to consider what all the auditors have said in the annual report and to decide whether or not to follow their suggestions.

The committees have the right to give their opinion on a remark.

The assembly shall obtain explanations of the qualifications presented in the audit report. Then, it shall decide whether discharge from liability is to be allowed or refused at a meeting held before the end of the year following the year to which the audit refers (section 16).

The audit mission is formally fulfilled the day when the assembly considers the issue of discharging of liability.

As the auditors act on behalf of the assembly, a continuous dialogue and exchange of information is necessary between them. Therefore it is recommended for the auditors to have regular meetings with, for example, the presidency of the assembly in order to inform themselves about their activities and way of working.

Even if it is stipulated in the Local Government Act that the auditors have to submit an annual report to the assembly, they can in fact raise matters in the assembly whenever the issue is a matter that concerns the administration connected with their auditing mandate but not when their inspection has revealed any discords. These must be presented in the annual report. For a long time what is called positive auditing has been practised in Swedish municipalities and county councils. This has never been stipulated by law. The auditors have been given the possibility to continuously give advice and instructions and also to make remarks and objections that lead to correction, even during current auditing. However, they may not ever take active part in the management of the activities.

The auditors do not have the necessary resources to examine all activities in much detail. The annual planning is a very important instrument for their activities as the municipal activities are wide. When planning their work they have to decide on the extent, aim, direction and priority of the examination of the various activities. The importance for the inhabitants and risk factors are also important measures. To be able to judge these factors it is necessary for the auditors to have both a good knowledge of municipal activities and access to information. This is one of the reasons why it is a duty of the committees, the employees and the assembly of drafting committees to supply the auditors with the information needed for the work of auditing (sections 10 and 11). They shall also give the auditors an opportunity at any time to compile an inventory of the assets for which the committees are responsible and to inspect the accounts and other documents relating to the committees' activities. It is always the auditors themselves who decide what kind of information is of special interest.

4. Sanctions applicable to local authorities and remedies available to them

The auditors do not have any right to punish a municipality for irregularities or to refer it to court. They are internal controllers and the assembly's instrument for controlling the committees and other local government authorities and how they make use of the funds and how they carry out their activities. It is the assembly that acts like a court towards the local government authorities. One can say that the result of the auditing normally is a political reproof. The assembly is not forced to turn to court or other authorities for correction.

If discharge from liability is refused, the assembly may decide to sue for damages. It is somewhat unclear to what extent the elected representatives are obliged to pay damages to the local authority for errors. Non-criminal proceedings shall be filed within a year after the decision to refuse discharge from liability. Failing this, the right to file such proceedings shall lapse.

The assembly may revoke the mandate of an elected representative or an entire committee elected by the assembly if refused discharge from liability or if convicted of a crime punishable by imprisonment for two years or more (chapter 4, section 10).

There is no specific provision on the legal responsibility for errors made during the audit for local elected auditors. They do not at all have the same legal responsibility as professional auditors in private companies.

It is not possible for local authorities to appeal against any findings established by the auditors or against the annual report. A decision by the assembly not to discharge from liability can be appealed against. The court may only judge whether or not the decision has been made legally due to the provisions laid down in the Local Government Act. The court may not try whether or not it was right not to discharge from liability. The conclusion is that the issue of liability is a pure political one that only the assembly itself can judge.

Finally, there are some legal possibilities for the municipalities and the county councils as employers to dismiss members of staff responsible for misconduct or who are otherwise unsatisfactory.

SWITZERLAND¹

I. LEGAL CONTROL

A. General principles concerning the legal control of local authorities' action

As a general rule in Switzerland, local authorities, whether communes or intercommunal associations (also known as “associations of communes” in some other cantons) are subject to supervision by the state, i.e. by the canton.

They enjoy a certain amount of autonomy, which is guaranteed at the constitutional level in the canton of Neuchâtel, but which is limited not only by the cantonal or federal legal order but also by the above-mentioned power of supervision. Where it employs one of the means of supervision, the state is required to observe certain principles of public law, in particular the principle of proportionality: it endeavours to employ the means which least affects communal autonomy.

Supervision by the state is exercised *ex officio* by means of information, authorisation, approval and intervention. The information method consists essentially in inspecting the communal activity, but also in providing the communes with legal assistance.

The state's supervision is also exercised upon application or upon complaint.

B. Control by administrative authorities

In the canton of Neuchâtel, the administrative control of local authorities is regulated by the Constitution of the canton of 21 November 1858 (CN), by the Communes Act (CA) of 21 December 1964 and concerning the procedure by the Administrative Procedure and Jurisdiction Act (APJA) of 27 June 1979.

Three bodies are responsible for the administrative control of local authorities at the canton level: the Council of State, the Department of Finance and Social Affairs and the Communes Department.

1. Council of State (canton government)

The Council of State is the principle body responsible for control. The communes come under its direct supervision (Article 53, CN and Article 6, CA). It may take action against the communal authorities at various stages and in various forms.

First of all, the Council of State has at its disposal wide means of information (Article 67, subparagraph 1, CN and Article 7, CA). It may be represented in all sittings of the communal authorities, in a consultative capacity, and demand all the necessary documents.

¹ This report is the synthesis of a study on the situation in the canton of Neuchâtel, prepared by Mr André Rüedi, Head of the Service of Communes, cantonal administration of the canton of Neuchâtel.

The Council of State also exercises control by approving local regulations and certain decrees (Article 67 sub-paragraphs CN and Article 8, CA), possibly cancelling decisions (Article 9 CA), convoking the authorities (Article 10, CA), acting on behalf of the communal authorities (Article 11, CA) and, lastly, dissolving the General Council (the communal parliament) in certain circumstances (Article 12, CA).

Approval of regulations and of certain decrees

Communal regulations and also certain decrees (financial participation and guarantees, real-estate transactions, etc) are enforceable only after they have been approved by the Council of State.

Decrees and regulations are subject to approval either upon being adopted by the General Council or upon expiry of the referendum period to which they are generally subject (except where an urgency clause has been adopted by a qualified majority). The control is exercised *ex officio* and *a priori*.

i. Under Article 8, section 2 of the CA, approval is refused in the case of regulations which are illegal or manifestly contrary to the general interest. There is thus a control of legality and a control of opportunity. It should be observed, however, that both these types of control are exercised with circumspection. Approval is a *prima facie* examination. In the event of doubt, a provision or regulation of dubious legality is approved. Even more restraint is exercised in ascertaining whether or not a regulation or provision is contrary to the general interest.

The general interest mentioned in that provision is in principle the general interest of the commune itself, but that it may also be the general interest of a region or indeed of the canton. The Federal Court accepts, even in the absence of an express provision, that the cantonal authority should review the commune's appreciation where regional or intercommunal interests are at stake.

The control of expediency depends on the commune's sphere of activity.

Where the activity in question falls within the commune's autonomous sphere, i.e. the sphere in which it has a "relatively wide margin of discretion when adopting decisions", the control of opportunity is exercised within very narrow limits. The canton must then confine itself to ascertaining that the communal regulation is compatible with higher-ranking law.

In spheres which are covered by cantonal legislation, on the other hand, examination of the communal regulation depends on the aim pursued. If the purpose of the cantonal law is to establish a uniform minimum standard throughout the territory, it is sufficient to ensure that this law is actually applied. If, on the other hand, the cantonal law is aimed at establishing a common policy in a particular matter, i.e. where it is designed to ensure that a public task is administered in the same way, the control of opportunity is exercised in full, the determining criterion being supplied by the public interests.

Where a regulation contains an illegal provision it is none the less approved with a reservation in the decree of approval. This reservation corrects the provision in question where this can be done without any problem. This is so, in particular, where all that is necessary is to remove an illegal provision or replace it with the appropriate provision of cantonal law. Where, on the other hand, the illegality may be corrected in various ways and the choice must be made at communal level, the decree of approval is limited to not approving the impugned provision. It is then for the communal council to bring the matter before the General Council again on the basis of the observations and suggestions made by the state.

As regards the scope of the control, (new) Article 69, CA, which deals with intercommunal associations (associations of communes), goes even further, since it authorises the Council of State to refuse to approve a provision of a general regulation which is simply unfair or subsequently to cancel it upon complaint by a commune for reasons to do with simple fairness.

ii. In addition to regulations properly so-called, the Council of State also examines the conformity of real-estate transactions. It checks, in particular, that they comply with both superior law and the intention emerging from the decree of the local legislature (Article 25 sub-paragraphs 5 *g* and *h* (new) and Articles 52 to 56, CA).

iii. Financial participation and guarantees also require cantonal authorisation (Article 25, sub-paragraph 5 *e*, (new) Article 30 sub-paragraph 2 *c* and Articles 50 and 51, CA). The Council of State has a wide power of appreciation: the participation of a commune in the formation or maintenance of a private undertaking (generally meaning the acquisition of shares) is allowed only where there is no legal obstacle (for example, the distribution of water cannot be entrusted to a limited company) and where the undertaking in question presents a general interest.

iv. Lastly, the Council of State is entitled, and is even under an obligation, to check *ex officio* the urgency of decisions of the local legislatures containing an “urgency clause”, i.e. meaning the abolition of the right to a discretionary referendum which normally exists in connection with all decrees and regulations adopted by the General Council. The check carried out by the Council of State must be rigorous: it is the guarantor of citizens’ political rights and enjoys unrestricted power to examine the urgency of such measures.

Cancellation of decisions

The Council of State may also intervene *a posteriori* in regard to communal decisions. Under Article 9 of the CA it may ask a communal authority which has adopted a decision which is illegal or manifestly contrary to the general interest to withdraw the decision. If the communal authority refuses to do so the Council of State may cancel the decision.

The communal decisions referred to in Article 9 of the Communes Act are either administrative acts of a general and abstract nature – e.g. regulatory provisions – or decisions of a procedural nature. On the other hand, decisions which may form the subject matter of an appeal under the APJA cannot be reviewed under Article 9.

The Council of State intervenes *ex officio* or upon application. In the latter case there is a complaint, and (new) Article 9, CA makes clear that the complainant has none of the rights recognised by the parties. That also means that the Council of State is not required to take action in response to the complaint. All that the complainant can do is draw the Council of State's attention to the facts which, in his view, justify the Council of State's intervention in the public interest.

Complaints lodged by communes against regulations or decisions adopted by intercommunal associations are always resolved by the Council of State.

Individuals whose interests are in issue act within the framework of administrative procedure. The Administrative Court is the ordinary higher appellate authority (Article 30, APJA), while the Council of State is the appellate authority only in the cases provided for in the APJA (Article 31), either for decisions concerning allocation plans, decisions approving tariffs, decision concerning the allocation of the foreign workforce or decisions concerning the relations of the state personnel service.

Certain cantonal laws, in areas where the communes have only an executory role, provide for an initial appellate authority in respect of their decisions – generally a department of the Council of State – before the matter is brought before the Administrative Court.

The “lower cantonal authorities” – these are essentially departments of the Council of State, sometimes supracommunal authorities or services – may be appellate authorities at first instance where federal or cantonal law so provides (Article 30, APJA).

That is the case in particular where the role of the local authority is essentially that of implementing cantonal law (e.g. purification of used water, collection and treatment of waste, education, town and country planning, construction, social assistance, etc.).

The rules on the scope of the control, procedure and the powers of the jurisdiction are virtually identical for the lower authorities and the Administrative Court. They will therefore be set out below, in the section on the Administrative Court.

Withdrawal of approval

As a general rule, and for reasons connected with legal certainty and the credibility of the authorities, approval which has been granted cannot be called in question. It will be called in question, however, where there is a new important fact which justifies reconsidering approval. An example is where it is subsequently discovered that the authority which adopted the regulation which was approved was not correctly composed. Approval may also be withdrawn where it transpires that objective conditions have changed with the passing of time and that a provision approved at a particular time subsequently proves to be legally unacceptable.

Powers to act on behalf of the communal authorities (substitution)

The Council of State may also (Article 11, CA) act on behalf of the communal authorities which, after being duly requested to do so, fail to adopt the measures which the law requires them to adopt. In that case the costs are borne by the offending commune and the Great Council must be informed with the minimum of delay of the measures adopted by the Council of State on behalf of the communal authority.

Before the Council of State can act in this way there must have been a very clear obligation laid down by the law in the narrow sense which the commune refuses to meet.

In its extreme form – generally known as placing the commune under supervision – this power has the effect that the state or persons appointed by the state assume the administration of the commune for and on behalf of it and taking over its accountancy.

Apart from the general rule laid down in Article 11, CA, cantonal legislation contains a number of specific provisions – particularly concerning town and country planning or construction – which provide for enforcement by equivalent.

Dissolution

The Council of State may also intervene in order to ensure the political functioning of the commune. It therefore convokes the electorate to renew the entire local legislature where, as a result of vacancies, it has lost the majority of its members and at the same time cannot be brought up to strength without a supplementary election being held (Article 12, CA).

The purpose of this intervention is to prevent the paralysis of the authorities following, for example, a policy of obstruction by a group within the General Council. In that regard, it should be observed that apart from the power of dissolution mentioned above, the Council of State has no hierarchical power over the communal authorities. Thus it cannot adopt any disciplinary measures against them or even compel them to resign.

It may be observed that the General Council has the same power to dissolve the communal council and to arrange for it to be reelected in full where the same conditions as those provided for in Article 12 CA (lack of a quorum) are met (Article 25, sub-paragraph 1 *b*, CA).

Remedies against decisions of the Council of State

There is no remedy at cantonal level against decisions of the Council of State, apart from the exceptions in Article 28, sub-paragraphs 2 and 3, APJA (decisions concerning certain service relations of state personnel and decisions concerning expropriation), which provide for a possible appeal to the Administrative Court.

Judicial remedies at federal level will be examined in sub-paragraph C, below.

2. Department of Finance and Social Affairs (DFSA)

Its role in control matters is very limited. It mainly acts, by delegation, for and on behalf of the Council of State.

The only area in which it exercises its own power of control concerns real-estate transactions. The department is responsible for authorising them after the event where they could not be described in detail in the decree of approval adopted by the Council of State (Article 56, CA). The DFSA essentially ensures that these transactions correspond with the framework initially determined by the decree of the communal legislature.

The DFSA cannot deal with individual complaints. Apart from its powers to supervise the financial management of the communes, it has no power to cancel any communal decisions which may be illegal or contrary to the general interest.

3. Communes Department (CD)

In the field of control, the Communes Department is the administrative body that prepares the decrees of approval of the Council of State, the Council of State's decisions cancelling communal measures and also decisions of the DFSA.

However, the essential part of its activities is carried out upstream. It provides the communes with information, advice and assistance in legal matters. In particular, it checks, upon application, the draft decrees or regulations before they are adopted at communal level. It draws up standard regulations, informs the communes of the amendments which must be made to their regulations where federal or cantonal law has been amended and provides them with legal opinions.

The CD, too, is unable to deal with individual complaints and has no power to cancel communal decisions.

C. Judicial control

Legislation concerning the judicial control of local authorities' action includes the Administrative Procedure and Jurisdiction Act of 27 June 1979 and the Federal Judicial Organisation Act (FJOA) of 16 December 1943.

Competent jurisdiction includes: the Administrative Court and the Federal Court.

1. Administrative Court

The Administrative Court is the ordinary appellate jurisdiction in administrative matters.

Scope of the control

The scope of the control is very wide. The matter may be brought before the Administrative Court provided that there is an individual decision which has an effect on the applicant's rights. The court reviews both facts and law and resolves the question of opportunity where the relevant legislation so provides.

i. The subject matter of an application may be any final decision adopted by the communal authorities or the institutions which come under them, i.e. any measure adopted by these authorities in individual cases, based on federal, cantonal or communal public law, and designed to:

- create, alter or cancel rights or obligations;
- declare the existence, non-existence or scope of rights or obligations; or
- dismiss or declare inadmissible applications seeking to have rights or obligations created, altered, cancelled or declared.

ii. The following have *locus standi*:

- any person, corporation and public law establishment or commune affected by the decision and in possession of a valid interest in having the decision cancelled or amended;
- any other person, association or authority with a statutory right to take proceedings.

iii. The applicant may invoke:

- breach of the law, including excess or misuse of discretionary power;
- an inaccurate or incomplete finding as to the relevant facts;
- unequal treatment;
- opportunity, where a special law so provides;
- a refusal by an authority to resolve a matter, or a significant delay in doing so.

Procedure

A decision within the meaning of the APJA must include the word “decision” or the verb “decides”, it must in principle be served in writing, it must state the means whereby and the time within which an appeal may be lodged (normal time limit: twenty days) and it must state the reasons on which it is based. Where all these conditions are not fulfilled a decision is not enforceable (Article 4, APJA).

This means that the person to whom the decision is addressed is fully informed of his rights and that legal control is exercised effectively.

The parties are entitled to be heard, to consult the file and to be represented (before the Administrative Court the representative must be a lawyer) (Articles 13, 21, 22 and 51, APJA).

As a general rule the procedure is in writing and the application has suspensory effect (in certain cases, where the public interest so requires, this effect may be withdrawn by a reasoned decision which is itself subject to appeal).

Powers of the Administrative Court

The court is not bound by the grounds relied on or by what is set out in the statement of the facts (Article 43, APJA). Where an important public interest so requires, the court may even deviate from the forms of order sought by the parties, after informing them that it will do so and setting a time limit within which they must reach agreement. Lastly, the court may either determine the merits of the application or remit the case to the authority below, which must then determine it along the lines laid down by the appellate authority (Article 44, APJA).

2. Federal Court

An appeal to the Federal Court is admissible only against decisions adopted at last instance by the cantonal authority (Administrative Court or Council of State) (Articles 87, 98 and 98 *a*, FJOA).

Public law appeal

A public law appeal is in principle a means designed to protect the holders of constitutional rights – in particular the right to equal treatment, individual freedoms (of trade and industry, establishment, conscience and belief, religion, the press, association, “personal” freedom, etc.), certain institutional guarantees (right to marry, property rights) and certain political rights (enjoyment and exercise of cantonal political rights, separation of powers and communal autonomy) – against abuse by the state power (Articles 84 and 85, FJOA).

Although the communes are holders of public power, they may defend themselves by these means against a violation of their autonomy, an encroachment on their existence or the state of their territory. They may also use this remedy where they act as a private person under private law.

Individuals and communities who are injured by decrees or decisions which affect them personally or which are of general scope have *locus standi* to lodge a public-law appeal (Article 88, FJOA).

Decisions of the Council of State adopted upon complaint (Article 9 of the Communes Act) cannot form the subject matter of a public law appeal to the Federal Court by the complainant. The complainant has no legally protected interest on which he can rely.

Administrative law appeal

An administrative law appeal may be lodged, in particular, for breach of federal law (Article 104, FJOA).

Anyone – whether an individual or an authority – who is adversely affected by the impugned decision and has a valid interest in having it set aside or amended has *locus standi* to lodge such an appeal (Article 103, FJOA).

II. THE AUDIT

The accounting auditing of local authorities' action is regulated other than by the Canton Constitution and the Communes Act already mentioned, by the decree on the amortisation of the various items in the assets of the balance sheets of the state and the communes of 23 March 1971, the regulation on the finances and accountancy of the communes (RFAC) of 18 May 1992, the directives of the Department of Finance and Social Affairs to communes on amortisation of 5 December 1994 and the directives of the DFSA to bodies responsible for auditing communal accounts (Au.dir.) of 8 November 1995.

A. Main requirements for local authorities concerning financial commitments and accountancy

1. Financial commitments

Principles of financial management

The entire financial management of the communes is supervised by the state. The communes must apply the principles of financial management as defined in cantonal law (Article 42, CA: Articles 2 to 9 of the RFAC): legality, budgetary equilibrium, economic and judicious use of resources, payment by the user, remuneration of economic advantages and non-allocation of ordinary communal taxes.

Budget

Approval of the budget by the DFSA is the principle means of controlling the financial management of the communes. The budget consists of an operating budget and an investment budget (Article 57, CA).

In principle, the operating budget must be balanced. It may be rejected if it shows a deficit greater than net wealth (general accounting reserve) (Article 58, CA): in such a case the commune is given time to adopt the necessary measures to adjust expenditure or income. When this period has expired, or where the measures adopted are inadequate, the Council of State intervenes at the level of taxation, although it preserves the commune's autonomy in this field as much as possible (the commune's autonomy is very wide in the canton of Neuchâtel: the communes themselves, in a relatively unrestricted framework, determine the scales of income tax and wealth tax payable by natural persons).

In the case of legal persons, and except where the Communal Council gives a negative opinion, the Council of State decrees the rate of communal tax at the statutory maximum. Subject to the same reservation, it fixes the rate of communal wealth tax payable by natural persons at the statutory maximum. As regards income tax payable by natural persons, the Council of State determines the additional communal tax for the financial year in question – fixed as a percentage of the cantonal direct tax – necessary to obtain the result required by the DFSA (Articles 26 to 28 of the RFAC).

It should be observed, however, that there is a limit to the tax effort required of communes in difficult budgetary situations. Where the product of the communal tax and certain local taxes reaches 25 per cent more than the cantonal tax levied in the commune, the state provides financial intervention to the commune by means of a compensation fund in order to allow it to balance its operating account.

Real-estate mortgages and the pledging of securities

In principle, communal assets cannot be mortgaged (Article 44, CA). The Council of State may authorise exceptions, in particular where specific laws so provide (e.g. in the case of low-rent housing) or where a mortgaged property is acquired (a planned amortisation is then required).

The pledging of securities can be authorised by the Council of State for a limited period only for the purpose of obtaining the funds necessary to implement a specific programme (Article 45, CA).

Capital investment

Power to make capital investments belongs to the communal executive (Article 46, CA). It must invest the commune's available capital in gilt-edged securities, either in securities of public law corporations and their dependent undertakings (the authorities must hold the majority of the capital) or in loans to individuals guaranteed by sufficient first-rank mortgages. Also acceptable are investments in the form of bonds, cash vouchers, savings books or current forward accounts with establishments subject to federal banking law.

Financial participation and guarantees

The authorisation by the Council of State is necessary (Article 50, CA). Private undertakings in which the communes may participate must present a general interest (which is a wider concept than "public interest"). Examples include public limited liability companies supplying energy or heat, dealing with waste treatment, real estate (car parks and sports installations) or trusts coming within the field of health.

The Council of State's authorisation is also necessary if financial guarantees are to be given to private undertakings (Article 51, CA). Guarantees must be for a limited period.

Credits

The communes are subject to various constraints when adopting their credits. These must be adopted in the form of gross amounts and the decree granting the credit must indicate the amortisation rate or rates. Furthermore, a supplementary credit must be requested where the authorised expenditure is exceeded, unless this is due to price increases or caused by carrying out unforeseen work which is indispensable for technical or security reasons (Articles 78 to 80 of the RFAC).

Amortisation

The communes amortise credits in accordance with the rules determined by the state (Article 65 CA, Articles 59 to 64 of the RFAC). Amortisation is on a straight line basis, determined according to the duration of the asset, on the initial value on the balance sheet.

2. Accountancy

Communal accounts are presented according to the accountancy plan and regulations decreed by the Council of State (Article 60, CA, RFAC). The accountancy plan in force is the New Accounts Model (NAM), which is applied in all Swiss communes of the canton of Neuchâtel. The accounts must be presented according to the classifications based on function (institutional) and type (economic) in the NAM. This requirement provides a harmonised analytical accountancy, which is indispensable for a valid comparison of the financial situations of the public authorities.

Book-keeping (records, supporting documents, memoranda, rectifications, accounting documents, control of funds, etc.) is governed by rules of cantonal law.

The accounts consist of the balance sheet and the administrative account.

The balance sheet includes on the assets side financial assets, administrative assets, advances to special financing and the eventual deficit. The liabilities are composed of commitments (third party funds), commitments to special financing and net wealth.

The administrative account is divided into the operating account (which includes current expenditure and income, including amortisation) and the investments account (which includes expenditure and income employed in establishing the permanent assets forming part of the commune's administrative assets).

The balance of the operating account alters solely the net wealth or deficit. This rule is crucial: it ensures the transparency of the results and the immediate amortisation of an eventual operating deficit. The closure of the investments account shows self-financing and also any shortfall or surplus in funds.

B. Accounts control

Bodies responsible for the auditing are the Department of Finance and Social Affairs (DFSA), the Communes Department (CD) and the external auditors.

1. Department of Finance and Social Affairs (DFSA)

The DFSA approves the accounts (Article 59, CA) but the actual control is carried out by the CD.

Where a document which is presented does not correspond with the norms it may be returned to the commune to be amended. In the majority of cases, time, however, the DFSA merely requires that the errors or informalities be corrected for the following financial year. Where a commune does not meet its obligations concerning the adoption of the accounts the Council of State, as the supervisory authority, may intervene as described above and, in particular, act for and behalf of the commune (Article 11, CA).

In the event of book-keeping irregularities, which are a matter for the criminal law, it is for the Communal Council, and possibly the Council of State if the Communal Council is involved, to report the matter to the Public Prosecutor's Department.

The communes have no real remedy against injunctions formulated by the Department of Finance and Social Affairs during the approval of the accounts. At the very most they can refer the matter to the Council of State in its capacity as direct supervisory authority.

2. Communes Department (CD)

The CD is the administrative body responsible for the formal control of the accounts.

The control concerns observance of the rules of cantonal law on amortisation, the presentation of the accounts (various classifications), internal charging, attributions and levies to special financing, compliance with the accounting plan, accounting of the communal shares to cantonal expenditure or income, etc.

Following the example of its role in legal matters, the CD also has the role of advising and assisting the communes in accountancy matters. For example, it provides support when the accounts are closed, indicates the rates of amortisation applicable, checks the drafting of decrees relating to credits, etc.

The CD also draws up taxation and financial statistics, which are useful for the purpose of comparing the various communes, and calculates various financial indicators, some of which are harmonised at national level.

3. External auditors

At least once every four years the communes must have their accounts audited (although two thirds of communes have chosen to do so every year or every two years) (Article 35, CA).

The bodies authorised to carry out this audit are defined in Article 1 Au.dir. Except in the case of small communes, the professional qualifications required are the same as those laid down in federal law for bodies auditing public limited companies: this task may be carried out only by persons or undertakings regarded as “specially qualified auditors” within the meaning of the Code of Obligations (Article 727 *b*) and entered as such in the commercial register.

The audit is a full audit; it is carried out *in situ* and modern auditing techniques are employed.

The auditor ascertains, in particular:

- that the accounts are accurate, that entries agree with supporting documents and that these supporting documents are authentic;
- that income and expenditure are compatible from the legal, accounting and economic aspects;
- that income and expenditure are fully accounted for;
- that the balance sheet is in order;
- that computer procedures have been correctly applied; and
- that there is an adequate system of internal control.

The auditing body also ensures compliance with legality (two joint signatures, expenditure covered by commitment or budgetary credits) and checks that the accounting provisions laid down by the canton are applied.

In this regard, the auditing body checks, in particular:

- that the accountancy plan has been applied, and also that the definitions contained therein have been complied with and the procedure for balancing the accounts followed;
- that commitments to special financing (allocated reserves) have their basis in a statute or in a regulation approved by the Council of State;
- that amortisation has been effected according to the rules and rates laid down in cantonal law.

It ensures that the accountancy principles have been applied (Articles 12 18 of the RFAC) and carries out spot checks to ensure that the formalities of administrative management and accountancy (memoranda, discounts subtracted, registers up to date, etc.) have been observed. It also carries out unannounced checks on funds (Articles 6 to 8, DFAS Au.dir.).

In a report to the commune and the DFSA the auditing body certifies that it satisfies the regulatory conditions on qualifications and independence, lists the checks and spot checks carried out, notes the weaknesses found, sets out recommendations susceptible of remedying them and mentions any significant discrepancies found between the financial year to which the audit related and the previous financial year.

Where irregularities are discovered, it is for the commune to take action against the administrative persons responsible. The DFSA, or indeed the Council of State, eventually intervenes only where there is an effect on the result of the accounts and the subsequent budget and where the commune fails to take the appropriate action.

TURKEY¹**INTRODUCTION**

The Turkish public administration system and the local self-government with their bodies are presented in the two tables below.

Organisation of public administration

TERRITORIAL SCALE	CENTRAL ADMINISTRATION	SELF-GOVERNING ADMINISTRATIONS
State	Ministries	
Region (NB: only a regional prefectural administration has been set up)	Governor (prefect)	
Province	Governor (prefect)	Special provincial administrations
District	Sub-Governor (sub-prefect)	

Bodies of self-governing authorities

TYPE OF BODY	SPECIAL PROVINCIAL ADMINISTRATIONS	MUNICIPALITIES	VILLAGES
POLITICAL HEAD	Governor (appointed by the government)	Mayor (elected)	Head of the village (elected)
DELIBERATIVE BODY	Provincial council (elected representatives)	Municipal council (elected representatives)	Village council (all electors)
EXECUTIVE BODY	Provincial executive committee (elected and appointed representatives)	Executive municipal committee (elected and appointed representatives)	Village executive committee (elected representatives and <i>ex officio</i> representatives)

The section on the administration of the 1982 Constitution contains the main principles governing the public administration.

Article 123 states the general principle of the integral nature of the administration: "The administration is an integral unit by its establishment and functions and will be regulated by law. The establishment and functions of the administration will be based upon the principles of central government and decentralisation."

Article 125 expresses the principle of the rule of law: "Every action and operation of the administration is eligible for and can be subject to judicial control." It also indicates the limits of the powers of the judge and establishes that: "The administration ought to compensate the damages caused by its actions and operations."

1 The present report is the synthesis of a study prepared by Mr Firuz Yasamis

The main article on local government, which regulates the overall principles for local government and its relations with the central government authorities, is Article 127. This provision states, *inter alia*, that: “The establishment conditions, functions and powers of local government will be regulated by the statutes in line with the decentralisation principle.” It also provides for the administrative supervision on local administrations.

It should be underlined that the Turkish local authorities have a certain degree of autonomy for local governance. Supervision over their action, which is dealt with in detail in the following sections, concerns legality and not appropriateness. In other words, supervisory bodies verify whether a decision or act of a local authority is legal, but they cannot judge whether this decision or act is suitable for a given situation.

I. LEGAL CONTROL

A. Control by central administration

According to Article 127 of the Constitution, the central government has the power of tutelage over the local government. This power must be implemented according to the principles and procedures established by the law, for the sake of maintaining the provision of local services in harmony with the principle of the integral nature of the administration, securing the unity in public services, protecting the public interest and meeting the local needs as deserved by the local conditions.

Three main deficiencies affecting the control procedure over the local authorities should be briefly indicated here.

First of all, the principle of local self-government has neither been defined in the Constitution nor in any other law.

Secondly, although the local governments are the public entities responsible for certain local and common public services and the duties of the local governments are listed in the laws, there is no clear cut allocation of public services between local government and central government agencies. This causes confusion and ambiguities because of the ongoing centralisation tendencies.

Thirdly, there is no single law regulating the power of tutelage. There are numerous laws, bye-laws, regulations and administrative circulars which pose certain regulatory controls over the actions of the local authorities.

1. Role of the Ministry of the Interior

The Ministry of the Interior is the main responsible body for the regulation of the activities related to local government. According to the Law on the Organisation and the Functions of the Ministry of the Interior (No. 3152, 1985), the ministry is responsible to arrange the issues related to local government and its relations with the central government. Its supervisory power is very significant. There are two main units within the ministry responsible for local government: the General Directorate of Local Governments¹ and the Presidency of the Inspection Council.²

In addition to the inspectors of the ministry (mainly responsible for provincial centre municipalities and the provincial special administrations), the General Directorate of Local Governments has established its own controllers' organisation at the headquarters and at the prefectorial administration level (*valilik*) (mainly responsible for smaller municipalities and villages).

It should be noted that, besides this external controlling system, most of the larger municipalities have their own internal inspection systems.

2. Controls by other central bodies

Some other central bodies are authorised to monitor local government activities. The most important of them is the Presidential State Council of Inspection. Article 108 of the Constitution and the Law on the Establishment of the State Council of Inspection (No. 2443, 1981) enable this council to carry out research, analysis, investigation and inspection at the public institutions upon the request of the President of the Republic.

A similar authority is also given to the Prime Minister's Inspection Council by means of Article 20 of the Law on the Organisation of the Cabinet (No. 3056, 1984).

1 According to Article 11 of the law, the functions of the Local Government's General Directorate have been stated as follows:

- a. to perform all the tasks entrusted to the ministry by several laws for the regulation of activities related to local government;
- b. to administer the tutelage power given to the ministry;
- c. to observe the conformity between the investments of local government with national development plans;
- d. to carry out scientific researches and collect, analyse and retrieve the statistics for the enhancement of local government;
- e. to observe the developments related to the in-service training of local government employees;
- f. to set the standards for organisation, managerial staff and equipment of local government;
- g. to organise the work of local government controllers (other than the inspectors of the ministry) employed by the General Directorate.

2 In Article 15 of the Law, the functions of the presidency of the Inspection Council have been stated as follows:

- a. to inspect and investigate operations and accounts of the local government and the institutions related to them;
- b. to carry out investigations and interrogations relating to the activities of the local government elected and appointed bodies and their members.

Finally, according to Article 20 of the Legislative Decree on the Functions and the Organisation of the Ministry of Finance (No. 178, 1983) the inspectors of the Ministry of Finance are entitled to examine local government work.

3. Governors and sub-governors

The Province Administration Law (PAL – No. 5442, 1949) provides for the tutelage power of governors and sub-governors. According to this law, the governor (or the sub-governor for the district) controls and inspects the special provincial administration, the municipalities, the villages and institutions attached to them. This control and inspection duty can also be performed by inspectors and officials of the central government agencies.

4. Control procedures

In the following table, the most significant administrative control procedures have been briefly described and analysed to provide an overview of how local authorities' action is administratively controlled by the central government agencies.

ACTS CONTROLLED	TYPE OF CONTROL
<p>Urban planning</p>	<p>According to the City Planning (Reconstruction) Law (No. 3194, 1985) the municipalities are free to exercise the right of urban planning within the boundaries of their territory. However, this right can be limited and even excluded.</p> <p>This law (Article 9) gives overall power to the Ministry of Public Works and Settlements to make urban plans for the city or parts of it, to hire consultants to prepare the plan, to make alterations to the plans prepared by the municipality or to establish a compulsory approval procedure for the plans prepared by the municipalities whenever or wherever the ministry considers that it is feasible. Within this context the ministry has the power to issue orders to the municipalities to make changes in the city plans or the ministry can make the changes directly on the plans and then approve them. The ministry also has the power to solve urban planning disputes among the municipalities. The decision taken by the ministry has to be implemented by the municipalities concerned.</p> <p>The Privatisation Administration of the Cabinet has the same power as the Ministry of Public Works and Settlements for areas subject to privatisation schemes. City plans for these areas can be prepared by administration which has to be approved by the Higher Privatisation Council. The municipalities cannot use their right of planning over these areas for the following five years.</p> <p>The Tourism Promotion (Encouragement) Law (No. 2634, 1982, Articles 3 and 7) gives the Ministry of Tourism the right to declare that some regions and centres are “tourism promotion areas” and the right to spatial planning for these regions and centres.</p> <p>The Legislative Decree on the Establishment of Regional Development Administration for the South Eastern Region of Turkey (No. 388, 1989) entrusts the duty of preparing urban plans of the municipalities within the region to this Administration.</p> <p>In order to protect the highly sensitive environmental areas, the Legislative Decree on the Establishment of Special Environmental Protection Zones Administration (No. 383, 1989) gives this administration (within the Ministry of the Environment) the right to spatial planning for all these areas, at every stage ranging from the preparation of master and comprehensive plan to the construction permits.</p>

<p>Approval of the municipal regulations</p>	<p>There are two main types of regulations to be prepared by the municipalities: the municipal police regulation and the municipal health police regulation.</p> <p>According to Article 71 of the Municipal Law, municipal police regulations which set rules and norms for urban life have to be initially approved by the municipal council and then by the governor or sub-governor.</p> <p>According to Articles 266 and 267 of the Public Health Law (No. 1593, 1930), municipal health police regulations which sets rules, norms and procedures for the protection of urban hygiene have to be approved by the Ministries of Interior and Health.</p>
<p>Municipal organisation</p>	<p>Municipalities have the power to establish their own organisational structure although there are no specific provisions concerning the municipal organisational structure in the Municipal Law. Consequently, the internal organisation structure of the municipalities is decided by municipal assemblies. Nevertheless, the Council of Ministers established by decree that all public agencies (including local government) should have <i>a priori</i> approval of the State Planning Organisation responsible for the preparation of the five-yearly development plans. On the other hand, Article 11 of the Law on the Organisation and the Functions of the Ministry of the Interior (No. 3152, 1985) confers the duty of developing the standards for local government organisation charts. Thus, the ministry is currently approving the organisation charts of the upper-tier municipalities of the metropolitan municipalities.</p>
<p>Approval of managerial staff</p>	<p>The municipalities and the special provincial administrations are subject to the same recruitment procedure for the appointment of officials in parallel with central government organisations' appointment of their white-collar employees. According to the Legislative Decree on the General Non-Officials and Procedure (No 190, 1983), municipalities, the special provincial administration and the local government unions should apply to the Ministry of the Interior once a year concerning officials and the ministry, after compiling all applications, will consult with the Ministry of Finance and the State Personnel Presidency. Approval is given by decree of the Council of Ministers, to be ratified by the President of the Republic.</p> <p>For the permanent blue-collar worker officials, approval is given by the Ministry of the Interior, after consulting with the state Personnel Presidency. The approval of the Ministry of the Interior will also be sought for the provisional blue-collar worker officials.</p>
<p>Public transport and transport of dairy products</p>	<p>Municipalities can only delegate the services of public transport and transport of dairy products if authorised by the Ministry of the Interior.</p>

Establishment of economic and commercial enterprises and partnership	The Law on the Regulation of Privatisation Activities (No. 4046, 1994) has brought up a new permission system for the local government's economic and commercial enterprises. Thus, a local government planning to establish such enterprises or form a partnership to that end must obtain permission from the Council of Ministers.
Establishment of wholesale grocery markets	<p>According to the Legislative Decree on the Regulation on Fresh Vegetables and Fruits Trade and the Management of Wholesale Markets (No 552, 1995) municipalities may establish wholesale grocery markets only with the approval of the Ministry of Industry and Trade. The authorisation is issued after approval by the Ministry of the Interior on the municipal application.</p> <p>The Ministry of Trade and Industry will take into consideration the need to secure fair competition at the market and to protect consumers and producers; the number of wholesale grocery markets in the region, the size of the consumer market, transport facilities and the geographical situation are also taken into consideration. Municipalities can appeal decisions concerning the delivery of this inter-municipal co-operation to the administrative courts.</p>
Selling of municipal lands	According to the Land Office Law (No. 1164, 1969), Article 8, the municipalities must inform the Prime Minister's Land Office upon their intention to sell municipal lands. Municipal lands can only be sold after securing the permission of the Office or if an answer is not received from the Office four months after the notification.
Visits abroad by the elected representatives	<p>Visits abroad by the local elected representatives are subject to approval to be granted by the Ministry of the Interior.</p> <p>The ministry has handed over this power to the prefectorial administrations.</p>
Twinning agreements	Such agreements are not regulated by any law. Nevertheless, the Ministry of the Interior, by a general circular issued to local government, has set up new rules for this type of agreement and stated that it would be subject to <i>a priori</i> permission from the ministry
Local government unions	The local government may establish unions to commonly manage its legal duties. Nevertheless, according to Article 127 of the Constitution, such unions can only be established if authorised by a decree of the Council of the Ministers ratified by the President of the Republic.
Municipalities' written correspondence	According to Article 35 of the Province Administration Law, the district municipalities are obliged to carry out their written correspondence with the prefectorial administrations and the ministries via the sub-governors.

B. Reciprocal controls between deliberative and executive bodies and disputes among elected bodies

An internal check-and-balance system exists; accordingly, the bodies of the municipalities may administratively control each other.

For instance, the municipal council may vote against the mayor's annual performance report. According to Article 76 of the Municipal Law, if such voting occurs the deputy chairperson of the council will inform the governor/sub-governor. The case shall then be taken to the Council of State with the personal opinion of the sub-governor/governor where the final decision will be made on the fate of the mayor after a period of one month.

The same process is also applicable to general questions from council members. If the mayor's answer to the general question is found to be unsatisfactory by a two-thirds majority, the case, again, will be taken to the Council of State for a final decision.

If the annual performance report of the mayor or the answers given to the council members' general questions are found to be "insufficient" by the Council of State, the mayor will automatically be dismissed and a new mayor elected.

The mayors – as well as the related parties – are entitled to object to the decisions of the municipal councils at the central government agencies. According to Article 73 of the Municipal Law, objections will be made to the prefectorial administrations for the district municipalities and to the Ministry of the Interior for the provincial centre municipalities.

The objections, after securing the opinion of sub-governor or governor, will be resolved by the provincial executive committee for the district municipalities after a period of two weeks and by the Council of State for the provincial centre municipalities after a period of one month.

The governor is also entitled to postpone the implementation of the contested decision until the final judgement is rendered.

According to Article 87 of the law, the mayors are also entitled to object to decisions of the municipal executive committee if they think that the decision is against the law and public interest. In this case, the mayors are entitled to postpone the implementation of the decision and to apply to the committee for review.

The related parties may also object to the judgement given by the municipal executive committees to the provincial executive committee for the decisions of the district municipal executive committee and to the Council of State for the provincial executive committee decisions. The final decisions shall be made after a period of one month.

According to Article 97 of the Municipal Law, if a conflict of opinion occurs between the mayor and the executive committee the problem will be solved by the municipal council. The parties can appeal to the governor who will take the issue to the provincial executive committee (for the district municipalities) or to the Council of State (for the provincial centre municipalities) with the opinion of the provincial executive committee for final resolution.

The Law on the Metropolitan Municipalities has brought another administrative procedure for solving disputes between the tiers of the system as well as amongst lower-tier municipalities. According to Article 24, if a dispute emerges between the upper-tier municipality and the lower-tier municipalities or amongst the lower-tier municipalities and if there is a difference among the lower-tier municipalities in their application of legal duties, the council (if not in session, the executive committee) of the metropolitan municipality is entitled to resolve the disputes and to take necessary countermeasures.

The parties concerned may appeal to the governor who will take a final decision within a period of ten days.

Several other administrative control mechanisms are being developed in several other laws for the solution of some specific problems such as disputes over the local government boundaries, disputes in metropolitan municipalities for the allocation of the assets owned by the dissolved municipality to the new municipalities and the disputes concerning more than one special provincial administration. These laws indicate responsible and authorised administrative and judicial bodies to solve the dispute.

C. Judicial control

According to Article 125 of the Constitution, every action and operation of the administration is eligible for and can be subject to judicial control.

The trying power of the judiciary is limited to the legal conformity of the administrative actions and operations. The courts cannot take decisions limiting the implementation of the legal duties of the administration which is in accordance with the established rules, and nullifying the discretionary power of the administration.

Implementation of the administrative decision can be postponed by the court if irrevocable and irretrievable damages could possibly arise as a result of the implementation or the legal conformity of the administrative decision is openly in dispute with the law.

Judicial control of local authorities' action is entrusted to administrative courts and the Council of State. In addition to the controls at the request of the interested parties, various specialised procedures are applicable. Some of these procedures are presented below.

1. Procedures of control over local government elected bodies

According to Article 127 of the Constitution, disputes over the legality of the elections of the local government bodies can only be resolved by the courts. However, the Minister of the Interior, as an interim measure, can temporarily remove the elected bodies of the local government from office for the duration of a criminal investigation procedure already initiated.

The main principle stated in the Constitution for the temporary removal of the elected officials of the municipalities is also repeated in Article 93 of the Municipal Law. The Minister of the Interior may temporarily remove these officials from office until the completion of the investigation and/or trial.

Despite this main principle, Article 41 of the Village Law (No. 442, 1924) gives the right of terminating the terms of office of the village president to the provincial/district municipal executive committees.

According to Article 53 of the Municipal Law, the municipal council will be abolished or dissolved if it:

- a. convenes other than the regular and extraordinary sessions,
- b. convenes in any other place other than designated by the law,
- c. fails to perform its legal duties leading to the malfunctioning of the municipality, and
- d. discusses political issues and indicates political beliefs.

Under these circumstances, the Ministry of the Interior may cancel the meetings of the council and apply to the Council of State for the dissolution of the council. The court shall make a decision within a period of two months.

The mayor's term of office, if he/she personally takes part in the above-described situation, will also be finalised by the Council of State's decision.

The same principle and procedure are contained in the Law of Provincial Special Administration (Article 125) in regard of the provincial council.

Finally, the role of the Council of State within the framework of the system of reciprocal control and settlement of disputes among elected bodies should be borne in mind (see I. B above).

2. Ratification of the local government council decisions

Some of the decisions made by the assemblies of the municipalities and the provincial special administrations need to be ratified by governors and sub-governors within a week. If they are not ratified within the time limit, the municipal council will take the case to the Council of State for a final decision.¹

Governors are entitled to raise objections against the decisions adopted by the provincial councils within a period of twenty days. If an objection is made, the case shall be submitted to the Council of State for final decision within a period of two months.

1 According to article 71 of the Municipal Law, these decisions are:

- a. budget, and the modifications made in the budget;
- b. final account;
- c. borrowing,
- d. list of charges to be applied the municipal services other than municipal taxes;
- e. the decisions related to the future macro-format of the town and the urban linear infrastructures;
- f. arbitration decisions for values less than a set amount specified in the law; and
- g. the municipal circulars concerning the implementation of municipal police regulations.

If a conflict of opinion occurs between the governor and the provincial executive committee, the governor may ask the provincial executive committee to reconsider the issue once more at its next session. If the provincial executive committee insists on a decision by a two-thirds majority, the governor must approve it but is also entitled to take the case to the administrative courts for nullification.

3. Assessing and correcting the decisions of the municipal council in contradiction with the law

According to Article 74 of the Municipal Law, decisions adopted by the municipal assemblies considered contrary to the law will be submitted by the governors to the provincial executive committee for the district municipalities and by the Ministry of the Interior to the Council of State for the provincial centre municipalities for the assessment of the legality of these decisions. In case of illegality, they are cancelled.

II. FINANCIAL CONTROL AND AUDITING

Before examining the different procedures of financial control and auditing, it should be underlined that in Turkey, a substantial part of the local government revenue is derived from tax revenues.

According to the Law on the Allocation of state Tax Revenues to Municipalities and Provincial Special Administrations (No 2380, 1981), 9.25 per cent of state tax revenues shall be allocated to local government.

This rate has been ineffective due to Article 72 *e* of the 1995 Budget Law. According to the latter, the rates to be applied will be jointly determined by the Ministries of the Interior, Finance and Public Works with the agreement of the Prime Minister's Office regardless of the rates determined by the above-mentioned law. The ministries will divide the amount between the municipalities taking into account the size of the population, level of development, financial conditions and tourist potential. Thus, the main income sources of local government are administratively controlled by central government.

A. Procedures of controls over the financial operations

1. Approval of the budget

The annual budgets of the municipalities and the provincial special administrations require the approval of the central government officials and agencies. According to Article 122 of the Municipal Law, the municipal budgets have to be approved by the governors and sub-governors. According to Article 123, the approving authorities can exercise the following tutelage practices over the proposed budget:

- a. correction of the items contrary to the laws and bye-laws;
- b. reduction of the excessively forecasted income sources up to the legal limits;
- c. cancellation of the appropriations earmarked or allocated for services not foreseen by the law as a municipal function;

- d. inclusion of compulsory funds into the budget mandated by other laws;
- e. increasing the municipal tax rates accepted in the budget to the maximum level possible if the municipal income level is less than the municipal expenditure and;
- f. making necessary transfers from the reserve funds to the compulsory funds.

The municipality must send the budget before the beginning of the fiscal year to the approving authority where it has to be approved within a period of one week. If it is not approved within the time limit the budget will be considered to be automatically approved.

If the approval authority makes changes in the budget in line with Article 123, the municipal council may take the case to the Council of State.

Likewise, the budget of the special provincial administrations has to be approved by the Ministry of the Interior. According to the Provincial Special Administration Law (Article 86), the provincial special administrations have to send their annual budgets to the ministry to be approved within a period of thirty days. If they are not approved within this time limit the budget will be considered as automatically approved.

During the approval procedure, the ministry is entitled to exercise the following tutelage (control) powers:

- a. correction of budget articles and contents which are contrary to the laws;
- b. cancellation of the revenues which have no legal basis;
- c. cancellation of borrowing which is not related to the sale of special provincial administration assets;
- d. reduction of the excessively forecasted revenues up to the legal limits;
- e. cancellation of the appropriations earmarked or allocated for services which are not legally mandated for special provincial administrations;
- f. inclusion of compulsory appropriations which are not foreseen in the budget, and,
- g. inclusion of sufficient appropriations to meet the repayment of previous borrowing in conformity with approved payment plans or court decisions.

No provision has been foreseen in the law for the special provincial administrations to raise a dispute with the ministry in the case of conflict of opinion over the approval process of the budget. This therefore means that the ministerial decision is final.

2. Approval of the final account of the special provincial administration

According to Article 133 of the Law on Special Provincial Administration, the final accounts of the special provincial administration shall be approved by the Court of Auditors. In this regard, the governor is given the duty of sending the final accounts approved by the provincial council to the Ministry of the Interior and to the Court of Auditors.

3. Approval procedure for domestic borrowing/lending

Municipalities are entitled to domestic borrowing in three different formats: credits obtained from the Bank of Provinces, counter-guaranteed by the municipality's expected income from the state tax revenues to be distributed by the same institution, credits to be obtained from other public or private credit institutions, and municipal bonds to be issued to the public. For the first possibility no administrative control procedure has yet been established. However for the last two options some types of administrative control procedures have been foreseen.

According to the Municipal Law (Articles 71 and 72), the municipal council's decision concerning borrowing has to be approved by the governor and the sub-governor. If the lending period exceeds twenty five years, the municipal council decision has to be reviewed by the provincial executive committee and upon the endorsing decision of the provincial executive committee the decision has to be approved by the governor. The decision will be finally approved by the Council of State.

Finally, the municipalities have the power of issuing bonds to finance the implementation of urban plans. The Municipal Law (Article 19, paragraph 10) allows municipalities to issue bonds on the market. The municipal council's decision for the issue of bonds should be sent to the Ministry of the Interior which should also include the governor's assessment on the issue. The decision will be finally approved by the Prime Minister based upon the opinion of the Ministry of the Interior.

It should also be indicated that the municipalities can also lend funds and in such operations are subject to the same principles as for borrowing.

4. Guidance for international borrowing

Although domestic borrowing procedures of the municipalities are regulated by the law in detail, international credit relations are somewhat ambiguous.

The municipalities may contract two different types of international loans: credits guaranteed by the Treasury and non-guaranteed credits. For the first type of credits – whether the creditor is found by the Treasury or the municipality itself – the Treasury has a guidance role in settling the credit procedure. Within this framework, negotiations are held, the agreement is drafted and signed by the Treasury and, then, the credit is handed over to the municipality. Clearly, the municipalities are subject to administrative control in this procedure.

For the second type of credit until 1993, there was no legal arrangement. In the annual importation regime for the fiscal year of 1993 a new condition was set for this type of credit operation and the municipalities were urged to obtain permission from the Treasury before initialising the credit document. However, as a result of Turkey's entrance into the European Customs Union such a condition was not required in the annual importation regime for the fiscal year of 1996. The situation is in some confusion at the moment. It is not yet clear whether municipalities are free to negotiate non-guaranteed international credits or not.

5. Approval of the municipal service charges

Municipalities can provide several services to the local inhabitants and are entitled to collect charges from the beneficiaries to cover the costs of these services. However, the municipal charges to be applied in this regard have to be approved by the ministries or governors/sub-governors. Examples of these charges are those resulting from: individual transportation and freight using public ports, to be approved by the Council of Ministers (Law No. 3004, 1936); municipal hospitals, to be approved by the Ministry of Health (Law No. 3359, 1987); drinking water consumption by the municipalities with more than 100 000 inhabitants, to be approved by the Ministry of Energy and Natural Resources (Law No. 1053, 1968); public transport, chimney cleaning, daytime nurseries, public baths, parks, museums and zoos, fuel depots and emptying septic tanks, to be approved by the governors/sub-governors.

6. Authorisation for staff expenditure

According to Article 117, paragraph 16 of the Municipal Law, staff expenditure for any municipality cannot exceed 30 per cent of the annual municipal income. This limit can only be exceeded with the permission of the Ministry of the Interior.

7. Approval of the salaries of mayors and council members

Article 156 of the Municipal Law envisages the payment of salaries to the members of assemblies of the municipalities with more than 70 000 inhabitants. However, according to the article, the amount of the salary is to be determined by the municipal council and to be approved by the Ministry of the Interior.

Similarly, until recently, the salaries of the mayors were freely determined by the municipal assemblies. However, with the Budget Law of 1995, it was decided that the municipal assemblies were free to decide on the amount of salary, within the limits established by the Ministry of the Interior, in view of population and budget level of municipalities.

8. Withholdings on local government revenues

With an amendment made in 1994 to Article 4 of the Law on the Bank of Provinces (No. 4759, 1945), the Bank of Provinces responsible for cash operations is entitled to make necessary withholdings on these revenues to meet the unpaid debts of local government. The following types of debts will be withheld from the revenues upon the request of and on the conditions set by the Ministry of Finance and will be paid to the interested parties:

- a. debts processed and finalised according to the Law on the Procedure of Collecting the Public Money;
- b. local government debts guaranteed or paid by the Treasury;
- c. debts to the pensions and retirement institutions.

B. Audit procedures

The audit on local government (especially in municipalities) is carried out at three different levels in Turkey: by the local government itself, by the inspectors and the controllers of the Ministry of the Interior and by the Court of Auditors (*Sayıstaya*). A fourth level to be added to the system is the independent and private auditors/consultants who can be employed by the municipalities and is already envisaged in the Municipal Law but is seldom used at the moment.

1. Internal auditing by the local authority

Internal auditing of financial commitments and accounts can be carried out by two different bodies in municipalities: the municipal council and the inspection unit of the municipality.

According to Article 63 of the Municipal Law, the municipal council may establish a sub-committee to audit the municipal accounts at any time it considers necessary. This sub-committee may hire external consultants to assist their auditing activities. The report of the sub-committee, after consultation with the mayor, will be submitted to the council.

According to Article 86 of the Municipal Law, the final account of the last fiscal year has to be approved by the municipal council.

The same principle also applies to the provincial special administrations. The provincial council, according to Article 133 of the law, has the right to approve or disapprove the final accounts of the last fiscal year.

The second way is to control accounts and financial commitments through the municipal inspectors. These inspectors, following the mayor's instructions, carry out periodic or non-periodic investigations on the accounts of the municipality.

2. External auditing by the Ministry of the Interior

The Ministry of the Interior, being the main responsible body in the central government for the regulation of the local government activities, carries out several tasks for the enhancement and control of local government through the General Directorate of Local Government and the Presidency of Inspection Council.

The General Directorate also employs local government controllers at the headquarters and at the prefectorial administrations.

The inspectors and the controllers carry out periodic controls on local government accounts and financial commitments.

3. External auditing by the Court of Auditors

According to Article 160 of the Constitution, on behalf of Turkish administration, the Court of Auditors is responsible for the public agencies, namely:

- a. control over all income and expenditure of public agencies;
- b. review of the validity of the documents;
- c. analysis of the operational processes' compatibility with the rules;
- d. assessment of the legal conformity of accounts and financial operations of the authorised officials responsible for the accounts, and
- e. initiating investigation and/or the prosecution process in case of any wrongdoing.

According to the Law on the Court of Auditors (Articles 28, 30 and 38) (No. 832, 1967), the Court of Auditors is authorised to carry out the following tasks:

- a. control the transactions, the storage conditions and the overall usage of cash, bonds, goods, stocks and assets of the public agencies;
- b. register all the public contracts regardless of the size of the contract;
- c. review, assess and approve the public contracts of a certain size determined by the annual budget (e.g. contracts in excess of 3 billion TL for the 1995 fiscal year) prior to the final tendering of the contract,

- d. question the accounts and financial operations; request explanations/opinions of accountable managers on important issues; if these explanations are found to be satisfactory terminate the review process; if not found to be satisfactory, send the accounts to the departments concerned of the court for trial (total number is eight and there is a certain division of labour among the departments on a geographical basis and/or the type of local government); this procedure may result in acquittal of the case or sentencing for compensation of the accountable managers at the end of the trial and, also, if any criminal act is observed or encountered during the review and/or trial process send the case either to the related ministry for further investigation or to the public attorney for prosecution.

The Court of Auditors is authorised to carry out these tasks at the headquarters in Ankara or at the administrations which are periodically selected every year. The Court of Auditors is able to review the accounts of 150 municipalities at headquarters and only fifty municipalities on the site (out of total 2 800 municipalities) annually.

According to the Law on the Court of Auditors, a new and specific law will be enacted to regulate the auditing procedure for local government and, until the enactment of such a law, the articles of the former Law of the Court of Auditors related to the auditing of municipalities and the special provincial administrations (No. 2514, dated 1934) will be implemented.

Consequently, the former law which is still in effect for local government states in Article 11 D that the Court of Auditors is responsible for reviewing, approving and disapproving the accounts and financial operations of local government. Additionally, Article 14 states that the accounts of these administrations will be submitted to the Court of Auditors for an ultimate audit after reviewal and approval by their respective assemblies.

Articles 29 and 30 also states the responsibilities of local government as follows:

- a. the accountants and the other managers who have decisive roles in expenditure are responsible for all accounts and financial operations they have carried out;
- b. these officials are obliged to submit the accounts to the Court of Auditors every year; and
- c. these officials are also obliged to compensate the damage caused by unlawful conduct of business.

According to Articles 68-70, the final accounts of local governments are also subject to reviewal by the Court of Auditors. The final accounts of local government will be submitted to the Court of Auditors along with the budget, one month after the approval of the respective assemblies. The Court of Auditors will review the accounts as already described.

However, it should also be indicated that the review process of the Court of Auditors is overwhelmingly concentrated on legal conformity concerns rather than efficiency, effectiveness, appropriateness, suitability and value for money concepts of the financial audit

UNITED KINGDOM¹

INTRODUCTION

A. Functions and structure of local government

Local authorities are responsible for delivering or securing the provision of a wide range of services to local communities within the legislative framework enacted by parliament and in accordance with central government guidelines. The main services provided are education in schools, social services, social housing, highways maintenance on non-trunk roads, refuse collection and disposal and planning and building control.

The structure of local government varies in the four constituent principalities of the United Kingdom. In Scotland and Wales there is one principal tier of local government, each authority is known as a unitary. In Northern Ireland local authorities have limited powers: major services, such as education, personal social services and housing, are administered by area boards (including elected representatives nominated by local authorities) which are accountable to the relevant department of central government, the Northern Ireland Office. England has a number of unitary authorities, mainly in metropolitan areas, and in the rest of the country, two tiers of principal authorities: district councils and county councils. Under the two-tier system, the major functions, in terms of expenditure, reside with the county. In England and Wales there is a further lower tier of local government, called parish or community councils; this tier has very few responsibilities and low expenditure.

This paper will consider the control and regulation of principal authorities in England and Wales. Principal authorities are counties, districts and unitaries. The principles laid out for English and Welsh authorities are broadly the same as for Scotland, though in some cases the detailed legislation varies.

B. General principles

All local authorities are corporate bodies, that is the authority is a legal *persona* in its own right. The actions of local authorities may be referred to the courts in much the same way as those of any other kind of corporate body or any natural person. It is, therefore, the authority itself which is liable for its obligations and in whom its property vests. Incorporation has three key corollaries in the doctrine of *ultra vires*, the power to contract and the common law of tort.

1. Ultra vires

An act is *ultra vires* an authority if it is beyond its powers. Courts have traditionally held that authorities are not only empowered to do that which they are specifically empowered to do, but also things which are reasonably incidental to the expressly authorised functions.

This view is now enshrined in primary legislation (section 111 of the Local Government Act 1972) which empowers local authorities to do anything “which is calculated to facilitate, or is conducive or incidental to the discharge of any of their functions”.

¹ This report is the synthesis of a study prepared by Mr Guy Hollis, Partner at Coopers and Lybrand.

Statute frequently not only gives the power to carry out a function but also mandates the procedures which should be followed in the making of a particular decision or order. The decision will be *ultra vires* if mandatory procedures are not followed.

Furthermore, decisions may be *ultra vires* if an authority uses improper methods to reach its decisions. The three most important aspects of this are that:

- authorities must not act “irrationally”, that is only legally relevant considerations should be taken into account;
- it is not acceptable for an authority to fetter its discretion by, for example, adopting a blanket policy in an area where statute mandates that the authority should consider cases on individual merits; and
- the courts may hold that there is an obligation for the authority to observe the two principles of natural justice: *audi alteram partem* and *nemo iudex in causa sua potest*.

2. Power to contract

Since local authorities are corporate bodies they are able to enter into contracts and are bound by the general principles of contract law. An Authority may only enter into contracts to discharge one of its functions. Any other contract would be *ultra vires* and not binding in law.

When contracting and tendering, local authorities must follow EU directives on public procurement contracts and, for contracts below the specified thresholds, the authority’s standing orders should specify tendering procedures. Failure to expose any contract to open competition may cause adverse comment from the body’s auditor or legal action from an interested party.

Furthermore certain local authority functions are subject to compulsory competition and various contracting and tendering rules have been set out by the Department of the Environment, Transport and the Regions to cover these situations.

The government has recently put forward proposals which envisage replacing the requirement for compulsory competition by a more flexible framework within which local authorities will be required to obtain best value in improving the quality of local services and the efficiency and economy with which they are delivered.

3. Tort

A tort is a civil wrong for which a common law action for damages and/or a decree of the court such as an injunction is sought. A tort is not a crime, where a punishment is meted out by the state: it allows, instead, an injured party to take an action to receive compensatory damages for a wrong and/or to prevent reoccurrence of the wrong.

Since local authorities are corporate bodies they may sue and be sued in tort if they infringe a private right or are in breach of contract. The main torts which are applicable to local authorities are trespass (to persons, land or goods), nuisance, negligence, defamation and deceit.

I. LEGAL CONTROL

A. Control by administrative authorities

1. Sources of law

Local authorities must be specifically authorised by statute to carry out an activity, that is they do not have any general powers. Since statute is the prerogative of parliament, the prime source of administrative control is central government's ability to set the actions which local authorities may or should carry out. The main source of statute is primary legislation, that is acts of parliament which are debated in full and approved by the legislature.

In recent years secondary legislation has become increasingly important. Secondary legislation, generally effected through a statutory instrument, occurs when primary legislation gives the relevant Secretary of State the power to issue statutory instruments. Statutory instruments are generally concerned with detailed rules and regulations. They must be laid before parliament and some are subject to the so-called "negative resolution" (which means that they may be challenged by members of parliament but they will not be debated unless so challenged); others are subject to affirmative resolution (which means that they must be debated and voted on by parliament).

Under the United Kingdom legal system, case law and common law are important sources of law for local authorities. Case law sets precedents on the interpretation of statute.

Primary and secondary legislation, case law and common law are binding on local authorities. The final source of law, or quasi-law, may be deemed influential by the courts. This final source is central government circulars and guidelines. Circulars and guidelines generally contain the relevant minister's interpretation and amplification of statute. Local authorities are generally advised to follow circulars and guidelines.

2. Control by central government

There is no single body with responsibility for exercising general administrative supervision of the actions of local authorities. As made clear previously, local authorities are primarily corporate bodies whose scope for action is determined by statute. The legislation determining the scope for action may, however, be the responsibility of the Secretary of State for the Environment, Transport and the Regions, or the Secretaries of state for Scotland, Wales or Northern Ireland, or another Secretary of State with responsibilities relevant to the field of activity concerned (for example, the Secretary of State for Education and Employment, or the Secretary of State for Social Security).

The relationships between the relevant secretaries of state and local authorities will normally rely on a specific statute determining the specific nature of that relationship and relative responsibilities.

The following section considers the main modalities of *a priori* and *a posteriori* control.

A priori control

Central government exercises *a priori* control via parliament through five main modalities: sponsoring legislation, controlling revenue funding, controlling credit approvals, challenge funding and specific powers.

Most, though not all, legislation in parliament determining the scope for local authority action is sponsored by central government. In this sense, central government, if it has an effective majority in parliament, exercises significant control on the actions of local authorities. A large volume of legislation, sponsored by interested departments, is enacted each year. The volume of legislation has tended to increase in recent years as central government policy has been to increase the control over local government.

Central government determines approximately 80 per cent of the income received by local authorities. In setting the annual total of grants to local authorities, central government balances the cost of providing services against overall national public expenditure considerations and the general level of taxation which it considers acceptable. The main general grant for local authorities in England is Revenue Support Grant (RSG). This is an unconditional grant which may be used for any purpose within the local authorities' competence.

To control overall public expenditure and to prevent local taxpayers having to pay excessive increases in council tax, legislation provides central government with powers to set a maximum or "cap" for a local authority's annual budget if it is considered, on the basis of objective criteria, that the budget is excessive or represents an excessive increase over the previous year. Under the legislation, the cap (and the commensurate reduction in budget or reduction in council tax) must either be agreed by the authority or approved by the House of Commons.

Central government not only controls public expenditure provision relating to the revenue activities of local authorities but also controls their expenditure on fixed assets (the capital control regime). Capital controls work by limiting the amounts local authorities are allowed to borrow by issuing what are known as "credit approvals". A credit approval gives the authority the power to borrow money. Each authority receives a basic credit approval which may be used on any capital scheme and government departments issue supplementary credit approvals for specific schemes which they have approved. The overall effect of this control regime is that most capital schemes must be approved by a central government department before they are started.

A recent innovation has been the use of challenge funding. Under this arrangement authorities bid for central government grant funding, on a competitive basis. Authorities are granted money at the discretion of central government increasing central government control over local government activities. Schemes which have used the challenge model include City Challenge and the distribution of the Single Regeneration Budget.

Legislation may reserve specific powers to the relevant Secretary of State to control or intervene in the activities of a local authority. For example, the Secretary of State for the Environment, Transport and the Regions may order a contract let under the Compulsory Competitive Tendering Legislation to be relet if he considers the authority has acted anti-competitively.

A posteriori control

Central government exercises *a posteriori* control through two main modalities: the courts and specific powers.

Any government department may challenge a local authority through the courts if it considers that the authority has acted unlawfully.

Legislation may reserve specific powers to the relevant Secretary of State to intervene in the activities of local authorities after the event. For example, under the Compulsory Competitive Tendering Legislation the Secretary of State for the Environment, Transport and the Regions may order the retendering of a contract if the in-house team is making a loss according to the specified accounting regime, which is itself set by the Secretary of State.

Remedies available to local authorities

Local authorities may challenge central government decisions through the courts, if they consider that central government has acted unlawfully.

3. The ombudsman

The local government ombudsman may investigate written complaints made by, or on behalf of, a member of the public where an injustice has occurred as a result of an act or omission by the authority which may be construed as being caused by maladministration.

Maladministration has not been defined in statute. The ombudsman has published examples of what he considers to be maladministration which include neglect and unjustified delay, failure to follow agreed policies and procedures, failure to have proper procedures, unfair discrimination and providing inaccurate or misleading advice.

If the ombudsman considers that maladministration has occurred he will report to the authority and make appropriate recommendations. The authority has a duty to consider the report. If the authority does not deliver a satisfactory response the ombudsman can compel the authority to publish a statement of reasons in a local newspaper. Local authorities are not obliged at law to accept the ombudsman's views so some authorities do fail to take action to the satisfaction of the ombudsman.

B. Judicial control

1. Scope of jurisdiction

Local authorities may, in common with other legal *persona*, be sued in contract or tort and, if a criminal offence has been committed, proceedings may be brought by the relevant prosecuting authorities.

A litigant must prove to the court that he has *locus standi*, that is sufficient interest in the case. The initial application for judicial review must be made within three months of the authority's decision that is being challenged. Courts rarely consider the merits of a particular decision but only intervene when the authority has made an error in law. There are three main grounds for a judicial review: illegality, irrationality and procedural impropriety.

2. Remedies

If the court accepts the litigant's case there are four main remedies available:

- *mandamus*: this order compels the performance of a public duty imposed by law. For *mandamus* to be granted the duty must be compulsory and not discretionary, the litigant must show a significant personal interest in the performance of the duty and no other remedy should be available. If the authority breaches the order it will be in contempt of court;
- *prohibition*: this order restrains an authority from acting unlawfully in the future or from completing an act which has already begun. The order is normally granted where an authority has acted outside its jurisdiction;
- *certiorari*: this order enables a decision which has already been made to be reviewed and, if necessary, quashed. The order may be granted not only where an authority has acted outside its jurisdiction but also where an error of law is apparent on the face of the record, where an order is obtained by fraudulent means or where there is such a degree of unfairness that the unfairness is analogous to fraud; and
- *declarations and injunctions*: under this order a litigant may obtain a declaration that an authority should perform an act or desist from carrying out an act being performed. Courts are more willing to issue prohibitions than mandatory injunctions. Non compliance does not constitute contempt of court but in appropriate cases a court may issue a writ of sequestration.

Litigants may also apply in an ordinary action for an injunction, which is now used less frequently as the case law on judicial review has developed, and may start proceedings before the auditor (see below).

3. Statutory appeals

In certain cases statute specifies the appeal mechanism which should be used by an aggrieved party. If an appeal mechanism is specified in statute there is no discretionary power held by any court to extend its jurisdiction to cover the case. Examples of a statutory appeal mechanism include:

- applications to quash a compulsory purchase order from a local authority which must be made in the High Court and may only be made if the original order does not comply with statute or if a statutory requirement has not been met; and

- initial appeals against town and country planning decisions made by a local authority which must be made to the Secretary of State for the Environment, Transport and the Regions.

II. THE AUDIT

A. Legal base and scope of the audit

1. Accounting requirements

The accounting requirements for local authorities are set out in statute, secondary legislation (The Accounts and Audit Regulations) and a statement of Recommended Practice (SORP) which is regularly updated by the Chartered Institute of Public Finance and Accountancy/Local Authority (Scotland) Accounts Advisory Committee Joint Committee and approved by the Accounting Standards Board. In England the SORP constitutes the “proper accounting practice” specified in statute and must, therefore, be followed by all authorities.

In recent years accounting practice has moved towards a more commercial style accounting, within the constraints of statute and the unique features of local authorities. Most of the United Kingdom accounting standards set by the Accounting Standards Board are incorporated into the SORP and apply to local authorities.

The financial year for local authorities ends on the 31 March and audited accounts should be published by the following 31 December.

2. The audit regime

The current audit regime for local authorities was set up in 1982. There is a central and independent body, the Audit Commission for Local Authorities and the National Health Service in England and Wales (the Audit Commission), which appoints the auditors for each local authority. Appointed auditors are from the private sector accountancy firms and from the Audit Commission’s arms length audit service – District Audit.

The authority of the Audit Commission and its auditors derives from primary legislation and from the Code of Audit Practice, which is compiled by the Audit Commission and approved by parliament.

3. The Audit Commission and its principal responsibilities

The Audit Commission’s key role is to uphold the principles of public audit. The Audit Commission is independent from the bodies being audited. Its principal responsibilities are to:

- appoint auditors, ensuring that the appointees have sufficient knowledge of the complexities of local government;
- provide guidance and support to auditors but without compromising the independence and scope for professional judgement which auditors need to exercise;
- regulate the quality of audits;

- undertake or promote studies designed to promote value for money and improved management in audited bodies; and
- identify and report on the national implications of studies and audits.

The Audit Commission has a chairman, deputy chairman and up to eighteen members. The members are drawn from, but do not represent, a range of interest groups including industry, local government, health, the accountancy profession and the trade unions. Members are appointed by the Secretaries of State for the Environment, for Health and for Wales following consultation. The commission is supported by a permanent staff of 190 people.

4. Core audit objectives

Under legislation and the code of practice each audit engagement has seven audit objectives which must be fulfilled. The auditors' objectives are to give an independent assessment of:

- whether the statement of accounts present fairly the financial position of the authority and its income and expenditure for the year in question and have been prepared in accordance with appropriate legislation;
- the adequacy of the authority's arrangements to secure economy, efficiency and effectiveness (value for money) in the use of resources;
- the general financial standing of the audited body;
- the adequacy of the authority's financial systems;
- the adequacy of the audited body's arrangements for preventing and detecting fraud and corruption;
- the adequacy of the authority's arrangements for ensuring the legality of transactions which might have a financial consequence; and
- the adequacy of the authority's arrangements for collecting, recording and publishing performance indicators (performance indicators, which cover a range of financial and non-financial areas, are specified each year by parliament and may be published by the Audit Commission).

The scope of the local authority audit is, therefore, wider than commercial audits and emphasises the auditor's role as watchdog and guardian of the public purse.

The auditor must come to an assessment on each of the audit objectives for each financial year. The scope of the audit means that year round contact with the authority is normally required. The results of the audit are reported to the authority in a management letter, individual reports on value for money exercises and in an opinion on the financial accounts which should be considered by elected members. The management letter must be made available to all elected members and it should be made available to members of the public if so requested.

5. Public access

All interested persons may inspect the unaudited accounts and supporting documentation of a local authority. Each year there must be an appointed day when members of the public have the right to attend before the auditor and ask questions. The accounts must be available for fifteen working days prior to the appointed day.

Registered local electors have the right to make a formal objection to the accounts. Auditors may receive other information from members of the public and may deem it appropriate to remind local electors that they have the right to object.

If the auditor is satisfied that the objection is valid, he must investigate it and, if the objection is found to be based in fact, the remedies outlined in B below are open to him.

If an elector disagrees with the auditor's decision not to investigate an objection or if a party to the auditor's findings is aggrieved, the auditor's decision may be challenged in the courts.

6. Extraordinary audits

The Audit Commission may, on application from an elector or otherwise, decide that an extraordinary audit should be held. One use of the extraordinary audit provision is to allow an auditor to investigate an objection on a prospective year of account – objections are not normally investigated until after the appointed day.

B. Other powers of the auditor and remedies open to him

The auditor has a range of other powers and duties open to him, to: make a public interest recommendation; issue a public interest report; apply to the courts for a declaration that an item of account is unlawful; issue a prohibition order or apply for judicial review; and certify a sum arising from failure to account and certify losses caused by wilful misconduct.

When exercising these powers the auditor has a quasi-judicial role. The auditor is not only responsible for gathering evidence but also for deciding what, if any, action should be taken against the authority, its officers or members.

1. Public interest recommendation

Auditors have the power to force authorities to consider and respond publicly to recommendations made in the management letter. There are two main areas where an auditor may consider it appropriate to compel a public response to a recommendation, where:

- the authority have responded inadequately to recommendations previously made by the auditor; and
- the authority disagrees with the auditor's recommendations and the auditor sees advantage in a wider public debate on the issue.

Authorities will normally have the opportunity to comment on draft recommendations of this nature but otherwise no alternative remedy is available to the authority.

2. Public interest report

Auditors have the right to issue a special report on a particular topic if they consider that the issue is of such importance that it should be brought to the attention of the public. These reports are known as public interest reports.

Examples of where an auditor might consider a public interest report are:

- excessive or inadequate levels of balances, lack of prudence, prospective budget deficits or other financial problems,
- deficiencies in income collection procedures and deficiencies in internal control arrangements, management information systems or monitoring arrangements.

The authority should have the opportunity to comment on the draft report and, where appropriate, concerns should be communicated as soon as practicable to allow early corrective action to be taken. The report must be considered by the authority and a public response given to the auditor. No remedy is available to the authority.

3. Unlawful item of account

Auditors may apply to the courts for an item of account to be declared unlawful, that is *ultra vires* the authority. This power may not be used if the Secretary of State for the Environment, Transport and the Regions has sanctioned the item even though it may be otherwise unlawful.

Where the court declares the item unlawful, it may order the repayment of the amount by the person concerned and the rectification of the accounts. The court must consider the person's ability to pay and is precluded from making a repayment order if it is satisfied that the person acted in good faith. Where the person concerned is an elected member and the expenditure exceeds £2 000, the court may disqualify the member from office for a set period.

Authorities may appeal to a higher court in accordance with normal procedures.

4. Failure to account

Where a person has failed to bring into account a sum which ought to have been included, or where there is a loss or deficiency due to wilful misconduct, the auditor may certify a sum due from the person responsible. This sum is recoverable either by the auditor himself or the authority. Where the person is an elected member and the sum is over £2 000, the person will be disqualified from office for a period of five years.

Wilful misconduct will generally apply to an act or omission where the person acts, or fails to act, knowing that he is wrong or demonstrating reckless indifference to whether he is wrong or not.

Parties affected by the auditor's decision may challenge the auditor's certification of a sum due in the courts.

5. Prohibition order

The auditor may issue a prohibition order requiring an authority under audit to desist from making or implementing decisions which the auditor believes may result in a significant, whether in financial amount or principle, unlawful item of account.

The auditor must issue a statement of reasons within seven days. The authority may challenge the auditor's decision in the courts. Pending the result of the authority's challenge the prohibition order may not be breached.

Alternatively the auditor may apply to the courts for a judicial review of any decision which the authority has made or failed to make. The auditor must believe that the act or omission would have an effect on the authority's accounts.

The auditor has no duty to consult with the authority before exercising the powers discussed in this section. However, if time for consultation is consistent with the need to exercise the powers promptly and in the public interest he should give the authority an opportunity to respond.

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