

Models of Legal Supervision over Local Self-Governments in Continental Europe (Excluding France)¹

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The European Charter on Local Self-Government declares the European standards of institutions and principles which should be considered by all Member States in the construction of their own systems in order to guarantee the rights of local and regional self-governments and their elected officials. For our topic Article 8 has priority, yet also the rules on the scope of local self-governance deserve to be analysed, since the intergovernmental expert committee elaborating the Charter treated it jointly with the nature of relationships between local and central bodies from the very beginning. Consequently, the Charter's system of legal supervision cannot be understood without it. This paper examines the different models of the control over local self-governments established in some Member States of the European Union.

Keywords: European Union, local self-governments, state control, legal supervision, models

1. Introduction

1.1. The European Charter of Local Self-Government

The European Charter of Local Self-Government (hereinafter: *Charter*), which the Council of Europe opened for signing on 15 October 1985 in Strasbourg, and which entered into force on 15 September 1988, is the first international framework convention on the minimum conditions of local democracy. Realising that local authorities are one of the main foundations of any democratic regime, and that the right of citizens to participate in the conduct of public affairs can be exercised most directly at local level, this Charter has become an international framework agreement.² Consequently, both post-communist and Western-European countries consider it the cornerstone of European self-governance.

The Charter declares the European standards of institutions and principles which should be considered by all Member States during the construction of their own local government systems in order to guarantee the rights of local and regional self-governments and their elected officials. Such rights are for example community and regional liberties, the constitutional foundations of local self-governance, the legal supervision of community acts by bodies independent from central government (courts),

¹ I will analyse the French system in a subsequent article.

² Preamble of European Charter of Local Self-Government.

financial autonomy, the right to associate and to international cooperation.³ According to its initiators, the aspects of local self-governance, along with human rights, are crucial elements of the post-war democratic regimes.⁴ Rather than the unification of their legal systems, however, one should note that this framework agreement aims to establish general standards, potentially adaptable by all Member States independently of their specificities. Hungary (at that time called Hungarian Republic) joined the Charter on 21 March 1994 and Act XV of 1997 transposed it to the Hungarian legal system.

According to the intergovernmental expert committee elaborating the Charter, local self-governance and the relationship between local and central bodies are interconnected.⁵ For this very reason, the present study focuses primarily, but not only on Article 8, and – for better understanding of the supervision system set by the Charter – on the provisions regulating the scope of local self-governance.

1.2. The Scope of Local Self-Governance

According to Paragraph (1) of Article 8 of the Charter, “[a]ny 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.” In other words, the Charter institutionalizes administrative supervision.

Moreover, the procedure of legal supervision is limited by the constitution and the regarding statutes. To this end, the Act on Local Self-Government sets the limits to supervision (such as the cases out of its scope) and its subject. According to the Charter, “any administrative supervision of the activities of the 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.”⁶ The Charter generally aims to protect the rights of self-governance efficiently, thus administrative supervision “only” means legal supervision.⁷

The Charter establishes that “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.”⁸ In other words, the supervision procedure shall implement the principle of proportionality. The Hungarian legislation sets a number of rights for the body exercising administrative supervision if it finds the local government decree or if its provisions are in conflict with the legal regulation. Firstly, it may notify the representative body and if the local self-government fails to comply with its obligation, it may initiate a judicial review. Furthermore, if needed, it may adopt the decree instead of the negligent local self-government. In this case, the local self-government fails to comply with its obligation set by law, so this intervention is considered to be proportionate to the importance of the interest to be protected. How it should be put into practice appropriately is a different question.

³ Articles 3, 5, 7, 9 of the Charter.

⁴ That’s why the Charter is considered one of the basic documents of the Action Plan “Building One Europe”, created under the *aegis* of the Council of Europe. For more information see: Alain Dulcamp, *La charte européenne de l'autonomie locale et son système de contrôle*. In: *Annuaire des collectivités locales*, Tome 19. 1999., pp. 139-172.

⁵ Patrice William-Riquier, *La charte européenne de l'autonomie locale: un instrument juridique international pour la décentralisation*. *Revue Française d'Administration Publique*. 2007/1. (n 121-122) pp. 191-202.

⁶ Article 8 of the Charter.

⁷ I. Ivancsics, *A helyi önkormányzatok törvényessége ellenőrzése*. In: N. Chronowski & J. Petrétai (Eds.), *Tanulmányok Ádám Antal professor emeritus születésnapjának 80. évfordulójára*, Faculty of Law of the University of Pécs, 2010. p. 109.

⁸ Paragraph (3) of Article 8 of the European Charter on Local Self-Government, celebrated by the Council of Europe on 15 October 1985 in Strasbourg and transplanted by Act XV of 1997.

2. Solutions Provided by States Following the French (Latin) Model with Regard to Supervision over Local Self-Governments

2.1. Belgium

In the beginning of the 1960s, a series of language acts defined the concept of cultural autonomy, and, consequently, catalysed the process of regionalization.⁹ As a result, linguistic (cultural) communities and areas were created, as well as provided with public legal personality, political, administrative and financial autonomy. By increasing the role of regions, the Belgian State started to implement regional federalization.¹⁰

Article 162 of the Belgian Constitution declares that provincial and municipal institutions are regulated by the law, and guarantees the intervention of the supervisory authority or of the federal legislative power to prevent the law from being violated or public interests from being harmed by the provinces or municipalities.¹¹ Section 7 of the Institutional Reform Act of 8 August 1980 provides regions with the right of supervision (*tutelle administrative*) over municipal institutions, which may be exercised with regard to all types of local acts, but exclusively with a the view to protect legality and public interest.¹²

In the framework of decentralization processes, regions delegated a part of their power to provinces. In the Belgian system, general supervision (*tutelle générale*), exercised after the approval and coming into effect of a decision, shall be distinguished from special supervision (*tutelle spéciale*), exercised beforehand. In this respect, in the competence of general supervision, the so-called provincial council may suspend or annul municipal acts in conflict with the law. In the first case, it may call on the involved authority to withdraw or amend the unlawful decision appropriately within 40 days. Should the authority fail to comply with its obligations, the decision is annulled retroactively. In the competence of special supervision, some types of local acts – typically of financial and economic nature – come into effect with the approval of the council.¹³ To sum up, the Belgian model is considered to be powerful, even though the supervisory body shall always include a reasoning of its decisions.¹⁴

2.2. Italy

According to the Italian Constitution, the republic is composed of municipalities, provinces, metropolitan cities, regions and the state.¹⁵ Supervision over local self-governments is limited and covers only legality issues. Just like other states following the French example, Italy, too, experienced a long

⁹ Z. Józsa, *Önkormányzati szervezet, funkció, modernizáció*, Budapest-Pécs 2006. p. 176.

¹⁰ Cf. I. Balázs, *A francia helyi önkormányzati rendszer átalakulása napjainkban*, Állam- és Jogtudomány, Vol. 57, No. 2, 2016, p. 23.

¹¹ Paragraph (6) of Article 162 of the Constitution, and L. Trócsányi, *Nemzeti Alkotmányok az Európai Unióban*, Wolters Kluwer. Budapest 2016. p. 122.

¹² Section 7 of the Institutional Reform Act of 8 August 1980.

¹³ Jean-Benoît Pilet, *L'autonomie locale en Belgique*,

http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_belgique_fr_2009.pdf&t=1500457830&hash=6a2eb7913b0d8878b13a62a63ab3efa2 (18 July 2017) p. 45.

¹⁴ Nadine Poulet-Christian de Visscher, *België. Études sur les fonctions publiques locales en Europe*, <http://www.europaong.org/wp-content/uploads/2013/06/Belgique.pdf> (10 Mai 2018) p. 11.

¹⁵ Paragraph (1) of Article 114 of the Constitution of the Italian Republic.

history of outstandingly powerful administrative supervision (*tutelle administrative*) over local self-governments, exercised primarily by regions, which could annul local decisions. Later on, within the framework of the institutional reform that has been going on since the 1990s, local autonomy has been increased, and supervision has been proportionally restricted.¹⁶

The legislative decree of 30 July 1999 established the new organization of territorial public administration and the role of the prefect within the system.¹⁷ Article 130 of the Constitution had traditionally provided a special regional body set by law, the so-called Regional Monitoring Committee, with the legal supervision of local self-governments, yet the constitutional amendment of 2001 repealed this provision. Nowadays, the Government's regional commissioners exercise this right along with the prefects.¹⁸ These bodies exercise subsequent control, which, according to the Italian Constitutional Court, shall always be proportionate to the gravity of the infringement. They may not annul the unlawful decisions or suspend their execution, however, they may initiate control procedures from the central administrative organs. To sum up, the formerly sanction-centred solution has been substituted by a cooperation-centric system of supervision.¹⁹

As regards regional acts, they shall be presented to the body exercising administrative supervision which has 30 days to question it in the Government's name. If the act is found to be exceeding regional competence, violating the interests of the nation or other regions, it may be sent back to the Regional Council. If the Regional Council approves the act again with absolute majority, the Government may apply to the Constitutional Court.²⁰ Furthermore, the Regional Council may be dissolved by the President of the Republic in case of unconstitutionality or grave violations of the law.²¹

2.3. Spain

Setting up 17 self-governing communities as regions, the Spanish Constitution establishes a rather special model of territorial autonomy. Spanish regions are based on territorial (self-governmental) autonomy, their power is delegated to a representative and an executive body, and they are provided with limited law enforcement competences. Their statutes have legal effects, and in case of conflict with statutes issued by central organs, the Constitutional Court makes the decision.²²

The so-called statutes of autonomy are the basic institutional rule of each self-governing community and the State shall recognize and protect them as an integral part of its legal system.²³ In the Spanish constitutional system, local autonomy mainly prevails in the local decision-making processes, and may

¹⁶ Jakob Wienen-Stuart Dickson, *La démocratie locale et régionale en Italie*, <https://rm.coe.int/la-democratie-locale-et-regionale-en-italie/16807509e1> (10 Mai 2018) pp. 27-28.

¹⁷ Gaetano Armao, *The Role of the Prefect in the Italian Legal System*, IALS Student Law Review Vol. 1. Issue 2. 2014. p. 54.

¹⁸ Luciano Vandelli, *L'autonomie locale en Italie*, http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_italie_fr_2011.pdf&t=1500471429&hash=e56492dad36365b7eef439d00c25cedf (18 July 2017) p. 6.

¹⁹ I. Hoffman, *Gondolatok a 21. századi önkormányzati jog fontosabb intézményeiről és modelljeiről. A nyugati demokráciák és Magyarország szabályozásainak, valamint azok változásainak tükrében*, Eötvös Kiadó. Budapest 2015. p. 233.

²⁰ Article 127 of the Constitution of the Italian Republic.

²¹ Paragraph (1) of Article 127 of the Constitution of the Italian Republic.

²² K. Sipos, *Katalónia és a „nemzetté válás” alkotmányos folyamata* <http://kisebbssegkutato.tk.mta.hu/uploads/files/archive/81.pdf> (9 Mai 2018) p. 13.; and Sipos Katalin, *A regionalizáció történeti és jogi aspektusai (Spanyolország, Olaszország, Franciaország)*, Institute for Legal Studies of the Hungarian Academy of Sciences, Publications. n. 6. Budapest 1993. p. 92.

²³ A. Fábián (ed.), *A regionalizált országok önkormányzati rendszere*, in. *Válogatott európai önkormányzati modellek*, Dialóg Campus, Budapest-Pécs 2012. p. 42.

be exercised free from intervention, authorisation or approval by higher levels of governance. Nevertheless, this assumption does not mean that each municipality is an independent entity or a city-state within the state, or that external control is totally absent.²⁴ In the Franco era, local self-governments were directly controlled by the ministries and the so-called civil governor (*gobernador civil*).²⁵

Since then, the State has elaborated a multilevel system to provide legal supervision over local self-governments which, in contrast to Belgium or Luxembourg, does not apply the tutelage (*tutelle*), an institution regarded incompatible with the principle of local autonomy according to the Spanish Constitutional Court. Each self-governing community shall send the adopted decision to the supervisory body, the so-called government commissioner. Furthermore, one should note that State organs may only exercise legal supervision over local decrees, thus, just like in Hungary; their competence does not cover the criterion of expediency.²⁶

The system of administrative supervision is regulated by Section 65 of Act 7/85 on Local Government which offers the government commissioner three possibilities:

- If the commissioner alleges unlawfulness, he may issue a warning to the local body asking for the annulment of the contested measure within one month. If the authority fails to comply with its obligations, the government commissioner may take it to the administrative court.
- If the commissioner believes that a local authority has taken a measure exceeding its competence, he may directly apply to the administrative court without issuing a warning.
- If the commissioner believes that a local authority has taken a measure that endangers seriously the general interest of Spain, he may suspend the execution of the contested measure by its own power and issue a warning to the local body, which has a ten-day period to annul the decision, otherwise the delegate of the State may apply to the administrative court within 10 days.

In exceptional cases, if the local body consistently and unlawfully refuses to adopt a decision, which is obligatory under the law, the government commissioner may take substitutive measures.²⁷

2.4. Luxembourg

In the Grand-Duchy of Luxembourg, the Municipal Act of 13 October 1988 sets the standards for the legal status of local self-governments, which are equally named municipalities, yet there are communities with city status among them.²⁸

Article 107 of the Constitution establishes legal supervision over local self-governments, regulated in detail by the Municipal Act. According to the current legislation, legal supervision encompasses a number of limited competences of a higher-level authority in order to protect lawfulness and the public interest in case a local body takes unlawful measures or exceeds its competence set by law.

²⁴ Angel-Manuel Moreno Molina, *Local government in Spain*, http://www.ola-europe.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_espagne_en_2013.pdf&t=1500477152&hash=78102ce4b46aa2d5067b86cc33ec5a5d (18 July 2017) p. 16.

²⁵ Angel-Manuel Moreno Molina (n 20): p. 3.

²⁶ Angel-Manuel Moreno Molina (n 20): pp. 16-18.

²⁷ Angel-Manuel Moreno Molina (n 20): pp. 19-20.

²⁸ L. Lőrincz (ed.), *Közigazgatás az Európai Unió tagállamaiban. Összehasonlító közigazgatási jog*, Unió, Budapest 2006. p. 301.

Supervision over local decrees is exercised by the Grand Duke, the Ministry of Home Affairs and the district commissioners. Possible measures against the local bodies, *i.e.* the city council, the collegiate body of the mayor and the aldermen, the mayor (and the vice mayor) are the following:

- Posterior approval of the local legislative procedure.
- Annulment of a decision: this competence may be exercised by the Grand Duke against decisions violating the law or the public interest. However, the supervisory body is not competent to take the necessary decision in place of the local body. In any case, the annulment shall be explained and legal grounds shall be given.
- Suspension of a decision: the Minister of Home Affairs is entitled to suspend the execution of a decision against the law or the public interest. Nonetheless, he shall inform the involved local body and if the Grand Duke does not annul the decision within 40 days, the suspension loses effect.²⁹

3. States Following the German Model

3.1. Germany

German legislation makes a distinction between municipalities and the so-called *Länder* (States) rather than dividing the administrative system into local and territorial self-governments.³⁰

In the interpretation of the Federal Constitutional Court, State supervision over local self-governments shall mean “the natural counterbalance of the communities rights” and it shall be exercised only for the protection of the public interest. In this respect, the Bavarian Constitutional Court emphasized that this supervision shall not transform into intervention.³¹ Article 28 of the Constitution of the Federal Republic of Germany establishes that municipalities shall be guaranteed the right to regulate all local affairs in their own responsibility and shall also have the right of self-governance in accordance with the law. Their competence shall be supervised only in cases of “order or decision needed by the public interest or individual necessity.”³²

According to the Act on Municipalities, State supervision means support, protection and help for communities to fulfil their tasks appropriately, and, consequently, contribution to increase the sense of responsibility of local bodies. In other words, it aims to guarantee support in activities in compliance with the constitutional principle of the legality of public administration, rather than to guarantee their

²⁹ François Benchendikh, *L'autonomie locale en Luxembourg*, http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_luxembourg_fr_2010.pdf&t=1502441078&hash=f5b7995180ff314eafc8cee601e14f75 (10 August 2017.) pp. 14-16.

³⁰ A. Fábián, *A német önkormányzati rendszer vázlata különös tekintettel Bajorországra*, in. Fábián (n 19). p. 19.

³¹ A. Fábián, *Segíthet-e az önkormányzati korrupció visszaszorításában a törvényességi ellenőrzés?*, in. F. Csefkó & Cs. Horváth (Eds.), *Politika és korrupció*, Pécs 2010. pp. 214- 215.

³² Max-Emanuel Geis: *Local self-government in Germany*.

http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_allemagne_en_2011.pdf&t=1500450846&hash=47e682a10c40f3ce8de9fbb79f16e498 (18 July 2017) p. 28.

legality.³³ Legal supervision over local self-governments is exercised by provincial organs of State administration.³⁴

In this respect, supervision is only *a posteriori* and is limited to legality (*Rechtsaufsicht*), i.e. to monitor the lawfulness of the local measures.³⁵ On the contrary, supervision in cases of delegated powers considers not only posterior legality, but also prior expediency (*Fachaufsicht*), which intervenes more deeply in the sphere of self-governance.³⁶ In this regards, István Hoffmann notes that *Rechtsaufsicht* means legal supervision of the decision-making process and its result, the individual and legally binding decision, while *Fachaufsicht* is within the competence of special authorities and hugely restricts the decision-making freedom of municipalities.³⁷

Legal supervision equally covers preventive, corrective (in support of local bodies) and repressive measures. The instruments of control are e.g. the general right to information, to object, to take substitutive measures to delegate powers to the first mayor or to appoint a special commissioner.³⁸ If the representative body is unable to make a decision or does not comply with the instructions of the authority exercising legal supervision and this seriously jeopardizes the normal functioning of local affairs, the supervisory authority may delegate powers to the first mayor to replace the representative body until the end of the unlawful situation. In the German system, decisions may be annulled only by the Administrative, the Land or the Federal Constitutional Court.³⁹ To sum up, legal supervision aims to involve municipalities in general State administration and, at the same time, to maintain the final State responsibility.⁴⁰

Other provisions of the Act establish that some local decisions shall be approved *a priori* by the supervisory authority before they are issued or announced.⁴¹

3.2. Austria

In Austria, municipalities are supervised by the *Land* Government at *Land* level, and by the *Land* Governor or the competent federal Minister at federal level.⁴² Generally, administrative supervision means predominantly legal control over local law enforcement, with the exception of local financial management, which may be submitted also to subserviency control. With regard to local decisions, municipalities shall immediately provide information requested by the supervisory authority. Instruments and methods of supervision differ from *Land* to *Land*, but there are some similar elements:

- The right to request information and documents;

³³ A. Fábíán, *Az önkormányzati jogalkotás fejlődése és fejlesztési lehetőségei*, PhD Dissertation, PhD School of the Faculty of Law of the University of Pécs. Pécs 2005. p. 28.

³⁴ Exceptions are provinces in Lower-Saxony, Saxony-Anhalt and Saxony, where the district self-governments are the supervisory bodies. See: Hoffmann (n 15): pp. 242-244.

³⁵ Max-Emanuel Geis (n 28): p. 28.

³⁶ Clotilde Deffigier-Evelyn Will-Muller, *Allemagne. Études sur les fonctions publiques locales en Europe*. <http://www.europaong.org/wp-content/uploads/2013/06/Allemagne.pdf> (10 May 2018) p. 15.

³⁷ Hoffmann (n 15): p. 244.

³⁸ Fábíán (n 19): pp. 29-30., Clotilde Deffigier-Evelyn Will-Muller (n 27): p. 15.

³⁹ Hoffmann István, *Németország közigazgatása*, in: Lőrincz (n 24): p. 188.; Hoffmann (n 15): p. 246.

⁴⁰ Max-Emanuel Geis (n 28): p. 28.

⁴¹ Fábíán (n 19): p. 30.

⁴² Hans Neuhofer, *L'administration autonome des communes en Autriche et l'incidence dans l'entrée dans l'Union Européenne*, in: *Annuaire des collectivités locales*. Vol. 17. 1997. p. 122.

- The right to prior approval in case of certain decisions;
- The right to annul certain decisions taken in administrative procedures: after hearing the representative body, the supervisory authority annuls the unlawful decision and, at the same time, informs the municipality;
- The right to take substitutive measures in order to prevent direct threat in case of negligence;
- The right to suspend the execution of the contested decision in case of threat;
- The right to impose supervisory fines;
- The right to dissolve the local council (provided to the *Land* Government).

The general rules of administrative proceedings regulate the way in which administrative supervision shall be exercised, including the right to take supervisory decisions which may be contested by the municipality before the Administrative Court.⁴³

Any citizen whose rights or legal interests are violated by a local decision (which triggers an obviously unlawful situation), may lodge a special appeal before the supervisory authority within two weeks after receiving it. If the authority finds that the citizen's rights have been infringed, it may annul the contested decree and refer the matter back to the municipality for a new decision.

4. States Following the Scandinavian Model

4.1. Sweden

In Sweden, local autonomy is exercised by authorities functioning as local self-governments. Currently the traditional concept of *province* merely has a cultural and historical reference, without any political or administrative connotations. The two levels of local administration are the region (*län*) and the municipality (*kommuner*).⁴⁴

Supervision over local self-governments is exercised by decentralised State organs, the so-called administrative agencies working at regional level, guaranteeing the lawfulness of local self-governance. If they find that a local decision violates the law, they may appeal to the Administrative Court or, in some cases, impose a fine. These agencies inform the Government annually on local issues.⁴⁵

Furthermore, citizens play a crucial role in legal supervision, as they may appeal to the Administrative Court against some local decisions regardless of direct interest.⁴⁶ According to Paragraph 10 of Chapter I of the 1991 Local Autonomy Act, any citizen of a region or a municipality may challenge the lawfulness of a decision taken by the *län* or the *kommuner*. Consequently, the Administrative Court may

⁴³ Fábíán (n 19), System of the Austrian local self-governments. p. 40.

⁴⁴ K. Szamel & I. Balázs & Gy. Gajduschek & Gy. Koi (eds.), *Az Európai Unió tagállamainak közigazgatása*, Complex, Budapest, 2012. p. 563.

⁴⁵ Isabelle Crepin-Dehaene, *L'autonomie locale en Suède*.

http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_suede_fr_2010.pdf&t=1502190284&hash=b72fa328da9dae6dee5c294320c36d7a (7 August 2017) p. 33.

⁴⁶ Examples are decisions issued by committees and assemblies if they are not preparatory or executive.

entirely or partially annul the contested decision, yet it cannot amend or substitute it, as that would be contrary to the principle of local autonomy.⁴⁷

Obviously, the institution of the Ombudsman shall not be neglected either: it is a “forum of *quasi*-appeal” in the supervisory system over local self-governments. The Ombudsman may initiate an investigation *ex officio* or – more often – on complaint in order to determine whether the local body in question has passed the decision lawfully, in compliance with its obligations.⁴⁸

4.2. Finland

In Finland, the territorial administration system is highly decentralised; the basic unit of local self-government is the municipality which includes both communities and the capital.⁴⁹

The Finnish system outstandingly focuses on the implementation of Article 8 of the European Charter on Local Self-Government, *i.e.* “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.” Exclusively legal supervision may be exercised only by authorities the competence of which is set by law. After accession to the EU, control exercised by the central Government over local self-governments has been dramatically reduced. Formerly, central authorities had supervised the functioning of local self-governments. Since then, their competences have been restricted to a very limited monitoring activity.⁵⁰

4.3. Denmark

From 2002 to 2007, Denmark implemented a general reform of public administration in order to create a highly decentralised administration and to revise the extremely detailed system of local self-governments.⁵¹

Formerly, legal supervision over local decisions had been exercised by monitoring committees, the members of which had been elected by the county council. Nowadays, the officers of local self-governments is directed and official appointed by the Government (*Statsforvaltninsdirektor*) and supervision is exercised by 5 regional and 15 county prefects. They may annul the unlawful decisions or impose fines against the involved representative body in order to enforce supervisory measures. Against their decision, local self-governments may appeal to the Ministry of Home Affairs.⁵²

⁴⁷ Isabelle Crepin-Dehaene (n 42): p. 35.

⁴⁸ Isabelle Crepin-Dehaene (n 42): p. 36.

⁴⁹ Szamel & Balázs & Gajduschek & Koi (n 41.): p. 584.

⁵⁰ Eija Mäkinen, Fabrice Bin, *Local self-government in Finland*.

http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_finlande_en_2011.pdf&t=1502183837&hash=1fdc4a7bbd8eff991e2a82ae1e207a26 (7 August 2017) p. 11.

⁵¹ Szamel & Balázs & Gajduschek & Koi (n 41): p. 608.

⁵² Alexandre Guigue, *L'autonomie locale en Danemark*.

http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_danemark_fr_2010.pdf&t=1502183837&hash=47817c13055a6143ca747a2990379359 (7 August 2017) p. 13.

4.4. The Netherlands

In the Netherlands, the basic units of local administration are the provinces and the municipalities. Provinces guarantee regional supervision and coordination, while municipalities fulfil executive tasks.⁵³

Article 132 of the Dutch Constitution establishes the boundaries of supervision over local administrative organs. The Minister of Home Affairs may supervise the provincial decisions in the name of the State, while a permanent committee created under the *aegis* of the provinces may supervise the municipalities.⁵⁴

Decisions made by the local administrative organs may be subject only to prior supervision with some exceptions set by law, and those in conflict with the law or the public interest may be annulled only by Royal Decree. The right to cassation may be exercised against all types of decisions. The right to take substitutive measures may be exercised only in areas under divided competences.⁵⁵

5. Models Set by Some Post-Socialist States

5.1. Poland

Poland was the first among post-socialist States to elaborate and implement a general reform of public administration in 1998. As a result, a new three-level local self-government system was created which consists of municipalities (*gmina*), counties (*powiat*) and voivodeships (*województwo*).⁵⁶

Voivodeships do not only belong to the local self-government, but also to the state administration system, which leads to a special coexistence of the two spheres of public administration.⁵⁷

The Polish Constitution establishes the scope, the criteria and the bodies of the supervision over local self-governments. All activities of local self-governments are subject to legal supervision, exercised by the Prime Minister, the voivodes and, regarding financial issues, by the Regional Courts of Auditors.⁵⁸

One should differentiate between supervision over activities pursued within the own competence of the local self-government, which concerns only legal criteria, and supervision over activities based on delegated powers, which shall cover efficiency and expediency control as well.⁵⁹

The executive body of the local self-government shall send local decrees to the supervisory authority within a week, which may assess its compliance with the law and declare its annulment within 30 days. The annulment issued by the *voivode* has retroactive effect, so the decree loses its effect from its announcement. If the supervisory body does not respond, the decision shall be considered lawful. The Prime Minister may annul the decision issued by the *voivode* or not covered by the *voivode*'s

⁵³ Szamel & Balázs & Gajduszek & Koi (n 41), p. 638.

⁵⁴ Articles 133-135 of the Dutch Constitution.

⁵⁵ Maëlle Perrier, *Le pouvoir local aux Pays-Bas*.

http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_pays-bas_fr_2009.pdf&t=1502198650&hash=c31e1b9e0a20269554a0ca50983998f4 (7 August 2017) pp. 16-18.

⁵⁶ Szamel & Balázs & Gajduszek & Koi (n 41), p. 677.

⁵⁷ <https://eures.praca.gov.pl/en/looking-for-a-job-in-eu/you-are-an-eu-or-efta-citizen/living-and-working-in-poland/information-about-poland/political-administrative-and-legal-system-in-poland> (7 August 2017)

⁵⁸ Paragraphs (1)-(2) of Article 171 of the Constitution of Poland.

⁵⁹ Szamel & Balázs & Gajduszek & Koi (n 41), p. 678.

supervision, if it is against the law or the criteria of efficiency and expediency.⁶⁰ Within 30 days, local self-governments may lodge appeal against the decision of supervisory authorities to the Administrative Court referring to violation of law. The Administration Court may suspend the execution of the contested decision *ex officio* or by request.⁶¹

The Supreme Chamber of Control, created by Act of 23 December 1994, is the chief organ of State audit, which, in subordination to the National Assembly (*Sejm*), shall audit the activity of the organs of government administration, the National Bank, state legal persons and other State organization units. It shall also audit the activity of regional and local self-governments, and of other regional and local bodies regarding the implementation of the central budget and other provisions in the fields of finances, economics, management and organization.⁶²

Furthermore, the Local Self-Government Act provides several methods of control and supervision according to the different forms of local autonomy, *e.g.* the revision of local decisions, the suspension of their execution, the appeal to court against an unlawful local decision, the notification sent to the local authority for the restoration of legality in case of minor violation.⁶³

Finally, according to Paragraph (3) of Article 171 of the Constitution, on a motion of the Prime Minister, the Lower House may dissolve the legislative body of the local self- government (the council of the municipality, the county or the *voivodeship*) if it has flagrantly violated the Constitution or the law. Nevertheless, decision W1/94 of 5 October 1994 of the Constitutional Court established that this competence may be considered a disciplinary sanction, rather than a supervisory measure *stricto sensu*.⁶⁴

4.2. The Czech Republic

Articles 99-105 of the Constitution regulate the principle of local autonomy and the *two-tier system*, divided into municipalities,⁶⁵ which are the basic territorial self-governing units, and into regions, which are the higher territorial self-governing units.

State supervision over municipalities shall include only the criterion of legality: “the State may intervene in the affairs of territorial self-governing units only if such is required for the protection of law and only in the manner provided for by statute.”⁶⁶ Supervision of the local measures adopted within independent competences is exercised by the Ministry of Interior, while supervision of measures adopted within delegated powers is exercised by regional offices.⁶⁷ If the supervisory body alleges unlawfulness of the activities of municipalities, it may issue a legality notification. In case of independent competences, if the local organ fails to comply with its obligations, the Minister of Home Affairs may suspend the

⁶⁰ Anna Chmielarz-Grochal, Beata Marczevska, *Le pouvoir local en Pologne*. http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_pologne_fr_2014.pdf&t=1502271155&hash=d15a19838b3b649216478588c6a3b233 (8 August 2017) pp. 16-18.

⁶¹ Z. Józsa, *A lengyel regionális reform*, http://www.terport.hu/webfm_send/344 (8 August 2017) p. 26.

⁶² *Ibid.*

⁶³ Z. Józsa, *Változatok a regionalizációra: a lengyel, a szlovák és a cseh modell*, p. 51.

⁶⁴ Anna Chmielarz & Grochal, Beata Marczevska (n 56), p. 20.

⁶⁵ Szamel & Balázs & Gajduszek & Koi (n 41), p. 710.

⁶⁶ Paragraph (3) of Article 101 of the Constitution of the Czech Republic.

⁶⁷ Ilona Kruntoradova, Petr Jüptner, *Local self-government in Czech Republic*. http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_rep_tcheque_en_2013.pdf&t=1502285197&hash=748162253d2c2584d5d8172b5f5675bf (8 August 2017) p. 41.

execution of the contested decision. In case of delegated powers, the supervisory authority may pursue a complete revision of the unlawful situation.⁶⁸

With regard to higher level territorial self-governing units, the supervision system is completely different. In case of independent competence, the Minister of Home Affairs and the other entitled central bodies may only exercise legal control, including the right to suspend the execution of unlawful decrees. In case of delegated powers, though, they do not merely investigate the compliance of local decisions with legal provisions, but also with the directives and recommendations of central bodies.⁶⁹

4.3. Slovakia

In Slovakia, the system of local self-governments has two levels: municipalities at local level and higher territorial units (self-governing regions).⁷⁰

Legal supervision over local self-governments is exercised by law enforcement bodies, i.e. by the courts and the prosecutors. Thus, bodies of State administration are not entitled to supervise local government activities in Slovakia.

According to the 2001 amendment of the Constitution⁷¹, county prosecutor may supervise the legality of decisions issued by municipalities, while the regional prosecutor may exercise legal supervision over decrees of the self-governing regions. Local acts are not *de jure* sent to the prosecutor's office, yet /s/he may investigate them at any time and may initiate an investigation at the request of any individual or legal person. The prosecutor is entitled to supervise the legality of both normative and individual decisions. Furthermore, in his consultative function in the assemblies of the local legislative bodies, he may notify them and object to unlawful drafts. If a local act is approved despite his objection, he may initiate proceedings before the court.⁷²

Appeals against decisions issued by municipalities are decided by one of the 55 district courts, while there are 8 regional courts of second instance to decide the legality of decisions issued by the self-governing regions. They work in councils composed by a president and two judges. If they ascertain the unlawfulness of the contested decision, they may annul it.⁷³

5.4. Slovenia

In Slovenia, there are 210 municipalities as parts of the local self-government system. Apart from the regions created for statistical and project-management purposes, no other administrative units are vested with public legal status or representative bodies.⁷⁴

⁶⁸ Cf. Szamel & Balázs & Gajdushek & Koi (n 41), p. 714.

⁶⁹ Cf. Szamel & Balázs & Gajdushek & Koi (n 41), p. 713.

⁷⁰ Galligan, J. Denis & Smilov, M. Daniel (1999), *Administrative Law in Central and Eastern Europe*, Central University Press, Budapest. pp. 332- 333.

⁷¹ Venice Commission on Further Constitutional Developments (Amendments to the Constitution of the Republic of Slovakia. [https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2001\)109-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2001)109-e) (11 May 2018) p. 1-5.

⁷² Ludmila Malikova, Frédéric Delaneuville, *L'autonomie locale en Slovaquie*. http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_slovaquie_fr_2009.pdf&t=1502359037&hash=201278ecb41f89a0f65d07f51b1c0d0e (9 August 2017) p. 32.

⁷³ Ludmila Malikova, Frédéric Delaneuville (n 67), p. 33.

⁷⁴ Cf. Szamel & Balázs & Gajdushek & Koi (n 41), p. 799.

According to Article 140 of the Constitution of the Republic of Slovenia, State authorities shall supervise the proper and competent performance of local affairs, apart from supervising the legality of local decisions.⁷⁵ Control instruments are specifically regulated by the Local Self-Government Act.

The supervision system of municipalities is based on the principle of local self-governance, thus the scope of supervision depends on the type of activities. If they are pursued within the independent competences of local bodies, state authorities may only supervise their legality. In case of matters of delegated powers, the state also supervises the suitability and expertise.⁷⁶

If the supervisory body alleges that a local decision is in conflict with the Constitution or the law, it shall notify the municipality to cease the unconstitutional or the unlawful situation and propose an appropriate solution. If the municipality does not amend the contested decision, the supervisory body shall propose to the Government to initiate the proceedings before the Constitutional Court. In other words, the supervisory authority is not entitled to annul, amend or substitute the decision, which may be decided only by the Constitutional Court, in case of normative acts, or by the Administrative Court, in case of individual decision.⁷⁷

With regard to delegated powers, supervisory bodies may decide complaints filed against local decrees or may issue resolutions to provide municipalities with instructions how to increase the expediency of delegated activities and other mandatory measures. If the addressed local body does not fulfil the resolution, the supervisory authority may propose the Government to initiate the proceedings to withdraw the delegated powers. The local body may challenge the decision before the court.⁷⁸

5.5. Romania

Romanian public administration is divided into territorial-administrative units at local and regional level. The units of local administration are integrated. At the regional level we can find both prefects and municipalities.⁷⁹

The Government shall appoint a prefect in each county and in the Bucharest Municipality. The prefect is the Government's representative at local level and shall direct the decentralised public services of ministries and other bodies of public administration in the territorial-administrative units.⁸⁰ Furthermore, he exercises supervision over law enforcement at local level.⁸¹

An important constitutional provision establishes that there is no subordination between prefects and local bodies (local councils, mayors, county councils and their presidents). However, if the prefect

⁷⁵ Guillaume Protière, *Le pouvoir local en Slovénie*, http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_slovenie_fr_2012.pdf&t=1502359037&hash=9f7460a85a03d19f3b071ac9b99525d5 (9 August 2017) p. 10.

⁷⁶ Stane Vlaj, *Local self-government in the Republic of Slovenia with a Special Emphasis on the Status of The Capital City Ljubljana*, <https://pdfs.semanticscholar.org/3326/4015b12a32ef9ffabe104eac11860d5d5d8a.pdf> (9 August 2017) p. 6.

⁷⁷ Stane Vlaj (n 71): p. 29.

⁷⁸ Stane Vlaj (n 71): p. 30.

⁷⁹ Szamel & Balázs & Gajduscek & Koi (n 41), p. 824.

⁸⁰ Paragraphs (1) and (2) of Article 123 of the Constitution of Romania.

⁸¹ Emil Balan & Troanta Rebeles & Teodor Dragos: *Local self-government in Romania*, http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_en/mono_roumanie_en_2011.pdf&t=1502359037&hash=44a5f22605ab28bd5d555d1953f1cec1 (10 August 2017) p. 8.

deems the act of the county or the local council unlawful, he may challenge it before the Administrative Court. The act thus challenged shall be suspended *de jure*.⁸²

The prefect's institution is not only recognised by the Constitution, but also by Act no. 340/2004, which established detailed provisions for the principles and the scope of his activities. The Act provides legal supervision over decisions issued by the county, the local council and the mayor in the field of public administration.⁸³

5.6. Estonia

In Estonia, the units of local self-government are rural municipalities and cities and, according to the Constitution of the Republic of Estonia, other entities (regions) may be formed. The system of local self-government mainly followed German model, yet Russian influence can be noticed as well,⁸⁴ which means that the state system and the legal order borrows some element from the Russian pattern.

In accordance with Article 160 of the Constitution, supervision over the activities of local self-governments is exercised by three bodies: the county governors (*maavanemad*), the National Audit Office (*Riigikontroll*) and the Chancellor of Justice (*Õiguskantsler*).⁸⁵

County governors exercise legal supervision over local decrees issued in individual cases. If they notice conflict with the law, they notify the local body to cease the unlawful situation within 15 days. If the authority fails to comply with its obligation, county governors may apply to the Administrative Court.⁸⁶

According to Article 139/C of the Constitution, the Chancellor of Justice scrutinises legislative instruments of local authorities for conformity with the Constitution and the laws. In order to help him to fulfil his task, local bodies shall send him every approved decision. Alleging unlawfulness, the Chancellor notifies the local body to amend the decision otherwise he may turn to the court to annul the whole decision or its unlawful provision(s). Furthermore, an amendment to the Act on the Chancellor of Justice, which entered into effect on 1st January 2004, expanded his function as an Ombudsman. Consequently, he has jurisdiction over individual complaints against local decrees violating fundamental rights.⁸⁷

⁸² Gabriela Condurache, *Le pouvoir local en Roumanie*, http://www.olaeurope.com/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_roumanie_fr_2013.pdf&t=1502372971&hash=1cec5ee3753e29b0b64664f44b7ba310 (9 August 2017) p. 57., Paragraphs (4) and (5) of Article 123 of the Constitution of Romania.

⁸³ Gabriela Condurache (n 77), p. 57.

⁸⁴ Szamel & Balázs & Gajduschek & Koi (n 41), p. 876.

⁸⁵ Vallo Olle, Rodolphe Laffranque, *L'autonomie locale en Estonie*, http://www.olaeurope.eu/index.php?eID=tx_nawsecuredl&u=0&file=fileadmin/user_upload/ressources/monographie/mono_fr/mono_estonie_fr_2010.pdf&t=1543326482&hash=263613e3f3d61040df5d9924e0183a6f (10 August 2017) p. 31.

⁸⁶ Vallo Olle, Rodolphe Laffranque (n 80), p. 32.

⁸⁷ Vallo Olle, Rodolphe Laffranque (n 80), pp. 33-34.

6. Summary

In summary, European local self-government systems are in compliance with Article 8 of the Charter, which greatly contributes to the legal unification of control and supervision in the continent.

In most cases, state control over the activities and decisions of local self-governments means legal supervision, which differs in intensity because of the wide range of competences supervisory authorities are provided with. In general, expediency supervision has been drastically reduced, yet it is still present with regard to certain types of decisions in Belgium, Germany, Austria, Poland and Slovenia.

Furthermore, apart from some exceptions, legal supervision is always exercised *a posteriori*, i.e. the contested decision comes into effect and is executed regardless of the assessment of the supervisory body. Thus, when local decisions are sent to the controlling authorities and announced according to the local custom, they are considered executable.

In the analysed countries, typically the reform processes of the 1990s have substituted the traditional administrative tutelage for a more flexible system with control or supervision measures. The competences of the organs exercising control over local self-governments are relatively different from state to state. In Italy or France, these authorities have above all initiatory functions and a few independent competences, while in Spain, Austria, the Netherlands, Belgium, Germany, England and Hungary they may also take substitutive measures. The contested decisions may also be annulled by court (in Spain, Germany, Sweden, Poland, Slovakia, Slovenia, England, Estonia and Hungary), or by the supervisory authorities themselves (in Belgium, Luxembourg, Austria and Denmark.)

The latest still reminds of the traditional tutelage exercised by the State. Finally, the unlawful decision may be challenged also by individuals, which is also a common denominator in the different systems.