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REPORT ON PUBLIC CONTROL OVER LOCAL AUTHORITIES IN EUROPE: COMPARATIVE STUDY BASED ON DOMESTIC LEGISLATION IN SEVERAL EUROPEAN STATES

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Introduction

Decentralisation in Europe is closely tied up with the concept of local democracy, to the extent that the former is now defined by reference to the latter. Local democracy is itself based on the combination of several approaches, and a distinction is traditionally made between representative democracy (election of representatives of citizens) and participatory democracy (involvement and participation of citizens in public decision-making).

Participatory local democracy took longer to emerge and become established than its representative counterpart. In France, for instance, this did not happen until “Act 1” in the decentralisation process, with the indication in the first article of the law of 2 March 1982 that “legislation will determine the development of citizen participation in local life”. In practice, the first key laws were passed in 1992 (law of 6 February 1992 on the territorial administration of the republic), 1995 (law of 4 February 1995 on spatial development) and 2002 (law of 27 February 2002 on community democracy), with the introduction of machinery for consultation, petitions, dialogue and inquiries, etc.

At European level, local citizen participation (or, more broadly, resident participation) has been included since the outset in the definition of local self-government; the Council of Europe issued a recommendation in 1981; Article 3 of the 1985 Charter of Local Self-Government incorporates it in the “concept of local self-government”¹; an additional protocol on the right to participate in the affairs of a local authority was adopted in 2009, and guidelines for civil participation in political decision-making were adopted by the Committee of Ministers in September 2017.

All these developments at national and European level also entail citizen influence and control over local public action. The issues of access to information, transparency and possibilities for *complaints and suggestions regarding the functioning of local authorities and local public services* (cf. Article 2, 2 ii d, of the additional protocol) come up repeatedly, in addition to the administrative supervision exercised over local authorities by central government bodies.

In this connection, in order to shed light on citizen influence and control over local authorities in Europe, this report will first give an overview of relevant practices based on national models before taking a more thematic, cross-cutting look at information access for citizens at local level in Europe and the wide range of models of local democracy that allow for complementary forms of control.

¹ “This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.”

1. Practices of public influence and control over local and regional authorities in Europe

Participation and control are closely related, and there is also the issue of the legal consequences when citizens identify breaches of legislation by local authorities. In such cases, judicial remedies are a vital part of the legislation on local authorities, as is clearly illustrated by the example of France. The examples of Germany and Sweden, as well as Bulgaria and Romania in central and eastern Europe, also offer relevant models in different historical and political contexts regarding the relationships between citizens and local governments.

1.1 Resident participation in local life in France and possible judicial remedies

In addition to the ballot box (elections, plus local consultation processes to seek citizens' views and, since 2003, binding local referendums to adopt decisions), several arrangements exist in France to enable citizens to participate in local life.

One example here are *neighbourhood councils*, which are mandatory in municipalities with over 80 000 residents (and optional below that figure). They may be consulted by local authorities and may make proposals to them on any issue concerning the relevant neighbourhood or the town/city as a whole. Municipal councils may also provide the neighbourhood councils with premises and grant them funding for their operation.

In addition, every municipality with over 5 000 residents has a *committee on accessibility for persons with disabilities* and also an *advisory committee on local public services* (municipalities with over 10 000 residents), chaired by the mayor, but including representatives of local associations. Apart from the opinions which it may issue, the latter examines every year a report (by the mayor) on public services covering, for instance, water price and quality; disposal/treatment of domestic waste, etc.; administrative and financial reports of operators, both public and private (delegation of services). Apart from the bodies provided for in the legislation, local authorities may set up advisory committees and involve them concerning a particular issue (representatives of foreigners, young people, the elderly, shopkeepers, etc.).

In the area of town planning, under an approach combining information, consultation and scrutiny, reference must also be made to the existence of a *public inquiry* procedure, in France (and other countries, e.g. Belgium), involving residents and all interested parties prior to any urban development decisions. This consultation procedure is a formal requirement for the relevant decision (which may be annulled by the courts if no inquiry is held) and was introduced in 1810 to protect private property in the event of compulsory purchases in the public interest (its scope has since been expanded). The procedure is initiated by a representative of the state (prefect) even when the development concerned is being carried out by a local authority. The inquiries are

headed by “inquiry commissioners” appointed by the president of the administrative court and conducted in the town halls concerned by the development projects. The public can consult the plans and register any proposals. At the close of the inquiry procedure, the commissioner draws up a report to the prefect recommending approval or rejection.²

Lastly, the French example illustrates a key aspect of the way citizens can exercise influence or control over local authorities, namely judicial reviews, which come in addition to the reviews of lawfulness performed by prefects. The principle is that any parties with standing (at local level, all taxpayers have standing to challenge any municipal decisions involving financial commitments) may apply free of charge (without recourse to counsel) to the administrative court for their area challenging any decisions by a local authority producing specific effects (orders, votes, individual decisions, etc.). With these *ultra vires appeals*, the courts can retroactively quash any measures on the ground of unlawfulness (lack of authority, formal defect, procedural defect, mistake of law, of fact or affecting the motive). Since 2014, interested parties have also been able to challenge the contracts of public corporations under another procedure (full appeal).

These options are vital as means of safeguarding the rule of law and, at local level, enable both individuals and legal entities to exercise effective influence and control over public officials. Two further comments should be added here:

- 1) In 2001, to make these sometimes lengthy and non-suspensory procedures more efficient, parliament introduced new urgent procedures: firstly, where there are serious doubts about the lawfulness of a decision, the courts may suspend it (urgent suspension order) and, secondly, where a decision entails serious and manifestly unlawful infringement of a fundamental freedom, they may have its effects terminated by any means, within 48 hours (urgent order for protection of fundamental freedoms);
- 2) In connection with these court actions, in criminal-law terms in this case, local elected representatives guilty of breaches of integrity, bribery or influence peddling, etc., may be sentenced to an additional penalty of 10 years’ disqualification from standing for election in the case of serious offences and five years’ disqualification in the case of lesser offences. This is not automatic (in 2010, the Constitutional Council abolished automatic disqualification from standing for election in some cases).

² Further to legislation of 2 February 1995 on the environment, there is also a national commission for public debate (CNDP) tasked with “ensuring public participation in the process of drawing up development or infrastructure projects of national interest with major social and economic implications or significant impacts on the environment or spatial planning.”

To conclude these comments on France, it must be stressed how important access to public information is in order to be able to exercise these various rights, this being a point which we will come back to later.

1.2 Practices in other European states (Germany, Sweden, Bulgaria and Romania)

While participatory local democracy in Europe is based on machinery specific to each state, there are a number of recurring common features, for instance, the holding of referendums or consultation processes, the setting up of various councils and committees involving voters or residents and the right of petition. A number of novel or significant examples will be presented in this report (in part two), but with specific regard to influence and control, some countries have developed arrangements that could serve as models for others.

In *Germany*, representative democracy is enshrined in the Basic Law, but the success of citizens' movements, in particular in the former GDR, highlighted the need for direct participation. A half-way house between simple petitions and referendums was therefore introduced: known as a citizens' motion (*Bürgerantrag*), it requires municipal councils to address a specific issue if the motion is supported by a minimum number of residents. Citizens' assemblies (*Bürgerversammlungen*) are also held, at which citizens are able to make proposals, examine the affairs of the municipality and then put questions at the public sittings of the municipal council. Lastly, subject to variations depending on the individual municipal codes, local referendum procedures (*Bürgerbegehren*) also exist and may result in real local decisions. Above all, judicial remedies are available if municipalities fail to implement decisions taken by referendum.

In *Romania*, several laws were passed from the early 2000s allowing free access to information and consultation and participation of residents, in particular by giving them the right to propose draft decisions (minimum support of 5% of the population, Law No. 141/2004), and since 2003 (Law No. 52/2003), there has been legislation governing transparency in decision-making (consultation of residents before any project with a major impact on the community). In spite of the still haphazard practices in terms of public scrutiny and the shakiness of public confidence, some authorities in Romania have sought to involve residents in local administration and enable them to perform some checks themselves: in 2001, for instance, the city of Brasov introduced a "public inquiry" procedure concerning local finances and public services so as to enable residents to rank the latter by importance, identify priorities in the allocation of funding and then take part in drawing up budgets.

In *Bulgaria*, the constitution includes direct references to participatory local democracy, with Article 136 providing that "Citizens shall participate in the government of the municipality both through their elected bodies of local self-government and directly, through a referendum or a general meeting of the populace", and several laws have been passed on the subject since the 1990s. Local referendums are possible, on the initiative of political authorities or the public (1/4

of voters), and are mandatory and binding in effect when it comes to establishing, altering or abolishing municipalities. The purpose of the general meetings of citizens provided for in the constitution is to establish direct dialogue with local authorities; they can take binding decisions, by absolute majority, if at least one third of the voters in a local authority take part. In addition, public debates may be held concerning local projects and, in broader terms, citizens' ability to influence local affairs is ensured by means of wide access to information, public meetings and the provision of minutes of meetings on request.

Lastly here, the *Swedish* model includes a number of interesting arrangements for local democracy in Europe. For many years (the process of decentralisation began in the 1960s), the country has had a highly structured approach to participatory democracy and, in addition to numerous tools for participation (referendums, petitions, citizens' forums, participatory budgeting, etc.), the principle of participation through scrutiny and control is well established. Judicial remedies are widely available: as in the case of France, all residents can challenge the lawfulness of decisions by local bodies in the administrative courts ("local cases appeals", since 1862). The *democratic audit* process used in Sweden to assess social democracy also concerns local authorities (in particular, it measures participation in local affairs and the effectiveness of the implementation of the political authorities' programmes, etc.). It is described as a special participatory system based on citizen expression that draws on studies and reports by academics. The findings of the audits are released in final reports made available to the public. Lastly, the way *municipal information* is organised in Sweden also gives citizens a say in the administration of local affairs. There is an institutional aspect here, however, in that every municipality has an official responsible for public relations and many of them have public relations departments. These communicate information about the administration of the relevant municipality, means of direct participation for residents and the content of the proposals made by the municipality, as well as the impact of the various decisions on daily life at local level. This last example shows that information is therefore vital for enabling citizens to exercise real and effective influence over local government.

2. Access to information for local residents in Europe and the wide range of models of participatory local democracy

Proper influence and control over the action of the authorities by citizens requires the availability of *proper* levels of information for them, and it is generally acknowledged that the principle of free public access to administrative documents is one of the cornerstones of all democratic societies. While most European countries give citizens that right, the arrangements vary between states, as do the remedies available in the event of difficulties with access. Legislation in some countries has also moved forward in this area in order to increase the transparency of local and regional authority data (as was recently the case in France, for instance). Details of other specific arrangements will once again illustrate the wide range of examples of direct local democracy in Europe.

2.1 The need for free access to administrative documents

The right of access to administrative documents is widely recognised in Europe, under constitutional provisions (Spain, Sweden), legislation (France, Italy, UK) and in some cases regional legislation (*Länder* in Germany). Over time, these various provisions have gradually ended the old systems of administrative or professional secrecy (1978 in France, 2006 in Germany), which used to prevent or restrict the disclosure of administrative documents (confined to the personal data of the individuals concerned in Germany, for instance).

Depending on the individual cases, the scope of freedom of access varies with regard to the documents that can be consulted, from central to local level (frequent restrictions concerning documents relating to legislative or judicial authorities, in Germany in particular); the individual information (in Sweden, citizens have access free of charge to the payslips of government ministers or local officials, which is an exception for this type of data in Europe); and the type of the documents (in France and Germany, the right of access applies solely to completed documents, not preparatory documents for decisions; in Italy, all internal administrative documents or documents used by the authorities may be disclosed; in Spain, under legislation from 1992, citizens have the right to be informed about the state of progress of procedures that concern them).

The development of digital tools and the emergence of open data are also helping to modernise transparency rules. For instance, the law of 7 August 2015 on local and regional government reform in France introduced a new Article L. 1112-23 in the General Code on Local and Regional Authorities, which requires authorities with over 3 500 inhabitants (...) to post public information (...) of an administrative, social or fiscal nature online, when such information relates to their area and is available in electronic form.

In terms of procedures, the legislation in some countries has established a presumption of free access under which all documents may in principle be made available (Germany), unless the authorities can prove otherwise. In the United Kingdom, for instance, there is a public interest test: in cases of exemptions to disclosure, the authorities have to determine whether maintaining confidentiality is in the general public interest, failing which the information must be disclosed.

In addition, the arrangements for access vary, depending on whether disclosure is automatic or whether written requests have to be submitted to the authorities concerned. Access is usually free of charge (in France, the authorities may charge for printing and postage) and specific bodies are sometimes set up to deal with information disclosure rights (commission on access to administrative documents in France (CADA) and Italy; commissioner for data protection and freedom of information at federal level and in nine *Länder* in Germany; and the Information Commissioner in the UK).

Where the authorities refuse to disclose information, means of redress do exist in most cases. Initially, if individuals do not obtain the document requested, they may apply for administrative reviews, either free of charge to the authority that refused to provide the document (Spain, Germany, UK and Sweden, but in the latter case via hierarchical channels) or to the bodies set up for the purpose (commission on access to administrative documents, commissioners, see above). In all the countries quoted, where the refusal to disclose the documents is confirmed, appeals may be lodged with administrative courts or special tribunals (Information Tribunal in the UK).

In this connection, it should be noted in conclusion that apart from access to administrative documents in the strict sense, the right in question also applies, in France in particular, to budgetary and accounting documents and documents relating to the award of funding to outside bodies. Under the General Code on Local and Regional Authorities, all individuals or legal entities are entitled to request the disclosure of the minutes of local/regional council meetings, as well as the authorities' budgets, accounts and orders. The disclosure requirement extends to private bodies tasked with providing public services, insofar as the documents concerned relate to the relevant service. Under Article 10 of a law passed on 12 April 2000, the budgets and accounts of private bodies receiving public funding must be disclosed by the administrative authority which granted the funding. The disclosure requirement applies to the administrative authority that granted the funding, except when the body concerned is responsible for providing a public service.

2.2 The wide range of forms of citizen participation in local government in Europe

Here the report will consider some additional examples in order to provide an overview comprising particular cases which are sometimes determined by the characteristics specific to each country but shed light on the different ways of getting citizens to participate in local decision-making and ultimately exercise some form of control over it.

Firstly, there is a legislative provision in the *Netherlands* that blurs the distinction between representative and participatory democracy, with a novel combination of the two approaches. It concerns the appointment of the local executive at municipal level: the mayor (*burgemeester*). As under the legislation in most European countries, the executive is elected by indirect universal suffrage by the municipal council. However, legislation on local government passed in 2002 allows the holding of a very particular type of local consultation process. It enables municipal councils to involve voters in choosing mayors by holding referendums on the candidates. Residents therefore take part in the process of electing mayors, even though the referendum results are not binding on the municipal councils.

Another type of participation which is sometimes found and may serve as a model is citizens' juries. *Spain* provides an interesting example here, with juries which are a tool for direct participa-

tion. Through the juries, individuals can find out about and debate issues relating to the affairs of their local authorities. The focus is on providing citizens with comprehensive information so as to allow properly informed debate before decisions are taken. The jury participants are drawn by lots so as to obtain a representative sample of society, the discussions are chaired by outside moderators and reports are drawn up by the organising teams.

Thirdly, it is worth noting that some European states with recognised national minorities involve those minorities in local public life and representation. This is true in *Slovenia*, where the constitution recognises the autochthonous Italian and Hungarian national communities. In multi-ethnic regions, the two minorities are entitled to have at least one representative on the municipal council. They may also set up bodies to represent them in municipalities. For instance, in three municipalities (Koper, Izola and Piran), the Italian community forms “autonomous Italian municipal authorities”. The candidates in elections are chosen within them by voters who are members of the community. The same applies to the Hungarian community. These specific rules are designed to foster more effective integration of the various local communities.

Conclusion and recommendations

Without claiming to be exhaustive, this report enables to identify a number of guidelines regarding how citizen influence and control over local authorities in Europe should be organised. Participatory local democracy, which has expanded continuously in a large number of states since the 1980s and did so more rapidly in some during the 2000s, in keeping with the Council of Europe’s recommendations, is based on fundamental principles of transparency in decision-making machinery, involvement of citizens and residents in local public life, in various forms, and administrative and/or judicial remedies for challenging the decisions and actions of local authorities and their representatives.

When establishing or reforming the relevant systems, it is important to follow the following recommendations:

1 – Representation of citizens at local level by elected councils is a necessary – but insufficient – condition for decentralisation and local democracy. Whether in the form of neighbourhood councils, various consultative committees, people’s assemblies, citizens’ juries or participatory budgeting, etc., it is vital to identify places for dialogue between elected bodies and the more direct expression of the views of the residents, associations and businesses in a given area. Opportunities for questioning elected councillors (*annual public hearing* procedure in Hungary, for instance) are frequently provided through these various forms of representation or by other means;

2 – Citizen scrutiny and control requires information, and all relevant legislation should include procedures for the broadest possible access to the administrative and financial documents of lo-

cal authorities, without the authorities having discretion in this respect. This may be ensured through the establishment of an independent outside body, and open data methods should be used to facilitate the dissemination of local information;

3 – In keeping with the general principles of the rule of law, citizen influence and control over local authority representatives must be based on considerations relating to the lawfulness of the decisions adopted and actions taken. Administrative and judicial remedies must be available to enable all interested parties to challenge and seek the annulment of measures on grounds of unlawfulness or to seek compensation for harm suffered. Citizens must be aware of the remedies, which must be facilitated (legal aid, etc.) and must be publicised by the authorities. Political responsibility is exercised during elections and when councils are renewed. In Europe, there are no imperative mandate systems and no procedures for the recall of elected representatives by voters on the latter's initiative and on an individual basis.