

DIVISION OF RESPONSIBILITY BETWEEN LEVELS OF POWER

Kenneth Davey

Introduction

This paper discusses the division of competences between the State and different levels of regional/local self government.

Local Government Structure

- Local government may be constituted on a single or multiple levels. There are a number of different patterns.
- *Single tier systems* have a single level of local authorities with corporate status (i.e. owning property, discharging legal competences, operating a formal budget, employing staff), although some resources, duties and consultative rights may be delegated to sub-organisations at village or neighbourhood level. The most prominent CEE example is in Bulgaria, while within EU Ireland and Portugal also have single tiers.
- *Multi-tier systems* have both a lower, “municipal” or “primary” authority at the level of the town, suburb or village, and a higher tier embracing a conurbation (e.g. Budapest) or a region combining a number of towns and surrounding rural areas (e.g. a Slovak region or a Romanian *judets*). EU examples would include the Danish and Swedish municipalities and counties. Some countries have three tiers, such as Poland with regions (*województwa*), districts (*powiats*), and municipalities (*gmina*), France with regions, *departements* and *communes*.
- In *mixed systems*, larger municipalities may be independent of the surrounding upper tier authority and combine the competences and resources of both tiers. This applies, for example, to “county right” towns in Hungary or “cities of oblast subordination” in Ukraine. EU examples would be British unitary authorities or German *kreisfreistadte*.

Local Authority Size

- Sizes of local authorities vary enormously. Average population sizes of municipalities range from 1,300 in France to 123,000 in England and Wales. Single tier authorities tend to be large of necessity. Bulgarian municipalities have an average population of 28,000 (excluding Sofia). Some multi tier systems such as Czech Republic, France, Hungary, Slovakia or Ukraine have both huge variations in the population of the basic municipal authorities and a proliferation of very small authorities. 80% of Czech municipalities have less than 1,000 population; 41% of Slovak municipalities are below 500.
- Optimum size is hard to define and almost impossible politically to achieve. The arguments and evidence have been well discussed in two publications:
 - The Size of Municipalities, Efficiency and Citizen Participation (Council of Europe, 1995)

- Consolidation or Fragmentation: the Size of Local Governments in Central and Eastern Europe, edited by Pawel Swianiewicz, (LGI/OSI, 2002).
- Larger sizes provide economies of scale (though these may diminish over 100,000 population) and catchment areas for both basic and more specialised services. Small authorities lack scale economies, have heavier *per capita* overheads and become dependent on higher tiers, intermunicipal cooperation or some form of contracting for more specialised services. Empirical evidence suggests 5,000 as the approximate threshold below which significant efficiency losses are experienced. On the other hand indicators like election turnouts and satisfaction polls suggest that citizen participation is inverse to population size (though not in the smallest villages which may be petty dictatorships). Civil society, however, may be a stronger check on local government management in bigger cities.
- Geographical circumstances and history obviously have a major role in municipal size, with small villages occurring most in mountainous rural areas. In several countries Communist regimes undertook forced administrative amalgamations of small settlements which were coupled with regional planning policies designed to freeze development in smaller communities and encourage movement to larger centres. This was greatly resented and after 1989 there was a strong political movement to revive smaller settlements in terms both of municipal autonomy and provision of public services such as primary education, water supply, energy and telecommunications. The right of individual settlements to municipal status is enshrined in a number of constitutions (e.g. Slovakia) and organic laws (e.g. Hungary).
- As a result the territorial fragmentation of local government is seen as a widespread problem. Options for reform are too complex for discussion here but are analysed in the Annex.

Universal State Functions

The State is always responsible for external relations, defence and macro-economic policy.

The following *field services* are normally operated by State owned or regulated agencies, which may include autonomous and occasionally privatised enterprises:

- Services which are located in regions but do not specially serve local populations, e.g. universities, research institutions.
- Administration of national taxes.
- Inspection or audit of local government and its services.
- Agricultural and veterinary services involving disease control and farming subsidies.
- Services which are highly integrated technically, e.g. post, railways (although local government may subsidise local commuter services).
- Environmental control in respect of major industries and water sources.

Uniform Local Government Responsibilities

Some competences are devolved to upper or lower tiers of local government almost throughout Europe. They are described below.

Physical Planning and Development Control

- In all cases the municipal level of government is responsible for making local land use plans and deciding applications for permits for new constructions, conversions, changes in use etc. The latter is often regarded as a “delegated” function to be undertaken by appointed officials, not elected mayors or councillors.
- In most countries local plans are supposed to comply with broader regional plans setting out strategies for location of major industrial development, transport routes, trunk infrastructure development and reservation of land for nature reserves, recreation etc. These are usually the responsibility of a higher tier of self government.

Public Health Control

Basic preventative services such as food inspection and pest control are municipal responsibilities in most EU countries, though not in CEE states where epidemiological control is usually exercised by the State. Local government duties also include waste collection and disposal. Waste disposal may well be managed, or at least regulated by higher tiers of local government, both to economise on investment in landfill sites, incinerators etc and to ensure provision of sites.

Parks, Open Spaces and Cemeteries

These are basically municipal responsibilities in all countries. Higher tiers of local government may manage large forests, nature reserves, country parks etc of regional significance and share responsibility for crematoria.

Recreational Facilities

Sports facilities, libraries, museums and other cultural activities are generally provided by local government, but these are not exclusive functions of any level of government, national, regional or municipal.

Public Transport

This is invariably a local government responsibility, but its nature and distribution between levels varies. Typically local government subsidises public transport services (either generally or in the case of special groups like schoolchildren and pensioners, or of congested or remote rural routes), controls traffic and organises school transport. Companies operating bus, tram and metro services may be municipally owned in large towns, but are increasingly privatised.

Social Services (excluding financial benefits)

Local government is invariably responsible for such services as residential or domiciliary services to elderly people, child protection, and aid to the physically handicapped. These services may be managed directly or, increasingly, by cooperation with the private and voluntary sectors.

Variable Responsibilities

In the case of other major competencies, the division between central, local government and the private sector varies between European countries as described below.

Education

- In Britain, Denmark, Hungary, Norway, Poland, Sweden and Ukraine local government exercises full responsibility for both primary and secondary education, subject to national policies over the curriculum and standards. This local responsibility includes the employment and payment of teachers. The division of this responsibility between municipal and higher tiers varies; in some cases higher tiers take responsibility for secondary or specialised schools.
- In several countries such as Austria, Czech Republic, France and Germany, local government is responsible for the construction, equipment and upkeep of primary and secondary school buildings, but not for the employment or oversight of teachers.
- In some countries individual school boards may exercise substantial responsibility for budgets, buildings, the discretionary elements of the curricula and even the appointment of staff. Both local government and parents are normally represented. This may dilute local government control in countries like Britain where it otherwise has devolved authority, or increase it where the State retains the major share of responsibility.

Hospitals

- Comparisons of responsibility for medical services are very complex, because they involve both the ownership and management of medical units and their funding.
- In Britain and Scandinavian countries, as also in Ukraine, public medical services are basically financed by taxes through national or local budgets. In Scandinavia medical services are usually a local government responsibility, hospitals belonging to the upper tier. In Britain they are a national government function, though exercised through a complex hierarchy of nominated district health authorities and quasi-autonomous trusts.
- In most other countries the operating costs of medical care are met from compulsory insurance schemes; this permits some variety in the ownership and management of hospitals and other medical units. In several countries including Austria, Germany, Hungary, Netherlands and Poland, local governments provide either primary health care units or hospitals, or both, with varying degrees of financial responsibility for buildings and equipment. Hospitals would normally be run by large municipalities or upper tier governments. In France hospitals are autonomous units, but the mayor presides over the management board. In Italy medical services are run by special health districts, which are inter-municipal bodies.

Social benefits

- State regulated insurance schemes provide for certain entitlements in all countries including a basic retirement pension, some disability payments and unemployment pay (limited typically to one year). These fixed benefits are administered by local government in Scandinavian countries, but elsewhere by a national network of benefit offices. British, Czech and Hungarian local authorities administer housing benefits.
- Local governments are more widely involved in the provision of "safety net" benefits i.e. payments, either regular or in emergencies, to people in poverty like the long term unemployed, old persons with no occupational pension, single parents or the disabled for whom legal entitlements are insufficient. Whilst all countries have this safety net, the degree of local government responsibility for it varies. In Austria, Belgium, France, Germany, Hungary, Italy, Netherlands and Portugal, the whole of the safety net is a local responsibility (higher tier in France and Germany). In some other cases local responsibility is restricted to emergency relief, while state assistance is negotiated.

Roads

Local governments in all countries except Portugal maintain local and regional roads. British local authorities also maintain national trunk roads, (though only as agents in the case of motorways).

Public utilities

In Britain water, sewerage, gas and electricity have been privatised though regulated by national legislation. In most other countries these remain local government responsibilities, though usually franchised to companies which operate on a national or regional basis. The ownership of these companies varies widely between countries.

Fire protection

Within the EU this is a local government responsibility in Austria, Belgium, Britain, Denmark, Germany, Netherlands, Portugal, Spain and Sweden. It is a state function in Greece and Italy, and complex state/local arrangements operate in France. Practice varies considerably in CEE states.

Policing

Municipal police forces responsible for traffic and byelaw enforcement operate parallel to national police forces in Austria, Belgium, Czech Republic, France, Germany, Hungary, Italy, Slovakia and Spain. In Britain there is no national police force; county police forces are supervised by special boards representing local governments and the magistrates.

Social Housing

Within the EU local governments have some degree of responsibility for provision of social housing in Austria, Britain, Denmark, France, Germany, Italy, Netherlands, Portugal, Spain, and Sweden. This is also the case in CEE countries. In France, Germany and the Scandinavian countries this is normally undertaken by participation in, and subsidisation of non-profit housing

companies or associations, which is also becoming common in Britain.

Regulatory Functions

Previous paragraphs have described local government responsibilities for town planning and development control, traffic management, policing and benefit administration. In addition most local government systems have delegated responsibility for civil and electoral registration (though civil registration tends to be a Church function in Scandinavia). In Britain, Denmark, Spain and Sweden local government is responsible for consumer protection. In most countries local government has some responsibility for environmental protection, though shared in varying degree with a specialised state agency.

Rationale and Criteria

Traditional factors

There is so much variety in the distribution of competences between state and local government that it is very difficult to identify any guiding principles.

Within the EU much is due to history. In particular there are differences in tradition between

- southern European/Mediterranean countries where the State has maintained both a prefectorial administration and field technical services which have provided many services directly and supervised and assisted the provision of local government services, and
- northern European countries where the State has not maintained much executive capacity outside the capital, and has relied on local government to undertake most service delivery

One practical result of these different traditions is that northern countries have taken more drastic steps to reorganise the structure of local government so that individual local authorities are big enough to manage major services. In these countries, also, most of the technical expertise at regional and local level is employed by local rather than state government. In southern countries the presence of state machinery has enabled the survival of small municipalities, and much dependence on the professional capacity of state agencies. There has been some change over the last twenty years, particularly in France, so that the contrasts between traditions are not as marked as they used to be.

Within CEE countries, an autonomous level of municipal government was established rapidly in the early 1990s and responsibility devolved to it for physical infrastructure, including communal services, housing and utilities such as water, sewerage and district heating. There have been considerable delays in most states, however, in reforming the upper tiers of administration, which have affected the speed at which competences such as education, social services, health care and regional roads have been reorganised, due to their larger catchment areas as well as degrees of national concern. The process of territorial reorganisation and devolution is now almost complete in most of the accession countries, but in the former Soviet Union much responsibility for these functions outside the larger cities has been left with rayon administrations whose executives are still State appointed and whose character and future remain controversial.

Reasons for devolution

There are a number of standard reasons for devolving responsibility to regional/local self government:

- the advantage of local discretion in adapting services to local conditions and preferences
- the opportunity for innovation with only localised risks, but potentially national benefits
- increased accountability, i.e. local pressure on officials to behave promptly, courteously, fairly, honestly etc
- potential for coordination of services and investments which may deal with a common problem (e.g. unemployment) or clientele (e.g. the elderly)
- efficiency savings from sharing of common services (offices, receptionists, equipment etc)
- ability to harness local resources including taxes, knowledge and social responsibility.

Risks of devolution

There are some obvious risks in devolving responsibility to local government. These include

- disparities in standards of service where uniformity or equality of opportunity are desirable (e.g. education)
- neglect of wider or national interests; e.g. failure to protect air or water quality
- excessive political interference in processes which should be impartial
- excessive "producer" interests e.g. local politicians may not be strong enough to enforce accountability on teachers, doctors, unionised labour etc.
- local government jurisdictions may be too small to fit service catchment areas or employ sufficient expertise.

None of these reasons need be insuperable. Intermunicipal cooperation, the assignment of functions to higher tiers or contracting out may overcome the weaknesses of small jurisdictions (see the Annex). Regional or local disparities may be overcome by financial equalisation.

Above all, devolution does not mean abdication of responsibility. Devolution of major responsibilities to self-government should be accompanied by the development of effective professional inspectorates and audit systems. In unitary countries Parliament retains the power to specify national policies and standards wherever they are relevant.

There is much emphasis now on partnership between levels of government, rather than "autonomy" or "control". This is partly because of privatisation or "de-etatism", but also because contemporary problems like unemployment, criminality, family breakdown, or drugs cannot be tackled in isolation by any level of government or even the public sector as a whole.

Kenneth Davey

SOLUTIONS TO TERRITORIAL FRAGMENTATION

1. *Alternative Remedies: structural or cooperative*

- 1.1 There are many types of solution to territorial fragmentation, but they can be grouped into two categories
- (1) structural solutions, depending either on amalgamations or on intermediate levels of single or multi-purpose authority
 - (2) cooperative solutions, leaving basic local authorities with functional responsibilities, but exercised through forms of cooperation or buying in.

These will be examined in the following sections.

2. *Structural Solutions: Amalgamation*

- 2.1 The *amalgamation* model simply involves abolishing small municipalities and merging them into new basic units of local government with some minimum population size. It is typified by reorganisations in Scandinavian countries where minimum populations are generally around 5,000 but averages in the range of 10,000 to 30,000.
- 2.2 There is also a *semi-amalgamation* model which combines small municipalities into larger units for administration and service provision but leaves some form of representative body in existence in the original settlements. Examples are the British rural system of districts and parishes, and the *grossgemeinde* in some German Lander.
- 2.3 The British reorganisation in 1974 merged local authorities into districts with large populations (25,000 being the smallest). All mandatory tasks and all the normal financial resources (grants, taxes etc) were allocated to the districts or county tier authorities. The districts became in practice the basic level of local authority. Smaller communities within districts can, however, constitute and elect parish councils with the right to levy a small surcharge on the local district tax. Parish councils have no mandatory tasks but they can provide supplementary services if they wish, have the right to be consulted on all planning issues (plans and planning/building permissions) and generally represent local opinion to other bodies, public or private.
- 2.4 *Grossgemeinde* were formed in some German Lander by amalgamating smaller *gemeinde* to form a single operating unit of local government, undertaking all tasks requiring substantial budgets and staff. However, the original *gemeinde* were left with the right to elect a *burgermeister*, to undertake small ceremonial and administrative duties and to represent local opinion to higher authority. A variation in the Rhine Palatinate created an upper tier of *verbandsgemeinde*; both the *verbandsgemeinde* and the constituent *gemeinde* have elected mayors and councils and their individual competences, but the *verbandsgemeinde* provides a single office serving both levels.

- 2.5. Amalgamation is always a contentious process in which small, usually rural communities fear loss of power and identity to central towns. Two steps can lessen those fears. The first is an electoral system which divides the amalgamated area into constituencies each electing members of the council. This generally gives the smaller communities better chance of representation on the council than a party list system.
- 2.6 The second step is the establishment of municipal branch offices serving one or more villages which can deal with routine business such as tax payments, applications for licences, benefit payments or civil registration so that citizens do not have to travel to the central municipal office. Computer connections between central and branch offices greatly facilitate such physical decentralisation.

3. *Cooperative Solutions: Inter Municipal Co-operation*

- 3.1 Alternative approaches leave basic tier municipalities with a full range of local government tasks, but insert various cooperative and contracting mechanisms to compensate for their inadequacies.
- 3.2 The 1990 local legislation in central European countries generally made provision for municipalities to form associations for the common discharge of functions. These powers were largely voluntary and there has been general disappointment at the lack of implementation.
- 3.3 The Hungarian legislation was an exception in that it virtually required very small neighbouring municipalities to establish a common office to employ a qualified Administrative Notary. This official is personally charged with performing the municipality's regulatory functions such as licencing, development control and tax assessment. These stipulations are gradually becoming stricter; development control, for example, must be assigned to a common office able to employ a qualified engineer or architect to advise the Notary.
- 3.4 Far greater experience of intermunicipal cooperation lies in those western European states with large numbers of small municipalities. Chief of these is France which has over 2,000 multi-purpose *syndicats de communes* maintaining roads, water supplies and social and educational services on behalf of their member communes and over 11,500 other *syndicats* providing a single service such as water supply, schools, electricity, gas or flood control. They are run by joint committees representing the member commune councils and levying a compulsory contribution from them. Roughly 50% of Spanish municipalities are involved in joint authorities, half of them single-purpose and half multi-purpose.
- 3.5 Even in countries where basic tier authorities are generally larger, joint working is common for specialised functions with significant economies of scale. In Britain, there are normally joint authorities at county level for services such as fire protection, public transport and waste disposal. In Finland municipal authorities form joint boards mainly for health care, social services and vocational training.
- 3.6 There are a number of significant differences in the operation of these joint authorities. The first is their legal form varying from an independent statutory authority to a joint

committee or a company in which the partner municipalities hold equity. Most are governed by some form of board of representatives of the member authorities. They may establish their own management structure or entrust administration to one of the constituent municipalities. The British joint boards normally employ their own technical staff but use the administrative, accounting and legal machinery of one of the member boroughs/districts.

- 3.7 The second difference concerns their financial base. Joint authorities typically receive directly any charges or fees pertaining to their function, but rely on contributions from member municipal budgets for the balance of their cost. Whether these contributions are obligatory or voluntary, i.e. at the discretion of the joint boards themselves or the municipalities, depends on the statutory base of the board. In some cases, however, joint boards may levy a tax directly, normally by "precepting" on taxes raised by their members, i.e. an additional percentage rate on the local tax base.
- 3.8 The third difference lies in the voluntary or compulsory nature of the cooperation. Some joint authorities are purely voluntary creations of their member municipalities. Some, by contrast, are established by legal requirement. One such example is the metropolitan fire and public transport authorities in Britain; another of mixed success is the common rural administrative offices in Hungary. Many lie in between these two descriptions, the results of vigorous arm twisting by the State. A high proportion of the French *syndicats de communes* fall into this category - constituted by agreements brokered by Prefects, backed by State grants and loans only accessible to joint authorities.
- 3.9 This, indeed, may be the principal lesson of western European experience. Large municipalities may combine spontaneously to run a highly specialised function which is peripheral to their main operations and a relatively small charge on their budgets. But small municipalities do not cooperate readily with neighbours to run a basic service like a school or a water supply or to share administrative machinery, whatever the technical merits of such arrangement.
- 3.10 A high degree of legal compulsion or State manipulation lies behind the scale of intermunicipal cooperation found in countries like France and essential in such systems to secure service viability, particularly in rural areas. Of special interest is the French legal provision that all communes in a locality must participate in a specific *syndicat* if it is established by agreement between two thirds of the communes concerned or communes representing two thirds of the population of the area served. It may be important, also, to make budgetary contributions binding on member authorities and to provide model formulae for the distribution of costs.

4. Contractual Arrangements

- 4.1 An alternative strategy for coping with inefficiencies of size is "contracting out" or "buying in".
- 4.2 Such practice may be inter-municipal or commercial. Intermunicipal arrangements consist of buying the services of another local authority. This is not uncommon in central Europe where rural and suburban authorities frequently purchase the services of municipal companies owned by the core town (though these are normally reimbursed by direct charges on their residents).

- 4.3 A widespread alternative is contracting out service provision to a commercial company, which may well operate on a national, or even international basis. Again, France offers the most celebrated cases with companies, led by Vivendi (formerly Compagnie Generale des Eaux) and Societe Lyonnaise-Dumez, managing 75% of municipal water supplies by contract, with a high degree of vertical integration including distribution, treatment, maintenance and pipe manufacture. These companies have expanded their contracting to many other municipal services, Vivendi being active in construction, street lighting, leisure management, carparking, telecommunications, public health and catering. They have also expanded to other countries, taking advantage of privatisation and contracting out policies in Britain, for example, and securing water supply management contracts in the Czech Republic.
- 4.4 British legislation has required local authorities to submit provision of many services to public tender, although the in-house organisation is allowed to compete with the private sector. This has also brought private sector companies into the management of services like refuse collection and leisure centres, and even now into "white collared" services like engineering, payroll management and legal representation. Contracting out enables municipal purchasers to benefit from the economies of scale offered by external suppliers, and to tap into the expertise they gain from operating on a wider scene. Some of the leisure management companies have undoubtedly brought new flare and innovation to both sporting and cultural facilities in Britain. It also potentially offers greater efficiency; compulsory competitive tendering is estimated to have resulted in overall cost savings of 6% in Britain, even though in-house organisations have secured around 70% of the contracts. But the efficiency benefits do depend on the existence of genuine competition, based on alternative providers, honest and transparent procurement processes and effective supervision. Local authorities have to retain the technical expertise to design and supervise contracts - or have some shared resource for doing so.