

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

Recommendation Rec (98) 12 of the Committee of Ministers to member states on supervision of local authorities' action

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recommends to the governments of member states that they:

1. adopt the appropriate measures:

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

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

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

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

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

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

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

Appendix to Recommendation No. R (98) 12

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

I. Guidelines on the scope of administrative supervision

- To provide that, unless the contrary is provided for by law, local authorities exercise their own competencies.
- To favour the attribution of "own" competencies over the delegation of competencies, resulting in a reduction of expediency supervision.²
- To enumerate clearly, in statutory provisions, the acts subject to supervision.
- To limit compulsory ex officio administrative supervision to acts of a certain significance.
- To reduce a priori administrative controls (those where the involvement of a government authority is necessary for a local decision to take effect or be valid).

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

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

III. Guidelines concerning the supervisory procedures

i. Judicial procedures

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

ii. Supervisory procedures before the administrative authorities

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

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

iii. *Financial supervision and supervision of management*

- Minimise the effects of financial supervision and supervision of management in so far as these can bring into question the expediency of choices made by local elected representatives.

- To organise these two kinds of supervision in order to foster good accounting practices and the effectiveness of management, prevent financial imbalances, monitor financial rehabilitation of local authorities which encounter financial difficulties and enlighten citizens with complete and objective information.

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

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

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