## Local Government

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<table>
<thead>
<tr>
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</thead>
<tbody>
<tr>
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</tbody>
</table>

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A. Definition

1. Core Meaning

1. Local or municipal self-government is a system of management of local affairs which is exercised by special elected bodies directly representing the population of particular administrative-territorial unit of the country (Leybo and Entin 291).

2. The European Charter on Local Self-Government adopted by the Council of Europe on 15 October 1985 (CETS 122) gives a general definition of local government which has become universal and accepted by all democratic states. Under the local government Charter understands ‘the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population’ (Art. 3).

3. Local communities represent one of the basic elements of any democratic regime and the right of citizens to participate in management of public affairs is an integral part of the democratic principles of most modern states. The concept of local self-government assumes that citizens’ participation in management of public affairs can be implemented most directly at the local level. It is clear that the existence of local communities vested with real powers makes it possible to provide control which would be the most effective and close to the needs of the population (Batanov 4).

4. In most modern states local government is carried out by special bodies of local self-government (councils or assemblies) freely elected by → secret ballot on the basis of direct, equal, → universal suffrage, but there can be also local authorities appointed directly by the central authority. Local government is practically the only centre of power outside the national parliament (→ legislative bodies) with the legitimacy based on → elections and national will (Duncan 12). This independence, however, has a different nature than autonomy, as local representative bodies do not have their own legislative powers and act on the basis and within the framework of the laws established by the highest representative bodies.

5. In practice, the degree of real independence of local authorities is limited. After all, granting to them certain powers is often just the result of → separation of powers between the centre and the administrative-territorial units within the unified state mechanism. Local authorities do not have the competence to establish their jurisdiction (that is to determine the scope of their authority) which is set by the higher state bodies and the courts.

2. List of Concepts

(a) The Natural Law Doctrine

6. In legal doctrine there can be determined two basic approaches to the nature of local government (Dementyev 4). First of all, this is the traditional interpretation of self-governing local communities in the spirit of the natural law doctrine (mainly from French (A.Mabileau, P.Galès) and some English authors (D.Hill, R.Leach, J.Stewart). This concept distinguishes between ‘artificially’ created (ie by acts of the central authorities) administrative-territorial units (eg canton, district), and ‘naturally’ existing entities, only recognized by the central authorities (eg a city). It is believed that in governing the former ones the interests of the state should prevail, while the latter may have significant autonomous rights and be guided primarily by local interests.

(b) State Theory of Local Government

7. In Anglo-Saxon countries state theory of local government is commonly recognized which is
largely based on the judicial practice on municipal affairs. According to it, local authorities are, first and foremost, agents of central authorities providing services to the population in accordance with national standards and under the state control (Rhodes 1). So the main function of local government is to exercise public authority at the local level. Local authorities operate only insofar as the → central government is not able to independently manage all administrative-territorial units from a purely technical point of view (Davies 35). Some French authors (eg, G.Majone, P.Duran) also support this theory. Local authorities are formed primarily for the convenience of the government, because it is impossible to govern the state from the centre only, without creation of local bodies (Drago 133).

8. Describing the current realities in local governance in Germany, the German researcher Rolf Grawert emphasizes that the more local territorial units are involved in the state politics, the more they are forced to abstract from local specifics and to follow the unified principles of state policy (Grawert 107). As local authorities are linked with the tax and financial system of the state (→ taxes; → public finance), they are rather part of the whole than independent territorial units, and the ability to do something at the municipal level is more dependent on the general situation in the country than from specific local circumstances (Grawert 99). This explains why in many modern works on local governance (particularly of English writers, such as D.Wilson, R.Jackson, E.Banfield) interpretation of local government in the spirit of the natural law doctrine is replaced by the thesis that local government derives from the public authorities.

(c) ‘Local Government’ vs ‘Local Self-Government’

9. In order to adequately assess the role of local government in the state mechanism it is required to understand the relationship between the concepts of ‘local government’ and ‘local self-governance’. Usually in the literature local government (called also ‘local control’) is defined as authorities appointed from the centre and representing the state administration. Local self-governance is set by local representative bodies elected by the local population directly. It is important not to confuse the local government to local self-governance and to consider them in the ratio of parts to the whole, since local management is a complex and flexible mechanism and can include both public administration and local representative bodies. For example, in the United Kingdom (‘UK’) and other Anglo-Saxon countries there are no representatives from the centre in the administrative-territorial units. It turns out that there is no local control as such, although this term is used in law and in works of individual researchers (Chirkin 676).

(d) Public Theory of Local Government

10. In the constitutions of many countries a different approach can be traced which is based on the distinction between state power and local self-government, ie the local government is taken outside of the state mechanism (eg Art. 12 of the Constitution of the Russian Federation (RF) from December 12, 1993). In Russia, this approach has its roots in the so-called ‘public’ theory of self-government (popular in the 1860s) which opposed the interests of society to the interests of the state, defending the right of local institutions to be engaged in purely public affairs.

(e) The Concept of ‘Municipal Government out of Politics’

11. Regarding the role of local authorities, democratic states usually apply the doctrine of ‘municipal authority out of politics’. This means that local authorities may not decide on political issues that affect the interests of the entire state and, therefore, cannot have a purely local significance. However, this does not mean that local government is not subject to political influence which is impossible as local bodies are elected on regional lists of political parties. This concept aims to more clearly divide the competence between the regional and central authorities to prevent the intervention of regional bodies to decision-making on national issues.
B. Evolution

1. Formation of the Modern Administrative-Territorial Division (Eighteenth–Nineteenth Centuries)

12. In most countries (e.g., United States (‘US’), Germany, Spain, Italy, Switzerland, etc.) basics of modern system of administrative-territorial division were formed in the nineteenth century, and in the UK, even earlier, and were associated with the processes of transition from feudal organization to a modern industrial society. One of the main demands of emerging cities was granting them autonomy in local affairs, freedom of community self-government from oversight and interference by the central authorities. Since the mid-nineteenth century this kind of governance became known as local government that reflects certain realities of the time. A number of researchers believe the concept of local self-government is primarily a product of the liberal democratic state of nineteenth century (e.g., Ashford 2).

13. At that time local representative bodies were treated as the fourth branch of power bound by law and judicial control but not subordinated to the government and its agencies in the centre and in the administrative territorial units. Interpretation of the local administration as the fourth branch of power may be found in contemporary works dedicated to the countries where municipalities have a strong and autonomous position in the state mechanism (e.g., Warmenhoven). However, local government gradually turned into a kind of executive activity undertaken in the framework of general state policy due to detailed shaping of legal status of local authorities in the legislation and increasing interlacing of competencies of municipalities and central authorities.

14. The most traditional is the two-level scheme of administrative-territorial division: counties and municipalities in the US, amts and communities in Denmark, lens and communities in Sweden, prefectures and municipalities in Japan, provinces and communities in the Netherlands, etc. Historically, the formation of a two-level organization local authority is connected with the different origin of the territorial units of municipal and superior levels. Municipalities were formed naturally, every town or village became a separate administrative-territorial unit (municipality or community). The higher level units (prefectures, districts, departments, provinces) were purposefully created by the public authorities to resolve their own problems, i.e., originated artificially. As a result, they were more similar in size and in population than municipalities. The existing two-level system of administrative-territorial division was mostly formed in the eighteenth and nineteenth centuries.

2. The Administrative-Territorial Reforms of the Twentieth Century

15. Social and economic changes of the twentieth century led to the fact that the old administrative-territorial division has ceased to meet the objectives of the authorities and distribution of the population. This primarily refers to territorial units of the basic level: too small rural communities are unable to manage effectively due to the lack of staffing, the narrowness of the fiscal base and other complexities associated with the small size of the population. To solve this problem, in the second half of the twentieth century the administrative-territorial reform was held in many states, aimed at reducing the number of basic level units by combining them. So, in Germany in the early 1970s the number of communities was reduced three times, in the Netherlands the number of communities was reduced by half over a century, in Denmark the number of communities has decreased in five times (by law of 1 April 1970).

16. The second part of the administrative-territorial reform was connected with formation of unified management bodies for large cities. As a result of the urbanization of the eighteenth to twentieth centuries many small settlements, towns and villages joined to the major cities, forming a single agglomeration. Traditional administrative divisions prevented effective management because a city could consist of several independent municipalities (→ administrative division). This problem was solved in two ways: either through intermunicipal cooperation or by granting to the major cities a...
special legal status of independent territorial units with unified authorities.

17. For example, London is divided into 32 districts, managed by district councils. From 1986 to 2000, urban management functioned only at district level. The Greater London Council was abolished at the initiative of the Conservative government in 1986, and the restoration of city management in London became one of the main election slogans of the Labour party in 1997. This intention was supported by most residents of the capital on the referendum in 1998. Direct elections of the mayor and the Greater London Authority have been held again since 2000.

18. The administrative-territorial reforms also resulted in the formation of such territorial entities as the city-regions or cities outside the regions in Germany and in Austria, dins and new communities in Greece, independent cities in some US states, a new unitary territories in the UK and New Zealand.

19. Finally, the third level of administrative-territorial division was created in the second half of the 20th century: regions in France, Italy, Portugal, Ireland, UK (in England), peripheries in Greece, management districts in Germany. In some countries a three-level administrative-territorial division is traditional, but in most cases the creation of new territorial units was emerged by a number of new factors. Firstly, old administrative-territorial units were too small for effective economic planning which becomes an important aspect of the state policy since the 1950s in almost all countries. Secondly, as a result of the → decentralization of power, previously created artificial territorial units (departments, districts, provinces) receive the right to self-government. Thirdly, the establishment of a regional level of territorial organization in Western Europe was stimulated by European integration. Many EU development programmes are designed for regions that meet certain geographical characteristics. Depending on the characteristics of the state, these areas can be managed by central authorities (Germany, Greece, UK), be self-governed (France, partly Ireland), or have greater autonomy comparable to the status of federal units (Italy, Spain; → federalism; → component federal units).

20. In Latin America, the legislation on local governance was influenced by other factors, such as the Spanish colonial legislation. The first local bodies were created in Mexico in 1519 and were regulated by special ordinances adopted by the Spanish Parliament—the Cortes. On the one hand, local authorities were provided with wide powers, and on the other, they were put under tight control of the central authorities. Urban municipalities were provided with their own property, received the right to consider local issues, collect taxes and issue local regulations. However, the heads of municipal bodies (mayors or corregidor) were considered agents of the central government. So, the system of administrative autonomy was introduced in Latin America that means significant autonomy of local government in the framework of the law but under strict control of the central authorities through their representatives in the administrative-territorial units (Yeremyan 99). This principle has become fundamental in the law on local government and applies in Latin America up to the present.

C. Comparative Description

1. Comparative Constitutional Framework of Local Government

21. Local government is usually regulated by the constitution and laws of the state. The constitution of federal states can provide detailed regulation of local government (Austria, Mexico), establish general principles of formation and competence of local authorities (Germany, India) or simply avoid any provisions regarding this issue leaving the legal implications related to local administration to federal units (US, Australia, Canada). For example, the Constitution of Mexico contains detailed provisions dedicated to local government. Its fifth section establishes the basic principles and structure of local authorities. Here I would concentrate on the most popular
jurisdictions (Germany, France, US, UK).

22. The Grundgesetz of 1949 (the German Constitution) states that ‘in the lands, counties and communities people shall have representative bodies formed by general, direct, free, equal and secret elections’ (Art. 28(1) of the Grundgesetz). Art. 28(2) of the Basic Law guarantees the municipalities local autonomy by granting them the right to manage all their own affairs on their own responsibility within the limits set by the law. The right of self-government also includes responsibility for financial matters. The guarantee of local autonomy prohibits federal and Länder legislation from removing the rights of the local authorities to manage their own affairs or from restricting this right to such an extent that the substance of the autonomy is taken away from within.

23. There is an extensive practice of the → Federal Constitutional Court of Germany (Bundesverfassungsgericht) concerning the scope and limits of local government. Local government is in principle responsible for all affairs within its territory (BverfGE 21, 117 (128 et seq); BverfGE 79, 127 (146)). Local self-government has two dimensions: one administrative (Selbstverwaltung als Verwaltungsmodus) and the other functional (Selbstverwaltungsaufgaben). The administrative dimension relates to a municipality’s management powers (Organisationshoheit), power to appoint staff (Personalhoheit) (BverfGE 1, 167 (175); BverfGE 17, 172 (182 et seq); BverfGE 91, 228 (245)), power to make by-laws (Satzungshoheit), power to administer its own finances (Finanzhoheit) (BverfGE 71, 25 (36)), and zoning and planning powers (Planungshoheit). These powers are not dependent on enabling legislation but come from the Basic Law. Other powers are conferred by Land law. According to the principle of all-responsibility of the municipalities, municipalities are also in charge of all those competencies within their territory that are not explicitly distributed to a land or the federation, which are necessary for organising the daily living conditions of the local people (BverfGE 79, 127 (146)).

24. In the US two main approaches are used: Dillon’s Rule and home rule. Dillon’s Rule is derived from the two court decisions issued by Judge John F Dillon of Iowa in 1868. It affirms narrow interpretation of a local government’s authority, in which a substate government may engage in an activity only if it is specifically sanctioned by the state government. Dillon’s Rule was challenged by Judge Thomas Cooley of the Michigan Supreme Court in 1871, with the ruling that municipalities possess some inherent rights of local self-government. Cooley’s Rule was followed for a short time by courts in Indiana, Iowa, Kentucky and Texas until the US Supreme Court upheld Dillon’s Rule in 1903 and again in 1923 (Writ 12). Since then, the following tenets have become a cornerstone of American municipal law and have been applied to municipal powers in most states:

- A municipal corporation can exercise only the powers explicitly granted to them;
- Those necessarily or fairly implied in or incident to the powers expressly granted (→ implied powers);
- Those essential to the declared objects and purposes of the corporation, not simply convenient, but indispensable.

25. State constitutions vary in the level of power they grant to local governments. However, Dillon’s Rule states that if there is a reasonable doubt whether a power has been conferred to a local government, then the power has not been conferred. Dillon’s Rule allows a state legislature to control local government structure, methods of financing its activities, its procedures and the authority to undertake functions.

26. The inflexibility of this system is the reason that many states began to adopt ‘home rule’ provisions in the early 1900s that conferred greater authority to their local governments. Home rule is a delegation of power from the state to its sub-units of governments (including counties, municipalities, towns or townships or villages) (Richardson et al). That power is limited to specific
fields, and subject to constant judicial interpretation, but home rule creates local autonomy and limits the degree of state interference in local affairs. There are ten states that employ home rule: Alaska, Iowa, Massachusetts, Montana, New Jersey, New Mexico, Ohio, Oregon, South Carolina and Utah (Krane et al).

27. The powers and limits of home rule authority for local governments are defined state-by-state. State provisions for home rule can be defined by each state’s constitution and/or statutes enacted by its legislature. Not all cities make use of the discretionary powers of home rule that are provided by their charter. Functional powers are the most frequently used and expanded.

28. Home rule cities enact charters that establish governance structures and rules of governance. Charters may also broaden municipal powers beyond those expressly granted by the state (Krane et al). City charters express constitutional-level rules that define the citizens’ rights to have their preferences included in the process of public decision making (Maser 1985, 1998; Miller 1985). State rules may provide options for forms of municipal government, but the selection of local governance institutions is primarily a local choice.

29. It should be mentioned here that capital cities of many countries have their own system of local government that differs from other municipal units of the state (eg Washington, London, Paris, etc). Another recent constitutional trend is that federal systems are increasingly moving from a dual system of government (central-state/provincial relations) to institutionalised multi-level government. The growth of strong local government requires the redefinition of the role and function of federal and municipal units.

30. The scope of constitutional regulations of local government also varies in unitary states (→ unitary state). The French Constitution of 1958 is very brief in this respect. It only states that ‘local units of the Republic are communes, departments, overseas territories’, which ‘is freely managed by elected councils under the conditions provided by law’ (Art. 72).

31. The constitutions of other countries dedicate whole chapters and sections to local government: the Constitution of Japan (chapter ‘Local Government’), Bulgaria (‘Local Self-Government and Local Administration’), Mongolia (‘the Administrative-Territorial Units of Mongolia, their Governance’). The Spanish Constitution contains a section devoted to the territorial organization of the state, including local government.

32. Constitutional provisions on local government are specified and detailed by the current legislation (eg the local government act 1947 in Japan, the law on the organization of local government 1974 in New Zealand, the law on general principles of organization of local self-government 1995 in the Russian Federation). In addition, the local administration is regulated by various acts on other constitutional institutions and especially on elections.

33. In the UK the provisions referring to local government are set basically in general legislation but also so-called ‘local’ or ‘private’ acts of Parliament may be enacted which are addressed to a particular municipality. Such acts are generally adopted on the initiative of the municipality. Currently, the value of private acts is small but they still continue to be used as a substitute of general legislation in subunits. Local government may also be regulated by adaptive laws. The central Parliament adopts model laws and local authorities put them into force on their territories with modifications arising from local peculiarities. Such laws or its separate provisions are enacted in administrative-territorial units upon the request of municipal councils (eg provisions of the Law on Public Health 1907, the Rent Act 1968) (Garner 307).

2. Models of Local Government

34. Depending on the relations of local authorities both among themselves and with the state bodies there may be distinguished three main models of local governance in the world: Anglo-
Saxon (English) model, Continental (French) model and Iberian model, some authors also define Soviet model (Chirkin).

(a) Anglo-Saxon Model

35. The Anglo-Saxon model of local governance (UK, US, Canada, Australia, etc.) assumes that local representative bodies formally act independently within their powers and are not subordinate to the central (or federal) authorities. The population of the municipal unit elects local representative bodies directly, in some countries private officials can be elected as well (eg US). This model lacks any officials appointed from the centre for controlling the local government. Local councils independently and under its own responsibility decide on local issues falling outside the competence of the central authorities. The state bodies exercise mainly indirect control over local authorities through financing of their activities, ministerial inspections, judicial control or adaptive laws.

36. The relationship between the central authorities and local self-government are determined by the principle of *inter vires* (to act within the powers granted), ie local government can perform only those actions that are expressly prescribed by law (*inter vires principle*). All other actions are considered to be executed in excess of their authority (*ultra vires*) and can be recognized as unlawful or void by court.

(b) Continental (French) Model

37. Continental (French) model of local government is used in most countries of the world (continental Europe, Africa, Latin America, Middle East). It is based on the combination of direct state control (state administration) in municipal units and local self-government. Agents of the state administration in administrative-territorial units supervise over the activities of local representative bodies which are, in their turn, subordinate to the higher state authorities, eg in Italy, regions are entitled to exercise control over the legality of acts issued by local authorities of the provinces, communes and other local entities (Art. 130 of the Constitution 1947). In Germany, municipalities are not incorporated as a third order in Germany’s governmental system (BverfGE 11, 266 (275)). They are rather a part of Land administration. There is also no direct legal relationship between the federation and the municipalities. Supervision of the municipalities is exclusively the task of the Land authorities. The legal supervisory authority is authorised to inform itself about all municipality affairs. In particular, it can view municipality institutions and facilities, examine the business and cash account management and call for reports and files. In reality, however, the municipalities are strongly influenced by federal policies. For example, municipalities must fund all social aid from their own budgets.

(c) Iberian Model

38. Some researchers refer the organization of local governance in Latin America to a specific Iberian model (Shashkova 162) which combines elements of self-government and state control. In most Latin American countries there is no direct central control of local authorities. In every administrative-territorial unit a council shall be elected that represents the local population and also an official (mayor, Regidor) approved by the central authority as its representative in the municipal unit. Such representative shall have only supervisory functions and act in collaboration with the head of municipality elected by the people or by the council.

39. In Ecuador, in provinces the people elect provincial councils headed by the prefects and the governor represents the central administration, in cantons there are municipal councils headed by mayors, although the chief administrative officer is the so-called ‘political leader’. The functions of appointed representatives of the centre are officially reduced to oversight of elected local bodies but actually apply to daily control over the work of local government (Constitution of Ecuador 1980).
40. The differences between these two models are not crucial and tend to minimize. (particularly after the municipal reforms in France and the UK in 1980s). Both models are based on similar principles, local authorities are representative bodies formed through free and competitive elections.

41. Local governance in some countries (Austria, Germany, Japan) has similarities with both the Anglo-Saxon and Continental models while possessing some specific features, which suggests a kind of mixed or hybrid forms of local governance. For example, in India local governance is in most of its respects similar to the English model. At the same time there is absolutely not peculiar to the Anglo-Saxon model direct state control exercised in the municipal units through officials appointed by central authorities (Rao 3).

(d) Soviet Model

42. The Soviet model is fundamentally different from the above models. This model was implemented mainly in the Soviet Union and other socialist states (→ socialism). Nowadays it continues to exist in only a few countries (China, Cuba, North Korea, Vietnam). The countries of Eastern Europe and Russia abandoned the Soviet model adopting mainly the Continental model of local governance as the closest to their legal systems.

43. The Soviet model denies the principle of separation of powers and is based on the opposite principle of the sovereignty of representative bodies (councils). The main task of local councils in a socialist state was limited primarily to the need to ensure realization of functions of the central government in every area of the country. This approach was reflected, in particular, in the Constitution of Cuba, which characterizes the local assembly as the highest organ of state authority in administrative-territorial units carrying out state functions in the respective territories (Arts 101, 102).

44. Representative bodies (councils) are deemed the initial legitimate authority originated from the people’s sovereignty and all other state bodies are considered to be derived from the councils and accountable before them. In accordance with the Constitution of the People’s Republic of China 1982, all state administrative bodies, judicial and prosecuting bodies are formed by assemblies of people’s representatives, responsible to them and controlled by them (Art.3). Local executive bodies (executive committees) are also formed by local councils from its members and are subordinate both to the executive body of the higher level and to the local council.

3. Systems of Local Government

45. Systems of local government are based on administrative-territorial division of the country which falls to the competence of the central government in unitary states and often to the competence of federal units in federations. Administrative-territorial units set spatial borders of local authorities and are created primarily for the convenience of management of public affairs on the respective territory. Nowadays, most countries tend to have a two-level (Denmark, Costa Rica, Finland, Japan, etc), a three-level (Italy, some states in India, Kenya, etc), a four-level (Germany, Cameroon, Senegal, etc) or a five-level (France) system of administrative-territorial division.

46. The lowest level of the administrative-territorial division usually includes settlements (town, village, group of villages (eg in Bangladesh), urban areas (in many of the largest cities in the world), and even individual neighbourhoods (eg in Indonesia). A kind of administrative-territorial unit is a nomadic tribe or clan (as in Mali, Niger). The medium level of administrative-territorial division is formed by the higher administrative-territorial units (province and region in Italy, prefectures in Japan, cantons, districts, departments and regions in France).

47. Not every administrative-territorial unit elects its own representative body. There are no such bodies in the French cantons and districts, as well as in the districts of the German lands, in the
Polish provinces. Representative bodies do not exist at the departmental level in such Latin American countries as Bolivia, Honduras, Costa Rica.

48. Whether a representative body shall be created or not depends on the already mentioned distinction between natural and artificial administrative-territorial units. For a long time it was believed that a natural unit has rights of territorial collectives (eg the Constitution of France 1958) and must from its own representative bodies. Artificial entities may not have their representative bodies and can be managed solely by representatives of the central government. Currently this distinction loses its significance, eg in France the highest artificially created units, regions, received rights of a territorial collective in 1982.

49. Different forms of local management in administrative-territorial units are determined by historical, geographical, demographic characteristics, political regime as well as the specific legal system of a particular country. For example, an active role of representatives appointed by the central government (the so-called ‘direct state control’) in local governance is mainly a characteristic of continental law states.

4. Administrative-Territorial Division

(a) The US

50. Basic administrative-territorial units in the US are counties (more than 3,000). They vary by quantity of population and size of the territory. In some states, counties are divided into towns and townships ie casual type of compact urban and rural settlements. As general rule, American cities belong to the type of municipal corporations which are home to about two-thirds of the population of the whole country. Administrative-territorial organization of the US implies special districts in the states created to manage those areas of life that are excluded from the jurisdiction of local authorities. Special districts have their own authorities (commissions) that are elected by the people or appointed by states or counties and act as conductors of the general policy of the state or the county (eg, school districts). School districts are formed to guide schools and their financing and also to move the school from the sphere of influence of political parties. Special districts are created to perform a variety of functions: fire protection, house building, water supply, transport services, etc., when the local authorities for one reason or another are unable to provide such services to the public.

(b) The UK

51. In the UK, the territory is divided into counties, counties into districts covering both urban and rural settlements. Basic administrative-territorial units are parishes in England and communities in Wales and Scotland. All administrative-territorial units, except for small parishes, have elected bodies of local management (councils). In small parishes the functions of local authorities are carried out by periodically convened general meetings of electors of the parish.

(c) Italy

52. Italy is divided into regions which are granted with broad autonomy according to the Constitution of Italy 1947. Autonomous regions have the right to adopt their own legislation and possess other important powers. Regions are divided into provinces which include urban and rural communes. All these subunits have bodies of local self-government in the form of elected councils.

(d) Germany

53. In Germany, the system of administrative-territorial division is established by the constitutions of the lands. Lands are divided into regions, regions into districts and districts are divided into communities. Districts and communities have their own elected bodies of local government.
(councils). In small communities meetings of local voters are also periodically convened to decide on local issues. Regions do not form bodies of local government (Ehlers 3). The German Basic Law also guarantees the right to local self-government of associations of municipalities. Unlike the Kreise that are area specific, the associations are function-specific, usually related to planning or service delivery. They are public entities entrusted by the participating municipalities with certain powers. Participating municipalities may delegate a specific function—such as schooling, education, fire services or waste disposal—to an association (BverfGE 21, 117 (129); BverfGE 79, 127 (150 and 152)). By agreement, associations render services such as electricity, roads, transport or hospitals. There are a wide variety of associations, depending on their purpose. Membership does vary and one municipality could belong to more than one association.

(e) Japan

54. Japan is divided in prefectures that vary in quantity of population from half a million to twelve million people. Prefectures include cities (settlements with population over 50 thousand inhabitants), towns and villages. The largest cities with population over half a million people have a special legal status (Voronig 1). Local government bodies in prefectures, cities, towns, and villages are councils elected directly by the people.

(f) Latin America

55. In Latin America, the basic administrative-territorial unit is a municipality managed by the municipal authority. Higher levels of territorial division of countries are provinces or departments. They are governed by means of direct state control which does not allow administrative autonomy, eg Brazil includes more than 4,300 municipalities, which have the right for self-control in all matters that relate to their interests. Municipalities have political, administrative and financial autonomy. However, the representatives of the central authorities exercise → administrative control over the local bodies. They may verify the legality of acts adopted by municipal bodies and their compliance with the current legislation. Sometimes decisions of local authorities do not entry into force until they are examined by the representative of the central government. If no objections arise from his side within the prescribed period of time, the decision comes into force. The representative may not cancel the decision of the local government but he may contest it in court. In their turn, local bodies may defend their rights and the scope of their powers in court in case of violation of their autonomy by the government, head of state, the country’s parliament.

5. State Supervision

56. In most countries local government is supervised by ‘superior’ levels of government. State supervision is the term used to designate the state executive that supervises the local authorities’ right to local autonomy and, where appropriate, limits it on the basis of the law. State supervision is thus the correlate of the local authorities’ right to local autonomy. For state supervision the division of local authority activities into performing the tasks of the own and the transferred sphere of activity is important in that it results in the subdivision into legal supervision and expert supervision.

57. State legal supervision is subject to the performance of tasks within the own sphere of activity. It is limited to supervising the performance of the municipality’s tasks and its administrative activity that are laid down in law or have been taken over under public law. Legal supervision is prohibited from checking the appropriateness of a municipality decision made at its own discretion. This is the key difference between legal and expert supervision.

58. The authorities responsible for expert supervision are usually determined by means of special laws. If there are no such provisions the legal supervisory authorities will also be responsible for expert supervision. Expert supervision, which refers to the performance of the tasks in the transferred sphere of activity, contains supervision of lawfulness and appropriateness. In this connection the examination of lawfulness for the transferred sphere of activity by the expert
supervisory authority is of the same extent as the examination of lawfulness for the own sphere of activity by the legal supervisory authority.

59. Supervision includes standard setting, support, routine review of decisions, monitoring of performance and intervention. The extent of supervision inevitably defines the level of local autonomy. The supervising powers of superior levels of government proved to be a crucial factor in determining the level of local self-government. Again, the law and practice among countries differed considerably. It was also apparent that the supervision of local government should be seen against the political context: is local politics insulated against the party politics of the supervising level of government. Legal supervision is more prevalent in Europe, while political control is more evident in the North American systems.

60. There are also various levels of supervision. In Austria, a distinction is made between control over administrative affairs and control over the budget. There is always an uneasy balance between autonomy and control, which fluctuates over time depending on the political climate.

61. In Germany, the legal supervisory authority is obliged to object to decisions and decrees of the municipality that are against the law and demand that they are repealed or amended. In the case of nonfulfilment of the tasks under public law or obligations the legal advisory authority must call upon the municipality to implement the necessary measures. In the event that the municipality does not respond to the legal supervisory authority’s demand within the appropriate period set, the supervisory authority must authorise and implement the necessary measures immediately at the expense of the municipality. This measure is known as Ersatzvornahme (performing a task instead of the municipality).

62. Another remedy is the appointment of a commissioner. If the orderly course of administration is seriously hindered from fulfilling legal instructions from the legal supervisory authority as a result of the inability of the municipality council to reach a decision or by a refusal from it, the legal supervisory authority can empower the mayor to act on behalf of the municipality until the unlawful state has ended. The most serious intervention in the municipalities’ right to local autonomy is the dissolution of the municipality council and an order for new elections, either of the mayor or of the mayor and the council. The municipalities that are affected by the above-mentioned legal supervisory measures have the right to object and to appeal to the administrative court.

63. In Russia there may be different types of control over local government affairs:

   a) administrative oversight of local government by the regional administration;
   
   b) financial audit of local government;
   
   c) supervision of local government by public prosecutor (exercising control over correspondence of legal acts passed by representative bodies of local government with the federal legislation).

64. In Brazil, since the federation is based on a significant centralization, including the right of the central authorities on the widest possible intervention in the affairs of the states, state constitutions provide for a similar intervention in municipal affairs. The grounds can be violation of municipal autonomy, debt on federal payments, failure to comply with federal laws or court decisions, violation of human rights, etc. The federal intervention has a constitutional basis, it is stipulated by the Federal Constitution and the constitutions of the states. The principle of federal intervention is considered by Brazilian researchers as one of the guarantees for the preservation of the state integrity, normal functioning of the constitutional bodies of power, the democratic regime and the system of local government.

D. Comparative Assessment
65. As we have seen, there are plenty of approaches to understanding the nature of local governance, the main of which are the natural law approach and the state theory of local governance and also the concept of ‘municipal government out of politics.’ The organization and functioning of local government is laid down in the constitutions and legislation of states quite differently.

66. Currently, there are two main models of local governance—the Anglo-Saxon and the Continental model. Some researchers also speak about the Iberian model, and some countries of the world still use the Soviet model. The differences between these models are made primarily by relations between local and central authorities and by means of state control over local bodies.

67. Regulation of administrative-territorial division falls to the competence of the central authorities in unitary states and to the competence of the federation in federal states (general principles of administrative-territorial division shall be based on the principles of the federal constitution). Detailed regulation of local administrative-territorial division is provided by special laws.

68. The main goal of the administrative-territorial division of the state is to provide the most convenient and effective system of public administration which meets the needs of the people of territorial units to the greatest extent. At the same time, there remain serious differences in size of territory, quantity of population and economic potential of administrative-territorial units of the states. Politically, local government is the level closest to the people. It is therefore important to include local government in the political system in order to mobilize people to participate in the issues closest to their daily lives and to democracy as such.

69. The power and influence of local government in different countries reflect the degree of democracy achieved by the state. Local authorities originated and were developed as a direct counterweight to the absolute power of the centre. Due to this fact they very often took the position opposite to the central government, e.g. on such matters as distribution of competence, economic and financial issues, etc. Initially, local bodies were elected by wealthy citizens who possessed voting rights based on serious limitations (literacy, education, residence, property qualification). Subsequently, elections of local government were democratized and local authorities became the most common and the closest to the population of the territorial unit.

Select Bibliography

Baranchikov, VAMunicipal Bodies in the UK (1990).
Boynton, RP, and De Santis, VS, ‘Form and Adaptation: A Study of the Formal and Informal
Functions of Mayors, Managers, and Chief Administrative Officers’ (1990) 22 (1) Baseline Data Report.
Cherkassov, AI, (ed.), The Bodies of Local Government in Foreign Countries: Comparative Study (INION 1994).
Chirkin, VE, Comparative Constitutional Law (International Relations 2002).
Garner, D, Velikobritaniya: Tsentral’noe i Mestnoe Upravlenie (Great Britain Central and Local Government) (1982).
Leach, R and Percy-Smith, J (2001) Local Governance in Britain, Basingstoke: Palgrave
Majone, G., From the positive to the regulatory State: causes and consequences of changes in the mode of governance, Journal of Public Policy, vol 17, part 2, may August 1997.
Pratchett, L. and Wilson, D. eds. Local Democracy and Local Government, Basingstoke: Macmillan
Vorob'eva, AG, Local Government in Japan (Goubernia 1996).

Select Cases

Freiburger Polizei 2 Bvl 12/62 (26 November 1963) BVerfGE 17, 172 (Ger).
Gleichstellungsbeauftragte 2 Bvr 445/91 (26 October 1994) BVerfGE 91, 228 (Ger).
Kommunale Baudarlehen 2 Bvl 28/63 (17 January 1967) BVerfGE 21, 117 (Ger).
Kommunalverfassungsbeschwerden 2 Bvr 1808, 1809, 1810/82 (15 October 1985) BVerfGE 71, 25 (Ger).
Rastede 2 Bvr 1619/83; 2 Bvr 1628/83 23 (23 November 1988) BVerfGE 79, 127 (Ger).
Selbstverwaltungsrecht der Gemeinden 1 Bvr 267/51 (20 March 1952) BVerfGE 1, 167 (Ger).
Wählervereinigung 2 Bvr 373/60; 2 Bvr 442/60 (12 July 1960) BVerfGE 11, 266 (Ger).