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**POWERS AND ACTS OF THE MUNICIPAL
COUNCIL IN EXECUTION OF LOCAL
SELF-GOVERNMENT**

REVIEW

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I. GENERAL CHARACTERISTICS OF THE DISERTATION THESIS

Relevance of the study

The actuality of the study is determined by the contemporary trends towards predominant decentralization, the fiscal autonomy of municipal councils and the possibility of direct and indirect civic participation in the context of European policies and good local self-government and governance.

The author's interest in the current administrative legal issues in the area of the powers of the municipal council in the implementation of local self-government is determined by the following circumstances:

First of all, the author has experience and personal commitment as a specialist in the field of local self-government and local administration. He is involved in a number of projects and initiatives for the development of local self-government, such as his work as a consultant to the National Association of Chairs of Municipal Councils in the Republic of Bulgaria.

Secondly, there are also quite academic reasons, such as the fact that the powers of the municipal council have also been debated by other authors, but their consideration has not

been thorough and there is no comprehensive and systematic analysis; the author can contribute to the development of science by analysing legislative gaps and ambiguities and making proposals for legislative reforms.

Next, there is no shortage of social factors to attract the author's attention, such as the increased public interest in the transparency and accountability of local authorities; the need for legislative changes to illustrate a more modern reading of the powers of municipal councils according to the needs of the local population and the importance of European policies that promote decentralisation and enhance civic participation.

Objectives and goals of the study

The research itself aims to analyze the most up-to-date administrative law issues related to the powers and acts of the municipal council issued in connection with the implementation of local self-government. The direct research objective is to examine the overall legal framework dedicated to the powers of the municipal council for the implementation of local self-government from the point of view of administrative law. The dissertation work aims to enrich the general theoretical knowledge of the lawyers about the competence of the

municipal councils related to the implementation of local self-government and to clarify as much as possible the administrative legal phenomena arising in the process of implementation of local self-government.

In summary, it may be said that the task of scientific development is to outline as much as possible the current administrative legal problems that are related to the exercise of the powers of the municipal council on the functioning of local self-government and to propose adequate approaches to solve these problems by updating the current legislation and adapting the administrative practice on its implementation.

Object and subject of the study

By its very nature, the dissertation is a complete monographic study. **The object of the study** is the current administrative legal aspects of the powers and acts of the municipal council related to the implementation of local self-government.

The subject of the scientific analysis are: the classifications of the individual powers of implementation of local self-government, as well as the acts issued in connection

with their exercise, which cause repeated disputes in theory and practice related to the determination of their type and, above all, the terms and conditions for exercising control over them. It should be noted that the scientific work has been developed entirely in accordance with the legislation in force, and the current case law, together with the practice of the municipal councils, has been analyzed. In order to fully clarify the main theoretical and practical issues related to the implementation of local self-government, a special place is given to the detailed analysis of the case law of both the Supreme Administrative Court and the regional administrative courts.

Methodology of research

In order to achieve the scientific goal and the tasks that are set in the dissertation, the following well-known methods of knowledge are used: observation, description, comparison, method of scientific analysis and synthesis. The experience of the municipal councils in the exercise of the powers of local self-government is also used. The practical analysis of the legal framework and the assessment of the development of the legislation in the context of the reforms in the policy for implementation of local self-government is also applied.

Known private methods of research have also been used, namely: comparative-legal, historical and logical-legal.

Practical significance of the dissertation

The dissertation aims to help improve the work of municipal councils in making decisions and adopting acts; to contribute to the promotion of legality, transparency and effectiveness in local self-government and to assist lawmakers and law enforcement agencies when changes or interpretations of local self-government legislation are needed.

The conclusions and proposals made may be used as the beginning of a future discussion on improving the current legislation in the field of local self-government. The basics and basic ideas of the dissertation may also be used in the training of students, as well as in the preparation of legal practitioners.

II. CONTENTS OF THE DISCARTATION THESIS

In the **introduction** itself, the object, purpose, tasks and importance of scientific research are listed. The topicality of the scientific work is supported by solid facts. The design of the study is summarized, which includes: analysis of the nature and historical development of local self-government; exploring decentralisation as a process to ensure that local government authorities may take responsibility; discussing key issues related to the legal status of the municipal council; classifying the powers of municipal councils in the implementation of local self-government; summarizing the possible legal means for control over the acts and actions of the municipal council in the implementation of local self-government and proposing options for improvement of the current legislation. The main tasks of the scientific research, which are a consequence of the set goal, are also specified in detail.

CHAPTER ONE "THE MUNICIPAL COUNCIL AS AUTHORITY OF LOCAL SELF-GOVERNMENT" is divided into four paragraphs and is dedicated to the historical development and legal status of the municipal council as a local self-government body.

The first paragraph, entitled 'Decentralisation of state government. Essence of local self-government' discusses in detail the essence of local self-government as the main manifestation of the decentralist principle in the state government. The research begins with a general presentation of the legal framework of local self-government in the Republic of Bulgaria, emphasizing its role as a fundamental principle of democratic governance. The importance of maintaining the balance between centralist and decentralist beginnings is underlined, stressing also the need to complement each other in order to ensure as much as possible the implementation of effective local self-government and the protection of the public interest. Various forms of decentralisation – administrative, financial and political decentralisation – have also been examined. The focus is on administrative decentralisation, as the main tool for transferring central powers to local governments. Emphasis is placed on the importance of decentralisation for the development of modern civil society and its socio-economic progress.

The concept of "local self-government" is presented not only in the light of national, but also of European legislation, trying to systematize its features: territorial limitation, legal autonomy, responsibility, orientation towards the interests of

the local community and the possibility of real participation of citizens in governance. This paragraph also draws a distinction between local self-government and related concepts.

The second paragraph, entitled ‘Historical development of self-government in Bulgaria’, traces in detail the stages in the development of local self-government in Bulgarian lands from ancient times to the present day. First of all, the exhibition presents the tribal forms of self-government in the Thracians and Illyrians; It passed through the Roman munitions and Slavic associations and reached the administrative structures of the First and Second Bulgarian states. Solid attention was also paid to the influence of Byzantine and Ottoman rule, which limited and even destroyed local self-government in order to reach modern local self-government after the Liberation in 1878. A new legal framework has been created, gradually adapting to the needs of the local community and developing together with civil society. The Third Bulgarian Kingdom may be associated with some stabilization of local self-government, despite the strengthened central authority.

After September 9, 1944, local self-government was fully subordinated to the centralist model of government. Only

after 1989, with the adoption of the new Constitution of 1991, local self-government was reaffirmed as a fundamental principle of the democratic governance of the Republic of Bulgaria. In summary, the paragraph outlines the overall legal framework and tracks the development of the sources of modern local self-government, including international acts, the center of which is the European Charter of Local Self-Government.

The third paragraph, entitled ‘The municipality – the territorial basis of local self-government’, is devoted to the municipality as the main administrative-territorial unit within which local self-government is implemented in the Republic of Bulgaria. The legal nature of the municipality as a legal entity is examined in detail, as well as its main features - territory, population, name and symbols, as well as its legal personality. The municipality is represented as a legal entity - an independent public entity, which has its own property and an independent budget. In this paragraph, special attention is also paid to the territorial structure of the municipality and the population as a key element, as well as to the symbols that form its identity. Attention is also drawn to the legal regime of municipal property and the municipal budget, as well as to the role of local government and self-government bodies – municipal council, mayor of a municipality, mayors of

mayoralties/districts and municipal administration. This paragraph concludes with the conclusion that the municipality is a necessary tool for the realization of local self-government, since its recognition as an administrative-territorial unit within which local self-government is realized is a guarantor for the protection of the interests of the local community.

The last paragraph of this chapter, entitled ‘The municipal council in its capacity as a body of local self-government in the Republic of Bulgaria’, deals with the legal nature, structure and functions of the municipal council as the main body of local self-government in the Republic of Bulgaria. The municipal council is represented as a representative, collective and elected body, whose activity is constitutionally established and further developed in the Local Self-Government and Local Administration Act (hereinafter “the Act”). The Council is characterized as a body with a wide range of powers, mainly concentrated in the field of local politics - education, health, culture, social policy, etc.

The municipal council is regarded as a body of general competence whose powers extend within the administrative-territorial unit ‘municipality’. Although it also has executive functions, it is not part of the territorial executive bodies and is

not directly subordinated to a superior administrative body, which underlines the decentralized nature of local self-government.

In short, the mutual control relations between the municipal council, the regional governor and the mayor of the municipality are also discussed here. Instead of a conclusion, the paragraph stresses the need for a balance between the autonomy of local self-government and the control mechanisms that ensure legality and efficiency in the management of municipalities.

CHAPTER TWO "POWERS OF THE MUNICIPAL COUNCIL IN EXECUTION OF LOCAL SELF-GOVERNMENT" is the core part of the dissertation, which is entirely devoted to the main topic and is divided into five paragraphs.

In the first paragraph, entitled 'Introduction', the municipal council is represented by its characteristics as a main representative body of local self-government. A distinction has been made between the concepts of 'powers' and 'competence', emphasising the fact that the competence of the municipal council is a set of powers defined by law and limited in volume, territory, time and extent. The five types of competence are also considered: personal, material, territorial, by degree and temporal competence, and the means of acquiring it, whether primary or functional. The municipal council has a wide range of powers, most of which are exercised on a discretionary basis. It also emphasizes its ability to issue secondary legislation. Emphasis is placed on the conclusion that the municipal council is the key figure for the implementation of the principle of local self-government through its statutory and functionally acquired powers.

In the second paragraph, entitled ‘Types of powers of the municipal council’, this chapter of the dissertation analyses in detail the powers of the municipal council. The legal bases and the scope of the powers provided for in Articles 17 and 21 of the Act are examined, focusing on the substantive and functional distinction between the different types of competences of the Council and their role in the implementation of local self-government. This is the most voluminous paragraph of the scientific development.

The first part presents an extensive analysis of the areas in which the municipal council has management powers, and lists the eleven main areas. The focus is on the requirement that matters must be of local importance in order for them to fall within the competence of the local parliament.

The second part provides an overview of the classifications of powers proposed by several leading scientists in the field: Prof. Boris Spasov, Prof. Maria Slavova and Dr. Michaela Dotsova. An attempt has been made to deduce the possible criteria that can be used to classify and systematize the powers of the council, namely - subject of activity, functional orientation and legal nature. Comparative analysis between different classification approaches supports a more profound

understanding of the role and importance of different power groups.

There is also the idea that the so-called ‘organisational powers of the municipal council’, which include: establishment of permanent and temporary commissions, approval of the structure of the administration, election and dismissal of the chair of the municipal council, determining the remuneration of mayors and the administration and the election of a public mediator, also indirectly, contribute to the implementation of the principle of local self-government.

The structuring powers of the municipal council are also presented, including the possibility of creating districts and mayoralties and making proposals for administrative-territorial changes affecting the territory and boundaries of the municipality. As an independent category there is another special group of powers, which bears the name administrative-cultural powers of the municipal council and includes the power to adopt decisions for naming and renaming of streets, squares, parks, engineering facilities, villa zones, resorts and resort areas and other sites of municipal importance and the possibility of approving a symbol and stamp of the municipality and granting honorary citizenship to Bulgarian and foreign citizens.

The property management powers of the municipal council are also analyzed in detail: the adoption of decisions on the acquisition, management and disposal of municipal property and the determination of the specific powers of the mayor of the municipality and the mayors of districts and mayoralties; the adoption of decisions on the establishment, transformation and dissolution of commercial companies with municipal property and the election of the representatives of the municipality in their bodies and the adoption of decisions on the establishment and dissolution of municipal foundations and on the management of donated property.

The financial powers related to the adoption and amendment of the annual budget of the municipality, the implementation of the control and the adoption of the report on its implementation are also analyzed; the determination of the amount of local fees and the adoption of decisions on the use of bank loans, the granting of interest-free loans, as well as decisions on the assumption of municipal debt through the conclusion of loan agreements or the issuance of municipal securities and decisions on the issuance of municipal guarantees.

This part of the dissertation focuses on proving the autonomy of municipal councils in making decisions of local importance, while also delineating the boundaries of this autonomy. The maintenance of these limits is guaranteed by the aforementioned legal control mechanisms. The need for guaranteed managerial responsibility of municipal councils in the exercise of these powers is clearly underlined in order to prevent the issuance and execution of unlawful acts and the perverted exercise of power.

This paragraph also deals with the specific powers of the municipal council, which are also related to the implementation of local self-government and reflect the spirit of decentralization, namely: the adoption of decisions for the creation and approval of spatial plans and their amendments for the territory of the municipality or parts thereof under the conditions and by the order of the Spatial Development Act; the adoption of strategies, forecasts, programmes and plans for the development of the municipality, which also reflect the European policies for the development of local communities; the definition of requirements for the activity of natural and legal persons on the territory of the municipality, which result from the environmental, historical, social and other characteristics of the settlements, as well as from the state of

engineering and social infrastructure; the adoption of decisions on the participation of the municipality in associations of local authorities in the country and abroad, as well as in other non-profit legal entities and the appointment of the representatives of the municipality in them; the adoption of decisions to hold referendums and general assemblies of the population on matters within its competence; the exercise of ongoing and subsequent control over the implementation of the acts adopted by the municipal council itself and the determination of the conditions and procedures for travel on the routes of public urban transport on the territory of the municipality concerned. These powers aim to ensure the autonomous management of the municipality and the effective participation of citizens in local government.

The third paragraph of the dissertation, entitled 'Powers of the municipal council relating to the implementation of local self-government', deals independently with the category of powers of the municipal council, which are directly related to the implementation of local self-government. They do not fit into the usual categories of powers - organizational, property-planning, financial or cultural-administrative and are in practice the direct reflection of the decentralist principle. Emphasis is placed on the fact that these

powers not only ensure the sustainable development of the municipality, but also create conditions for active and enhanced civic participation, in accordance with the principles of the European Charter of Local Self-Government. Seven sets of powers are discussed in detail.

First of all, the powers of spatial planning – adoption, amendment and approval of general and detailed spatial plans (general spatial plans and detailed spatial plans) regulated by the Spatial Planning Act – are laid down. The municipal council is represented as one of the authorities actively involved in all stages of planning on the territory of the municipality. Its powers in relation to the definition of specific requirements for the urban appearance are very important.

The second group of powers in this category relate to regional development and planning and include: adoption of strategic documents, programmes and plans, including the Municipality Integrated Development Plan. This activity aims at harmonizing municipal policy with national and European priorities for sustainable development.

Next, the municipal council determines the requirements for the activity of natural and legal persons on the

territory of the municipality, which result from the environmental, historical, social and other features of the settlements, as well as from the state of engineering and social infrastructure. It is emphasised that when setting these requirements, the municipal council must comply with the restrictions provided for in the Limitation of the Administrative Regulation and Control over Business Activity Act. The power in question allows local policy to be adapted to the specificities of each specific municipality.

The fourth power relates to decisions on the participation of the municipality in associations, both local authorities and other NGOs, including at international level, in order to exchange good practices and jointly solve international, national and inter-urban problems. This also highlights the need for a clear legislative framework for cross-border cooperation.

Municipal councils are also empowered to take decisions on holding local referenda and general assemblies. This is about powers in the field of direct democracy, through which the local population is realized the right to participate directly in solving important issues for the municipality.

The control powers of the municipal councils over the implementation of the adopted acts are also discussed. Both the current and the subsequent control over the acts of the council, which are subject to implementation by the mayor of the municipality, are analyzed. It stresses the crucial importance of accountability and control as mechanisms for improving local governance and self-government.

The municipal council also defines the so-called ‘municipal transport policy’. It is empowered to provide the conditions for travel by public transport on the territory of the municipality. This power is seen as a very important tool for social inclusion and economic efficiency.

In summary, these powers of the municipal council represent the realisation of genuine local self-government – the direct involvement of citizens, strategic development planning and normative autonomy. They underpin the effective management and development of the local community and must be exercised in accordance with the principles of legality, proportionality and transparency.

The penultimate *fourth paragraph, entitled ‘Other powers of the municipal council’*, includes the so-called ‘other

powers of the municipal council'. The study in this section focuses on two key provisions, points 19 and 23 of Article 21(1) of the Act, which extend the possibilities for the municipal council to act in the interest of the local community.

The first hypothesis examined (Article 21(1)(19) of the Act) examines the power of the municipal council to discuss and adopt decisions on proposals by mayors of districts and mayoralties. This power is assessed as a guarantee for the involvement of the territorial authorities in the decision-making process and provides an opportunity to better present the needs of the local population. It also emphasizes the need for normative and procedural provision of this process, as well as the need to provide additional conditions for citizens' participation in the governance of the territorial community by making proposals for solving issues of high public interest.

The second hypothesis examined (Article 21(1)(23) of the Act) analyses the possibility for the municipal council to decide on other issues of local importance that do not fall within the exclusive competence of other bodies. This power is seen as a kind of "reserve competence" that allows the local parliament to respond in a timely manner to specific local needs. Particular attention is also paid to the right of the municipal council to

declare certain days as festive and absent, which has both cultural and administrative significance.

Instead of a conclusion, the analysis highlights the importance of reserve competence for the effective functioning of local self-government, focusing on their significant role in ensuring flexibility and transparency of local governance and maintaining a policy that keeps citizens close to the actual governance process.

The **last fifth paragraph, ‘Measures for the protection of the powers conferred on the municipal council’**, is analysed in relation to the mechanisms for the protection of the powers of the municipal council as a local self-government body. The analysis focuses on the legal framework that guarantees the autonomy of local authorities vis-à-vis the central one and underlines the importance of judicial protection as the main means of asserting this autonomy.

The provisions of Article 145 of the Constitution of the Republic of Bulgaria and Article 11 of the European Charter of Local Self-Government are also analysed, according to which municipal councils have the right to challenge acts and actions that violate their powers. However, in administrative law theory

there is a dispute about the legal personality of municipal councils, which is based on whether they, as collective bodies, have the right to defend their rights independently.

Attention is also drawn to the Act, which also provides for specific protection mechanisms, including the right of the municipal council to revoke or challenge acts of the mayor that contradict its decisions - Article 45(2). An assessment has also been made of the right provided for in Article 149(1)(3) of the Constitution to refer the matter to the Constitutional Court in the event of the withdrawal of powers by the central authority belonging to the municipal council as a local self-government body.

The role of the chair of the municipal council, who is the representative of the authority in legal proceedings, is also considered, as well as the need for a collective decision to initiate such proceedings. It is stressed that the realization of judicial protection is difficult, and the case law of the Constitutional Court in this regard is scarce.

In conclusion, it is proposed that *de lege ferenda* introduce additional effective mechanisms to protect local self-government, including the possibility for the National

Association of Municipalities in the Republic of Bulgaria to play an active role in referring the matter to the Constitutional Court in case of violation of the principle of decentralisation. This emphasizes the need not only for statutory mechanisms for protection, but also for practically feasible protection of the powers of municipal councils as a guarantor of the sustainable functioning of local self-government.

CHAPTER THREE "ACTS OF THE MUNICIPAL COUNCIL ESTABLISHED IN THE PROCESS OF IMPLEMENTATION OF LOCAL AUTHORISATION. CONTROL OF THE ACTS OF THE MUNICIPAL COUNCIL'

is devoted entirely to the acts by which the municipal council exercises its powers of local self-government. The acts he adopts are defined as the formal expression of the will of the local community.

The first paragraph is structured in the form of **an introduction** to this area of study, with particular attention being paid to the importance and importance of clearly distinguishing between types of acts, due to their different legal nature, adoption procedures and control mechanisms. It is the determination of the nature of an act that is decisive for whether it is subject to any control at all, what kind of control it may be subject to and by whom it may be challenged. This is key to ensuring the legality and appropriateness of the acts and actions of this body and protecting the rights of citizens. The introduction also outlines the objectives of this part of the scientific research, namely: analyzing the types of acts issued by municipal councils; clarification of their legal nature and functional importance; examining the forms of control (administrative, judicial and public) over these acts and

formulating proposals for regulatory improvements (de lege ferenda) to improve legal regulation in the field of local self-government.

The conclusion is drawn that the good knowledge of the acts, functions and competence of the municipal councils is essential not only for the control over the local authorities, but also for the overall stability of the democratic governance of our country. Therefore, the analysis of this topic has serious theoretical and practical significance in the context of administrative law and process.

The second paragraph, entitled ‘Acts of the municipal council’, examines in depth the legal nature, classification and specific features of acts issued by municipal councils in the Republic of Bulgaria. Attention is focused on the administrative legal nature of these acts and their importance for the realization of local self-government. But first of all, it is pointed out that, although municipal councils are not bodies of state power but of local self-government, most of their acts have the characteristics of administrative acts – they are unilateral, authoritative statements, capable of producing legal effects without the consent of the addressees. In accordance with the requirements of the Administrative Procedure Code, the acts are

divided into normative, individual and general administrative acts, each with different legal force and order for issuance and contestation.

The legal nature of the normative acts, which contain secondary legal norms with repeated effect and addressed to an unlimited number of persons, is also studied in detail. Particular attention is paid to the decisions of municipal councils, the most common form of legal act issued by the municipal council. On the basis of case-law and legal theory, the controversial issues surrounding the nature of certain decisions, such as those concerning budgets, naming of streets, spatial plans and disposal of municipal property, have been analysed. The management acts, which, although having legal weight, do not fall within the definition of administrative acts under the Code, are also examined in depth.

This paragraph also includes an analysis of internal acts addressed only to subordinate bodies and devoid of any external legal effect, as well as declarations and addresses – acts without legal force that fulfil a moral, political and social function.

By systematizing the types of acts and clarifying their legal regime, the work seeks to contribute to a clearer understanding and application of the principles of local self-

government, to clarify the scope of the powers of municipal councils, as well as to increase legal certainty and protection of the rights of citizens and organizations.

The last paragraph of that chapter, entitled ‘Control over the municipal council acts’, is devoted to analysing the mechanisms for reviewing municipal council acts, focusing on the legal means of ensuring their legality and appropriateness.

The main forms of control over these acts are discussed - administrative control, judicial control, prosecutorial supervision and public control. The central place is occupied by the control exercised by the regional governor and the mayor of the municipality.

Control by the regional governor is seen as a form of administrative control, but covers only a legality check, with no possibility of interfering with the appropriateness of the council’s acts. The regional governor may return an act for further discussion or challenge it before the administrative court. The three forms of control exercised by the mayor of the municipality - preventive, current and subsequent - are discussed.

Prosecutorial supervision is presented as an opportunity to monitor the legality of acts without the prosecutor interfering

in their expediency. It is noted that the prosecutor can appeal to the court, even if he does not have a personal interest, when protecting the public interest.

The most detailed review is carried out by the administrative courts, which adjudicate on appeals lodged by affected persons, the prosecutor, the regional governor or the mayor. The specifics of the local and generic jurisdiction are specified, as well as the specifics of cassation contestation. It is indicated that in certain cases judicial review may also be carried out by the ordinary courts, for example in disputes under the Agriculture Lands Ownership and Use Act or the Commerce Act.

The analysis shows a need to improve the legislative framework, including the introduction of clearer sanctions and safeguards against possible abuse of control powers.

The dissertation ends with a **conclusion** summarising that local self-government is a fundamental constitutional principle based on decentralisation, while the municipality and the municipal council are the drivers of this structure – the municipality is an administrative-territorial basis and the council is a body of broad competence exercising representative power at local level. The powers of the municipal council are classified into separate categories, and the means of control

over the acts and actions of the council are also analyzed. Numerous proposals for legislative changes have also been made to improve the accountability, transparency and legal protection of councils against excessive interference by the central government.

III. CONTRIBUTIONS OF THE THESIS

The contribution of the dissertation can be determined in several directions:

A systematization of the powers of the municipal council has been made; the historical development of local self-government in Bulgaria is analysed in detail – the evolution from antiquity to the modern constitutional framework is traced, which enriches the scientific picture of administrative history; the legal nature of the acts of the municipal council is also clarified – normative and non-normative acts are distinguished, as well as their legal consequences and control mechanisms, and a critical review of the case-law is made with an analysis of the contradictions in the interpretation of the acts of the municipal council by the Supreme Administrative Court and other courts.

The practical contributions are: the proposals made to improve the legislative framework; the formulated

recommendations for a clearer distinction between administrative and management acts and the proposed models for effective control over the acts of the municipal council and for improving the interaction between the municipal council, the mayor and the regional governor.

The interdisciplinary approach has also been applied – in order to combine historical-legal, comparative and positive-legal analysis. An analytical model for the assessment of powers has also been developed – a systematic approach has been used to assess the competence of local authorities.

Proposals have been made *de lege ferenda* in the field of the regulation of local self-government and the powers of the municipal council, which aim to outline guidelines for future improvement of legislation with a view to achieving a more effective, democratic and legally guaranteed local authority.