Administration and Territory in Europe: Public Services and Distribution of Competencies

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1. Introduction

1. Most OECD-countries have institutional systems of multi-level governance with devolved responsibilities and resources to elected local self-governments, which are empowered to set up their own administration and public services on their respective territory and to pursue their own policy objectives.

2. Devolution is a dynamic process. It gave birth to a wide range of configurations which are always in evolution. The goals and objectives of these processes are diverse and deeply rooted in the historic and particular circumstances of each country and there are no standard patterns.

3. Europe’s history is rich in examples of (re-) distributing competencies over territorial based centres of power born out of coinciding interest and needs. All these had in common that public responsibilities were exercised by the authorities closest to the citizens.

4. If devolution then was most of time the final outcome of political and military disputes and settlements, devolution in the European context nowadays should take place within a democratically established, consensual institutional framework.

5. This paper looks at redistributing competencies across levels of government to pinpoint some essential conditions that should inspire sound decentralisation processes.

2. Distribution of competences to sub-national governments

6. The choice of a territorial model is based on a trade-off between the degree of domestic demand for decentralisation and the resources available, to be transferred. The underlying question is if a country is prepared to bear the political and economic costs of such changes.

7. However, even a highly centralized state cannot operate without some kind of distribution of competencies to subnational governments through delegation\(^1\) or administrative deconcentration\(^2\) where there is no real transfer of political authority. The local governments implement the existing policies, practices and/or policy preferences without substantially changing the existing ones. Central government keeps the final responsibility.

8. Decentralization on the other hand means an actual transfer of decision-making powers and financial resources empowering local governments to make decisions.

9. Other forms of managing competences exist like co-operation, participation and association\(^3\). Municipalities associate freely in (a) network(s) which are based on grounds of common interest in order to manage together certain responsibilities by creating economies of scale.
3. Dealing with redistribution of competences

3.1 A suitable answer to societal challenges

10. Surveys overall underline empirically the need for a better quality of life, political involvement and effectiveness, better public service delivery and better economic prospects. In some countries, minorities claiming self-government and territorial autonomy make these challenges more complex. In those cases redistribution of competences is then a suitable tool for:

1) having public service delivery at the most appropriate level for citizens and business with the central level guaranteeing homogeneous quality across the national territory

2) ensuring citizens equal access to services and giving the same standards of quality;

3) strengthening the legitimacy of local /regional/ sub national and national authorities and being perceived as such by the citizens;

4) promoting a healthy process of competition and comparison between local governments in the provision of services and investment activities;

5) setting up co-ordination and co-operation mechanisms between and across the different levels of government;

3.2 Critical factors of sound distribution of competences

11. The transfers of functions, the progressive delimitation of fields of interest, as well as the transfer of the financing and functionaries need to be sequenced properly. Furthermore, in distributing competences to local governments – whatever the level –, it is important to fix correctly the rules between the local level and the upper level, to define the distinction between own, delegated and devolved responsibilities, to determine the assignment of regulatory competences, how to exercise them and the fields of local interest.

12. Ideally, local governments should first be given clarity about their functions and expenditure responsibilities, the tax instruments and transfers and the administrative decentralization should be implemented along with expenditure and fiscal arrangements. But this is not always the case.

13. In fact, there are a number of critical factors to take into account:

1. *Conflict management*: decentralization implies a profound or complete transformation reforming and changing fundamentally the distribution of public power within a State among its components. This could enhance existing contradictions and tensions and requires capacity to ease them, solve them and give a sustainable solution;

2. *Creating capacity*: Redistribution of competences needs tremendous capacities, lots of time and huge resources. And those efforts, particularly in small-sized countries, do not always match the added value:

   - a. To have the administrative and political capacity to lead such a reform
   - b. To have the financial resources to finance the local units:
there must a finance system appropriate to the needs and to the volume of activities performed by those local units

transfers from the centre must be sufficient

there must be an additional revenue from own fiscal levies or retributions

there must be other sources of financing (proper economic activities)

oversight, control and audit mechanisms must exist and be well-designed and effective

rich regions must support poor ones. This is often criticized for being economic inefficient, but on the other hand this may a necessary cost of political stability, a investment to create a political capital securing the “loyalty” of recalcitrant regions

– c. To have the human resources to manage the local units:

With administrations becoming more multiple and more important in sub national levels, this is generating larger public employment. There must be capacity to professionally and properly build and manage those units and to develop individual local strategies to enhance local service delivery

3. Keeping the unity of the internal market: decentralizations in EU countries generally are done under the condition of preserving the domestic market while acknowledging, respecting and protecting the diversity that may exist within its society. There’s a risk that competition is installed between regions in economic and social policy where local policy makers could create different conditions pushing other regions out of competition.

4. Keeping administrative procedures general and simple and ensuring equal policing: Multi-level governance could lead to a proliferation of forms of tutelage specific for one region compared to another with diverse procedural rules and different policing

5. Uphold the rule of law: the distribution of competences is bound by and has to occur within the rule of law

6. Respecting the international context. The question is to what extent the territorial organization of a country is exclusively a domestic prerogative? Every country is more and more – directly or indirectly – bound by international conventions, partnerships and other conventions setting the criteria, touchstones and limits for any decentralized or devolved management to act lawfully and legitimate within the framework of the International Community.

7. Avoiding ethnic fault lines: Realigning units of self-government along ethnic lines to empower minorities leads to the “institutionalization of ethnicity” where political and administrative disputes are automatically transposed into ethnic ones. In the end this results in the formation of coalitions on the sole basis of looking for an inter-ethnic compromise or bargaining instead of being formed and assessed on the basis of their policies, platforms and performance in economic and social terms. This is damaging and destroys the political and social cohesion
3.3 Identifying fields of local interest

14. Local stakeholders can have a stake in almost every field of service delivery. The following list is an open list, according to a SIGMA-study from 2005 covering more than 90% of the local services provided by most local authorities in France, Germany, Spain and Portugal:

   i) To manage the relationship between the city council and the citizens

   ii) To control and to monitor the use of territorial space

   iii) To authorize, license and monitor economic and non-economic activities on the local territory

   iv) Civil protection

   v) To regulate, provide and finance typical municipal services

   vi) To plan, deliver, regulate and/or finance personal services to citizens

   vii) To regulate, design and monitor and sanction transportation

   viii) Housing

   ix) Others like protecting the environment, cemeteries and funerary services, providing sport and leisure services, cultural infrastructure,…

4. Conclusion

15. Municipalities as an universal level of self-government have proven their capacity for dealing at their level with solving many public needs while preserving political, social and economic coherence and solidarity throughout the national territory.

16. This paper looked at redistributing competencies across levels of government to pinpoint some essential conditions that should inspire sound decentralisation processes:

   1) In general competencies should be devolved to authorities and public services closest to the citizens (principle of subsidiarity);

   2) It has to be sound, viable, transparent, equilibrate and cost-efficient system but flexible enough as to take into account diversities when imposing duties and responsibilities to local authorities

   3) Central policies should guarantee the quality of services delivered and draft basic legislation

   4) Central policies should respect the principle of autonomy which prevents higher levels of government from unduly interfering in local affairs

   5) Public authorities should guarantee that citizens have equal access to public services

   6) Political, social, economic and financial cohesion should be preserved
7) Effective and consensual internal mechanisms of co-operation, collaboration and communication should be in place.

8) Territorial boundaries are determined in consensus and balanced inter-territorial financial solidarity and co-operation should be guaranteed by the state.

9) People in specific situations need specific solutions but territorialisation based on ethnicity and wealth should be prevented.

10) A professional civil service at all levels and an administrative and legal framework, functioning within the rule of law, in compliance to national and international conventions, treaties, charters and plans, sanctioned by an independent judicial review or (international) arbitration.
The transfer of managerial responsibility for specified functions to other public organizations outside normal central government control, whether provincial or local government or parastatal agencies (Elizabeth Linda Yuliani, Decentralization, deconcentration and devolution: what do they mean? p.3) but they are accountable to the central government. Spending priorities, norms and standards, working conditions are set centrally as is the funding (Charbitt, Claire: European Policy Options for the Distribution of Competences across Levels of Government, p.8)

Administrative decentralization, i.e. a transfer to lower-level central government authorities, or to other local authorities who are upwardly accountable to the central government. It is a redistribution of decision-making authority and financial and management responsibility among levels of the central government; there is no real transfer of authority between levels of government. It may involve only a shift of responsibilities from federal service officials of the capital city to those stationed in provinces, districts, etc … (Yuliani, o.c., p.3) but local government remains a service delivery arm of the central government with little or no discretion over how or where service is provided, funding is provided by central government through individual ministry budgets and the staff are employees of the central government and fully accountable to the center through their respective ministries (Charbitt, Claire, o.c., p.8)

The European Charter for Local Self-Government in its art.10 allows local authorities to associate and to co-operate in the exercise of their powers and so within the framework of the law and to form consortia with other local authorities in order to carry out tasks of common interest (10.1.)

The Belgian decentralisation process leading to the federalization model that’s actually in place started in the 1960’s and is still evolving towards an optimum. The Spanish process started in the 1980’s and is also still evolving. The French process is also still evolving but a very slow pace with tendencies to reverse the regionalisation (cfr. The recent “Rapport Baladur”). The German process started after the Second World War as a process weakening the central state and to include as much as possible the different Länder in the decision-making, for obvious political reasons...

E.g. the European Charter of Local Self-Government (September 1988), The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (1980) with its first (1995) and second protocol (1998). Even though a country has not signed and/or ratified it, it remains a source of law and a touchstone for organic laws and law based settlements. Montenegro hasn’t signed nor ratified these conventions. It has however signed the Framework Convention for the protection of national Minorities (1995) and the European Charter on Regional and Minority Languages (1992)


Parrado Diez, Salvador, Assigning…, p.27 a.f.

Like managing the registry office, levy of conscripts, organising the census & encouraging citizen participation in local political life

Urban & rural planning, regeneration schemes to protect historical , cultural or humanity heritage sites, environment.

Like licensing business, regulation, inspection, sanction of local markets in compliance with sectoral legislation

Citizen safety, public health and civil defence by local police and fire services together with national security services. Sometimes there’s participation in investigation for the judicial system (see point d) on p.28

Such as street maintenance, cleaning and lighting, upkeep of gardens and parks, water provision and treatment, energy, trash collection.

Such as education, health care, culture, housing, care of special needs groups (elderly, infants, handicapped people,…).

Such as parking lots , traffic flows, restrictions to traffic and pedestrian behaviour,…

Private housing & public housing, from building & renovation permissions and conditions, renting rules.
BIBLIOGRAPHY

Bindebir, Serap; Handschin, Mia; Jovanovic, Miodrag; Rieck, Christian: Federalism, Decentralization and Conflict Management in Multicultural Societies, pp. 15.


Janca, Dejan: Regionalism, Regional State and problems of regional structuring of Serbia, on epa.oszk.hu/00200/00278/download/voivodina_studiu.doc


Tosic, Desimir: General problems of centralization and decentralization on epa.oszk.hu/00200/00278/download/voivodina_studiu.doc