Governance and Public Management

Series Editor

Robert Fouchet
Universite Aix Marseille
France

Taco Brandsen
Radboud University Nijmegen
The Netherlands

The Governance and Public Management series, published in conjunction with the International Institute of Administrative Sciences (IIAS), brings the best research in public administration and management to a global audience. Encouraging a diversity of approach and perspective, the series reflects the Institute's conviction for a neutral and objective voice, grounded in the exigency of fact. How is governance conducted now? How could it be done better? What defines the law of administration and the management of public affairs, and can their implementation be enhanced? Such questions lie behind the Institute's core value of accountability: those who exercise authority must account for its use to those on whose behalf they act.

More information about this series at
http://www.springer.com/series/15021

Hellmut Wollmann • Ivan Koprić • Gérard Marćou
Editors

Public and Social Services in Europe

From Public and Municipal to Private Sector Provision

palgrave
macmillan

Editors
Hellmut Wollmann
Institute for Social Sciences
Humboldt University (HU) Berlin
Germany

Gérard Marćou
Université Paris 1 Panthéon-Sorbonne
France

Ivan Koprić
University of Zagreb
Croatia

The Governance and Public Management Series
ISBN 978-1-137-57498-5 ISBN 978-1-137-57499-2 (eBook)
DOI 10.1057/978-1-137-57499-2

Library of Congress Control Number: 2016945752

Printed on acid-free paper

This Palgrave Macmillan imprint is published by Springer Nature
The registered company is Macmillan Publishers Ltd. London.

Editors' Foreword

This book comprises chapters written, discussed and prepared under the aegis of Working Group 1 (WG1) of the *COST Action IS1207* Local Public Sector Reforms: An International Comparison (LocRef). The chair of the Action is Professor Sabine Kuhlmann (University of Potsdam, Germany) and the vice-chair is Professor Geert Bouckaert (University of Leuven, Belgium). The Action works as four thematic working groups (WGs) which study various types of local level reforms from a comparative, cross-country perspective, as described in the Action's Memorandum of Understanding of 21 November 2012.

We serve as chair (Professor Ivan Koprić) and co-chairs (Professor Gérard Marćou and Professor Hellmut Wollmann) of the COST Action's WG1 which has focused on the reorganisation of the public, especially municipal, sector in the provision of public services (public utilities and personal social services) across European countries, with special emphasis on the most recent developments.

The work of WG1 has essentially been conducted under the umbrella (and with the financial support) of the LocRef Action; however, it has also benefited noticeably from the participation and sponsorship of GRALE (*Groupement de Recherche sur l'Administration Locale en Europe*), CNRS, Paris, which is under the direction of Gérard Marćou and counts Hellmut Wollmann and Sabine Kuhlmann among the members of its *Conseil Scientifique*. The initial formulation of the theme of WG1 drew heavily on earlier work conceived, pursued and published under the auspices of GRALE.[1]

The papers proposed and written as part of the activity of WG1 were prepared and developed in several rounds of discussion which began during the kickoff session of the COST Action in Brussels in March 2013, continued in Edinburgh (11 September 2013), Potsdam (15–16 May 2014) and Paris (15–16 January 2015). The discussions were brought to a conclusion at the Action's conference in Dubrovnik, Croatia, in May 2015. At the outset, a conceptual framework was put forward and the aim of the group discussions was to promote conceptual and thematic consistency across the chapters.

Out of the 25 papers prepared in WG1, 19 have been selected for publication in this volume whilst others were published in a special issue (No. 3/2015) of the journal *Croatian and Comparative Public Administration* of which Ivan Koprić is chief editor. We thank the authors for the high quality of the contributions to both this volume and the special issue of the journal.

The final preparations for publication of this book were supported by the Study Centre for Public Administration and Public Finances of the Faculty of Law in Zagreb which is chaired by Ivan Koprić. We give particular thanks to Assistant Professor Goranka Lalić Novak for undertaking the important task of the technical editing of the manuscripts and to Dr Teo Giljević for producing the index.

We also wish to thank our publisher, Palgrave, and professors Taco Brandsen and Robert Fouchet, the co-editors of the Palgrave Series *Governance and Public Management*, for including our volume in the series.

Last but not least, we wish to thank Christian Schwab, MA (who was the Academic Project Coordinator and Secretary of the COST Action) for his valuable support throughout our project and in the publication of this volume.

Hellmut Wollmann
Berlin, Germany
Ivan Koprić
Zagreb, Croatia
Gérard Marćou
Paris, France

Note

1. See Wollmann H. and Marćou G. (eds.) (2010) *The Provision of Public Services in Europe. Between State, Local Government and Market.* Cheltenham, Edward Elgar.

List of Abbreviations of Country Names[1] and Authors

HR	Croatia
CZ	Czech Republic
F	France
D	Germany
GR	Greece
H	Hungary
IS	Iceland
I	Italy
PL	Poland
SK	Slovakia
E	Spain
S	Sweden
CH	Switzerland
TR	Turkey
GB	United Kingdom
HB & FM	Hartmut Bauer, Friedrich Markmann, Local Public Service Delivery between Privatization and Publicization: The Renaissance of the Cooperative?
PB & MS	Pierre Bauby, Mihaela M. Similie, What impact of European Court of Justice decisions in the field of local public services provision?
GG & CR	Giuseppe Grossi, Christoph Reichard, Institutional variants of local utility services: Evidence from several European countries
GM	Gérard Marćou, The impact of EU law on local public service provision: competition and public service
INTRO	Hellmut Wollmann, Comparative Study of public and social services provision: Definitional, conceptual and methodological frame

SUM Hellmut Wollmann, Provision of public and social services in Europe From public to private—and reverse or beyond?

Note

1. http://www.unece.org/fileadmin/DAM/trans/conventn/Distsigns.pdf

Contents

List of Contributors

Roselyne Allemand Reims University, Reims, France

Pierre Bauby RAP, Paris, France

Hartmut Bauer Potsdam University, Potsdam, Germany

Ulaş Bayraktar Mersin University, Mersin, Turkey

Frank Bönker Saxonian University of Co-operative Education, Riesa, Germany

Giulio Citroni Università della Calabria, Rende, Italy

Magali Dreyfus CERAPS-Lille 2 University, Lille, France

Vedran Đulabić Faculty of Law, University of Zagreb, Zagreb, Croatia

Jaume Magre Ferran Barcelona University, Barcelona, Spain

Giuseppe Grossi Kristianstad University, Kristianstad, Sweden

Kozminski University, Warszawa, Poland

Carsten Herzberg Institute for Cooperation Management and Interdisciplinary Research, Berlin, Germany

Tamás M. Horváth MTA-DE Public Service Research Group, Debrecen, Hungary

Tanja Klenk Potsdam University, Potsdam, Germany

Ivan Koprić Faculty of Law, University of Zagreb, Zagreb, Croatia

Jens Libbe German Institute of Urban Affairs, Berlin, Germany

Eva Lieberherr Swiss Federal Institute of Technology Zurich, Zurich, Switzerland

Andrea Lippi University of Firenze, Firenze, Italy

Magnús Árni Skjöld Magnússon Bifröst University, Borgarnes, Iceland

Gérard Marćou University Paris 1 Panthéon-Sorbonne, Paris, France

Friedrich Markmann Potsdam University, Potsdam, Germany

John McEldowney Warwick University, Coventry, UK

Łukasz Mikuła Adam Mickiewicz University, Poznan, Poland

Stig Montin Gothenburg University, Gothenburg, Sweden

Anamarija Musa Faculty of Law, University of Zagreb, Zagreb, Croatia

Juraj Nemec Masaryk University, Brno, Czech Republic

Stefania Profeti University of Bologna, Bologna, Italy

Esther Pano Puey Barcelona University, Barcelona, Spain

Christoph Reichard University of Potsdam, Potsdam, Germany

Renate Reiter Faculty for Cultural and Social Studies, FernUniversität Hagen, Hagen, Germany

Mihaela M. Similie RAP, Paris, France

Jana Soukopová Masaryk University, Brno, Czech Republic

Çagla Tansug Galatasaray University, İstanbul, Turkey

Athanasia Triantafyllopoulou Peloponnese Institute of Technological Education, Kalamata, Greece

Theodore N. Tsekos Peloponnese Institute of Technological Education, Kalamata, Greece

Claudine Viard University of Cergy-Pontoise, Cergy-Pontoise, France

Marzena Walaszek Human Geography and Spatial Management, Adam Mickiewicz University, Poznan, Poland

Hellmut Wollmann Humboldt University Berlin, Berlin, Germany

List of Figures

List of Tables

CHAPTER 1

Comparative Study of Public and Social Services Provision: Definitions, Concepts and Methodologies

Hellmut Wollmann

1.1 Introduction

This brief introduction sets out the definitions, concepts and methodology underpinning the chapters assembled in this volume.

Selection of Countries

The chapters of this book deal with some 20 countries representing a wide range of European (EU) member states (plus Switzerland and Iceland); they cover the west-east axis, including both western European (WE) countries and central eastern European (CEE) countries, and the north-south axis, from the Nordic to the Mediterranean countries. Besides being broadly representative, this spread of countries should be conducive to cross-country and cross-policy comparisons.

1.2 Selection of Sectors of Service Provision

The chapters assembled in this volume discuss institutional developments in the provision of public services and personal social services.

H. Wollmann (✉)
Humboldt University Berlin, Berlin, Germany

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_1

The term *public services* is used to refer to water supply, sewage treatment, waste management, public transport and energy provision (for the French administration's legally derived notion of *service public* see Marcoum, Public service provision in France, *in this volume*). In English and in the British context, these services are usually referred to as *public utilities*; in France, they are *services publics industriels et commerciaux*; in Italy, *servizi pubblici* or *servizi di pubblica utilità* and in Germany, *Daseinsvorsorge* ('provision of the necessaries of existence'). The EU introduced the term *services of general economic interest* (SGEI) to refer to this service sector (see European Commission 2011; see also Bauby and Similie 2014; Marcou, 'The Impact of EU Law', *in this volume*).

In contrast, *personal social services* and *health services* relate to individual social or health needs and in EU terminology, are referred to as *social services of general interest* (SSGI), a category which encompasses 'health care, childcare, care for the elderly, assistance to disabled persons or social housing' (see European Commission 2011: 2).

These two broad service sectors are usually treated separately in the literature, but the country chapters of this volume make a point of considering both sectors to facilitate a much more comprehensive analysis and thus, yield new empirical and theoretical insights.

1.3 Institutional Approach

Within political science, distinctions are drawn between *polity*, *politics* and *policy*. The term *policy* refers to the content and results of political decision-making, *politics* to the processes and conflicts surrounding political decision-making and *polity* to the *institutional/organisational* structure and context in which policies are decided and implemented.

The chapters of this book take an *institutionalist* perspective to focus on the *polity*, that is, on service provision at the *institutional level*, first on the *subnational/local level*.

Variance in the Institutions Involved in Public and Social Services Provision

A kind of taxonomy (and "glossary") of the institutions involved in service provision is given here to encourage the use of common terminology throughout the book. Whilst this attempt to construct a *lingua franca* may entail some loss in the substantive and cognitive differentiation and subtlety inherent in country-specific terms, it should improve readability and facilitate comparisons between countries.

- *Public sector*—used as a generic term—comprises the state, sub-national and, in particular, municipal sectors. Where public and social services are delivered directly by public sector's (particularly municipal sector) administrative units and personnel, one can also refer to *in-house* delivery or provision of services.
- The sometimes monolithic public sector may be disaggregated and decentralised at the organisational level by (horizontally) *hiving off* administrative units. Drawing on the *principal agent theory* and vocabulary, this process may also be termed *agentification* or *agencification* (see Van Thiel 2012; Torsteinsen and van Genutsen 2016).[1]
- The model of service provision that organisationally distances and disaggregates service provision from core administrative functions of the responsible public sector body, whilst ensuring that this body remains legally responsible and that services are under the aegis of an elected council and/or chief executive is called *régie* or *régie directe* (in France), *muncipalizzate* (in Italy), *Eigenbetriebe* (in Germany) or *direct labour organisation* (in the UK) (see Marcou, 'The Impact of EU Law', *in this volume*; Grossi et al. 2010, especially Table 10.1). In the terminology of principal agent theory, one might refer to *internal agentification* (see Torsteinsen and van Genutsen 2016).
- The term *corporatisation* (see Grossi and Reichard *in this volume*) has come to be widely used (also in most chapters *of this volume*) to describe horizontal organisational decentralisation which is directed at the creation of legally independent (private law- or public law-based) organisations or enterprises with managerial autonomy. When corporatisation is based on private law, the corporatised units are usually organised as limited companies or stock companies; public law-based corporatisation (*Eigengesellschaften* in Germany) makes it easier for private investors to acquire minority or majority shares in the corporation and thus, form *mixed* (*public-private*) *companies* and can be used to promote *asset privatisation* (see below). The term *municipally owned enterprises* (*MOEs*) has also gained widespread currency as well.[2] In the terminology of principal agent theory, corporatisation may also be referred to as *external agentification*.[3]
- Municipalities (and/or other public authorities) may establish *inter-municipal*/inter-organisational *companies* (sometimes legally independent) for the purpose of collaborative service provision.

- *Mixed companies* combine public (municipal) and private ownership.[4] A variant of the *mixed company* which has recently gained prominence is the *organisational public-private partnership* (*PPP*) which is made up of public/municipal and private shareholders and can be distinguished from *contractual PPPs* in which the organisation remains in public (municipal) ownership and the involvement of private investors is based on often complicated contractual arrangements. In a *contractual PPP*, a municipality solicits private finance for an infrastructure project and in many cases, private sector companies will also build the facilities and operate the relevant services (see Grossi and Reichard *in this volume*).
- The *not-for-profit* or *third sector* is essentially made up of non-public, usually non-profit-making organisations (sometimes referred to as *non-governmental organisations*, *NGOs*) that have salaried staff although they depend mainly on voluntary, unpaid labour. Some of these organisations receive significant public funding and thus, in practice, function as *quasi-public* organisations.
- Overlapping with the formally organised third sector is an *'informal' sector* (see Munday 2000: 268) made up of *societal* and civic groups such as charities, self-help groups, family and neighbourhood networks which do not usually have a formal institutional structure and whose workers are normally unpaid.
- *Outsourcing* (*contracting out*) of public functions or services is a term used to denote the transfer of responsibility for delivery of public and social services from a public/municipal authority to an outside provider (which may be public, semi-public, private or non-public and non-profit-making). Outsourcing is usually based on a competitive procedure based on the awarding of a (usually time-limited) concession contract. In France, outsourcing (*gestion déléguée,* which includes recent variants) has traditionally been a core strategy for municipal service provision (see Marcou, Public service provision in France, *in this volume*). Outsourcing may also be referred to as *functional privatisation* (see Kuhlmann and Wollmann 2014: 189), but to avoid terminological confusion, it seems best to eschew the term *privatisation* in this context, restricting its use to *material privatisation* (see below).
- *Material* or *asset privatisation* occurs when public (state or municipal) assets are sold to private sector investors. Privatisation can be partial or complete; partial privatisation may result in the formation of *mixed companies* or *organisational PPPs.*

- *Municipalisation* is the transfer of state- or privately owned service provision assets or operations to the municipalities/local authorities; *remunicipalisation* is the transfer of assets (usually privately owned) and operations back to municipalities or companies controlled by them.
- Similarly, transfer from municipal (or private) ownership to the state is termed *nationalisation*[5] or, in reverse, *re-nationalisation*.[6]

Operational Rationalities Governing Service Provision

A distinction can be made between *economic* and *political* rationality for decisions about service provision.

- Economic rationality is typically one of economic efficiency and is couched in terms of maximisation of economic benefits/profits and minimisation of economic costs (possibly by 'externalising' social, ecological and other non-economic costs). Private sector decision-making is usually governed by an economic rationality of the actors who are primarily driven by profit-seeking and 'private-regarding' goals and whose spatial area is the (possibly transnational) market.
- In contrast, a *political* rationality ideally or typically refers to a wide range of political, social and ecological goals and effects ('welfare effects', Mühlenkamp 2013: 3). Elected, publicly accountable decision-makers in national parliaments or local councils usually use a political rationality to justify their decisions; these bodies should ideally be 'public-regarding' and geared to the 'common good' and 'best interests' of, say, the local community and thus, motivated to prioritise more general 'public interest' concerns over strictly economic ones.
- Under certain conditions, an *amalgam* of political and economic rationalities (see Wollmann 2014: 68) may be used to usher in an organisation with a hybrid profile which combines public- and private-regarding perspectives (see Montin *in this volume*).

1.4 Developmental Approach

The chapters of this book take a developmental or chronological approach to the analysis of institutional changes in service provision. In accordance with other literature on institutional change (see Millward 2005; Röber 2009;

Wollmann and Marcou 2010; Wollmann 2014), the contributors to this volume recognise four distinct historical phases of institutional development:

- Development in the (late) nineteenth century;
- In western European (WE) countries, advancing and advanced welfare state climaxing in the 1970s, and in central and eastern European (CEE) countries, the centralist Socialist State (unto the post-1990 transformation),
- New public management (NPM) and market-driven 'liberalisation' or reorganisation of services in both WE and CEE countries; and
- Recent (post-NPM) development (since the mid/late 1990s).

There has been little comparative research on recent institutional developments so the chapters assembled in this book pay particular attention to this phase in an attempt to address this gap in the literature.

1.5 Comparative Approach

The analytical approach pursued in this book focuses on comparisons at three levels:

- Cross-country comparisons;
- Cross-policy and cross-sector comparisons; and
- Chronological comparisons.

Cross-Country Comparison

Taken together, the chapters in this volume cover a diverse range of European countries and span the west-east and north-south axes; thus, they represent a sample which appears suited to the 'most different cases' methodology proposed by Preworski and Teune (1970) for comparative research. With an eye on west-east comparisons, a methodologically pertinent difference that may lie in the *starting conditions* during the 1970s, respectively 1980s (of the advanced welfare state in the WE countries versus the centralist socialist state in the CEE countries) is relevant. Moreover, since the mid-1990s, a methodologically relevant difference may show the effects of the sovereign debt crisis in the Mediterranean countries versus the relatively solid financial and socio-economic situations in the 'Nordic' countries. Hence, this volume focuses on WE/CEE and Nordic/Mediterranean comparisons in preference to the comparison categories

previously favoured in political science (e.g. Page and Goldsmith 1987; Hesse and Sharpe 1990; for an overview, see Heinelt and Hlepas 2006), as such, categorisations do not any more adequately capture the current socio-economic and financial configurations of European countries.

Policy-Specific Cross-Country Comparison

Three chapters are devoted to cross-country comparisons with respect to policy in specific sectors, namely energy, water and hospital health care, which loom large on the public sector reform agenda in European countries. The analytical dividend from these policy-specific cross-country comparisons should be increased by the emphasis on these sectors in the country-specific chapters.

Longitudinal Comparisons

Conceptually and methodologically, longitudinal comparisons rely on a 'before and after' logic, first ascertaining the *starting conditions* (e.g. advanced welfare state or centralist socialist state) and then identifying subsequent institutional changes (such as NPM-driven or 'post-NPM' restructuring) and the factors influencing such changes.

1.6 Explanatory Framework

The *neo-institutionalist* debate (see Peters 2011; Kuhlmann and Wollmann 2014) provides the conceptual framework for the accounts of institutional development offered by contributors to this volume.

Historical Institutionalism

The concept of historical institutionalism is based on the assumption that the preferences and choices of actors are influenced by enduring institutional structures. It emphasises the *structural* impact of institutional, political and cultural traditions on *institution building* and *institutional choice* (see Pierson 2000); this impact may extend to the creation of *path dependencies*. Historical institutionalism also draws attention to 'critical junctures' (see Kuhlmann and Wollmann 2014: 48 with references) in institutional development, that is, points at which external impulses and events occur that may cause a change in institutional trajectory (which may, in turn, generate a new *path dependency*).

Actor-Centred Institutionalism

The *actor-centred* (or rational choice) variant of institutionalism (see Scharpf 1997) emphasises the influence which the decisions and interests, the political *will* and *skill* of the relevant political and economic actors can exert over the course of institutional development. Key decision-makers and decision-making processes can be identified at all intergovernmental levels. By promoting European integration, and particularly by pushing for market liberalisation in EU member states, the EU has exercised growing actor-centred influence on service provision by setting EU norms and through the rulings of the European Court of Justice (see Bauby and Similie *in this volume*). At national level, actor-centred (political, legal and so on) decisions and actions can have a decisive impact on hitherto path-dependent institutional trajectories. Of such political actor-driven changes and ruptures, the neoliberal 'Thatcherist' policy shift in the UK after 1979 is exemplar.

Discursive Institutionalism

Discursive institutionalism emphasises the ideas (political, ideological and so on) and discourses which—by framing and amplifying political and ideological beliefs and concepts (see Schmidt 2008)—set the context in which decisions in the international (EU), national and subnational arenas are shaped and legitimised. In a similar vein, normative *isomorphism* emphasises the explanatory potential of ideas, discourses and concepts (see DiMaggio and Powell 1991). Such discourses are typically the product of *advocacy coalitions* (Sabatier 1993) made up of academics, consultants and policy-makers and often linked to influential international organisations (such as the World Bank and Organisation for Economic Cooperation and Development, OECD). The triumph of NPM in national and international discourse and policy arenas in the 1980s, which lasted until the mid-late 1990s, exemplifies the ascent and descent typically experienced by discourses.

1.7 Methods

The contributions to this volume are based on primary research carried out by their authors and on *secondary* analysis of empirical data from other sources.

The primary research is particularly valuable as it pertains to the most recent developments (since the mid/late 1990s) on which little research is currently available. In many cases, the authors have carried out original empirical work and thus, their contributions are valuable sources of *primary* findings and insights.

Secondary analysis, particularly of data on non-Anglophone countries, is also important. To date, this body of evidence—mostly published in the relevant native language—has been largely neglected by the predominantly Anglophone international research community. It may not be the least important contribution of this volume that most chapters deal with non-Anglophone countries and it thus makes accessible to the Anglophone international research community and academic audience, research findings and insights which would otherwise remain in national knowledge silos rather than being integrated into a transnational corpus of knowledge.

1.8 Guiding Questions

The common question addressed by the chapters assembled in this volume is the nature of the pattern (convergence, divergence, variance) of developmental changes in the provision of public and social services at institutional level across countries and/or time (for the convergence vs. divergence debate, see Kuhlmann and Wollmann 2014).

From a chronological perspective, one important issue is whether there has been a pendulum-like pattern of development. The pendulum metaphor dates back to Polanyi's seminal work on the 'Great Transformation' (Polanyi 1944) which hypothesised the long-term swings from state regulation to the market and reverse (see Stewart 2010). The pendulum metaphor was revived by Millward (2005) and has been used in some international comparative research on stage models of development of service provision, particularly with regard to so-called *remunicipalisation* (see Röber 2009; Wollmann and Marcou 2010; Hall 2012; Wollmann 2014; for a cautious revisiting of the remunicipalisation thesis which relates it to the pendulum metaphor, see Bönker et al. *in this volume*).

Notes

1. The concept of *agencification* and the related classification set out by Van Thiel 2012 have been elaborated collectively within the previous COST Action (*Comparative Research into Current Trends in Public Sector*

Organizations, CRIPO) which focused on public sector reorganisation at national government level. It has been applied to local level service provision (Torsteinsen and van Genugtsen 2016).

2. In a research community or discourse focused on developments at national government level, the term *state-owned enterprises* (SOEs) is used (see for example the discussion in the *EURAM Public and Non-Profit Management Strategy Interest Group*).
3. *Corporatisation* effected on the basis of private law is sometimes also referred to as *formal* or *organisational privatisation*, but to avoid terminological confusion and conceptual misunderstandings, it seems advisable to restrict use of the term *privatisation* to *material/asset privatisation*.
4. For recent variations in the organisational form of the French *societé d'économie mixte locale, SEML* see Marcou, 'Public service provision in France', *in this volume*.
5. Or *etatization*.
6. It has been suggested that the somewhat unwieldy term *re-publicisation* should be used to describe the process of returning assets to private ownership be it state or municipal/local authorities, see Bauer and Markmann *in this volume*.

References

Bauby, P., & Similie, M. (2014). Europe. In UCLG (Ed.), *Basic services for all in an urbanizing world (GOLD III)* (pp. 94–130). London/New York: Routledge.

DiMaggio, P. J., & Powell, W. W. (1991). *The New institutionalism in organizational analysis*. Chicago: University of Chicago Press.

European Commission. (2011). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*. A quality framework for services of general interest in Europe. Available from http://ec.europa.eu/services_general_interest/docs/comm_quality_framework_en.pdf. Accessed 17 July 2015.

Grossi, G., Marcou, G., & Reichard, C. (2010). Comparative aspects of institutional variants for local public service provision. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 217–239). Cheltenham: Edward Elgar.

Hall, D. (2012). *Re-municipalising municipal services in Europe*. A report commissioned by EPSU to Public Services International Research Unit (PSIRU). Available from www.epsu.org/IMG/pdf/Redraft_DH_remunicipalization.pdf. Accessed 17 July 2015.

Heinelt, H., & Hlepas, N. (2006). Typologies of local government systems. In H. Bäck, H. Heinelt, & A. Magnier (Eds.), *The European Mayor* (pp. 21–42). Wiesbaden: Verlag.

Hesse, J. J., & Sharpe, L. J. (1990). Local government in international perspective. In J. J. Hesse & L. J. Sharpe (Eds.), *Local government and urban affairs in international perspective* (pp. 603–621). Baden-Baden: Nomos.

Kuhlmann, S., & Wollmann, H. (2014). *Public administration and administrative reforms in Europe. An introduction in comparative public administration.* Cheltenham: Edward Elgar.

Millward, M. (2005). *Public and private enterprise in Europe: Energy, telecommunication and transport 1830–1990.* Cambridge: Cambridge University Press.

Mühlenkamp, H. (2013). *From state to market revisited. Empirical evidence on the efficiency of public (and privately-owned) enterprises*, MPRA paper. Available from http://mpra.ub.uni-muenchen.de/47570. Accessed 17 July 2015.

Munday, B. (2000). Privatisation of social services in the United Kingdom. In H. Wollmann & E. Schröter (Eds.), *Comparing public sector reform in Britain and Germany* (pp. 264–284). Aldershot: Ashgate.

Page, E., & Goldsmith, M. (1987). *Central and local government relations.* Oxford: Oxford University Press.

Peters, B. G. (2011). *Institutional theory in political science. The 'New Institutionalism'* (3rd ed.). London: Bloomsbury.

Pierson, P. (2000). Increasing returns. Path dependence and the study of politics. *American Political Science Review, 94*, 251–267.

Polanyi, K. (1944). *The great transformation.* Boston: Beacon Press.

Preworski, A., & Teune, H. (1970). *The logic of comparative social inquiry.* New York: Wiley-Interscience.

Röber, M. (2009). Privatisierung ade? Rekommunalisierung öffentlicher Dienstleistungen im Lichte des Public Managements. *Verwaltung und Management, 15*(5), 227–240.

Sabatier, P. (1993). *Policy change and learning. An advocacy coalition approach.* Boulder: Westview Press.

Scharpf, F. W. (1997). *Games real actors play: Actor-centred institutionalism in policy research.* Boulder: Westview Press.

Schmidt, V. A. (2008). Discursive institutionalism. The explanatory power of ideas and discourses. *Annual Review of Political Science, 11*, 303–326.

Stewart, F. (2010). Power and progress. The swing of the pendulum. *Journal of Human Development and Capacities, 11*(3), 371–395.

Torsteinsen, H., & van Genugtsen, M. (2016). Municipal waste management in Norway and the Netherlands—From in-house provision to intermunicipal cooperation. In S. Kuhlmann & G. Bouckaert (Eds.), *Local public sector reforms in times of crisis.* Houndmills: Palgrave Macmillan.

Van Thiel, S. (2012). Comparing agencies across countries. In K. Verhoest, S. Van Thiel, G. Bouckaert, & P. Lægreid (Eds.), *Government agencies: Practices and lessons from 30 countries* (pp. 18–26). Houndmills: Palgrave Macmillan.

Wollmann, H. (2014). Public services in European countries. Between public/municipal and private sector provision—And reverse? In C. Nunes & J. Bucek (Eds.), *Fiscal Austerity and innovation in local governance in Europe* (pp. 49–76). Aldershot: Ashgate.

Wollmann, H., & Marcou, G. (2010). From public sector—Based to privatized service provision. Is the pendulum swinging back again? Comparative summary. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 240–260). Cheltenham: Edward Elgar.

CHAPTER 2

The Impact of EU Law on Local Public Service Provision: Competition and Public Service

Gérard Marcou

2.1 Introduction

The law of the European Union (EU) does not distinguish between levels of government; rules are the same regardless of which level of government is responsible for a given function. This reflects the principle of the institutional autonomy of member states, a key component of EU constitutional arrangements. Local and regional governments are considered part of the 'state' for the purposes of EU law. To date, EU law has had practically no influence over the status, powers and composition of local authorities in member states (Marcou 2015a).

Local government is, however, subject to the pervasive influence of EU law insofar as functions assigned to local government bodies are subject to EU directives or regulations. Institutional autonomy cannot be used to justify non-compliance with EU rules; on the contrary, the institutional arrangements of member states must be compatible with EU rules. Competition and environmental rules are of paramount importance because their impact runs across most local government functions (Boulet 2012; Monjal 2010).

G. Marcou (✉)
University Paris 1 Panthéon-Sorbonne, Paris, France

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_2

Nevertheless, European integration cannot ignore the social models of member states. The development of European social law notwithstanding, member states retain their national systems of social protection, and the Lisbon treaty consolidated this 'welfare autonomy' of member states. There are very few elements in EU law that could be used to support the development of a social constitution for Europe, despite the existence of the European Charter of Basic Rights and the European Social Charter (Thauvin 2016).

As a consequence, under EU law, local government service provision is affected by the principle of institutional autonomy, which safeguards the authority of local governments, and by material EU law to which local government functions are subject, in particular competition rules limiting public service mandates in the economic sphere.

2.2 Public Service Provision by Local Government and Member States' Institutional Autonomy

Institutional autonomy is one of the basic rights of member states. It is supported and strengthened by the competence of member states and is limited by the requirement for uniform application of EU law.

The Principle of the Institutional Autonomy of Member States

The sole subject of the principle of institutional autonomy is the member state; it does not apply to sub-national entities. There are organic and procedural dimensions to the principle of member state institutional autonomy.

The principle refers to the distribution of tasks for the implementation of EU law within each member state. When state bodies are deemed to implement EU law, the question of how they exercise these powers or duties depends only on the constitutional arrangements of the member state (*International fruit company*, C-51/71 to 54/7115, December 1974). The reference to 'bodies' has to be interpreted broadly, to include legal persons as representative or executive authorities. Each member state is free to allocate functions in the domestic arena as it thinks appropriate and to implement a directive through provisions adopted by local or regional authorities (*Commission v. Netherlands*, C-96/81, 25 May 1982).

The procedural dimension of the principle of institutional autonomy means that EU law is implemented through formal and substantial domestic legislation where decision-making processes, enforcement, sanctions and remedies are concerned. In particular, provisions for enforcement must be equivalent for EU law and domestic law, and the domestic law of each member state has to ensure the effective application of EU law, including specific rules for EU law (e.g., interim remedies: *Factortame*, aff. C-213/89, 19 June 1990; or liability in case of breach of EU law: *Brasserie du pêcheur and Factortame*, joined cases C-46/93, 5 March 1996). The limit on autonomy resides in the obligation of member states to remove obstacles to the full and uniform application of EU law (*Danske Slagterier*, C-445/06, 21 September 2009).

In some cases, the requirement for the uniform application of EU law may have an impact on the institutional autonomy of member states. For example, agreements between an inter-municipal association and a member municipality on provisions of services by the former to the latter was originally considered to be subject to public procurement regulations, which placed French inter-municipal institutions at risk. This obstacle was removed by the European Court of Justice (ECJ) (*Commission c. Germany*, C-480/06, 9 June 2009, in particular point 37) and then by the new directive on public procurement (2014/24, 26 February 2014, Art. 12.4). Public law corporations (*établissements publics*) are considered a form of state aid and this form of administrative organisation is quite common in France (*France c. Commission*, C-559/12, 3 April 2014). Germany and Austria were condemned by the Court for their interpretation of ministerial accountability with regard to independent regulatory authorities required by EU legislation (*Commission c. Germany*, C-518/07, 9 March 2010; *Commission c. Austria*, C-559/12, 16 October 2012).

Service Public, *Social Services, Services of General Interest*

Although the concept of 'services of general interest' was developed by the European Commission, member states have discretion over the determination of such services in accordance with the right to institutional autonomy. It derives from the notion of '*service public*' set out in French administrative law, but it was split by EU law since the competence of the EU is restricted to economic matters.

The concept of a *service public* has become a basic tenet of French public law and gave rise to a legal theory during the Third Republic (Moderne

and Marcou 2001). Léon Duguit (1911, 1913) argued that the state was nothing more than the sum of public services, that is, activities that governments had to carry out to maintain the social fabric. This view informed his perspective on the limits to government functions. Gaston Jèze (1914) considered public service as a process by which governments carried out their duties. Whilst Duguit saw public services as a response to an objective social necessity, Jèze emphasised the responsibility of government in recognising and organising public services to meet social needs. The legal regime surrounding *service public* has developed to a large extent from administrative case law related to public service contracts (concessionary contracts and others) awarded by local governments. Despite the fact that the notion of *service public* could not become the criterion of administrative law, as Jèze proposed, it remains the case that all public service is submitted at least in part to administrative law principles and procedures. Constitutional case law has also consolidated the recognition of the *service public* as a key concept in French public law through the requirement for legislation to comply with the principle of 'continuity of the public service' (CC 14 April 2005, No 2005–513 DC: on properties transferred in the private ownership of *Aéroports de Paris*, as a private law company substituted to the previous public law corporation).

The concept of *service public*, interpreted in various ways, had a broad influence over the laws of numerous countries, until it was challenged by neoliberal doctrines. Italy, Spain, Portugal, Greece, Belgium and Turkey have revived the concept of *service public*, as have the countries of Latin America. More recently, Russia has also had to consider the concept of a *service public*, given the need to reconsider the limits of public power and responsibility once most of the economy was subject to market rules (Tikhomirov 2010). On the other hand, many other countries ignore the concept of public service in the systematisation of their public law, for example the UK, where the 'welfare state' never became a legal concept, and Germany, despite the notion of *Daseinsvorsorge* (provision of the necessaries of existence), used to qualify public utilities in the competence of regional and local governments whereas the new constitutional concept of 'social state' (Basic Law, Art. 20) embraces all social guarantees. This separation of social and economic public services is in fact very close to the distinction introduced by EU law. In Denmark and Sweden, the state is not smaller, and social guarantees are no less comprehensive than in countries quoted above, quite the contrary; however, there is no formal legal recognition of public service functions, probably because they are not distinct from local government responsibilities, although they are monitored by the national government.

Taking a comparative perspective can help researchers to overcome the idiosyncrasies of the various legal systems, and the French theory of the *service public* offers an analytical tool for this purpose. In fact, the concept of *service public* may be used as a generic concept encompassing all the various functions performed by or under the control of public bodies in all countries reviewed, since *services publics* are invariably subject to special rules intended to make sure that they meet the relevant assigned objective. Setting aside the differences between legal systems, we can state that *a service can be considered a public service if a public authority controls the supply of that service to citizens (or legal subjects) in terms of its substance, accessibility and sometimes quantity.* Doing so, the public power refers to the needs considered as essential and determines the level of supply considered as relevant and adequate to needs.

As a consequence, the economic or social nature of the service has nothing to do with the identification of a service as a *public service*. The market and the private sector deliver a public service if the public body responsible decides to outsource delivery or management of the service to a private company under its control, but equally, a public body may prefer to take direct responsibility for service delivery. For example, an elderly care service can be paid for out of the public purse, or urban transport services can be run by a private or a public company. A *service public* is conceptually very different from a public utility. The *service public* is a material, rather than an institutional concept. The essential factor is the determination of the supply by the public body; how the service is delivered to the end user is important but has nothing to do with the qualification of the activity. The public monopoly may be a way of delivering the public service, but it is not essential to the concept of a *service public*. Lastly, a *service public* is not a consequence of a market failure; it derives from a political assessment of needs at national or local level, made by the competent public body.

Services of General Interest and Member States' Institutional Autonomy

Since the mid-1990s, the European Commission has been attempting to work out its doctrine on public services following important rulings issued by the ECJ. Its first communication on the subject was published in 1996, and this was followed by several more, including the White Paper of 2004 and the communication on social services of general interest in 2007. This doctrine was followed by several developments in EU law that are reflected

in articles and protocols of the Treaty on the Functioning of the European Union (TFEU), which resulted from the Lisbon treaty. At the same time, the EU has continued to develop a legal regulatory framework aimed at opening sectors of general economic interest to competition. In fact, there are two divergent processes relevant to EU handling of public services. The first is based on member states' shared understanding of solidarity functions and the second is directed at completion of the single market and increased competition in regulated sectors. Then, local governments will have different positions depending on sectors (more or less subject to market) and secondary EU legislation.

Article 106 of the TFEU requires member states to remove all exclusive and special rights, but it maintains that 'services of general economic interest' (SGEI) may deviate from competition rules if it is necessary to do so to achieve their general economic interest mission. This means that enterprises in charge of such services are in principle subject to the competition rules of the treaty, but that the general economic interest mission may override the principle of competition if necessary (*Poucet*, C-159/91, 17 February 1993; *Camulac e Pistre c/ CANCAVA*, C-160/91: 'the public service of social security' is based on the principle of solidarity; *SAT Fluggesellschaft GmbH c/ Eurocontrol*, C-364/92, 19 January 1994: functions involving the exercise of public power; *Paul Corbeau*, C-320/91, 19 May 1993: deviation from competition rules to secure the viability of the public service; and *Firma Ambulanz Glöckner und Landkreis Südwestpfalz*, C-475/99, 25 October 2001: quality and reliability of the service).

The Lisbon treaty provides the legal underpinning for the so-called 'European social model' in accordance with the political doctrine. Article 14 of the TFEU declares that SGEI are covered by the 'common values' of the EU; member states and the EU ensure that insofar as their respective domains of competence are concerned, such services operate under conditions that enable them to fulfil their missions. Lastly, Protocol 26 to the Lisbon treaty, and the Charter of Basic Rights which was incorporated into the Lisbon treaty, give legal guarantee for non-economic services of general interest and competence to member states with regard to such services. The shared values laid down in the Protocol include the 'broad discretion of national, regional and local authorities to provide, deliver and organise services of general economic interest' (Art. 1), taking into account 'the diversity' of such services with regard to 'needs and preferences of users' based on 'geographical, social and cultural' differences. The discretion granted to regional or local authorities depends exclusively

on national legislation. This is the first time that EU law has sanctioned provisions that might result in differences in the legal rules governing SGEI. Given that the remit of the ECJ is to enforce EU law uniformly, it is difficult to see how this conflict will be resolved; to date, there has been no case dependent on the interpretation of Protocol 26.

The recognition in Art. 2 of the Protocol that member states have ultimate responsibility for services of general non-economic interest is potentially of even more benefit to local public services, depending on national legislation. But services of general non-economic interest are only immune from market rules for as long as they are not contracted out to private providers. There is a serious ambiguity in this area, in determining whether a service is economic or non-economic; this is a matter of EU law and ultimately a decision for the ECJ, not for member states (*Höfner*, C-44/90, 23 April 1991).

The Charter of Basic Rights declares that Europeans have a right to education, social security social assistance and access to medical care and also 'recognises' the access to SGEI; thus, it refers to the competence of member states, in accordance with EU law. As a consequence, functional discretion also supports institutional autonomy.

These provisions should be related to new concepts, which have been introduced via secondary legislation, such as 'obligations of public service' and 'universal service'. These were introduced in directives and regulations on sector liberalisation as part of the single market project. The universal service obligation exists only in relation to three services: electronic communications, postal delivery and electricity supply. Member states have to organise for a 'universal service', in other words, ensure that users have access to a defined basket of services at an affordable price; their discretion in interpretation of this obligation depends on the detail in the provisions of EU legislation on basket content. The public service obligation is a different concept, introduced by the regulation on public transport (1191/1969), and revised in the new transport regulation (1370/2007). Member states are free to decide the content of public service obligations, provided that these do not result in discrimination against enterprises which do not have a public service obligation.

Overall, these provisions seem to be consistent with the proposed definition of a public service as the determination of the supply of a given service to the population by public power, although reformulated by EU law. Some important differences must, however, be pointed out. Public and universal service obligations are closely related to the competitive market framework

and a public service is not defined in terms of specific activities, but rather as a set of obligations to be met or, in the case of the universal service obligation, the provision of universal access. In both cases, providers of a public service have to be compensated to restore a level playing field amongst the competition. Furthermore, in an EU context, economic public services and non-economic services are considered conceptually distinct, despite the fact that both derive from public policies. In the case of economic activities, a public service is considered a remedy for market failure. According to the EU Tribunal (*Orange v. Commission*, T-258/10, 16 September 2013), market failure is one of the criteria for recognising a SGEI (point 153). In EU law, the market is in principle the best mechanism for ensuring that needs are met and there are very few exceptions to this general rule.

2.3 Local Government Between Public Service Assignment and Market Competition

In principle, there is no public service without assignment. This is recognised by EU law although services of general economic interest have to be provided on the basis of competitive markets. On the other hand, the competence of the EU is limited to cases where public service provision has an impact on the market. As a consequence, public service provision, be it economic or social, is always referred to market rules, and exceptions to market rules are strictly defined in EU law.

The New Public Economic Order and Local Government Public Service Provision

The new public economic order is the result of the strategy to achieve European integration through market mechanisms which was set out in the European Single Act Treaty of 1987 as part of a more general movement towards economic globalisation. It is based on institutionalisation of generalised market, as the extension of market competition rules to all kinds of economic activities. This sets new limits on states' economic sovereignty; removing their freedom to establish monopolies and direct economic activities in accordance with nationally determined objectives. In practice, this does not amount to the 'rolling back' of the state and other public institutions, because the market itself is far from being a 'spontaneous order' (Hayek 1981); in fact, it is an institution based on rules and enforcement institutions, even more so in the case of a generalised market

(Polanyi 1944). An important consequence is that competition law takes priority over law of contract (Marcou 2009, 2015b). This was recognised by the promoters of *Ordoliberalismus* (Eucken 1965), nowadays recognised as one of the basic principles of the EU. According to Article 3.3 of the TFEU, the EU is based on a 'social market economy', a clear reference to *Ordoliberalismus*. There are also limits to market institutions since economic efficiency has to be reconciled with human dignity, and in EU law, 'social cohesion' (Art. 3.3) is also recognised as a constraint on marketisation.

For local authorities, this means that they are subject to market rules when it comes to public service provision. They may be protected by limits to market rules resulting from the law on services of general interest, but they are also bound by limits determined at EU level.

According to EU law, the local authorities' main prerogatives are to decide, within the framework of domestic law, whether they will establish a public service and how any such public service would be operated. The first prerogative is covered by Protocol 26 on services of general interest, subject to the condition stated by the ECJ in the *Orange* case, namely that when the service is of an economic nature, a public service can only be established if there is a market failure. The ECJ has recognised that in such circumstances, local authorities are entitled to operate the service directly or to turn to the market (*Stadt Halle*, C-26/03, 11 January 2005, point 48; *Parking Brixen*, C-458/03, 13 October 2005, point 61; *CODITEL Brabant*, C-324/07, 10 November 2008, point 48). But local authorities must nevertheless comply with the legal framework which has resulted from several ECJ rulings: If they choose to run a service themselves, it must be within the limits of 'in-house' entities and if they turn to the market, they must comply with tender regulations and state-aid rules. Social services may also be subject to these rules. Lastly, a number of services are regulated at EU level to the extent that they are required to be open to competition and this regulation is binding on local authorities with respect to their powers in such sectors.

Direct or In-House Delivery of Public Services

In-house delivery of public services can be understood in several ways. The service may be delivered by an organisation within the municipal administration, usually one with financial autonomy (such as French *régies*, or Italian *munizipalizzate*, or English 'direct labour organisations' introduced by the Thatcher reforms to make such services subject to competition,

or German *Eigenbetiebe*). More frequently, however, the institution responsible for service delivery will be a local public enterprise in the form of a company, a public law corporation or a mixed-economy company.

The ECJ decided that to avoid distortion of the market by such organisations, contracts must only be awarded directly to institutions under full public control which are prevented from competing in the open market. According to the *Teckal* case (C-107/98, 18 November 1999, point 50), an exception to the public procurement rules is that a contract may be awarded directly to an operator who is subject to direct local authority control in a similar way to in-house operators and is working only for the parent local authority. This is known as the 'in-house' exception. The *Teckal* ruling cannot be applied to mixed-economy companies because private shareholders are involved; such companies can only be awarded local authority contracts in accordance with EU procurement rules (*Stadt Halle*, C-26/03, 11 January 2005, point 48). The Court later revised its position: In *Acoset* (C-196/08, 15 October 2009, points 59–63), it was admitted that direct contracting of the water supply to a mixed company was acceptable if the private partner was selected through a competitive procedure. This ruling was in line with the report published in 2008 by the Commission which distinguished between contractual and institutional partnerships to promote public-private partnerships, especially for large public investment projects.

To determine whether the relationship between an operator and the local authority meets the 'similar control' criterion, the ECJ looks at whether the contract holder is in a subordinate position that guarantees the local authority 'effective' power over the direction of the enterprise (*CODITEL Brabant*, C-324/07, 13 November 2008, point 34). It has been recognised that 'similar control' can include collective control (by several associated local authorities: *Carbotermo Spa, Consorzio Alisei*, C-340/04, 11 May 2006, point 70).

In-house provision of a public service is specifically provided for ground passenger transport by Regulation 1370/2007: Local authorities are entitled to deliver the service directly via an in-house enterprise instead of using a tender procedure; an in-house enterprise may not compete for other transport service contracts outside of the jurisdiction of the parent local authority. Directive 2014/23 gives an extensive legal framework for in-house provision (Art. 17).

Social services are not affected by these distinctions as they are not provided on a commercial basis.

Outsourcing

Outsourcing is a very broad and imprecise term covering all the ways of organising provision of services through tender procedures. It is subject to state-aid law.

For a long time, outsourcing was regulated by EU law only through regulations on public procurement contracts, in particular, those governing public work concession contracts, and by the general principles of EU law (transparent procedures, non-discrimination). Directive 2014/23 of 26 February 2014 set out a unified legal framework for all concession contracts as defined by the directive; however, the framework does not apply to water supply and electronic communications (Art. 11 and Art. 12). A concession contract is any contract through which an 'adjudicating authority' (a public body or another adjudicating entity) entrusts an enterprise, or several, with the realisation and the operation of a public work, or of a service, and as a counterpart, the right to operate the public work or the service, or this right supplemented by the payment of a price by the adjudicating authority. The directive reaffirms that public authorities have discretion as to whether provision should be in-house or outsourced (Art. 2). The directive does not apply to non-economic services of general interest (in particular, services with social purposes) although it does apply to economic social services (Art. 4 and Art. 19). Consumer choice arrangements (with vouchers or allowances) with providers agreed by the public power are not concession contracts—this is in line with the definition of a public service given above. A concession contract shifts the operational risk, or part of it, to the contractor, and this has to reflect a real exposure to market risk (Art. 5). The term of a concession contract has to take into account the time needed to recoup capital investment (Art. 18). Mixed contracts are permissible (Art. 20). Lastly, the directive provides for a tender procedure to ensure transparency and equal access for all interested enterprises (Art. 30 sq); it also regulates the conditions of execution of the contract that might affect competition (Art. 42 sq). To summarise, all outsourcing contracts awarded by local authorities that meet the criteria for a concession contract according to the definition in the directive are subject to the directive, whether assets of the public service return to the public body or not (Preamble, par. 11). This is a major change to the framework governing outsourcing of local government public service provision.

Outsourcing is also subject to state-aid law. In principle, state aid is prohibited by the TFEU unless explicitly authorised by the Commission. However, in the *Altmark* case (C-280/00, 24 July 2003), the ECJ ruled that compensation for the burden of public or universal service obligations is not state aid according to Art. 107 TFEU if four conditions are satisfied, hence need not be notified to the Commission in then advance. Notwithstanding this interpretation of the treaty, the Commission's own rules for appraising public service compensation are much more restrictive (the so-called 'Almunia package'). According to the Commission, compensation still counts as state aid, but is exempt from the notification requirement; the decision of 20 December 2011 gives a closed list of examples of exempt compensation including ground transport, which are subject to Regulation 1370/2007, and for a maximum of ten years (Art. 2). Overcompensation is a breach of the regulation; Communication 2012/C 8/02 specifies that compensation must be calculated on the basis of lowest cost delivery of the service and that the costs of a monopolistic enterprise cannot be taken in account (§74). But there are cases when competitors do not exist. EU law has a very comprehensive definition of state aid.

The Capacity of Local Governments in Regulated Sectors

The purpose of regulation (in the context of EU law) is to open sectors characterised by natural monopolies up to competition whilst maintaining SGEI. Several of such natural monopolies exist in sectors traditionally at least partly within the remit of local government, such as urban and regional transport, water supply and gas and electricity supply. In the context of EU law, the rule-making and the contracting powers of local government should not be confused with the regulatory function. This function remains in the hands of the central or national government and is administered directly (e.g., water quality directives in most countries) or through independent regulatory agencies.

This means that in the broader context of the regulatory framework, local governments should be considered as regulated bodies rather than as regulators (Marcou and Moderne 2006). National governments are required to enforce EU rules which apply to local governments, for example, in the fields of urban and regional passenger transport and energy supply. Local governments are subject to national or regional energy regulations, depending on the national constitutional arrangements. There is a similar situation with respect to the implementation of the EU directive

on water quality. But concessionary agreements cannot be considered a form of regulation as they create reciprocal obligations and joint interest between the public body and the concession holder on the long term for the public service performed. In this sense, EU law is even more pervasive owing to closer cooperation between regulators at EU level as a consequence of the most recent directives and regulations.

2.4 Conclusion

EU law is making profound changes to the legal framework surrounding functions currently performed largely by local governments as a result of the process of market integration. However, the administrative institutions and legal systems of member states are not vanishing. EU laws and policies are implemented through them, and the principle of institutional autonomy is reflected in the continuing heterogeneity of local government structures. Moreover, EU prevails not simply through the norm hierarchy, but through its integration in the respective legal systems. New legal concepts introduced by EU law are integrated into the basic structures of member states' legal systems. As a consequence, local government functions are subject to or framed by the *ratio legis* of the new public economic order based on competitive markets. This can give individual local governments more independence from central government provided that they comply with the new order.

References

Boulet, M. (2012). *Les collectivités territoriales françaises dans le processus d'intégration européenne, GRALE*. Paris: L'Harmattan.

Duguit, L. (1911). *Traité de droit constitutionnel* (Vol. 2). Bordeaux: Fontemoing.

Duguit, L. (1913 [1999]). *Les transformations du droit public*, reprint. Paris: La Mémoire du Droit.

Eucken, W. (1965). *Die Grundlagen der Nationalökonomie* (9th ed.). Berlin/Heidelberg/New York: Springer.

Hayek, F. A. (1981). *Droit, législation et liberté*. Paris: PUF.

Jèze, G. (1914 [2003]). *Droit public*. Paris: Les Cours de Droit, reprint. In *Les principes généraux du droit administratif* (Vol. 2). Paris: Dalloz.

Marcou, G. (2009). L'ordre public économique aujourd'hui. Un essai de redéfinition. In *Annales de la Régulation 2009* (pp. 79–103). Paris: Institut de Recherche Juridique de la Sorbonne.

Marcou, G. (2015a). Les collectivités territoriales et l'Union européenne. In L. Solis-Potvin (Ed.), *L'autonomie des collectivités territoriales dans l'Union européenne*. (pp.13–35), Brussels: Bruylant.

Marcou, G. (2015b). L'apparition du droit du marché et l'ordre public économique. In T. Perroud & S. Dormond (Eds.), *Droit et marché* (pp. 5–20). Paris: Lextenso.

Marcou, G., & Moderne, F. (2006). *Droit de la régulation, service public et intégration régionale* (Vol. 2). Paris: L'Harmattan, series " Logiques juridiques".

Moderne, F., & Marcou, G. (2001). *L'idée de service public dans le droit des Etats de l'Union européenne*. Paris: L'Harmattan, series "Logiques juridiques".

Monjal, P.-Y. (2010). *Droit européen des collectivités locales*. Paris: Lextenso, coll. Systèmes.

Polanyi, K. (1944 [1983]). *La grande transformation*. Paris: Gallimard.

Thauvin, T. (2016). *Les services sociaux dans le droit de l'Union européenne*, Paris: L'Harmattan, series "Logiques juridiques".

Tikhomirov, I. (2010). *Публичные услуги* [Public services] Moscow: Norma.

CHAPTER 3

What Impact Have the European Court of Justice Decisions Had on Local Public Services?

Pierre Bauby and Mihaela M. Similie

3.1 Introduction

In the last two decades, the European Court of Justice (ECJ) has dealt with a growing number of cases concerning the application of European Union (EU) law to services of general economic interest (SGEI). Most often, the ECJ is asked to interpret the provisions of EU treaties (preliminary rulings of national courts) and it may thus 'create' rules. In such cases, implementation of the ECJ interpretation remains the responsibility of national courts. To date, there have been no comparative reviews of the implementation of ECJ decisions at national and local levels, including the laws applicable to local public services.

Article 14 of the Treaty on the Functioning of the European Union (TFEU) recognises SGEI as 'shared values' of the EU and this means that EU policies and laws have a growing impact on infra-national and local public authorities (Bauby 2011).

Although there has been considerable progress in institutionalising EU dialogue with regional and local authorities since the Maastricht Treaty, the extent to which SGEI have been 'Europeanised' varies among local

P. Bauby (✉) • M.M. Similie
RAP, Paris, France

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_3

authorities and this is reflected in variation in capacity to engage in EU public policy processes and comply with complex EU rules. Regional and municipal organisations remain the main entities directly involved in the EU policy-making process and responsible for the introduction and maintenance of EU rules at regional and local levels. In some cases, they are involved in legal cases brought to clarify the interpretation of EU law.

It is interesting to analyse the impact of ECJ judgments on local public services against this background, drawing on various specific cases, areas and countries. In making our selection of case law, we looked at the importance of the subject to the development of European and national laws and the issues raised for SGEI and the diversity of SGEI. We also wanted to cover a variety of national contexts.

On this basis, we chose four concrete examples of case law from which we developed a taxonomy of ECJ decisions based on whether they are implemented by local authorities or at national level.

3.2 Implementation of ECJ Judgments at Local Authority Level

The judgment of the ECJ in the Altmark case (C-280/00) outlined how public service obligation (PSO) compensation was to be distinguished from state aid and determined the conditions under which member states may allocate grants to organisations, which provide local public transport services.

The case concerned the granting of licences to Altmark Trans GmbH to operate regular bus services in the *Landkreis* of Stendal in Germany. The competent Higher Administrative Court revoked the licences on the grounds that Altmark was not financially sound as it required subsidies and those subsidies were incompatible with EU law. Altmark lodged an appeal against this decision with the German Federal Administrative Court, which requested a preliminary ruling from the ECJ with reference, in particular, to the question of whether subsidies to compensate organisations for operation of local public transport services are subject to state-aid rules, within the meaning of the European Community (EC) Treaty of 1957.

The ECJ ruled that in such cases, public subsidy should be regarded as PSO compensation and not as state aid provided that four conditions are met:

1. The recipient undertaking is actually required to discharge PSOs and those obligations have been clearly defined.

2. The parameters, on the basis of which the compensation is calculated, have been established beforehand in an objective and transparent manner.
3. The compensation does not exceed what is necessary to cover all or part of the costs incurred in discharging the PSOs, taking into account the relevant receipts and a reasonable profit for discharging those obligations.
4. If the undertaking, which is to discharge PSOs, was not chosen in a public procurement procedure, the level of compensation needed has been determined on the basis of an analysis of the costs which a typical undertaking, well run and adequately provided with means of transport so as to be able to meet the necessary public service requirements, would have incurred in discharging those obligations, taking into account the relevant receipts and a reasonable profit for discharging the obligations (para. 95).

In Germany, the ECJ case law has a direct influence on what is allowed under German law (Caranta 2014); however, the seminal Altmark case was settled between the parties without final judgment by the German Federal Administrative Court. Then in 2006, in a similar case (3 C 33.05, BVerwGE 127, 42), the German Federal Administrative Court declared that the national public authority concerned may not decide whether state aid is compatible with the EC Treaty because assessing whether subsidies are in accordance with EU law is within the competence of the EC (Beck 2012), under the control of the ECJ.

At that time, the Europeanisation of SGEI was in the early stages. The EU term 'state aid' was rarely used in German legislation (Boysen 2009: 329–30); the national term 'subsidy' was usually used instead. Moreover, according to some authors, the national term *Daseinsvorsorge* would have been revived as a consequence of European harmonisation (Boysen 2009: 329). In fact, the notion of *Daseinsvorsorge* has already played a role in German jurisprudence as a factor entitling local authorities to take initiatives organising public services (Marcou 2001).

The term 'mandate' as defined in the Monti-Kroes[1] and now in Almunia[2] packages was not known or used in Germany until the Altmark case. The introduction of this concept into German law and practice is considered one of the main consequences of the Altmark judgment, which defined the entrustment, as an essential condition for relying upon SGEI concept. As a consequence of the case, local authorities gradually started to formalise and adopt new public acts of entrustment.[3]

At the same time, German local authorities were somewhat dubious about the impact of EU law on local services. They tended to support the principle of subsidiarity, in particular, the right to local self-government and limitations on requirements to comply with national or EU regulations and protection of the national *acquis*.[4] In some sectors, national public authorities provide documentation to assist the interested parties in interpreting and applying EU competition rules on SGEI and the financing of SGEI (Federal Ministry of Health 2014).[5]

The results of a relatively recent survey carried out in the most populous *Land* of Germany, North Rhine-Westphalia (see Table 3.1) are relevant to the problems German municipalities face in assessing public service compensation and state aid. The survey revealed considerable variability among local authorities. Just over half the municipalities reported that they had no problems determining whether the Altmark criteria or the EC exemption decision applied; the requirement to establish the parameters on the basis of which compensation is calculated in an objective and transparent manner caused more difficulties. The survey received few answers from municipalities on the application of the EC exemption decision, which indicates, according to the authors, that municipalities have great difficulty in interpreting the EU rules owing to their complexity and ambiguity. Although

Table 3.1 Problems with assessment of public aid for municipal services

Perceived problems	*Strongly agree (%)*	*Agree (%)*	*Slightly disagree*	*Strongly disagree*
Problems distinguishing 'economic' and 'non-economic' services	9.1	36.4	32.7	21.8
Problems determining cross-border importance (internal market dimension)	8.0	30.0	34.0	28.0
Problems determining the applicability of the Altmark Trans ruling and the exemption decision	6.1	40.8	34.7	18.4
Problems with the requirement that parameters on the basis of which compensation is calculated should be established in an objective and transparent manner	12.5	45.8	25.0	16.7
Problems estimating the consequences (such as repayment obligations) of non-compliance with EU regulations	11.1	44.4	26.7	17.8

Source: Minister für Bundesangelegenheiten et al. 2010: 71 et seq

the survey was territorially limited and many municipalities did not respond or were unable to evaluate the extent of their problems in this area, the findings appear to be representative.

The survey also asked municipalities whether tenders and cost evaluation comply with the fourth Altmark criterion. In the Altmark judgment, the ECJ stated that competitive tendering is not a necessary condition for the granting of compensation, and that under certain conditions, exclusive rights to provide SGEI may be granted through non-competitive procedures although the default process should be a public procurement procedure. The German territorial survey revealed that municipalities were more likely to use cost evaluation than tendering when awarding public services contracts, but it did not provide any evidence about how the use of competitive procedures has changed since the Altmark case, for example, whether German municipalities made more use of public procurement procedures or competitive procedures when awarding contracts for SGEIs as a result of the Altmark ruling. At the same time, the proposal and adoption of the EU Directive on service concessions (2014/23/EU) were viewed with suspicion in Germany and that 'might have been assuaged by the exclusion of services like water and emergency rescue' (Wollenschläger 2014: 171). Similarly, the German Towns and Municipalities (*Deutscher Städte- und Gemeindebund*) emphasised the difficulty of complying with the Altmark criteria and the adverse impact of the Almunia package. Audit and procedures with regard to the interpretation of legal terms and determination of definitions, the requirements of the act of entrustment (compensation and overcompensation parameters), the monitoring, reporting and information requirements and efficiency targets, as well as the intensification of state-aid control[6] render public administration tasks more complex and increase demand for external experts advice. This leads to significant delays in assessing project implementation, increased uncertainty about the granting of state aid and also affects the continuity of some public services. In practice, the complexity of EU state-aid rules and the lack of clarity in the criteria limit the discretion of member states in this area.

3.3 The Utilisation of EU Case Law by Central Governments

In the Antrop case (C-504/07),[7] the ECJ ruled on the conditions for granting compensation for PSOs in the urban passenger transport sector under the framework of Regulation (EEC) 1191/69 of the Council

of 26 June 1969 on action by member states with respect to the obligations implicit in the concept of a public service in transport by rail, road and inland waterway.

The appeal opposed the Antrop and other undertakings to the Council of Ministers, Carris, a public undertaking entrusted with a public service concession for passenger transport in the city of Lisbon, and STCP, a public undertaking which holds a public service concession for passenger transport in the city of Oporto. The case concerned compensation payments awarded to Carris and STCP in return for the provision of the urban passenger transport services under a resolution passed by the Council of Ministers.

The ECJ ruled that Regulation 1191/69 'precludes the granting of compensation payments (…) where it is not possible to determine the amount of the costs imputable to the activity of the undertakings concerned, carried out in the performance of their public service obligations'.

In accordance with the ECJ judgment in the Antrop case, the High Administrative Court of Portugal set aside the resolution of the Council of Ministers which allocated compensation to the concessionary operators of public service passenger transport (*Supremo Tribunal Administrativo* 2012), on the grounds that these payments were inconsistent with the provisions of Council Regulation (EEC) no. 1169/69 of 26 June 1969 on action by member states concerning the obligations implicit in the concept of a public service in transport by rail, road and inland waterway because it was not possible to quantify the costs incurred by the enterprises concerned as a result of activities carried out in fulfilment of their PSOs.

The ECJ judgment, coupled with the evolution of EU law, also had a more general impact on the financing of PSOs in Portugal, and necessitated the adoption of a new legal regime. On 19 February 2015, the Council of Ministers of Portugal adopted a draft law covering public transport of passengers by road, rail and other methods, including the provisions applicable to PSOs and compensation for them. Nevertheless, the explanatory memorandum on the first draft of the law[8] only made reference to the entering into force of Regulation (EC) 1370/2007 of 23 October 2007 as reason for the reform and did not refer directly to EU jurisprudence. In particular, the draft law aims to establish a new legal regime for the contracting of public services of transportation by road, rail and inland waterways and to review the concession regime for regular road passenger transport.

Until the new legal regime is adopted, public service passenger transport continues to be governed by the Regulation of automobile transportation (*Regulamento de Transportes Automóveis*—RTA, Decree of 31 December 1972, as amended) and the Framework Law on public transport no. 10 of 17 March 1990 (*Lei de Bases do Sistema de Transportes Terrestres—LBTT*). According to the latter, regular local transport services must be operated directly by the municipality or through a concession service contract between the municipality and an authorised transport company or companies. However, this legal framework has prevented municipalities to exercise power effectively, as some functions remain under national control (e.g., tariff levels are established by the national government). From this perspective, Law no. 75 of 12 September 2013 was intended to be the first important step towards achieving the decentralisation of powers at local (municipal and inter-municipal) level that will be completed when the new law on public transport comes into force. However, Law no. 75/2013 does not provide a special legal regime for the metropolitan areas of Lisbon and Porto, which are dependent on their respective Metropolitan Transport Authorities (*Autoridades Metropolitanas de Transportes*, AMT, created by Decree-Law no. 268 of 28 October 2003) and whose operators are organised as state-owned companies. It is the draft Law of 2015 that sets out new rules relevant to decentralisation of the powers and functions of metropolitan transport authorities in Lisbon and Porto and their respective areas.

In Italy as in Portugal, it was the central government that determined the manner in which EU jurisprudence would be implemented. But whilst the decision to comply with EU law was taken more promptly in the Italian case, Italy strayed progressively further from the ECJ interpretation in imposing a national policy of privatisation of local services based on derogation of in-house provision of local public services, which was opposed by local authorities and service users.

In the *Coname* case decision of 21 July 2005 (C-231/03), the ECJ clarified the criteria under which it was permissible to establish an in-house provision.

Padania, a predominantly publicly owned company had been awarded a contract for the maintenance, operation and monitoring of the methane gas network by the municipality of Cingia de' Botti (province of Cremona, Italy)—one of the company's shareholders—without a competitive tendering process. The Coname consortium brought a complaint on the grounds that the contract should have been put out to tender.

The ECJ mandates national legislatures to verify that the awarding of contracts complies with transparency requirements and does not constitute indirect discrimination based on nationality, which would be contrary to Community law; there is no specific obligation to put contracts out to tender.

In this case, the ECJ ruled that the fact that the municipality of Cingia had a 0.97% stake in Padania did not enable the municipality to exercise control over Padania. It also observed that Padania was partly privately owned and thus, precluded from being considered a structure for the 'in-house' management of a public service on behalf of the municipalities which formed part of it.

In accordance with the ECJ judgment, the national court declared that the direct awarding of the public service concession was illegal, on the grounds that the municipality did not have a similar degree of control over the operator as it would have over an in-house operator.

More generally, the legal regime for local public services in Italy became more complex as a result of changes in national law and implementation of EU law. Also, public services embody profound changes reflected in the decline in public provision of services and the corresponding rise in private provision.

In Italy, EU law led specifically to legislative interventions intended to ensure competition and safeguard fundamental EU freedoms and principles. In the field of local public services, Decree law no. 112 of 25 June 2008 provided for the application of EU competition principles, the freedom of establishment and the freedom to provide services.

Article 2 of the *Codice dei contratti pubblici* (*Decreto Legislativo* no. 163 of 12 April 2006) defines several principles to be respected in the awarding and execution of contracts for public services: low price, efficiency, opportunity, impartiality, open competition, equal treatment, non-discrimination, transparency and proportionality. Derogations from the low-price principle are possible within the limits provided by law to take into consideration social and environmental criteria specified in the invitation to tender.

The concept of in-house provision of public services was recognised in Italian law in 2003 (Decree law 269/2003 of 30 September 2003, Art. 14) together with the distinction between economic and non-economic services. The law modified Art. 113, paragraph 4(a) and 5 of the Law on local administration (*Leggi sull'ordinamento degli enti locali*) in accordance with the Teckal judgment of the ECJ (C-107/98) and such that the

delivery of local public services could be entrusted to public companies directly provided that they were wholly owned by public bodies, and that these bodies exercised similar control over the company to that exercised over their own departments and that the company's main activities were undertaken on behalf of the authority or authorities which controlled it. Paragraph 5 of this article refers specifically to the general need to comply with EU law.[9] Following the adoption of this new legislation, the EC halted proceedings against Italy which had been started in 2000 for the non-compliance of the national procedures used to select the operators of local public services with EU public procurement law (European Commission 2004).

Among the legislative amendments of this legal framework, the new principle introduced by the Decree Law no. 135 of 25 September 2009 (known as 'Ronchi Decree', adopted and modified by Law no. 166 of 20 November 2009) deserves particular attention, as it classified in-house provision as a derogated procedure for the awarding of contracts for local public services which should only be used in exceptional cases, that is, when the economic, social, environmental conditions in the territory concerned do not allow recourse to the market. These provisions met significant resistance at the local level and some were later repealed following a referendum.[10]

In 2010, investigations by the Authority for the Supervision of Public Contracts for Works, Services and Supplies (AVCP 2010) revealed widespread non-compliance with general and sectoral regulations for awarding contracts, together with frequent resort to in-house provision, thus highlighting the slowness of the transition to a competitive market for local public services. The slow, difficult implementation of the principle that services should be awarded through an open-tender process means that there has not been a real liberalisation of local public services. The creation of the single market and the endorsement of policies aiming to promote the privatisation of public enterprises have not yet yielded the expected gains in competitiveness, economic growth and welfare. The Authority concluded that this failure was mainly due to the lack of regulatory continuity, but that issues arising from the lack of proper regulation of liberalised markets were also a critical factor.

The Lisbon Treaty, which came into force on 1 December 2009, provided for 'the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest'. In the recent economic crisis, local public services remained

within the scope of the Italian government's liberalisation policies. To achieve economic stability and development objectives, the Decree law no. 138 of 13 August 2011[11] placed strict limits on the use of in-house provision for services whose economic value was below 200,000 euros per year (replacing the previous limit of 900,000 euros).

3.4 Potential Consequences of ECJ Jurisprudence for Local Authorities

Since 2006, the EC has held that the French enterprise *La Poste* benefited from an unlimited state guarantee based on its status as an EPIC (*établissement public à caractère industriel et commercial*, industrial and commercial establishment). According to the Commission, this constitutes *de facto* state aid because of the following reasons: French EPICs are not subject to the common law of the reorganisation and liquidation of enterprises in difficulty and the EPIC legal statute guarantees any creditor of *La Poste* the reimbursement of its credit, as well as the continuity of its credit in case of the transfer of *La Poste* public service obligations to another legal entity of public law. Moreover, this unlimited guarantee, which enables *La Poste* to obtain credit on better terms, is held to constitute an unfair advantage.

In its judgment of 20 September 2012 (T-154/10) on state aid to the French EPIC *La Poste*, the Court of First Instance noted that 'in French administrative law, EPICs are legal entities governed by public law which have distinct legal personality from the State, financial independence and certain special powers, including the performance of one or more public service tasks'. Public service undertaking and EPIC are not equivalent concepts since an EPIC may also undertake non-public service activities and bid for competitive contracts. The capital of an EPIC can be 'open', because the state need not be the only shareholder. At the same time, an EPIC is forbidden to extend its scope beyond its main field of activity (the principle of 'speciality').

The Court confirmed that an implicit and unlimited state guarantee granted to *La Poste* is inherent in EPIC status and hence, it is equivalent to state aid where economic activities are concerned.

Even if this judgment has had no impact on the French company *La Poste* (which had been transformed into a limited company wholly owned by the French state by this point although it continued to operate across the same range of public and commercial services), the consequences are potentially very important for some French EPICs which are becoming

involved in competitive market activities (e.g. the national railway undertaking SNCF, which was reorganised by the law of 4 August 2014 as three EPICs, Paris public transport undertaking RATP and, since the remunicipalisation of 2010, Eau de Paris).

Moreover, all forms of public enterprise which are majority owned by public authorities might be considered to benefit from the same form of implicit, unlimited guarantee as EPICs.

Finally, what use are the provisions of EU treaties which safeguard the right of public authorities to have their own public enterprises if such enterprises have to be almost identical to private enterprises? Abolishing EPIC status would do nothing to address the main issue, which is why a state should have to allow a big public service operator, be it organised as a private law entity or not, to go bankrupt. Wouldn't such interpretation put at risk any public service mission entrusted to a public undertaking because the EPIC legal statute offers it an advantage over its competitors? Finally, should we not question whether the state and its public authorities are distorting competition at a conceptual level?

3.5 Conclusion

The differences in how ECJ jurisprudence is integrated into the national legislative framework in each member state and implemented by local public authorities reveal the extent to which the process of Europeanisation of SGEI is based on a flexible combination of common European rules, sector-specific factors, national histories, traditions and institutions (Bauby 2011: 13). European integration is an ongoing process, which combines unity and diversity and is leading to the development of multi-level governance.

ECJ case law is only one component of the framework for SGEI Europeanisation; when the letter of the law is open to interpretation, it lays down what 'the law' is in practice. Case law also represents only one stage; the ECJ can reconsider previous rulings whilst legislatures can modify or reverse laws as they are interpreted by the ECJ, as the Monti-Kroes and Almunia packages did with respect to compensation for public service obligations with (Szyszczak and Grongen 2013) and as Regulation no. 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road, and more recently, the Services Concessions Directive no. 2014/23/EU, did for the in-house management model. In other words, local public authorities have some latitude in how they apply ECJ decisions and particularly to influence the adoption of future legislation.

Notes

1. It contains three acts: (1) Commission Decision of 28 November 2005 on the application of Article 86(2) of the EC Treaty to state aid in the form of compensation for public service granted to certain undertakings entrusted with the operation of SGEI C(2005) 2673; (2) Community framework for state aid in the form of compensation for public service (2005/C 297/04); and (3) Commission Directive 2006/111/EC of 16 November 2006 on the transparency of financial relations between member states and public undertakings and on financial transparency within certain undertakings.
2. It contains four acts: (1) Communication from the Commission on the application of the European Union state aid rules to compensation granted for the provision of SGEI (came into force on 31 January 2012), OJ C 8, 11.01.2012, p. 4; (2) Commission Regulation on the application of Articles 107 and 108 of the TFEU to *de minimis* aid granted to undertakings providing SGEI (in force from 29 April 2012 to 31 December 2018), OJ L 114, 26.4.2012, p. 8; (3) Commission Decision of 20 December on the application of Article 106(2) of the TFEU to state aid in the form of compensation for public service granted to certain undertakings entrusted with the operation of SGEI (came into force on 31 January 2012), OJ L 7, 11.01.2012, p. 3; (4) Communication from the Commission, European Union framework for state aid in the form of compensation for public service (2011) (came into force on 31 January 2012), OJ C 8, 11.01.2012, p. 15.
3. Such as the adoption of a public act of entrustment for the education partner Main-Kinzig Gmbh (*Erlass eines Öffentlichen Betrauungsaktes für die Bildungspartner Main-Kinzig Gmbh*), http://www.mkk.de/cms/media/pdf/politik/kreistag/vorlagen_antr_ge/2013_2/februar_3/vorlagen_10/KT-_BIP_Betrauungsakt.pdf. Accessed 26 April 2015.
4. See for instance the German *Bundesrat*'s Opinion no. 177/11 of 27 May 2011 on the Communication of the European Commission regarding the Reform of the EU State Aid Rules on SGEI, which asks the EC to recognise local and regional autonomy—introduced for the first time in the EU primary law by the Lisbon Treaty (art. 4.2 TEU)—(point 10 of the Opinion) and emphasises local authorities' considerable discretionary powers—Protocol 26 of the Lisbon Treaty recognised that local and regional autonomy should not be constrained beyond the requirement of the rules on state aid for SGEI (point 20 of the Opinion).
5. This document (Federal Ministry of Health 2014) is intended to assist in the implementation of the new exemption decision of the European Commission in the health sector, particularly the hospital and long-term care sectors. We thank Inge Reichert, Director of *Bundesverband Öffentliche*

Dienstleistungen, for his support with documentation for this part of the chapter.

6. Moreover, the third Altmark criterion, which prohibits overcompensation, could attract complaints from third parties and could lead to litigations and *ex post* controls.
7. We thank Professor Fernando Alvés Correia (University of Coimbra) for his support with documentation for this part of the chapter.
8. http://www.imtt.pt/sites/IMTT/Portugues/Noticias/Documents/2014/Anteprojeto%20RJSPTP_13_06_2014.pdf. Accessed 26 April 2015.
9. '*L'erogazione del servizio avviene secondo le discipline di settore e nel rispetto della normativa dell'Unione europea* (…)'.
10. In the referenda of 12 and 13 June 2011, Italy voted to repeal, among others, the rules allowing the management of local public services to be entrusted to the private sector.
11. *Ulteriori misure urgenti per la stabilizzazione finanziaria e per lo sviluppo.* In-house operators are subject to the internal stability pact under the conditions of a Ministerial Decree provided by the Decree Law no. 112 of 25 June 2008 (Art. 18, paragraph 2), as amended.

References

AVPC (Autorità per la Vigilanza sui Contratti Pubblici di Lavori). (2010, June 3). *Servizi e Forniture, Disciplina dei servizi pubblici locali di rilevanza economica. Segnalazione ai sensi dell'articolo 6, comma 7, lett. e) ed f) del decreto legislativo n. 163 del 12 aprile 2006.* Available from www.anticorruzione.it/portal/public/classic/AttivitaAutorita/AttiDellAutorita/_Atto?ca=4250#nota1. Accessed 26 Apr 2015.

Bauby, P. (2011). *L'européanisation des services publics.* Paris: Presses de SciencePo.

Beck, A. (2012). *Competition for public transport services: Institutional framework and empirical evidence of bus services in Germany.* Berlin/Heidelberg: Springer.

Boysen, S. (2009). Germany. In M. Krajewski, U. Neegaard, & J. van den Gronden (Eds.), *The changing legal framework for services of general interest in Europe* (pp. 327–356). The Hague: T.M.C. Asser Press.

Caranta, R. (2014). General report. In U. Neegard, C. Jacqueson, & Ø. G. Skovgaard (Eds.), *Public procurement law: Limitations, opportunities and paradoxes* (The XXVI FIDE Congress Publications, Vol. 3, pp. 79–176). Copenhagen: DJØF Publishing.

European Commission. (2004, October 25). Public procurement: Commission acts to enforce EU law in Germany, France, Denmark, Italy and the Netherlands. Brussels: Press release. Available from http://europa.eu/rapid/press-release_IP-04-1294_en.htm. Accessed 26 Apr 2015.

Federal Ministry of Health. (2014). Finanzierung der Daseinsvorsorge und Europäisches Wettbewerbsrech. Available from www.bmg.bund.de/fileadmin/dateien/Downloads/F/Finanzierung_der_Daseinsvorsorge/2014-02-05_Handreichung_DAWI_mit_Deckblatt.pdf. Accessed 26 Apr 2015.

Marcou, G. (2001). Les services publics en droit allemand. In F. Moderne & G. Marcou (Eds.), *L'idée de service public dans le droit des Etats membres de l'Union européenne* (pp. 83–192). Paris: L'Harmattan.

Minister für Bundesangelegenheiten, Europa und Medien des Landes Nordrhein-Westfalen, Bogumil, J., Pielow, J.-C., Ebbinghaus, J., Gerber, S., & Kohrsmeyer, M. (2010). *Die Gestaltung kommunaler Daseinsvorsorge im Europäischen Binnenmarkt—empirische Untersuchung zu den Auswirkungen des europäischen Beihilfe- und Vergaberechts insbesondere im Abwasser-und Krankenhaussektor sowie in der Abfallentsorgung.* Available from http://www.sowi.ruhr-uni-bochum.de/mam/images/regionalpolitik/gestaltung_kommunaler_daseinsvorsorge.pdf. Accessed 26 Apr 2015.

Wollenschläger, F. (2014). Deutschland. In U. Neegard, C. Jacqueson, & G. Skovgaard Ølykke (Eds.), *Public procurement law: Limitations, opportunities and paradoxes* (The XXVI FIDE Congress Publications, Vol. 3, pp. 389–452). Copenhagen: DJØF Publishing.

CHAPTER 4

Delivering Public Services in the United Kingdom in a Period of Austerity

John McEldowney

4.1 Introduction

The United Kingdom (UK) is a unitary state with significant financial and legal powers granted to local government to deliver a variety of public services (Leigh 2011; Varney 2012). The financial crisis and reduced public spending have resulted in local government finance being placed under increasing pressure, with austerity measures of up to 40 per cent reduction in budgets; in some areas, this has brought into question the viability of local government (National Audit Office 2013). Reducing the size of the state is an ongoing ambition of the newly elected Conservative government. The Government wants to use a 'Big Society' approach to empower communities, the voluntary sector and citizens to assume civil responsibility by changing the relationship between citizen and state (Smith 2010; Leyland 2013). This may not always favour institutional local government as empowering local citizens may create diffuse interest groups centred on particular localities. The Government has introduced wide-ranging social reforms that affect health, transport, water and waste as well as energy and social housing. The reforms place many burdens and responsibilities on local government and may favour market solutions delivered through the private sector.

J. McEldowney (✉)
School of Law, University of Warwick, Coventry, UK

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_4

This chapter examines how the policy shifts of successive governments have often left local government's role confused, contradictory and diminished in stature. The areas of public and social services covered in this chapter range from water and waste management to social services. Energy is examined in a separate chapter. It is evident that there have been three transformative periods in local authority delivery of public services: conservative-led compulsory competitive tendering from the 1970s to 1980s; market forces under the Labour government, including the private finance initiative (PFI) from the 1990s to 2000; and a third phase, potentially the most important for local authority autonomy, which was ushered in by the Localism Act 2011. The Act has the potential to lead to a renaissance in local authorities and is consistent with decentralisation strategies including devolution to megacities. This chapter focuses on England, where 353 local authorities deliver many public services. Devolution in Scotland, Wales and Northern Ireland has resulted in distinctive forms of local government that are similar, but not identical to those in England.

4.2 Setting the Framework: Contracting Out, Localism, Centralism and Remunicipalisation

Compared with many other European countries, the UK's unitary system gives very little constitutional protection to local authorities and central government retains considerable control and financial powers. UK's local authorities have a wide range of functions and statutory powers including responsibilities for education and schools and social services, especially children's services and adult social care (Bailey and Elliott 2009; House of Commons 2013). Local government, under the influence of new public management (NPM) strategies, has experienced outsourcing and privatisation, including public-private partnerships (PPPs), often involving hybrid relationships between the private sector and local authorities (Clark and Maher 2003). Some (e.g., Wollman 2013) see this as a retreat from central control in favour of remunicipalisation of local authorities, perhaps strengthening local government and promoting a reinvigorated public sector ethos. It is certainly a decentralisation strategy. The Localism Act 2011 is often cited as a step towards prioritising local decision-making and dispersing power from central government bureaucracy to local people and their communities. The political rhetoric surrounding the emphasis on local community and the Big Society idea is a prominent aspect of the dynamics of the power shift from central government to people living in local

communities, although the reliance of local government on central government finance remains (Bevan 2014).

Since the 1980s, local government service delivery has been subject to management systems familiar in corporate governance and the private sector, and market forces have been used to achieve economy and effectiveness in setting standards for spending public money through competitive pricing and value-for-money contracts. Market mechanisms have been introduced to commissioning and purchasing arrangements, and contracts and trading agreements are used to deliver various services. Three trends are discernible. First, there is the adoption of marketisation, the contracting out of services, the sale of assets including housing and competition with the private sector; this trend has been present since the Local Government Act 1972. Second, there is the pressure on local authorities to adopt compulsory competitive tendering when awarding contracts, which has clear financial implications for the behaviour of local government. This is closely related to the setting of agendas that prioritise commercial contracts. Under Section 17 of the Local Government Act 1998, local authorities are prevented from engaging in non-commercial considerations and the Secretary of State has reserved powers to amend and redefine the categories of non-commercial consideration. Compulsory competitive tendering under the Local Government Planning and Land Act 1980 Part III and applied by the Coalition government, albeit under new structures provided a new form of competitiveness in local government. The Local Government Act 1988 and the Local Government Act 1992 extended compulsory tendering to areas such as waste, refuse collection and so on. The Local Government Act 1999 set out performance indicators and established a best value regime, which was designed to enhance quality and efficiency. This brought with it local autonomy, subject to the constraints of careful audit and monitoring. For example, the Local Government and Public Involvement in Health Act 2007 sought to improve services and set Local Area Agreements on all aspects of local government engagement. Local authorities were also given extensive powers to sell off municipal property, including publicly owned housing. Despite initial reluctance on the part of central government, PFI was first introduced at local government level in 1995–6 and only ended in 2014. They encouraged joint ventures between the private sector and local authorities and over 700 projects were financed with over £55 billion of private investment secured (Garo Derounian 2014). The range of services delivered under PFI was transformative and included building schools, new roads and transport links, health services and a variety of recycling and landfill infrastructure initiatives to ensure environmental targets were met.

Examples of such projects include the Nottingham Fast Tram Link and the creation of new inner city academies and schools. The PFI was a means of saving public money, generating additional income, and with the formation of local partnerships, sharing costs. Trafford Council is an example of ensuring good value through PFI contracts, resulting in an estimated savings of £200 million on 20 local authority PFI contracts covering a wide range of local authority services. Many PFI schemes still have to be completed though their economic value and long-term cost to the public purse remain controversial (National Audit Office 2010).

4.3 The Localism Act 2011 and the 'Big Society' Debate

The third and potentially the most decentralising trend in local government services is represented by the Localism Act 2011, which granted local authorities more general powers, allowing them to act as an ordinary individual and undertake activities in innovative ways. Combined authorities may be created through the membership of other local authorities in their area. The combined authority may acquire additional statutory powers, for example, to allow the operation of an integrated transport authority for the combined authority. The Localism Act has enabling powers to allow the transfer of public functions from central government, government agencies and other quangos (quasi-non-governmental organisations) to local government to improve local accountability or promote economic growth. The Act goes further, requiring local authorities to consider expressions of interest from voluntary or community bodies, charities or even parish councils, employees and local workers in providing services on behalf of the local authority. This is an important element of the new legislation and is consistent with the so-called 'Big Society' idea (Lowndes and Pratchett 2012) that was intended to facilitate community-led, public-spirited, and to some extent, voluntary and unpaid work by citizens. The Act requires local authorities to maintain community assets and if they are put up for sale, to consider bids and proposals from community groups which want to bid in the open market (Leyland 2013).

4.4 The Influence of the 'Big Society'

David Cameron initiated the 'Big Society' policy in May 2010. The underlying belief is that 'big government' has failed and there is a need for a stronger civic society (Mulgan 2010). Philosophically, the 'Big Society'

promotes a form of 'liberty' that stands between the tough individualism of Thatcherism and the traditional, paternalist role of the welfare state. Its aim is to advance the cause of the local community and foster mutualism centred on community groups in an effort to reinvent urban democracy (Fung 2009); it is reminiscent of Tony Blair's Third Way. The 'Big Society' has three important themes (Cameron 2005; Conservative Party Manifesto 2010): first, opening up public services through voluntary organisations, charities and social enterprises, including employee-owned cooperatives; second, encouraging social action and enabling citizens to participate in society; and third, community empowerment including giving local councils and neighbourhoods more powers to make local decisions and shape their communities. Partly, this was a response to failures in 'big government' and the over-centralised state; partly, it was linked to reform of public services and attempts to build stronger communities and encourage a sense of civic responsibility, with powers from the state being made available to local communities. Benefits include provision of support for voluntary groups and charities, mitigation of the severity of the financial cuts, support for diversity in society and a reduction in the size of the state. Examples include a National Citizen Service programme to encourage personal development which is open to all 15–17 year-olds and a Big Society Capital Bank to make it easier for charities and social enterprises to access capital. There is evidence of the anticipated increase in voluntary work and charitable activities to encourage local community initiatives. Various community-based initiatives receive government funding and support through the Big Society Network and Lottery Funding, Cabinet Office Grants and various charitable donations (National Audit Office 2014). Examples of community-based initiatives abound across many of the public service delivery sectors. In education and sports, social services and help for the elderly, many initiatives have been used to encourage the voluntary sector to provide support for local communities, such as food banks, clothes and shelters for the homeless (Mackintosh and Liddle 2013). In essence, the collaboration between local authorities and both private and public organisations provides engagement with civil society, and is expected to allow ordinary citizens to hold local decision-makers to account. Volunteering and civic responsibility go together. The Localism Act 2011 introduced a wide variety of community rights. These include the right to bid for community assets, which is supported by a £250-million Community Asset Fund to allow applicants to finance the purchase of community assets. To date, there are 1500 assets of community value listed by Defra. The Act

also introduced a right to challenge local authority decisions and a right to build for the community. Neighbourhood planning in which communities are given a say in development is also supported by a £23-million fund. A community right to reclaim underused land and land formerly owned by public bodies was also included. Local citizens are invited to use the Sustainable Communities Act 2007 to make changes to improve their local areas. Community action groups may apply for various funds including the Big Lottery's £190 million to encourage local community initiatives (Macmillan 2013). 'Big Society' voluntary initiatives have not challenged private sector dominance over many local services that used to be exclusively publicly owned, nor changed the role of the private sector.

4.5 Local Government Delivery of Public and Social Services

The areas of public and social services covered in this chapter range from water and waste management to social services, including care for the elderly. Energy is covered in a separate chapter (see Allemand et al. *in this volume*).

Water and Waste Management

Water was one of many public utilities privatised in the 1980s. Local authorities no longer have any direct role in the water industry. Local authorities have limited responsibility for very small local companies that provide some supply. There are lengthy, technical utility contracts and licences. Company Act companies were formed under a plethora of licences and binding contracts and agreements. Strategies to protect the environment, competition policy and transparency in costs and access to the utility were also introduced. Water is a good example of the removal of historical and formal local authority powers dating from the nineteenth century and the displacement of the public sector by the private sector under privatisation policy. The various commercial companies operating as water and sewerage services received powers under the Water Industry Act 1991.

Local government is, however, pivotal to one part of an integrated approach to waste and related services; under the Environment Act 1995, the Environment Agency licences and supervises waste management activities. Responsibility for the actual collection and disposal of waste is delegated to local authorities who are responsible for setting contracts and monitoring

appointed contractors. The contractors are mainly private sector companies and many are large enough to provide contractual services to different local authorities. Local authority companies are seldom involved. The oversight of contractors is left to the local authorities but the contractors have to meet environmental standards enforced by the Environment Agency. In England and Wales, district councils act as 'waste collection authorities'. Their role is to arrange for the collection of waste and its delivery to designated sites that have been approved by the waste disposal authorities. Waste collection authorities are also charged with responsibility for drawing up proactive recycling plans. The 'waste disposal authorities' are mostly county councils in England and district councils in Wales (see Table 5.1 for the variations for each region). Both waste disposal and waste collection authorities are integral to the work of local authorities but organised separately from them. Their responsibilities include monitoring and operating waste disposal sites. UK waste management policy follows the direction set by the European Union. In May 2007, the Government announced a detailed Waste Strategy for England 2007 (DEFRA 2007) according to which local authorities are expected to meet targets and achieve a sizeable reduction in the use of landfill to redress the historic overuse of landfill.

Table 5.1 UK central and local institutions and responsibilities for waste disposal

Organisational responsibility	*Activities and jurisdiction*	*Sources of powers and role*
Central government	Sets general waste policy and has monitoring and reporting roles	EU Directive and policy-maker
Environment agency	Licences waste sites	General regulator: Environmental Protection Act 1990
District councils (England and Wales) and London boroughs	Waste collection authorities: responsibility for collecting waste and recycling	The Environmental Protection Act 1990 sections 45, 46–7, and 49
County councils in England	Waste disposal authorities: monitor and operate sites for waste disposal	The Environmental Protection Act 1990, section 51 and the Waste and Emissions Trading Act 1003
District councils in Wales	Waste disposal authorities: monitor and operate sites for waste disposal	The Environmental Protection Act 1990 section 51

Source: DEFRA 2007, www.gov.uk/…/department-for-environment-food-rural-affairs, accessed 19 July 2015

The UK has a complicated system for waste management payments and financing. Local authorities are financed by taxes levied at the local level and part of their expenditure is on waste and waste management. The 'polluter pays' principle, according to which business and commerce pay market rates for the disposal of waste, also applies. Central government responsibilities are paid for out of central taxes. In addition, there are a number of specialised waste taxes including a landfill tax. This is a tax levied on local authorities or organisations according to the volume of waste sent to landfill. Since 1999, this has increased annually under a mechanism known as the 'landfill accelerator'. There is also a 'landfill tax credit scheme' intended to encourage eco-friendly disposal of waste. Landfill owners are responsible for paying the tax but can receive up to six per cent tax credits (a form of tax allowance reducing the amount of tax paid) annually on the basis of the landfill tax credit scheme. In addition, licences for waste sites and disposal are collected as part of a self-financing system over the overall costs of waste disposal.

Waste management falls under the Environmental Protection Act 1990 (Sections 45-9) and the Household Waste Recycling Act 2003. The 1990 Act, together with the Waste Management Licensing Regulations 1994 constitutes the main licencing, institutional and regulatory framework. In addition, the Control of Pollution Act 1989 provides for a system of registration for carriers of waste. There have been some significant changes to the licencing regime:

- Waste and Emissions Trading Act 2003: provides for a waste quota system setting the amount that may be deposited in landfill sites;
- Household Waste Recycling Act 2003: provided for the phased introduction of separate waste collection before 2010;
- Clean Neighbourhoods and Environment Act 2005: provides a regulatory structure for waste that includes fixed penalty notices for certain waste offences.

There are various strategies for the implementation of the Waste Framework Directive (75/442/EEC) as amended in 1991 by Directive 91/156/EEC and Directive 91/689/EEC on hazardous waste. The Household Waste Recycling Act 2003 placed a legal duty on local authorities to provide kerbside collection for recycling, composting and energy recovery by 2010. This has created an incentive for all local authorities to meet their targets based on performance indicators (DEFRA 2007). To meet the demanding requirements of the European Landfill Directive, the

UK has embarked on the implementation of a strategy to reduce landfill (the UK target under European Landfill Directive 99/31/EC is to reduce landfill to six per cent of that produced in 1995 by 2020).

To achieve this target, the Government introduced a Landfill Allowance Trading Scheme in April 2005. This provides the 121 waste disposal authorities with tradeable allowances with a total value that ensures an overall reduction in landfill disposal but allows authorities, which expect to landfill more than they should, to trade with those that plan to make less use of landfill. The use of a trading arrangement for landfill is a means of encouraging local authorities to reduce landfill use. A Waste Strategy Board and a focus group to work with stakeholders have also been established under the Waste Strategy 2007. It remains unclear whether the UK will meet landfill reduction in landfill targets under the current strategy.

There is, therefore, significant input from local planning authorities into waste planning, which may involve the use of compulsory purchase schemes or regional spatial strategies. The Planning and Compulsory Purchase Act 2004 and regional spatial strategies are being used to replace the current planning guidance.

The details of development control and its application to waste are found in Section 55(3b) of the Town and Country Planning Act 1990. There are important overlaps between the implementation of the Framework Directive on Waste and the Integrated Pollution Prevention and Control Directive 96/61. Waste management facilities are covered by both directives. There are also related issues associated with the control of ground water that is contaminated by waste, and civil liabilities for the unlawful disposal of waste. In the latter case, this may be because of common law action or through the statutory arrangements under Section 73(6) of the Environmental Protection Act 1990.

Social Services and Local Authorities

Local authorities have responsibilities for public health services such as care of the elderly and social service support for people who are housebound or disabled. The Health and Social Care Act 2012 set out the main statutory duties of local authorities and added to local authority responsibilities by including preventative measures for tackling obesity, early detection of cancers and introduction of health and fitness regimes to prevent illness (Communities and Local Government Select Committee 2013). The establishment of new 'Health And Wellbeing Boards' as statutory committees

of upper tier local authorities which came into effect on 1 April 2013 was intended to improve public health and the wellbeing of local people, reduce health inequalities and promote the integration of services. The Boards represent a blending of community action and local healthcare initiatives with local authority-led forums. The political rhetoric emphasises 'local democratic legitimacy' and a strategic approach to the integration of health and adult care, children's services and safeguarding (Department of Health 2010). The role of the Boards is to provide public health commissioning support and guidance to the 'clinical commissioning groups' (CCGs) set up under the National Health Services (NHS) reforms. NHS England is the primary organisation that sets out the terms of reference, duties and powers of the health and wellbeing boards which have responsibility for needs assessment in their areas. The Boards are included in consultation procedures and draft plans as well as having a legal right to object to a plan and make representations to NHS England. The Boards act within a general statutory framework that provides for systems of accountability and representation. They have elected representatives and are subject to local authority scrutiny. There are also publication and information requirements that fit within the 'Adult Social Care and Public Health Outcome Frameworks'. Additional, guidelines are issued by Public Health England to facilitate defining the activities for local authorities when delivering public health outcomes as set out in the guidelines (DH 2012). These include health protection and improvement and general healthcare prevention strategies for the community and locality. The role of the independent consumer watchdog Healthwatch is also linked to the idea of the 'Big Society' and is an example of the citizen acting as a whistle-blower or complainant. Healthwatch provides a complaints advocacy service at local level, and monitors quality standards and service delivery. Local Healthwatch groups are expected to liaise with the official regulator, the Care Quality Commission, as part of the overall regulation system. Authorised individuals within Healthwatch groups also have rights of access to enable them to observe and obtain information on service providers and contractors. Central government funding for Healthwatch includes £3.2 million in addition to the £27 million already granted in 2011–2. Local authority engagement with healthcare is under review and in Manchester, it is planned to devolve control of the entire NHS budget to the Manchester local authority.

Section 12 of the Health and Social Care Act 2012 imposed on local authorities a new duty to take appropriate steps to improve the health of the people living in their area. At the same time, a degree of centralism

is retained as the Secretary of State has overall responsibility for national public health functions. The powers given to local authorities are extensive; they include powers to undertake research and disseminate information on healthy diets and exercise regimes. Financial incentives can be used to encourage individuals to adopt a healthier lifestyle and grant awarding powers may be used to help minimise risk to individuals arising from their housing conditions. Detailed arrangements for health checks for eligible citizens are also set out, including advice services. A 'Public Health Toolkit for Local Authorities in England' which provides general governance and clinical guidance is available. Public health duties under Section 30 of the Act include ensuring that there is an appropriate framework and providing guidance for local authorities including setting out the responsibilities of directors of public health, who have a pivotal role in the delivery of a comprehensive health service. The transfer of dental services and services for prisoners from 'primary care trusts' to local authorities under Section 29 of the Act represents an important new power for local authorities. Local authorities also have commissioning powers to ensure that sexual health services are appropriately delivered. Commissioning powers are an important aspect of local authorities' role and they may exercise these powers in conjunction with CCGs as well as the Secretary of State for Health. The local authority role is critical to the success of the NHS commissioning process, undertaken by the National Health England. In budgetary terms, local authorities have a large sum for which they are responsible. The Department of Health's annual budget for health services is £110 billion, which is divided between NHS England (£95.6 billion) and other agencies (£15.7 billion). NHS England allocates resources to local health economy commissioners, namely local authorities and CCGs. In 2013–14, local commissioners received £65.6 billion, with £63.4 billion allocated to CCGs and £2.66 billion to local authorities in the form of ring-fenced grants to be spent on their public health obligations. Local authorities also receive £3.8 billion for adult social care (the Better Care Fund) and further funds are available for specific needs. The main rationale for giving local authorities public health responsibilities was to ensure coordination and better delivery of services. This idea was taken forward in the recent Care Act 2014, which provided for coordination between local authorities and the NHS in delivering health care. It is far from clear that achieving targeted health care is attainable owing to the diversity in modes of funding and the increasing demands made by the ageing population on health resources. Commissioning does not, on its own. solve the problems of diverse funding

and in fact, it may make it more difficult to achieve an integration and coordination of the large number of very distinct providers. Local authorities have received a ring-fenced grant of £5.46 billion to cover their new public health obligations at both upper and lower tier levels since April 2013. This grant gives local authorities a large amount of autonomy as it is not subject to specific intervention or monitoring by central government.

4.6 Conclusions

The UK does not provide any entrenched constitutional protection for local government, even though local authorities spend 25 per cent of total public spending in the UK. The over-centralised nature of the UK state means that the bulk of revenue comes from central government grants and other revenue streams whilst only a small amount is raised locally via council tax. Local authorities deliver many public services, which have come under severe financial strain following the public sector spending cuts implemented after the 2008 financial crisis. Since the 1980s, compulsory competitive tendering, PFI and best value policies have transformed the delivery of local services. Since 2010, there has also been debate about proposals for 'Devo Met', which would allow certain English cities, such as Sheffield and Manchester, to enjoy greater autonomy and tax-raising powers especially when they pool resources. There is growing cross-party political support for delegation of additional tax-raising powers to local government. The 'Big Society' idea has also been influential in reducing the role of the central state and empowering local citizens, voluntary groups and local communities. The Localism Act 2011 gave local authorities additional powers of general competence and encouraged central government delegation to local authorities and communities by promoting community rights rather than direct provision of local services by local authorities. This was a reversal of the previous trend to restrict local authority autonomy, however, some caution is required in assessing the impact of these changes; it is too early to assume that local government is being strengthened or that some form of remunicipalisation is under way. Local authorities are unable to use their general powers of competence to raise taxes.

The public and social service domains covered in this chapter range from water and waste management to refuse collection and social services, including care for the elderly. Energy is the subject of a separate chapter. In many public service domains, private sector organisations remain an important beneficiary of the principle of contracting out of public ser-

vices and the diminishment of local authority involvement. Against a background of tight spending allocations and the increasing public finance deficit that has to be managed by central government, local government remains an agency for central government policy. The roles and functions of local government are often contradictory; decentralisation and increasing bouts of localism are intertwined with tough financial controls that leave local authority activities vulnerable to further cuts and have weakened structural and financial support systems.

References

Bailey, S. H., & Elliott, M. (2009). Taking local government seriously: Democracy, autonomy and the constitution. *Cambridge Law Journal, 68*(2), 436–472.

Bevan, C. (2014). The Localism Act 2011: The hollow housing law revolution. *Modern Law Review, 77*(6), 964–982.

Cameron, D. (2005, December 6). Cameron victory speech. *BBC News-online*. Available from www.bbc.co.uk/news. Accessed 19 July 2015.

Clark, G., & Maher, J. (2003). *Total politics: Labour's command state*. London: Conservative Policy Unit.

Communities and Local Government Select Committee, Parliament of the United Kingdom. (2013). *The role of local authorities in health issues*. Available from www.parliament.uk/business/committees/committees-a-z/commons-select/communities-and-local-government-committee/news/role-of-local-authorities-in-health-issues---report/. Accessed 19 July 2015.

Conservative Party Manifesto. (2010). *Conservative Central Office*. London.

DEFRA (Department for Environment, Food and Rural Affairs). (2007). *Waste strategy for England, Cm 7086*. Available from www.gov.uk/government. Accessed 19 July 2015.

Derounian, J. G. (2014, July). *Now you see it- now you don't: A review of rural community organising in England*, Working Paper 116, University of Birmingham, Third Sector Research Centre.

DH (Department of Health). (2010). *Equity and excellence: Liberating the NHS', Government of the United Kingdom*. Available from www.gov.uk/government. Accessed 19 July 2015.

DH (Department of Health). (2012). *Introduction to the public health outcomes framework 2013 to 2016*. Available from www.dh.gov.uk/publications. Accessed 19 July 2015.

Fung, A. (2009). *Empowered participation: Reinventing urban democracy*. Harvard: Harvard University Press.

House of Commons, Parliament of the United Kingdom. (2013). *Prospects for codifying the relationship between central and local government*. Available from www.parliament.uk/commons-library. Accessed 19 July 2015.

Leigh, I. (2011). The changing nature of local and regional democracy. In J. Jowell & D. Oliver (Eds.), *The changing constitution* (pp. 237–251). Oxford: Oxford University Press.

Leyland, P. (2013). Multi-layered constitutional accountability and the refinancing of territorial governance in the UK. In N. Bamforth & P. Leyland (Eds.), *Accountability in the contemporary constitution* (pp. 309–329). Oxford: Oxford University Press.

Lowndes, V., & Pratchett, L. (2012). Local government under the coalition government: Austerity, localism and the big society. *Local Government Studies, 38*(1), 21–40.

Macmillan. (2013). *Cancer Research Lottery Fund*. London.

MacKintosh, C., & Liddle, J. (2013). Emerging school sport development policy, practice and governance in England: Big society, autonomous and decentralisation. *International Journal of Primary, Elementary and Early Years Education, 3*(13), 1–20.

Mulgan, G. (2010, August 30). Investing in social growth: Can the big society be more than a slogan? *Sunday Times*, p. 26.

National Audit Office. (2010). *PFI in housing accounting treatment of PFI housing projects*. Available from www.nao.org.uk/about-us. Accessed 19 July 2015.

National Audit Office. (2013, January 30). *Financial sustainability of local authorities, HC 88 Session 2012–13*. Available from www.nao.org.uk/about-us. Accessed 19 July 2015.

National Audit Office. (2014, January 18). *The big lottery fund and cabinet office: Follow-up: grants to the big society network and the society network foundation, session 2013–14 HC 572*. Available from www.nao.org.uk/about-us/. Accessed 19 July 2015.

Smith, M. J. (2010). From big government to big society: Changing the state-society balance. *Parliamentary Affairs, 63*(4), 818–833.

Varney, M. (2012). Local government in England: Localism delivered. In C. Panara & M. Varney (Eds.), *Local government in Europe* (pp. 330–368). London: Routledge Press.

Wollmann, H. (2013). *Public service in European Countries between public/municipal and private sector provision- and reverse?* Available from http://amor.cms.hu-berlin.de/~h0598bce/docs/Wollmann.%20draft%20grenoble%20provision.pdf. Accessed 19 July 2015.

CHAPTER 5

Local Government Public Service Provision in France: Diversification of Management Patterns and Decentralisation Reforms

Gérard Marćou

5.1 Introduction

Since the early eighties decentralisation reforms have dramatically changed the distribution of tasks among local government levels. In broad terms, these reforms made social services the responsibility of *départements*, with the participation of municipal bodies, whereas with some exceptions, economic public services are under municipal or regional control. The changes in the utilities sector are more due to sector legislation than to decentralisation reforms. Inter-municipal bodies were empowered to determine urban transport service areas (1982); regions were empowered to organise regional rail services on the basis of agreements reached with the national railway operator (1997); and inter-municipal bodies, as owners of the distribution networks, were vested with the power to organise the public service of gas and electricity supply at regulated tariffs (2006). In France, contracting out of utilities has been standard practice since the nineteenth century (Bezançon 1999).

A much more important transfer of functions took place in the social sphere. Departmental councils became the major authority in this field,

G. Marćou (✉)
University Paris 1 Panthéon-Sorbonne, Paris, France

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_5

as social workers and the management of allowances as well as decision-making powers previously exercised by local branches of the Ministry of Social Affairs were transferred to them. Under the 1983 reforms, control of about 95 per cent of the expenditure on social care passed to departmental councils (services for the elderly and children and most services for disabled people). Most personnel from local branches of the Ministry and social workers were transferred to the control of the presidents of *départements*. Further social policy reforms have increased *départements*' responsibilities and their budgetary burden (2003, 2009: minimum revenue allowance; 2001: autonomy allowance for the elderly; 2009: disability compensation allowance) (Centre d'Analyse Stratégique 2013). However, in most cases whereas the departmental council has to service social benefits, services are delivered by municipal or inter-municipal bodies, or by the private not-for-profit sector under the supervision of public authorities. The main functions transferred to the departmental council are 'mother and child care' (*protection maternelle et infantile*), young people under protection and housing for elderly people who can no longer live independently. In 1986, *centres communaux d'action sociale* (CCAS) were established as public law corporations presided over by the mayor, replacing the social boards of municipalities with a form of institution with more powers and greater autonomy; some CCASs are inter-municipal. The CCASs are responsible for a lot of equipment and services for the populace: homes for the elderly, social care centres, various forms of child-care and playgrounds. They proceed to applications for social benefits, and they provide social assistance to persons in urgent need. Departmental councils may also delegate own tasks to them. Overall, the CCAS budget amounts to 2.6 billion euros and CCASs employ about 120,000 people, more than those employed by *départements* in the social sphere. In summary, regulatory, planning and supervisory functions are mainly the responsibility of *départements* (Penaud et al. 2011). However although decentralisation has been administratively successful in the social sphere, two problems remain unsolved. Territorial disparities are too great, particularly with respect to functions that are not fully regulated by central government, and this will not encourage further decentralisation. The monitoring and evaluation by central government is not satisfactory, and too often the response to problems is over-regulation (IGAS 2008).

Further decentralisation reforms might have consequences for local government service provision. These reforms can be characterised as involving generalisation of inter-municipal bodies with their own tax powers (about

2100, end 2015), since 2014 directly elected council members, the creation of 15 (one more created by decree of 20 april 2016) metropolitan authorities and the promotion of regions (law of 16 January 2015 designing a new map of 12 large regions, without Corsica). The law of 7 August 2015 on the 'new territorial organisation of the Republic' was deemed to extend the responsibilities of regions, but *départements* have retained important functions in the social sphere. Competition between metropolitan and regional powers is also to be expected (Marcou 2015).

In the following sections, functions will be reviewed in the context of recent changes in provision. Local authorities have full discretion to decide on the form in which the public services, which fall within their remit, are delivered unless special legislation applies (as in the case of gas and electricity supply, firefighting, social and medico-social institutions). It is part of their constitutional right to self-government (C. Art. 72). Outsourcing is often the preferred form of management, although the conditions vary considerably from sector to sector (5). In the French context, however, outsourcing does not mean divestment; quite the contrary, outsourcing is usually combined with public control, public funding and planning (5.3). Furthermore, since the early 2000s, several new legal arrangements have been put at the disposal of local governments to facilitate use of direct provision (5).

5.2 Outsourcing or Direct Provision: A General Overview

Outsourcing is an ambiguous concept, as direct management of public services by local government bodies is rather rare. According to the Court of Accounts (2015), direct provision means that management is not delegated to a contractor that would operate the service at its own risks and usually funded to a large extent by users' fees. Outsourcing is often the preferred form of management, but the conditions vary by sector. Furthermore, since the early 2000s several new legal arrangements have been put at the disposal of local governments to facilitate direct provision. The Court pointed out the emergence of new forms of direct provision by 'local public companies' (SPL; see below) eg fully owned by local governments, and the option of '*quasi régies*' in which the contractor is paid directly by the local authority and is subject to full local authority control. This definition is consistent with EU law, as devolution of services to in-house providers is not subject to EU procurement and concession directives (No 2014/23 to 25/CE).

Although a greater proportion of local government public services is outsourced in France than in other countries under review, cross-sector comparisons are not easy owing to differences in how data are treated. For example, 22,000 of the 31,000 water supply and sewage services are directly provided (*régies*) (Court of Accounts 2015), but 61.4 per cent of the population is supplied with water, and 41.7 per cent with sewage services , by private providers (Lieberherr et al. *in this volume*). However 90 per cent of public transport networks are operated by private companies (Court of Accounts 2015), 38 per cent of school catering (Maires Info) and 74 per cent of waste treatment (Fédération des Villes moyennes 2013). The situation of the social care sector is specific, as will become clear below.

In the field of utilities outsourcing is always equivalent to contracting out. Two main types of contract are currently used: concessionary agreements (*délégations de service public*; DSP) and procurement contracts. Concessionary agreements date back to the nineteenth century and there are several forms developed through practice and administrative case law. Under a *concession*, the contractor has to finance and provide the infrastructure and other equipment; under a franchise (*affermage*), the contractor has to operate the service with means put at its disposal by the public authority. In both cases the contractor is paid out of operational revenue. Under a third type of contract the contractor has to manage the service on a commercial budget, and it is paid for doing so by the local authority, with variations according to operational results (*régie intéressée*). Since local authorities ceased to be bound by standard contracts in 1982 there is the potential for considerable variation in the arrangements. The Law of 29 January 1993 set out a common legal framework covering the agreement procedure for all these contracts. Directive 2014/23/CE has required adaptation of French legislation, and in particular the word "concession" will take general meaning, instead of "délégation de service public", but no substantial change (legislative decree - ordonnance - n°2016_55, 29 January 2016; decree n°2016-86, 1 February 2016).

Traditionally, the contractor had to operate the service at its own risk; over time, risk-sharing evolved towards the transfer of a large part, if not the majority, of the risk to the public authority. Nowadays only a minority of contracts are really concessions in the strict sense, both as a result of industrial strategies (which have also supported the French version of the Private Finance Initiative (PFI) in, for example, water supply and of increased involvement of public authorities in the substance of the service

to be delivered (e.g., urban public transport services) (Lorrain and Stoker 1995; CDC 2002). In all cases, physical assets remain public in the sense that even when they are provided or constructed by the concession holder they are subject to the legal regime of the public domain (e.g public property with special legal assignment) from the beginning, unless the contractor obtained a long term lease on public estates. They return without any further compensation to the public authority at the end of the contract if they are necessary to the continuity of the public service, even if in the beginning they were private property or on private premises (CE Ass. 31 December 2012 'Commune de Douai', No 342788).

A service may also be provided through a public procurement contract. In this case the contractor is paid in instalments by the public authority throughout the term of the contract (*quasi régies*). This is very common in the case of waste collection services and for the management of sanitation plants. The distinction between procurement and DSP is based on the fact that in DSP contracts a 'substantial part of the remuneration' of the contractor has to be linked to operational results, thus imposing some risk on the contractor. This legal structure for contracting out is resumed by EU law with the directives of 24 February 2014, in particular the Directive 2014/23/EU which defines as a 'concessionary contract' any contract in which part of the operational risk is assumed on revenues by the concession holder, additionally to payments by the public authority as the case may be. French law needed only marginal adjustment to comply with these new directives.

The legal regime governing administrative contracts, as developed by Council of State case law, strikes a balance between the prerogatives of the public authority and the protection of the legitimate economic interests of the contractor. The public authority is allowed to change the terms of the contract unilaterally at any time if it is in the public interest to do so, while keeping the initial financial balance of the contract, through any kind of compensation. More recently the Council of State recognised a principle of 'fairness in contract relationships', which means that the judge must give priority to the continuity of contractual relationships when adjudicating (CE Ass. 28 December 2009 'Ville de Béziers' and CE Sect. 21 March 2011 'Ville de Béziers' II: see GAJA 2013, no. 118).

The pattern of provision of social services is different. Private sector involvement cannot be analysed in terms of outsourcing, when private institutions are not vested with a public duty. Social care in general has to be considered in the larger context of a broad employment sector:

'services to persons'. About one third of people working in social care (representing 41 per cent of work hours) are employed by delivery bodies of all kinds, whereas two thirds are directly employed by individuals, frequently using allowances or tax privileges. Both forms of employment have increased considerably from the early 2000, although the increase has been much greater in the case of delivery bodies (×3.5). Among delivery bodies, associations provide 59.3 per cent of work hours, public bodies 10.9 per cent (mainly those run by departmental councils and CCAS, both of which are decreasing in number) and private enterprises 29.7 per cent (sharp increase in recent years). Care for the elderly represents 48 per cent of the total, but makes up 57 per cent of the activities of associations and 56 per cent of the activities of public bodies (DARES 2015; Borgetto and Lafore 2014). Autonomy allowances given to elderly and disabled people (funded from *département* budgets) have certainly boosted the sector, and in particular the market in social care services, because the recipients of the allowance are free to choose how to spend it. In contrast, day nurseries and other similar childcare institutions remain largely under the direct control of public authorities (61 per cent), mainly CCASs, or are run by voluntary organisations (over 30 per cent). 'Mother's assistants' are licensed, trained and supervised by the *départements* (although they are actually employed by parents). At the management level much depends on municipal bodies. Of ten municipalities eight run programmes for elderly people and four run programmes for deprived people, children and young people (Penaud et al. 2011). Despite widespread decentralisation in the social sector, central government still has overall responsibility for services, which it exercises through the regulatory framework, funding and supervision arrangements and its own functions. In particular, as regards childcare, 100 per cent of children from three to six years old are admitted to nursery (*écoles maternelles*), as are 49 per cent of children between two and three years, although there are important regional disparities in provision (Borderies 2013).

DSP or public procurement contracts can also be used for such social care services but this is unusual. In the social sector, private institutions are not public services; they perform a regulated activity subject to authorisation and supervision by the *département*. The structure of service provision has been determined largely by central government social policies, concern over new risks for population in general (loss of autonomy) and improvements in understanding of the needs of disabled people; these factors have also increased the opportunities available to the private sector.

5.3 Forms of Public Control

Whereas outsourcing has for a long time been quite a common approach to delivering public services, in recent decades public control over public service delivery has been strengthened in several ways: contract provisions, planning and financing. Partnership contracts were deemed to rely more on the private but recently they were also brought under strict central control.

Control Based on Administrative Contract Law

In French law outsourcing involves public control. Outsourced services are always public services under the control of a public authority, and the relevant local authority therefore has the prerogative to decide how a service will be delivered. Recent administrative case law made public control over an activity one of the criteria for recognising the activities and services of private bodies as having the legal status of a public service (CE Sect. 22 February 2007 *Association du Personnel relevant des Etablissements pour Inadaptés*, No 264541). Public control is also typical for traditional concessionary agreements.

However, local authority control has not always been exercised as it should be. Sometimes financial obligations which benefit other local authority projects at the expense of service users have been imposed on contractors (Court of Accounts 2003). The legal framework, annulments by the Council of State and inspections of Regional Courts of Accounts have enforced greater transparency in relationships between private companies and local authorities. The Competition Authority pointed out the high degree of concentration in the water supply sector, where three companies are in charge of 98 per cent of all DSP contracts (*Conseil de la Concurrence*: No 05-D-58, 3 November 2005). In recent years the move to direct provision by a number of municipalities, and in particular the decision by the city of Paris to return to use of direct provision for water supply, has improved the negotiating position of other local authorities. However, direct provision was also subject to criticism by the Court of Accounts (2015). The concentration of power is even greater in the field of urban public transport services, with two companies sharing about 80 per cent of networks, and only 10 per cent of services run under direct provision arrangements. However, these two companies are also half publicly owned, the state railway public corporation SNCF holds 50 per cent of Keolis, and the *Caisse des Dépôts et Consignations*, a major public

financial institution, holds 50 per cent of Transdev with the other 50 per cent owned by Veolia. According to the Court of Accounts (2015) local authorities have rather little negotiating power and they usually have to assume much of the costs for funding services, generally as a consequence of the terms of reference they have imposed.

Planning

Public service provision is nowadays subject to strong planning regulations that are crucial to the enforcement of public policy objectives and consideration for users' needs. Regulations are usually enforced through the exercise of police power by *prefects*. This approach to service management is supported by EU law in the form of environmental directives. We will give only brief examples.

Water supply and sewerage are municipal responsibilities, according to the law. These responsibilities may be delegated to an inter-municipal body. The municipality or inter-municipal body has to establish a water supply network scheme, and since 2010, a sewerage network scheme (local government code—CGCT: Art. L.2224-7-1 and L.2224-8). These systems must comply with the water resource management schemes established at the level of hydrographic districts and sub-districts. Hydrographic districts are required by the EU Directive 2000/60/EC. Sub-district schemes must be compatible with district structure schemes and they are binding on any public or private decision on any work or activity related to water supply and sewerage (Environmental code, Art. L.212-5-2).

Urban transport authorities responsible for servicing over 100,000 inhabitants have to adopt a mobility plan (*plan de déplacements urbains*), the purpose of which is to coordinate all transport modes (passengers and goods; car traffic and public transport) in the area and to privilege the development and the use of passenger public transport (Kada 2012). The mobility plan has to comply with the structure plan (a higher level town planning document) with respect to strategy for the development of public transport and how it is related to urban development, housing settlements and activities, and with the regional scheme for inter-modality (Code of transports Art. L.1214-1 sq, in particular L.1214-7). The mobility plan is binding on local plans (*plans locaux d'urbanisme*) (Planning code Art. L.123-1-9); hence, no public transport service can be authorised or developed outside the provisions of the mobility plan although special rules

apply in the metropolitan area of Paris, where public transport services are operated by a state-owned public corporation.

Waste management is also subject to strict planning regulation, the responsibility for which was devolved to regional councils (law of 7 August 2015: Environmental code, Art. L.541-13 and 14). The decisions of public bodies and their concession holders have to comply with waste planning regulations (art. L.541-15). Municipal authorities or the appropriate inter-municipal bodies also have to adopt plans deemed to reduce the volume of waste (Art. L.541-15-1).

Various planning regulations also have to be incorporated into social policies regulated by national legislation, by state authorities and by the presidents of the departmental councils (Code of social care and families, in particular Art. L.312-5).

Financing

Lastly, special financing schemes and regulations are provided for by the law irrespective of the type of operation.

Nowadays, all social care benefits are served under the authority of elected heads of departmental councils, according to nationally regulated rates and conditions, and are funded from the department's budget. But a new national public corporation, the National Fund for Solidarity and Autonomy (CNSA), was established by law on 30 June 2004 with the objective of financing benefits and providing technical support to institutions and local government bodies in charge of social care for elderly and disabled people with limited autonomy. Between 2006 and 2013, financing provided by the CNSA and the Social Security fund for these services increased by about 50 per cent. Overall, the funding for services to compensate for the loss of autonomy comes from several sources: the CNSA (37 per cent, with resources coming from State levies—general social contribution, solidarity contribution for autonomy and additional contribution to the latter), state budget (26 per cent), Social Security fund (19 per cent), departmental councils (17 per cent); this funding has increased sharply since the mid-2000s (CNSA 2014). However, departmental councils act as agencies of central government, implementing national policy, particularly in the case of personal autonomy-related services.

In the field of urban public transport a special levy (*versement transport*, VT) was introduced to finance investments in urban public transport in the metropolitan area of Paris, and subsequently extended to all urban

areas with over 10,000 inhabitants; its scope was also extended to include running costs of transport services. This VT is levied at a rate between 0.55 per cent and 1.75 per cent of paid salaries, but can reach a ceiling of 2.7 per cent in the metropolitan area of Paris. Within the permitted range, the rate is set by local councils. At present, the VT yields on average 50 per cent of the resources of transport authorities, whereas tariffs yield only about 20 per cent and the gap (30 per cent) is covered by local public budgets. This imbalance raises questions about the sustainability of the transport financing system (Faivre d'Arcier 2012). The Court of Accounts (2015) recommended better consideration of users' needs and that users should bear a greater proportion of the costs of services.

Implementation of waste policy is supported by a special tax, the general tax on polluting activities, introduced in 2009, which is the main source of funding for the activities of the Agency for Environment and Energy Control (ADEME) as directed to the following areas: waste prevention (34 per cent), recycling (18 per cent), organic valorisation (18 per cent) and valorisation of building waste (eight per cent) (Ministère de l'Ecologie 2011). Local government contractors may finance projects with such support if they meet the necessary conditions. Municipalities levy a special tax on household waste collection to finance the service (Court of Accounts, 2011)..

Lastly, users' fees for water supply and sewerage include various levies provided for by the law which represent a contribution to the costs of managing water resources and conserving their quality. These levies are determined by hydrographic district committees in which all categories of users and local governments are represented. They distribute the costs of water consumption between these categories. For many years the system has been criticised by the Court of Accounts (and was criticised again in 2015), because too much of the burden of paying for water services is shifted from enterprises and farmers to domestic households; there are now plans to reform the system.

State Control Over Partnership Contracts

A legislative decree of 2004 introduced a French version of PFI as an alternative to DSP contracts. Briefly, this version of PFI involves one or several enterprises bidding for the right to design, construct and operate a project for a long period of time, with the public authority paying by instalments to cover all costs, including financing costs. Such a contract

was subject to conditions relating to the complexity of the work and the need for work on the project to begin rapidly. Originally, it was a condition of PFI contracts that the public authority did not contribute capital to the project, but this was abandoned in 2008. For industrialists, the main benefit of PFI was that it left the operational risks in the hands of the public authorities; for local governments it made it possible to shift debt onto the next elected council. After a number of failed PFI projects, which resulted in public authorities facing heavy instalment payments over long periods the government decided to bring such initiatives under central control. The Finance Programming Act 2014–2019 (Art. 34) prohibits local authorities and public hospitals from signing partnership contracts; central government may decide to sign such a contract at the request of a local authority, provided that the case is scrutinised by the competent ministry and is deemed to be financially sustainable.

5.4 New Forms of Direct Provision

The renaissance in direct provision can be observed at the legislative level and in local political initiatives, and it cuts across several sectors. Most recent laws were deemed to adjust to EU law constraints or opportunities.

From régies *to Local Mixed Economy Companies*

Traditionally local governments have been able to use two types of organisation when they opt for direct provision of a public service: the *régie*, or wholly publicly owned enterprise, and the local mixed economy company. which has financial autonomy and may or may not have corporate status. They are managed by a council headed by the mayor (or other local holder of executive power) along commercial lines, and they have their own budgets, which must, in principle, balance expenditure and commercial revenues, as an appended to the general budget of the local government. *Régies* having the status of a public law corporation under local government control have their own balance sheet, board and executive manager. A *régie* is deemed to facilitate the management of utilities (*services publics à caractère industriel et commercial*), and its management is subject to private law. In recent years, it has been possible to create administrative *régies* with financial autonomy for the purpose of direct provision of administrative public services, in particular social and cultural public services, instead of creating associations.

Despite the fact that there are a significant number of such local public enterprises this institutional structure has long been considered to lack the necessary flexibility and it complicates the sharing of capital investments among several local governments. In the fifties and seventies, mixed economy companies were developed for local projects by specialised subsidiaries of the *Caisse des Dépôts et Consignations*. The main purpose of the law of 1983 on local mixed economy companies (SEML) was to facilitate the creation of such companies and to secure local government control over their management by making it a requirement for local authorities to hold the majority of the capital and seats in the board. This legislation was a turning point, making SEML an instrument that local authorities could use to implement their policies, instead of being driven by state companies (subsidiaries of *Caisse des Dépôts*). In this sense, the 1983 law was consistent with the decentralisation reform of 1982, rather than with new public management (NPM). There was then a sharp increase in the number of SEML.

New Forms of Direct Provision and Renaissance in Public-Private Partnerships

In recent years, new legislation has facilitated direct provision. The first step was to allow local authorities to establish wholly publicly owned local public companies (SPL); this was achieved through the housing law of 2006, and more generally by the law of 28 May 2010. SPL, which have one or several public shareholders for whom they carry out orders, are fully in line with European Court of Justice (ECJ) rulings on 'in-house entities', provided that the control exercised by the public authority over the SPL makes effective the control over the direction of the SPL. They are private law limited companies, with at least two shareholders (instead of seven), and subject to public law with respect to local government functions and state oversight, including the legal regime governing SEML where applicable. SPL can only be created to perform local government functions, not for purely financial purposes.

The second step was the law of 1 July 2014 on single purpose, mixed economy companies (SEMOP), which referred to 'institutional public-private partnerships' (European Commission 2007, 2008). Such companies are created by one local authority (a single or a joint authority) with at least one shareholder who is an economic operator, for a limited time period and for a single purpose, namely a contract which is agreed between the local authority and the company. This contract is subject either to con-

cession rules or to public procurement rules as regards the open procedure chosen for the selection of the shareholding economic operator, depending on the objective of the contract. The contract itself is a consequence of the constitution of the company after the selection of this economic operator. Another innovation is the shareholding rule: the local authority has to hold between 34 per cent and 85 per cent of the capital and at least 34 per cent of seats on the board; economic operators have to hold at least 15 per cent of the capital. These provisions mean that the local authority has to decide at the tender stage whether it wants to create a SEML or a mixed economy company led by the economic operator. Similar single purpose companies can be used for planning development projects (law of 7 August 2015) and for hydraulic energy concessions (law of 17 August 2015).

In fact, SEML, SPL and SEMOP are all regarded as being instruments used by local authorities to carry out their projects. In 2014 there existed 1214 such 'local public enterprises' (EPL)—and the number is increasing –continuously, responsible for 578 subsidiaries and minority participations and with a global turnover of 12.33 billion euros. They manage 538,000 housing units, a major and traditional field of their activity. Municipalities and inter-municipal bodies are responsible for most EPL and the sectors in which EPL are most commonly used are development (317), tourism, culture and leisure (282, increasing), housing (215), environment and networks (169, sharp increase from 131 in 2012), transport and car parks (77) and economic development (124) (FEPL 2015).

The driving force behind the most recent legislative reforms was not to increase market competition in local public service provision, but on the contrary, to comply formally with EU law whilst retaining discretionary powers and the option of managing services outside of the market; the opposite of NPM recommendations. Why this attitude, given the long tradition of outsourcing in French local government? First of all, utilities represent a minority of EPL, albeit an increasing one, especially in the network sectors. This may be a consequence of a new distrust among local authorities of the big companies with which they have to deal with, sometimes without adequate negotiating power. This move might also be interpreted as the beginning of a creeping 'remunicipalisation' through new forms of direct provision. But this would go too fast, although these laws would be the legal instrumentorium for this purpose. On the other hand, the use of SEMOP might reflect a will among some local officials to enter into real partnerships with economic operators who contribute industrial knowhow to the project. But this could turn into a revival of classical SEML.

5.5 Conclusion

The NPM debate had little impact on local government service provision. Commercial management has always been practised in utilities. Disputes about its relevance and efficiency are also not new. After the Second World War, the main change in utilities resulted from nationalisations in the field of energy, but relationships between the national public monopolies and the municipalities that retained ownership of the distribution networks continued to be governed by concession agreements. EU law and policies have had a much greater impact on local government service provision than national monopolies. Recent legislative reforms have promoted new instruments for direct provision, and hence for remunicipalisation, but at present, there is no evidence to suggest a big move in this direction. Local governments have much more to do with decentralisation policies, the new distribution of tasks and central government policies which are to be implemented with the participation of local authorities than with NPM.

References

Bezançon, X. (1999). *Essai sur les contrats de travaux et de services publics: contribution à l'histoire administrative de la délégation de mission publique*. Paris: LGDJ.

Borderies, F. (2013). L'offre d'accueil collectif des enfants de moins de trois ans en 2011. *Document de Travail*, 184. DREES, Ministère des Affaires sociales.

Borgetto, M., & Lafore, R. (2014). *Droit de l'aide sociale et de l'action sociale* (3rd ed.). Paris: Montchestien Lextenso.

Caisse des Dépôts et Consignations (CDC)/Groupement de Recherche sur l'Administration Locale en Europe (GRALE). (2002). *Partenariat public-privé et collectivités territoriales*. Paris: Documentation française.

Caisse Nationale de Solidarité pour l'Autonomie (CNSA). (2014). *Les chiffres-clés 2014 de l'aide à l'autonomie*. Paris: Author.

Centre d'Analyse Stratégique (CAS)/Direction générale de la cohésion sociale. (2013). *Les politiques de cohésion sociale. Acteurs et instruments*. Paris: Author.

Cour des Comptes. (2011). *Les collectivités territoriales et la gestion des déchets ménagers et assimilés*. Paris: Documentation française.

Cour des Comptes. (2015). *Rapport public annuel*. Paris: Documentation française.

Direction de l'animation, de la recherche, des études et des statistiques (DARES) (2015), Les services à la personne en 2013, *DARES Analyses*, February, n°010.

European Commission. (2007, May 5). *Public-private partnerships, interpretative communication*, C, 6661.

European Commission. (2008, April 12). *Interpretative communication on the application of Community law on Public Procurement and Concessions to institutionalised PPP*, 2008/C 91/02, OJ C 91.

Faivre d'Arcier, B. (2012). Le financement des services publics de transport. In GRALE (Ed.), *Droit et Gestion des Collectivités Territoriales 2012* (pp. 141–150). Paris: Moniteur.

Fédération des Villes Moyennes. (2013). *Collecte et traitement des déchets ménagers. Quels coûts dans les villes moyennes?* Paris: Author.

Fédération des Entreprises Publiques Locales (FEPL). (2015). *EPL Scope 2014*. Paris: Author.

GAJA (Grand arrêts de la jurisprudence administrative , by Long, M. / Weil, P. / Braibant, G. / Delvolvé, P. / Genevois, B.). (2013). 18th ed. Paris: Dalloz.

Inspection Générale des Affaires Sociales (IGAS). (2008). *Les politiques sociales décentralisées*. Paris: Ministère des Affaires sociales.

Kada, N. (2012). Les autorités organisatrices de transports urbains (AOTU). In GRALE (Ed.), *Droit et Gestion des Collectivités Territoriales 2012* (pp. 97–106). Paris: Moniteur.

Lorrain, D., & Stoker, G. (Eds.). (1995). *La privatisation des services urbains en Europe*. Paris: La Découverte.

Marcou, G. (2015). L'Etat et les collectivités territoriales: de la centralisation à l'impuissance. In N. Kada (Ed.), *Les tabous de la décentralisation* (pp. 31–47). Paris: Berger-Levrault.

Ministère de l'Ecologie. (2011). *La fiscalité des déchets*. Available from http://www.developpement-durable.gouv.fr/Le-couplage-a-un-plan-d-aide.html. Accessed 5 Sept 2015.

Penaud, P., Amghar, Y.-G., Bourdais, J.-F., Dupays, S., Laloue, F., Léost, H., & Moleux, M. (2011). *Les politiques sociales*. Paris: Sciences Po/Dalloz.

CHAPTER 6

Remunicipalisation Revisited: Long-Term Trends in the Provision of Local Public Services in Germany

Frank Bönker, Jens Libbe, and Hellmut Wollmann

6.1 Introduction

The provision of local public services has undergone substantial changes over time (Clifton et al. 2011). For most of the past 20 years, attention has focused on the liberalisation, privatisation and marketisation of services. More recently, however, the focus has shifted. Many observers have identified a return of the pendulum (Wollmann and Marcou 2010), a municipality comeback (Wollmann 2014) or a renaissance of municipal enterprises. As a result, there has been a growing international interest in the 'remunicipalisation' of local public services (Hall et al. 2013; Warner and Clifton 2014).

Germany is often seen as a typical example of these processes. The international literature is full of references to cases of remunicipalisation in the German energy and water sectors (Hall et al. 2013), and there is considerable debate within Germany about the extent, dynamics and effects

F. Bönker (✉)
Saxonian University of Co-operative Education, Riesa, Germany

J. Libbe
German Institute of Urban Affairs, Berlin, Germany

H. Wollmann
Humboldt University Berlin, Berlin, Germany

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_6

of *Rekommunalisierung* (see Matecki and Schulten 2013; Schaefer and Papenfuss 2013; Monopolkommission 2014).

This chapter seeks to contribute to this debate by putting the recent changes in the provision of local public services into a broader perspective. First, it takes a historical approach, looking back at more than 100 years of service provision in Germany to establish the historical background to more recent developments. Second, the chapter deals with a broad range of local public services, from public utilities to personal social services. Our aim was to consider public services that are normally dealt with separately as a group, to shed new light on the extent and dynamics of change.

The paper is structured chronologically. In line with the remunicipalisation narrative, we distinguish three periods: the period from 1870 to the early 1970s, during which a public service regime characterised by local governments' dominant role in service provision emerged; the 'neoliberal age' from the late 1970s to the mid-2000s, with its tendencies to liberalisation, marketisation and privatisation of local public services; and finally, the most recent period, with its partial backlash against neoliberal policies.

6.2 Local Public Services: From Municipal Socialism to the Mature Welfare State

In Germany, the role of local government in public service provision gradually increased between the late nineteenth century and the early 1970s. The growing role of the state and the expansion of the welfare state during this period went hand in hand with the increasing involvement of local authorities in the provision of local public services.

In the late nineteenth century, local authorities reacted strongly to the social and other problems associated with growing industrialisation and the accompanying socioeconomic changes. The result was the emergence of an embryonic 'local welfare state' which was derided by contemporary conservatives and 'Manchester liberals' as 'municipal socialism' (Lenger 2013: 198–202).

The public utilities were an important domain of activity at the local level. From the mid-nineteenth century, many local authorities had been setting up savings banks and municipal enterprises to provide water, energy and public transport. In many municipalities, the newly established *Stadtwerke* bundled together a broad range of public services, from the provision of water and energy to waste management and the creation and management of public parks (Ambrosius 2012).

In the second half of the nineteenth century, local authorities also became more active in the field of personal social services, as the traditional system of poor relief gradually evolved into a more differentiated system with specialised services for different groups of people in need (Bönker and Wollmann 2000). In comparison with public utilities, however, the role of local authorities in social services remained more limited; although they expanded their activities, the bulk of services were provided by private charities concerned with social disintegration and driven by the idea of bourgeois social responsibility.

The activities of local authorities were politicised as a result of the democratisation which took place following the First World War. Local authorities led by the political left sought to expand further the role of municipal enterprises. In the sphere of personal social services, the mixed public-private system that had emerged in the second half of the nineteenth century was put on a new footing (Bönker and Wollmann 2000: 330–331). Although private associations continued to provide the majority of personal social services, local bourgeois philanthropy was increasingly replaced with centralised welfare association cartels.

In the Nazi period, local self-government was curtailed, and municipal enterprises and non-state providers of social services were brought under state and party control. Whilst most changes in the field of personal social services were reversed after 1945, a number of the developments in provision of public utilities had a more lasting impact. These include legislations such as the 1935 Local Government Code (*Gemeindeordnung*), the 1938 *Eigenbetriebsverordnung* and the 1935 Law on the Energy Sector (*Energiewirtschaftsgesetz*), and also the influential concept of *Daseinsvorsorge* which was formulated in the mid-1930s by a legal scholar affiliated to the Nazi movement (Forsthoff 1938) and has served as a major politico-legal justification for the public provision of services of general interest ever since.

After 1949, municipal enterprises kept their strong role in provision for a long time. Unlike other Western countries such as France, Italy or the UK, Germany did not experience the nationalisation of public utilities in the post-war period. At the local level, local authorities were keen on keeping control over municipal enterprises, regarding them as an important instrument for the rebuilding of municipalities. At the national level, the conservative-liberal coalition that governed Germany until the mid-1960s rejected all forms of nationalisation as representing a dangerous step towards socialism, citing the example of the German Democratic Republic as a deterrent. The interests of local authorities also

explain why the conservative-liberal coalition's attempts at privatisation in the late 1950s and 1960s were confined to big national enterprises such as Preussag, VEBA and Volkswagen, and left municipal enterprises largely untouched. The ambitious 1957 Competition Law (*Gesetz gegen Wettbewerbsbeschränkungen*) explicitly excluded the energy and the water sectors, thus facilitating the preservation of existing structures.

In most municipalities, some of the public utility services were bundled together under the management of local *Stadtwerke* (Ambrosius 2012). The role of the *Stadtwerke* differed in the various sectors:

- In the *energy sector*, the *Stadtwerke* co-existed alongside a number of private energy producers and distributors. Energy providers operated on the basis of exclusive concession agreement treaties with municipalities and enjoyed regional monopoly. Some *Stadtwerke* ran their own power stations, but most confined themselves to the transmission and distribution of energy and purchased energy from private energy companies. In some of these private companies, municipalities also had an interest.
- In the *water sector*, service provision also presupposed a concession agreement treaty with the relevant municipality. The *Stadtwerke* had almost exclusive responsibility for water supply and sewage disposal and treatment, however, and as a result, the system was highly fragmented (see also Lieberherr et al. *in this volume*).
- *Waste management* only gradually emerged as a public function after the Second World War. In most of the bigger cities, it was in the hands of municipal companies and was part of the portfolio of the *Stadtwerke*. In contrast, many small municipalities continued to rely on contracts with private providers.
- Other services provided by many *Stadtwerke* included public transport and public swimming baths.

The bundling of services allowed for cross-subsidisation within the *Stadtwerke*. Most local authorities used some of the profits made in the energy sector to subsidise loss-making services such as public transport and public baths.

The *Stadtwerke* were constituted in various legal forms. Until the 1990s, most took the form of *Regiebetriebe* or *Eigenbetriebe*, two legal forms subject to public law rather than private law and thus, available only to public companies. *Regiebetriebe* are formally part of local public

administration and have little autonomy; details of all their expenditures and revenues are listed in the local budget. In contrast, *Eigenbetriebe* are treated as independent organisations and only their surpluses or deficits are recorded in the municipal budget (Grossi et al. 2010; see also Grossi and Reichard *in this volume*).

The field of personal social services was also characterised by a high degree of continuity (Bönker and Wollmann 2000). The post-war modernisation and expansion of personal social services left the welfare associations' strong position in service provision largely untouched. Both the 1953 Act on Youth Welfare and the 1961 Federal Social Assistance Act reinforced the privileged role of the welfare associations, which had emerged during the Weimar years. Challenged by local authorities and Social Democrats, these provisions were confirmed by the Constitutional Court in a seminal ruling in 1967. When welfare state expansion was at its peak in the late 1960s and early 1970s (which coincided with the coming to power of the Social Democrats in 1969), local authorities managed to increase their leverage over social services by extending their market share and by using standards and social planning.

6.3 Local Public Services in the 'Neoliberal Age'

Germany entered the 'neoliberal age' relatively late. The liberalisation, marketisation and privatisation of local public services only gained momentum during the 1990s (Deckwirth 2008; Bogumil et al. 2007). Unlike in the UK, change was not driven by general (across the board) central government initiatives to change the way public services was provided, but by a complex, intertwining of sectoral reforms and local reform initiatives and thus, the changes have played out differently in the various sectors.

In the case of public utilities, change has been most marked in the fields of waste management and energy provision. In both fields, the changes in service provision have been part of a broader overhaul of the market.

In the case of *waste management*, the market has been transformed by two major regulatory changes (Dreyfus et al. 2010). Both changes have clear national origins and occurred well in advance of later EU initiatives. First, since the mid-1980s, the legal responsibility for waste management has been gradually shifted from municipalities to producers and enterprises. This change culminated in the 1994 Recycling Waste Management Act that explicitly confined local authorities' responsibility to household waste. The shift in responsibilities opened up the market for waste management.

When private companies entered the market, many local authorities found it difficult to compete; their private rivals benefited from more modern technology, weaker unions and lower pay. Hoping to benefit from the lower costs, many local authorities decided to outsource municipal waste management. It is estimated that in the mid-2000s, about 40 per cent of all local authorities relied on contracts with private providers.

The second major change was brought about by the 1993 *TA Siedlungsabfall*, which made incineration the only legal method of municipal waste disposal. Many local authorities lacked the financial means to build new incineration plants, so they often cooperated with private investors and relied on public-private partnerships (PPPs).

There were also radical changes in the energy sector. The 1998 Federal Energy Act which implemented the 1996 Energy Directive 96/92/EC brought about the radical liberalisation of the German energy market. The new Act did away with the old regional monopolies and gave German consumers the right to choose amongst different providers. Faced with competitive pressure from the big energy providers and mounting financial problems, many municipalities decided to sell local grids and shares in their *Stadtwerke* to the big players. RWE and E.on, two of the emerging market leaders in the sector, established subsidiaries with minority interests in about 100 *Stadtwerke*. In the mid-2000s, only 30 per cent of the energy companies supplying the main German cities were still fully owned by local authorities (see also Wollmann et al. 2010).

Changes in water provision have been less sweeping, and the overall regulatory framework has remained largely intact (Deckwirth 2008). Although private sector companies have entered the water market since the 1990s and have acquired stakes in the *Stadtwerke* almost half of the country's 109 largest cities, they have only taken minority stakes. The private water companies most prominently involved in the local market are the French giants, Veolia and Suez, and their German counterparts, RWE and E.on. In perhaps the most conspicuous case of privatisation, Veolia and RWE acquired a 49.9 per cent stake in Berlin's Water Works, Germany's largest water company, in 1999 (see Lieberherr et al. 2012; also Lieberherr et al. *in this volume)*.

These changes in ownership were complemented by a strong trend towards the corporatisation of municipal companies in almost all sectors (Grossi et al. 2010; Bogumil and Holtkamp 2013; see also Grossi and Reichard *in this volume*). In an attempt to make public companies more similar to their allegedly more efficient private counterparts, most municipali-

ties transformed their companies into limited liability companies (GmbH) or stock companies (*Aktiengesellschaft*) (see Gottschalk 2012). Legal entities subject to private rather than public law are now the predominant form of organisation in the public sector (Papenfuß 2010). About 58 per cent of the public utilities belonging to the German Association of Local Utilities (*Verband kommunaler Unternehmen*) are now limited liability or stock companies (VKU 2013). The percentage of public-law water suppliers has declined from 78 in 1993, to 56 in 2008 (see ATT et al. 2011).

Like public utility services, personal social services also saw substantial changes in the 1990s. Various reforms were introduced with the aims of increasing competition and fostering cost-consciousness (Heinze and Schneiders 2014). Change was most drastic in the field of long-term care for frail people; the introduction of a new social insurance scheme in the mid-1990s similarly reduced the role of welfare associations and local authorities (Bönker et al. 2010). The new scheme, which introduced new social benefits worth about €16 billion per year, boosted the market in care services. By ending the traditional privileges of the welfare associations and by replacing the old corporatist structures with more market-like relationships, the new legislation paved the way to an increase in the role of commercial service providers (see Table 6.1).

The rise of commercial providers, including some larger companies in the market for residential care, has been associated with a decline in the market shares of not-for-profit providers and local authorities. Some local authorities, for example, Hamburg and Stuttgart, sold their care homes to private providers. An additional development, not reflected in Table 6.1, is that in the late 1990s, a number of welfare associations and local authori-

Table 6.1 Profile of providers of long-term care in Germany, 1999–2011 (percentage share)

	1999	*2005*	*2011*
Residential care			
Public	8.5	6.7	5.1
Not-for-profit	56.6	55.1	54.4
Commercial	34.9	38.1	40.4
Domiciliary care			
Public	2.0	1.8	1.4
Not-for-profit	47.2	40.6	35.7
Commercial	51.0	57.6	62.9

Source: Federal Statistical Office of Germany, Long-term care statistics, various years

ties became involved in PPPs and thus, began to rent 'their' care homes from private owners.

Local authorities have not only lost market share. The law on new long-term care insurance schemes made the newly created long-term care insurance funds (*Pflegekassen*) responsible for licensing service providers and concluding agreements on the price and quality of services, which resulted in local authorities being sidelined if not marginalised. Many reacted to the introduction of the new insurance schemes by reducing their voluntary activities in the field. As a result, a far-reaching 'process of de-municipalisation and de-localisation of care' (Evers and Sachße 2003: 73) began.

Compared with the changes in long-term care, those in other aspects of personal social services in the 1990s and early 2000s were less dramatic. The traditional corporatist structures proved more resilient in childcare and other services for children and young people (Grohs 2010; Monopolkommission 2014); despite all the attempts to create a level playing field, the welfare association kept their strong voice in local decision-making. Moreover, private childcare did not lose its elitist and socially divisive image. As a result, the market share of commercial providers increased, but remained negligible (Table 6.2). Instead, it was the not-for-profit providers who benefited from the expansion of services, most notably in childcare.

Table 6.2 Profile of providers of services for children and young people in Germany, 1990–1991 to 2010–2011 (percentage share)

	1990–1991	*2002*	*2006–2007*	*2010–2011*
Service providers				
Public	47.7	34.8	31.6	29.6
Not-for-profit	51.2	63.8	66.8	68.2
Commercial	1.1	1.3	1.5	2.2
Places				
Public	55.3	40.0	36.1	34.3
Not-for-profit	44.0	59.3	63.1	64.5
Commercial	0.7	0.7	0.8	1.3
Staff				
Public	57.1	38.1	33.3	30.7
Not-for-profit	41.9	60.6	65.4	67.5
Commercial	1.0	1.3	1.4	1.9

Source: Monopolkommission 2014: 131

6.4 Return of the Pendulum?

Since the late 2000s, there has been much talk about a remunicipalisation of local public services in Germany. In the 1990s, the privatisation of service delivery seemed to have been broadly accepted if not approved by the public; however, since then, there has been a conspicuous shift in public values and the media discourse on the privatisation of municipal enterprises has become more sceptical (Theuvsen and Zschache 2011). Since the mid-1990s, local citizens' strong preference for the municipal sector has been reflected in a series of local referenda rejecting or revoking, often by a large majority, proposals by local councils for the privatisation of municipal assets and facilities. Surveys indicate a clear popular preference for public provision of more or less all forms of technical infrastructure.

The most striking comeback of local authorities and their companies has taken place in the German energy sector (Wollmann et al. 2010; Libbe 2013; Hall et al. 2013). Since the mid-2000s, many municipalities have repurchased local grids and shares in the *Stadtwerke*. The dynamics of this development are also reflected in the growing number of new *Stadtwerke*. Since 2005, local authorities have set up nearly 90 new energy companies (Libbe 2015; Wagner and Berlo 2015). Most of these utility companies were founded by a combination of public and private partners. Most are limited liability companies and about 50 of them are in full municipal ownership. This trend looks set to continue and it will make cooperation between municipalities more important in the field of energy provision.

A number of changes in the energy sector favoured the remunicipalisation of energy provision. First, the massive expiry of municipal concession agreements from the late 2000s to 2015-2016 helped put the issue of local energy provision on local agendas (Libbe 2013).[1] Second, the European Commission recognised the competitive potential of local energy companies in local and regional energy markets and has exerted some pressure on the 'big four' (E.on, RWE, EnBW, Vattenfall) to sell local grids and previously acquired minority shares in *Stadtwerke*. Third, and most important, the German 'turnaround in energy policy' (*Energiewende*), the policy of accelerated replacement of nuclear power with renewable energy, which was adopted in June 2011 following the nuclear disaster in Fukushima, has played into the hands of local authorities. The shift from nuclear power and coal to renewable energies changes the structure of energy provision and has resulted in a general trend towards decentralised or semicentralised energy provision. In this context, local companies have a strategic advantage.

As a consequence of these developments, the structure of the market in energy services has changed considerably. Although the electricity transport network is still in the hands of four private enterprises, the *Stadtwerke* have increased their share in energy production and distribution services. Their share in the former is expected to rise from less than 10 per cent prior to 2010 to up to 20 per cent before 2020. The *Stadtwerke* serve 46 per cent of domestic homes with electricity, and their combined share of the energy distribution market (electricity, gas, district heating) already exceeds 50 per cent.

As well as the comeback of the municipalities and their *Stadtwerke*, in recent years, the energy sector has also witnessed increasing citizen involvement, particularly in the generation of renewable energy. Between 2001 and 2013, the number of 'energy cooperatives' rose from 66 to 700 (DGRV 2014) and such cooperatives now generate electricity for about five per cent of all German households; however, recent energy law amendments penalise small players so it is unclear if this trend will continue.

A trend towards remunicipalisation can also be observed in the field of waste management (Verbücheln 2009; Libbe 2013). Starting in the mid-2000s, many local authorities have 're-insourced' some aspects of waste management, especially collection and transport. Interestingly, the privatisation of waste management, which was originally viewed as a cost-cutting device, is now often perceived as a cause of higher costs and fees. Since the mid-1990s, the relative efficiency of local enterprises has risen, whilst the profit expectations of private owners and lack of competition have kept the prices of private waste management companies high. However, the trend towards the remunicipalisation of waste management reflects more than just a reconsideration of the costs and benefits of privatisation at the local level. It has also been favoured by the booming market for waste and secondary raw materials. As the German recycling system came under pressure, local authorities lobbied to resume their former role in waste management.

In other public utility services, however, there is only a limited trend towards remunicipalisation. There are some spectacular examples of the public repurchasing of shares in private water companies (e.g., Potsdam 2001; Berlin 2012; Rostock 2013); however, the ownership structure of most water companies has remained unchanged, if only because most of the companies have always been in public ownership.

In the field of personal social service provision, the trend towards remunicipalisation has been even weaker. Whilst there have been individual cases in which local authorities have repurchased privatised care homes,

for example Stuttgart, most local authorities have shown no interest in taking over provision of these services, so the decline in the market share of public providers that began in the 1990s and early 2000s has continued (see Tables 6.1 and 6.2). One factor is that under the traditional, broadly accepted subsidiarity rule, local authorities have never played a significant role in direct service provision. In addition, their worsening financial plight has deterred them from taking over responsibility for cost- and labour-intensive services. In addition, although there is widespread dissatisfaction with the quality of many social services, especially long-term care services, ownership is not perceived as a major determinant of service quality. As a result, local authorities have not really questioned the role of welfare associations and commercial providers in the provision of services for elderly and frail people. The only development that might be interpreted as a form of remunicipalisation ('remunicipalisation-lite') is the attempt by many local authorities to expand their coordinating role in the care sector with respect to service providers and the Medical Service of the Health Insurance Funds, which is in charge of assessing frailty. In childcare services, there has actually been a trend towards privatisation. Most local authorities heavily promoted the expansion of subsidised private childminding services (*Tagesmütter*) in a desperate attempt to expand childcare facilities so as to be prepared for the coming into force in August 2013 of the legal right of all one to three year-olds to a childcare place. Private childminders now provide about a third of all childcare places for young children.

6.5 Conclusion

The starting point of this paper was the popular remunicipalisation hypothesis. As our analysis has shown, there is indeed some evidence of a return of the pendulum in the German case. The mood has changed; privatisation has become less popular and in a number of cases, including some highly visible ones, local authorities have repurchased privatised shares, re-insourced services or set up new public companies.

Upon closer inspection, however, the picture is less clear-cut. First, we identified substantial sectoral differences. The trend towards remunicipalisation is strongest in the energy sector, a profitable sector, and one affected by the dramatic changes in the German *Energiewende* (energy policy framework). In other public utility services, the developments have been less far-reaching. In the case of social services, there has been almost

no remunicipalisation, at least in the narrow sense of changes in the nature of service providers. These sectoral differences not only illustrate the limits of remunicipalisation; the weak remunicipalisation in the social services sector, which is in stark contrast to the return-of-the-pendulum metaphor, suggests that the extent of remunicipalisation is not related to the extent of the original privatisation. Unlike in the energy sector, the extensive privatisation of social services for frail people in the 1990s and early 2000s has not provoked a major backlash.

A second problem with the remunicipalisation hypothesis is that it suggests a return to the *status quo ante*, in other words, to the conditions that prevailed before the neoliberal age. Even in the sectors that have experienced a strong renaissance in local authority involvement and control, there are striking differences between the 'post-liberal' present and the 'pre-liberal' past. This applies to the regulatory framework as well as to the way public companies are run and are expected to be run. Although the emphasis on commercial enterprises and business practices may have weakened since the mid-1990s, it remains much stronger than in the 1960s and 1970s.

From a historical perspective, both these observations demonstrate that the recent trend towards remunicipalisation is less sweeping than the preceding neoliberal wave. Thus, it should be interpreted as a partial rebalancing rather than a fundamental rollback of market reforms. The pendulum might have swung back, but the pendulum has halted far from its original position.

Note

1. It should be noted; however, that the bulk of concessions have been renewed. By the end of 2014, only a few hundreds out of about 5000 new electricity concessions had been awarded to public companies.

References

Ambrosius, G. (2012). Geschichte der Stadtwerke. In D. Bräunig & W. Gottschalk (Eds.), *Stadtwerke: Grundlagen, Rahmenbedingungen, Führung und Betrieb* (pp. 35–51). Baden-Baden: Nomos.

ATT/BGW/DBVW/DVGW/DWA/VKU. (2011). *Branchenbild der deutschen Wasserwirtschaft 2011*. Bonn: wvgv.

Bogumil, J., & Holtkamp, L. (2013). *Kommunalpolitik und Kommunalverwaltung*. Bonn: Bundeszentrale für politische Bildung.

Bogumil, J., Grohs, S., Kuhlmann, S., & Ohm, A. K. (2007). *Zehn Jahres Neues Steuerungsmodell: Eine Bilanz kommunaler Verwaltungsmodernisierung*. Berlin: Edition Sigma.

Bönker, F., & Wollmann, H. (2000). The rise and fall of a social service regime: Marketisation of German social services in comparative perspective. In H. Wollmann & E. Schröter (Eds.), *Comparing public sector reform in Britain and Germany: Key traditions and trends of modernisation* (pp. 189–206). Aldershot: Ashgate.

Bönker, F., Hill, M., & Marzanati, A. (2010). Towards marketization and centralization? The changing role of local government in long-term care in England, France, Germany and Italy. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 97–120). Cheltenham/Northampton: Elgar.

Clifton, J., Lanthier, P., & Schröter, H. (2011). Regulating and deregulating the public utilities 1830–2010. *Business History, 53*, 659–672.

Deckwirth, C. (2008). Der Erfolg der Global Player: Liberalisierung und Privatisierung in der Bundesrepublik Deutschland. In H.-J. Bieling, C. Deckwirth, & S. Schmalz (Eds.), *Liberalisierung und Privatisierung in Europa: Die Reorganisation der öffentlichen Infrastruktur in der Europäischen Union* (pp. 64–95). Münster: Westfälisches Dampfboot.

DGRV (Deutscher Genossenschaft- und Raiffeisenverband). (2014). *Energiegenossenschaften*. Available from http://www.genossenschaften.de/sites/default/files/Auswertung%20Studie%20Brosch%C3%BCre%202014.pdf. Accessed 8 Apr 2015.

Dreyfus, M., Töller, A. E., Iannello, C., & McEldowney, J. (2010). Comparative study of a local service: Waste management in France, Germany, Italy and the UK. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 146–161). Cheltenham: Edward Elgar.

Evers, A., & Sachße, C. (2003). Social care services for children and older people in Germany: Distinct and separate histories. In A. Anttonen, J. Baldock, & J. Sipilä (Eds.), *The young, the old and the state: Social care systems in five industrial countries* (pp. 55–79). Cheltenham: Edward Elgar.

Forsthoff, E. (1938). *Die Verwaltung als Leistungsträger*. Stuttgart: Kohlhammer.

Gottschalk, W. (2012). Strukturen und Organisation von Stadtwerken. In D. Bräunig & W. Gottschalk (Eds.), *Stadtwerke: Grundlagen, Rahmenbedingungen, Führung und Betrieb* (pp. 53–92). Baden-Baden: Nomos.

Grohs, S. (2010). *Modernisierung kommunaler Sozialpolitik. Anpassungsstrategien im Wohlfahrtskorporatismus*. Wiesbaden: VS.

Grossi, G., Marcou, G., & Reichard, C. (2010). Comparative aspects of institutional variants of public service provision. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 217–239). Cheltenham: Edward Elgar.

Hall, D., Lobina, E., & Terhorst, P. (2013). Re-municipalization in the early twenty-first century: Water in France and energy in Germany. *International Review of Applied Economics, 27*, 193–214.

Heinze, R. G., & Schneiders, K. (2014). Wohlfahrtskorporatismus unter Druck: Zur Ökonomisierung der Sozialpolitik und des sozialen Dienstleistungssektors. In G. S. Schaal, M. Lemke, & C. Ritzi (Eds.), *Die Ökonomisierung der Politik in Deutschland* (pp. 45–68). Wiesbaden: Springer VS.

Lenger, F. (2013). *Metropolen der Moderne. Eine europäische Stadtgeschichte seit 1850.* München: Beck.

Libbe, J. (2013). Rekommunalisierung in Deutschland: Eine empirische Bestandsaufnahme. In C. Matecki & T. Schulten (Eds.), *Zurück zur öffentlichen Hand? Chancen und Erfahrungen der Rekommunalisierung* (pp. 18–36). Hamburg: VSA.

Libbe, J. (2015). *Transformation städtischer Infrastruktur. Perspektiven und Elemente eines kommunalen Transformationsmanagements am Beispiel Energie*. Mimeo: Leipzig (http://www.qucosa.de/fileadmin/data/qucosa/documents/17484/Diss_libbe_final_M%C3%A4rz2014_Verleihungsbeschluss.pdf).

Lieberherr, E., Klinke, A., & Finger, M. (2012). Toward legitimate water governance? The partial privatisation of the Berlin waterworks. *Public Management Review, 14*, 923–946.

Matecki, C., & Schulten, T. (Eds.). (2013). *Zurück zur öffentlichen Hand? Chancen und Erfahrungen der Rekommunalisierung.* Hamburg: VSA.

Monopolkommission. (2014). *Eine Wettbewerbsordnung für die Finanzmärkte. 20. Hauptgutachten*. Bonn.

Papenfuß, U. (2010). Unmittelbare Beteiligungen der öffentlichen Hand in der Kontroverse um Daseinsvorsorge—Eine empirische Analyse von allen im Internet verfügbaren Beteiligungsberichten zu Anzahl und Rechtsformen. *Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, 33*, 97–121.

Schaefer, C., & Papenfuß, U. (2013). Renaissance öffentlicher Unternehmen? Ein Überblick zu Rekommunalisierungsstudien. *Wirtschaftsdienst, 93*, 75–79.

Theuvsen, L., & Zschache, U. (2011). Die Privatisierung kommunaler Unternehmen im Spiegel massenmedialer Diskurse. *Zeitschrift für öffentliche und gemeinwirtschaftliche Unternehmen, 34*, 3–24.

Verbücheln, M. (2009). *Rückübertragung operativer Dienstleistungen durch Kommunen—am Beispiel der Abfallversorgung.* Berlin: Difu.

VKU (Verband kommunaler Unternehmen). (2013). *Zahlen, Daten, Fakten 2013.* Berlin: VKU.

Wagner, O., & Berlo, K. (2015). The wave of remunicipalization of energy networks and supply in Germany—The establishment of 72 new municipal power utilities. *ECEE Summer study proceedings*, Stockholm, (pp. 559–569).

Warner, M. E., & Clifton, J. (2014). Marketisation, public services and the city: The potential for Polanyian Counter movements. *Cambridge Journal of Regions, Economy and Society, 7*, 45–61.

Wollmann, H. (2014). Public services in European countries: Between public/municipal and private sector provision—and reverse? In C. Nunes Sillva & J. Bucek (Eds.), *Fiscal Austerity and innovation in local governance in Europe* (pp. 49–76). Aldershot: Ashgate.

Wollmann, H., & Marcou, G. (2010). From public sector—Based to privatized service provision. Is the pendulum swinging back? In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 240–261). Cheltenham: Edward Elgar.

Wollmann, H., Baldersheim, H., Citroni, G., Marcou, G., & McEldowney, J. (2010). From public service to commodity: The demunicipalization (or remunicipalization?) of energy provision in Germany, Italy, France, the UK and Norway. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 168–191). Cheltenham: Edward Elgar.

CHAPTER 7

Local Government and the Market. The Case of Public Services and Care for the Elderly in Sweden

Stig Montin

7.1 Introduction

Local self-government has been recognised as a distinctive feature of the Swedish political system since 1862, when the first Local Government Act (LGA) was passed. Sweden has a comparatively decentralised political system (Kuhlmann and Wollmann 2014), but it is a unitary state, which means that in practice local self-government is negotiated in the shadow of central government and parliament (*Riksdagen*).

In addition, 'horizontal' relationships develop dynamically. The overall position has been described in the following terms, 'the market has entered into local government and local government has entered into the market' (Government Commission Report 2015, 24: 377). This means that whilst local government is still politically accountable for a wide range of services, the provision of these services has been increasingly contracted out and municipally owned companies have increasingly become players in various markets.

The aim of this chapter is to provide an overview of changes to the regulation and management of public services, especially waste management, energy and public transport, and social services (particularly care of the elderly), which have taken place in recent decades. A short historical-

S. Montin (✉)
School of Public Administration, Gothenburg University, Gothenburg, Sweden

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_7

institutional background is provided in Section 2. This is followed by a description of the development of public services and social services, and finally some conclusions are drawn.

7.2 A Brief History of Public Services in Sweden

The expansion of the Swedish welfare state can be reconceptualised as the expansion of municipal welfare (Lidström 2011). Since the 1950s local authorities (municipalities and county councils) have been regarded to a greater or lesser extent as the most important institutions when it comes to implementation of social and educational policies. Several decentralisation reforms have made the municipalities more autonomous. During the 1960s and 1970s, the annual growth in volume was around 7–9%; 1992 was the first year in modern times when the volume declined. Local governments have not experienced a substantial economic crisis. Municipal and county council expenditure accounts for about 25% of the GDP, a figure that has remained roughly the same since 1980. Revenues come mainly from local income taxes (approximately 70%) and the equalisation system.

Developments since the 1950s can be described in terms of three eras of change. The first was during the 1960s and 1970s, when municipalities were amalgamated and turned into local welfare institutions with substantial financial, legal, political and professional resources. During the 1980s there was a period of decentralisation, mainly in response to the amalgamation reform and to overwhelming general criticism of public bureaucracy. Decentralisation took the form of experimentation with 'free communes' as well decentralisation reforms within municipalities (sub-municipal councils).

In 1991 a new LGA was passed, increasing freedom for municipalities and county councils to organise political and administrative functions. Then in 1992 responsibility for primary and secondary education was decentralised, and in 1993 central government subsidies went from being earmarked for particular projects to being general subsidies. These reforms were not the end of the decentralisation wave, but rather the start of a new and distinctive process.

The late 1980s can be broadly described as a period of transition between thinking about how to improve a decentralised welfare state and thinking about how to organise a decentralised welfare society. New ideas about freedom of choice for citizens and facilitating private provision of social services challenged 'old' ideas about a comprehensive public sector, including a comprehensive local government welfare regime. Strong political forces supported this move towards 'liberalisation', which was represented

not only by right-wing political parties in opposition but within the Social Democratic Party in government as well (Premfors 1991).

The legislative reforms of the early 1990s outlined above mark a third era of reform in which the overall direction has been towards the adaptation of market mechanisms as drivers for development (purchaser-provider split, competition, customer choice and performance management), accompanied by increased demands for citizen involvement in complex policy matters, and inter-municipal cooperation in operational and strategic issues. Local government acquired more responsibility for welfare, education, economic development and broader issues related to sustainable development, but central government control and supervision increased at the same time. Several of the legislative changes affecting municipalities and county councils can be represented as adaptations to European Union (EU) legislation.

During the 1990s several municipalities and county councils adopted different new public management (NPM) measures, but there was only a modest increase in the involvement of private providers. In the beginning government adopted a 'light' version of NPM (Montin 2000), however, due to continuing ideological and political changes, and to the way in which EU legislation was interpreted, competition became the new guiding principle and this led to a significant increase in the number of private providers of social services. This market orientation also affected the organisation of public services, for instance, deregulation (liberalisation) occurred in several sectors and there was an increase in the number of municipal companies. The next sections describe the developments in specific sectors, starting with public services.

7.3 Public Services

Various definitions of 'public services' or 'municipal services' have been proposed. In EU legislation, for instance, a distinction is made between 'services of general interest' and 'services of general economic interest' (SGEI). However, the EU vocabulary is not actually used in Swedish law; instead, a rather strict competition regime was introduced (Wehlander and Madell 2013). The principle was that service provision in general (public services as well as social services) should not be restricted to just one body (monopoly), but should be open to market competition.

Public services such as municipal housing, water and sewage services, energy distribution, property management, public transport, tourism and private company services have, to a large extent, been taken over by municipal companies, many of which compete in the market. There are

several reasons for establishing municipally owned companies, for example, they can act more flexibly and less publicly than an authority subject to public law. However, there is continuing debate about the transparency and political accountability of these companies. Changes have been made to the LGA with the aim of safeguarding democratic values. In the mid-1990s the constitutional principle of public access to official documents (*Offentlighetsprincipen*) became applicable to municipally owned companies (more than 50% municipal ownership). The LGA states that municipal companies cannot generally be set up *principally* to make a profit, but they are allowed to make a reasonable surplus (the principle of prime cost, *självkostnadsprincipen*). In addition, municipal companies are generally bound by the principle of localisation (*lokaliseringsprincipen*), which requires that their business must be connected to the relevant municipal area.

Taking a historical perspective we note that the number of municipal companies declined during the 1970s and that there have been two waves of corporatisation subsequently. In the first wave, from the late 1980s to the mid-1990s, a couple of hundred companies were established. The second wave started in 2007 and there are now about 1800 municipal companies. Most companies are based in larger cities and are mainly involved in private corporate services and property management. In terms of employment, the largest companies are in the energy and water supply sectors. The combined turnover of municipal companies increased by 40% between 2004 and 2013.

Municipal companies can be regarded as 'hybrid organisations'. Approximately 60% of all municipal companies compete with private companies (Swedish Competition Authority 2014). Provision of public services by municipal companies has been traditionally defined as 'conventional municipal business' and hence public services were considered natural monopolies; however this ceased to be the case in the 1990s. Several policy sectors have witnessed different forms of liberalisation, which means that many municipal companies are actors in the market like private companies are. This is the case in the public housing, energy provision, water management and public transport sectors. Municipal companies operating in these sectors are exempt from the principles of prime cost and localisation; this means that several municipal companies are supposed to act as commercial enterprises in a competitive environment whilst also serving the public interest (*allmänintresse*). This twofold mission can lead to conflicting goals, as in the case of municipal housing companies. Legislation passed in 2010 requires housing companies to act in the public interest,

but also to act according to commercial principles; in practice this means that they are not allowed to increase the rent on an apartment above what it is worth (the principle of the utility value), yet they are also expected to maximise profit (Svärd 2015). This liberalisation can be viewed as an adaptation of EU rules on state aid and implies that politicians have a dual role; on the one hand they represent the public, and on the other hand they represent the company as a profit-seeking entity. In the following sections three other examples of liberalisation are examined: energy, waste management and public transport.

Energy

Municipal companies compete alongside private companies in the market for distribution of electricity. Since the liberalisation of the Swedish energy market in 1996, profit-maximising companies carry the main responsibility of distribution and investment in new electricity generation. At the time of writing (2015) electricity consumers had about 127 different distributors to choose from. The largest companies are E.on (owned by a large German company), Vattenfall (owned by the Swedish state) and Fortum (owned by the Finnish state), which together distribute electricity to more than 50% of all customers. Most of the remaining distribution companies are municipal companies. This concentration of ownership is viewed as somewhat problematic (Swedish Energy Agency 2006; Fridolfsson and Tangerås 2011).

Liberalisation of the energy market also had an impact on the system of district heating (which is responsible for heating approximately 50% of all buildings and covers 270 of 290 municipalities). During the 1990s a third of all municipal district heating assets were sold to private companies (mainly Vattenfall, E.on and Fortum). None of these assets have been 'remunicipalised'.

Waste Management

Waste management represents a rather different case, although it also involves a combination of public and private actors. A privately owned system called "extended producer responsibilities" (EPR) is responsible for collecting and processing specific waste streams such as packaging, electronic equipment and batteries. However, the management of household waste (which is not included in the EPR system) is a municipal responsibility

(Corvellec et al. 2013). Municipalities are responsible for deciding how household waste management services are delivered, directly by households, by municipal companies (the most common arrangement), by joint boards or by municipal associations. Two or more municipalities can jointly own one company and thus collaborate on improvements and coordinate their policies (Lindqvist 2013). A municipally owned waste management company enjoys a monopoly on household waste services within the jurisdiction of its owner or owners and can also compete with privately owned companies for all other waste management contracts (within the EPR system). Private companies under contract to the municipalities perform the bulk of the household waste *collection*, but municipal companies do most of the waste *treatment* (recycling, biological treatment, energy recovery, incineration and landfill). The Swedish waste collection market is dominated by ten (five municipal companies and five private companies) of the 220 companies operating in it. Household waste management is often connected to the municipal district heating system, which means that household waste is used as fuel for district heating (incineration); this is the fate of approximately half of all collected household waste, and (increasingly) waste is processed into biogas (Corvellec et al. 2013).

In 2012 a government commission (Government Commission Report 2012) proposed a new structure of responsibilities in waste management. The main proposal was for municipalities to take over responsibility for collection of packaging, newspaper and waste paper for recycling. The proposal could be interpreted as a kind of 'remunicipalisation' of waste collection services from the EPR system. However, the Swedish Competition Authority concluded that the proposal would result in a monopoly. In August 2014 the Alliance government decided to maintain the system of private collection of waste for recycling, arguing that this would stimulate further improvement of recycling based on economic incentives rather than public regulation.

Public Transport

Public transport is a policy area characterised by continuous change. Several deregulation and re-regulation policies have been implemented since the 1970s. In the 1980s municipalities and county councils established jointly owned limited companies at local and regional levels to coordinate their activities in the sphere of local and regional public transport (Government Commission Report 2003). Public transport includes transport for spe-

cific groups (such as mobility service for old and disabled persons, school transport and transportation of patients) as well as general public transport services. In general, public transport services went from being provided by predominantly publicly owned transport companies to being provided by private companies in the 1990s. Since Sweden joined the EU further market reforms (liberalisation) have been introduced alongside regulations to protect passenger rights.

In accordance with legislation passed in 2012 (the Public Transport Act), county-based public transport authorities have been replaced by 21 regional public transport authorities tasked with making strategic political decisions about the development of public transport based on a large-scale overview (Swedish Transport Agency 2013). The new authorities can take the form of a regional authority, a county council, a regional association or an inter-municipal association. However, the regional public transport authorities do not purchase transport. This function still rests with the municipal transport companies. Simultaneously a market in commercial bus traffic within regions was set up, enabling for-profit bus companies to set up bus services anywhere. This means that in counties where transport companies owned by the council or the municipality used to have a monopoly over bus transport services, they now compete with private bus companies. In summary, the liberalisation of public transport in Sweden is gradually replacing political direction with market mechanisms (Swedish Transport Agency 2013).

7.4 Social Services

Contracting out of social services began in the 1990s and was extended in the run-up to the new millennium. There are several ways to assess this development. One is to calculate the number of employees in different sectors. Table 7.1 indicates that there has been a significant increase in the numbers employed by private, for-profit companies within education, healthcare and social services (care for the elderly and other forms of publicly financed personal care services).

Although 'civil organisations' (including not-for-profit organisations) have officially been the 'preferred providers' of social services since 2006 this is not reflected in practice on the ground. For instance, in 2010 about 13% of social services for elderly and disabled people were provided by for-profit companies while only 1.5% were provided by not-for-profit organisations (Swedish Agency for Economic and Regional Growth 2012).

An increasing number of 'social enterprises' are entering the social welfare market but these compete on the same terms as other private companies (European Commission 2014).

Care for the Elderly

Historically, municipal care for the elderly developed out of the responsibility for arranging homes for old and poor people in the seventeenth century. Modern care services for the elderly can be dated from the 1950s, when municipal home-based care services were introduced.

In Sweden it is a requirement that care services for the elderly are provided on a universal basis; this means that comprehensive, publicly financed, high quality services should be available to all citizens according to their need rather than their ability to pay. Approximately 85% of funding for care for the elderly comes from municipal and county council taxes and another 10% comes from national taxes. User fees only cover 5–6% of the costs (Erlandsson et al. 2013). For several decades, official policy on care for the elderly has focused on home-based care (home help services). The policy is that residential care should only be considered when no other options are available, and it should be as homely as possible.

Providing care for the elderly is still ultimately a municipal responsibility. The local government's overall political responsibility for private provision of public services is regulated in the Social Services Act (*Socialtjänslagen*) and the Medical Services Act (*Hälso- och sjukvårdslagen*), as well as regulations drawn up by national government agencies (such as the Swedish National Board of Health and Welfare). Having municipalities take responsibility for different welfare functions is rooted in the principles of local democratic control and the proximity of services

Table 7.1 Employment in education, healthcare and social services by type of organisation in 2000 and 2012 (number of employees)

	2000	*2012*
County councils	222,910	226,739
Municipalities	623,019	633,723
Private (for-profit) companies	90,356	221,820
Not-for-profit organisations	36,220	39,353

Source: Swedish Statistics 2013

to those who are politically responsible for making decisions about them in accordance with local needs. This regulatory framework means that municipalities are entitled to design social care services for the elderly that are adapted to local conditions.

From the 1970s to the 1990s municipal care for the elderly was regarded as an exclusively public (municipal) matter, involving public financing and provision. During the 1980s, decentralised administrative management—increased managerial responsibility at all levels—became the primary driver of policy in all sectors, including care for the elderly. Arms-length political control was introduced, including management by objectives (MBO), management by results (MBR) and purchaser-provider models. These models are supposed to enable politicians to focus on strategic issues rather than on time-consuming, day-to-day management. Today nearly all municipalities use some form of MBO or MBR, and most municipalities use some kind of internal contract system (sometimes still called the purchaser-provider model).

Along with this internal managerialism, initiatives were gradually put in place to increase management autonomy by contracting out welfare services. Outsourcing of care for the elderly and for disabled people has been expanding continuously since the beginning of the 2010s.

Between 2000 and 2010, private provision of care for elderly and disabled people (home-based services and residential care) increased by approximately 12%. The most extensive changes have taken place since 2006. The proportion of elderly people in privately provided residential care who were in private facilities was 21% in 2014, compared with 14% in 2007. In terms of hours of home-based services for elderly people, private provision increased from 13% in 2007 to 25% in 2014 (National Board of Health and Welfare 2015). Private provision of care for the elderly was initially a specifically metropolitan phenomenon (Stockholm), but it gradually spread to adjacent suburbs and larger cities, and subsequently to smaller cities. Nevertheless, in 2012 half of all municipalities (mostly the smaller municipalities) directly provided care for the elderly. On the other hand, some municipalities have put all care for the elderly into the hands of private providers (ESO 2014). This diversity in policy cannot be explained simply by referring to a right-wing political majority; it is the result of a complex nexus of ideological and economic factors and geographical proximity (Stolt and Winblad 2009).

Municipalities are not obliged to contract out home-based services or residential care; however, if they decide to do so they have to follow the

rules for public procurement (Public Procurement Act), which states that there has to be a competitive tender process or use of a 'system of choice', which entitles service users to choose among accredited and listed private help service providers (the *Lagen om valfrihet* [LOV] system, see below).

Most private providers are fairly large for-profit companies. Thus, privatisation of care for the elderly in Sweden represents a political shift from not-for-profit municipal organisations towards for-profit global venture companies (Stolt et al. 2011). In this context it should be mentioned that when the 'freedom of choice' policy was launched nationally by the right-wing Alliance government—and described as a reform which would enhance the quality of healthcare for elderly people—it was assumed that there would be a large number of not-for-profit organisations providing care for the elderly. However, because it is hard to define the precise quality criteria, the price of services has become the most important criterion in the awarding of contracts and smaller companies and not-for-profit organisations are not able to compete with the bigger entities, which have thus far made rather large profits from the sale of care services to municipalities.

In order to make it easier for municipalities and county councils to base procurement on consumer choice rather than outsourcing, a new legislative framework called 'system of choice' (LOV) was introduced in 2009 (Swedish Competition Authority 2012). System of choice is a procedure in which individual service users are entitled to choose which of the approved suppliers with which the contracting authority (municipality and county council) has concluded a contract should provide his or her home-based services (municipalities) and healthcare (county councils) (Erlandsson et al. 2013). There are no restrictions on how many providers can be approved; this means that the providers have no guaranteed customers. Under LOV, private service providers—unlike municipal providers—can supply supplementary services at market rates to 'top up' subsidised municipal care services for the elderly. LOV can basically be applied to all social services, home-based as well as residential. It is compulsory for county councils but voluntary for municipalities providing an LOV-based 'system of choice'. In 2014 a Government Commission suggested that all municipalities should be obliged to create systems that would enable users to choose between various providers of home-based services. Approximately 180 of the 290 municipalities had introduced such systems by 2014.

Market-oriented reforms to care for the elderly have transformed the role of local government, which has gone from being sole provider to being both purchaser and provider. Municipal politicians and professionals

are required to act in a 'competition neutral' manner, that is, in-house providers and private competitors must be treated equally.

7.5 Remunicipalisation

For many years there has been a mixture of public and market-oriented institutional arrangements within public services. Municipal companies are themselves hybrids of politically controlled bodies and market operators. With the exception of district heating construction there have not been any instances of wholesale privatisation of public services. Instead, within the framework provided by the liberalisation process which began in the 1990s, municipal companies have become actors in the market, competing with private, for-profit companies on equal terms. There has been continual evolution in regulations with the aim of facilitating competition in public services. Some initiatives to increase municipal control have also been implemented. For instance, in 2014 it was proposed that municipalities should be given formal authority over waste management; however the proposal was turned down by the Alliance government, which argued in favour of continuing market governance.

Remunicipalisation of care for the elderly in Sweden is taking place sporadically; however, there has not yet been a wave of remunicipalisation of previously contracted out care services for the elderly. As there has been no systematic review of remunicipalisation it is only possible to highlight specific cases in which municipalities have withdrawn the management of residential care services from private providers for a variety of reasons. A review of the sector suggests that the number of cases in which residential care services have been taken back from Attendo, Carema and other private providers is increasing. Examples exist in approximately 10–15 municipalities. There are also a few cases when municipalities have withdrawn approval of private providers in the LOV system and replaced them with municipal providers of home help services. After the general election of September 2014, the minority government consisting of the Social Democratic Party and the Green Party announced an 'end to profit-making within welfare'; private providers of welfare and education services are no longer permitted to have profit-making as an aim, all surpluses should be put back into the business. This is supposed to bring 'order' into the welfare system. However, a government white paper is scheduled for delivery in 2016, and legislation would have to be enacted by the national parliament, which might be difficult as the right-wing alliance parties have stated clearly that they will not support it.

7.6 Concluding Remarks

The political system in Sweden comprises a strong state and strong local government. Decentralisation has been a trademark of developments since the 1970s. However since Sweden became a member of the EU in 1995 the developments can be described in terms of the market entering local government and local government entering the market. During the 1990s there was a gradual, ideological move towards organising public services and social services on the basis of competition.

Municipal companies providing public services can be considered hybrids in the sense that they are representing the public ('practical rationality'), and simultaneously being a profit-seeking actor ('economic rationality'). This is especially evident in public housing, waste management, electricity provision and public transport services. There is no evidence of a trend towards remunicipalisation of public services in Sweden. One reason is that there has not been any privatisation, except in the case of district heating companies. In this latter case there are no signs of remunicipalisation. There is no obvious political or ideological tension between left and right with regard to the role of municipal companies as market players or the marketisation of public services.

In comparison there are prominent political and ideological tensions over social service provision. This is reflected in the general debate about profit-making in the welfare and education sectors. Some municipalities, mostly those with a left-wing majority, have withdrawn the provision of care services for the elderly from private companies. Nevertheless there has been no challenge to the view that competition is generally an appropriate mechanism for developing efficient, high quality services. In March 2015 the left-green government appointed a commissioner to make recommendations for the further regulation of profit-making within welfare services by the end of 2016.

The Swedish approach to complying with EU competition rules and state aid rules might be regarded as rather thorough, especially since 2006 when the right-wing Alliance came to power at the national level. For instance, if a municipality wants to provide any SGEI it is first required to determine whether the proposed activities could be handled by players already in the 'market'. If this is not the case ('market failure') then the economic activity can be legitimately managed by the municipality as SGEI. In accordance with this logic a government commission recently proposed a change in the LGA to require local government to act in a 'competition neutral' manner (Government Report 2015, 24: 38).

Local government in Sweden since the 1980 can be characterised in terms of both continuity and change. Municipalities and county councils still have considerable political, financial, professional and legal resources. From a formal institutional perspective, only small changes have taken place. When it comes to provision of social services, municipalities are still the dominant providers. This said, since the 1990s there have been changes which can be interpreted as a liberalisation process, leading to provision of services by a mix of public and private institutions governed by traditional values, such as national equity, but also strongly reliant on market mechanisms. Between 2006 and 2014 in particular, competition was considered almost a panacea for problems in all sectors.

If one wishes to emphasise evidence of continuity then a historical institutionalist account of these developments focusing on path dependence seems an obvious candidate (see Wollmann, Introduction *in this volume*). However, if the emphasis is on evidence of change another interpretation is possible. Particularly in the case of care for the elderly, the introduction of market principles represents a major challenge to the tradition of municipal provision. In this case it is reasonable to talk about gradual institutional change, such that dominant 'change agents' (e.g. political parties and government agencies) manage to implement old rules (e.g. competition) in new ways and in new sectors (Mahoney and Thelen 2010). Hence, gradually the market has entered into local government and local government has entered into the market, which means that the boundary between public and private has become even more blurred.

References

Corvellec, H., Campos, M. J. Z., & Zapata, P. (2013). Infrastructures, lock-in, and sustainable urban development—The case of waste incineration in the Göteborg Metropolitan Area. *Journal of Cleaner Production, 50*, 32–39.

Erlandsson, S., Storm, P., Strantz, A., Szebehely, M., & Trydegård, G.-B. (2013). Marketisation trends in Swedish eldercare: Competition, choice and calls for stricter regulation. In G. Meagher & M. Szebehely (Eds.), *Marketisation in Nordic eldercare: A research report on legislation, oversight, extent and consent* (Stockholm studies in social work). Stockholm: Stockholm University.

ESO. (2014). *Goda år på ålderns höst? En ESO-rapport om konkurrens i äldreomsorgen*. Rapport till Expertgruppen för studier i offentlig ekonomi 2014:1. Stockholm, Expertgruppen för studier i offentlig ekonomi.

European Commission. (2014). *A map of social enterprises and their eco-systems in Europe. Country Report: Sweden*. London: ICF Consulting Services.

Fridolfsson S.-O., & Tangerås T. P. (2011). *Investeringar på elmarknaden—fyra förslag för förbättrad function*. Rapport till Expertgruppen för miljöstudier 2011:5. Stockholm: Regeringskansliet.

Government Commission Report. (2003). (*Statens Offentliga Utredningar*, SOU), 67, Kollektivtrafik med människan i centrum.

Government Commission Report. (2012). (*Statens Offentliga Utredningar*, SOU), 56, Mot det hållbara samhället—resurseffektiv avfallshantering.

Government Commission Report. (2015). (*Statens Offentliga Utredningar*, SOU), 24, En kommunallag för framtiden.

Kuhlmann, S., & Wollmann, H. (2014). *Introduction to comparative public administration. Administrative systems and reforms in Europe*. Cheltenham: Edward Elgar.

Lidström, A. (2011). Sweden: Party-dominated subnational democracy under challenge? In J. Loughlin, F. Hendriks, & A. Lidström (Eds.), *The Oxford handbook of local and regional Democracy in Sweden* (pp. 261–281). Oxford: Oxford University Press.

Lindqvist, K. (2013). Hybrid governance: The case of household solid waste management in Sweden. *Public Organization Review, 13*, 143–154.

Mahoney, J., & Thelen, K. (2010). A theory of gradual institutional change. In J. Mahoney & K. Thelen (Eds.), *Explaining institutional change. Ambiguity, agency, and power* (pp. 1–37). Cambridge: Cambridge University Press.

Montin, S. (2000). Between fragmentation and coordination. The changing role of local government in Sweden. *Public Management Review, 2*, 1–24.

National Board of Health and Welfare. (2015). *Äldre och personer med funktionsnedsättning—regiform år 2014*. Stockholm: Socialstyrelsen.

Premfors, R. (1991). The 'Swedish model' and public sector reform. *West European Politics, 14*(3), 83–95.

Stolt, R., & Winblad, U. (2009). Mechanisms behind privatization: A case study of private growth in Swedish elderly care. *Social Science & Medicine, 69*, 903–911.

Stolt, R., Blomqvist, P., & Winblad, U. (2011). Privatization of social services: Quality differences in Swedish elderly care. *Social Science & Medicine, 72*, 560–567.

Svärd, O. (2015). Politiker eller företagare? Kommunikation mellan poliltiker i ett styrelserum. In H. Bengtsson (Ed.), *Vinklade budskap—perspektiv på politisk kommunikation* (pp. 217–234). Halmstad: Högskolan i Halmstad, Forskning i Halmstad Nr. 23.

Swedish Agency for Economic and Regional Growth. (2012). *Varför är det så få idéburna organisationer välfärden?* Stockholm: Tillväxtverket.

Swedish Competition Authority. (2012). *The act on system of choice in the public sector*. Stockholm: Konkurrensverket.

Swedish Competition Authority. (2014). *Kartläggning av kommunala bolags försäljningsverksamhet—I konflikt med privata företag*. Rapport 2014:3. Stockholm: Konkurrensverket.

Swedish Energy Agency. (2006). *Ägarstrukturen på elmarknaden. Vem äger vad på den svenska elmarknaden?* Stockholm: Energimyndigheten.

Swedish Statistics. (2013). *Finansiärer och utförare inom vård, skola och omsorg 2012, OE 29 SM 1101.* Stockholm: Swedish Statistics.

Swedish Transport Agency. (2013). *Transportstyrelsens marknadsövervakning 2013.* Stockholm: Transportstyrelsen.

Wehlander, C., & Madell, T. (2013). SSGI:s in Sweden: With a special emphasis on education. In U. Neergaard, E. Szyszczak, W. de Jvan Gronden, & M. Krajewski (Eds.), *Social services of general interest in the EU* (pp. 461–496). The Hague: Springer.

CHAPTER 8

Local Public Services in Italy: Still Fragmentation

Giulio Citroni, Andrea Lippi, and Stefania Profeti

8.1 Local Authorities and Public Services in Italy

Both public utility and social service delivery are subject to complex multi-level, public-private systems of governance in Italy. Since the early twentieth century municipalities have played a central role in public utilities, infrastructure such as roads (joint responsibility with the provinces), cemeteries, environment, tourism, educational policy (responsibility shared with the state), taxation (responsibility shared with the state), libraries and sports. Moreover, since the 1970s municipalities have also had full responsibility for the delivery of social services. Notwithstanding the reforms and changes discussed later, municipalities are still the main actors and *loci* of service management and delivery, and all reforms must take their role into consideration.

Since the mid-1990s, municipalities have also increasingly been expected or obliged to coordinate efforts towards joint service planning

G. Citroni (✉)
Università della Calabria, Rende, Italy

A. Lippi
Università di Firenze, Florence, Italy

S. Profeti
Università di Bologna, Bologna, Italy

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_8

and management through second-level organisations, 'optimal districts', and a growing number of municipal unions (Bolgherini 2014), on the basis of assumptions about economies of scale and the dangers inherent in excessive fragmentation. This trend is partly related to the decreasing role of provincial authorities, which are being divested of powers and, since 2014, are no longer democratically elected.

However, the role of regional authorities has been increasing since they were created in 1970, and more recently through a 'quasi-federalist' constitutional reform (Bobbio 2005; Lippi 2011; Kuhlmann and Wollmann 2014: 63 ff). Their role is now threefold: regional legislation, planning and programming and the definition of 'optimal districts' for the delivery of services.

Policy arenas in the fields of social and public services are thus dominated by municipalities, but the field is crowded with public authorities of every kind, including regulatory agencies, monitoring bodies and so on. In several sectors, private, not-for-profit and public-private bodies are also important, as well as a sort of stand-in for the municipalities which consist of more than 5000 'corporatised' units in the form of limited or joint-stock companies partly or fully owned by municipalities, provincial or regional authorities. These companies operate in water and waste services (14%), transport (10%), energy (8%), social and health services (4%) and many other services, industrial and commercial fields (ISTAT 2014). The role of non-public and non-administrative bodies increased during the 1990s following the marked de-legitimisation of central and political direction as a result of the 'Tangentopoli' corruption scandals and under the increasing pressure to implement EU liberalisation processes. These developments meant that decentralisation, new public management (NPM) and externalisation offered an interesting alternative enabling blame-shift and some savings. These arguments applied not only to services and utilities, but more generally to the reconfiguration of administration at all levels.

Finally, reference must be made to regional and sectoral differences in market and industry structures. Historically municipalities played a rather limited role in the energy sector, which was nationalised in 1962; it was not until the 1990s and the introduction of liberalisation that some municipal companies regained the central role that they had had before nationalisation. Similarly, major aqueducts and some transport infrastructure in the southern regions were built and operated by central government, and only recently transferred to regional control. On the other hand, the his-

torically massive involvement of state, regional and municipal authorities across sectors and regions in public utilities, and of the Church, semi-public charities and families in social services, has meant that no significant private sector exists in these fields, and only a limited not-for-profit sector. Of course, this legacy has created major obstacles to privatisation and liberalisation.

8.2 Public Utilities Before and After NPM

In Italy the modern era in local public utilities began with a 1903 act of parliament regulating local government (Act No. 103). Amongst other provisions the so-called Giolitti Act gave municipalities the right to deliver water, energy and other services directly or through municipal enterprises (*aziende municipalizzate*). The development of large numbers of such enterprises, especially in the northern and central regions, paved the way for later corporatisation and contributed to the industrialisation and modernisation of services in many large and medium-sized towns.

In the last century public service provision was dominated by direct and indirect municipal management, and it is only since the 1990s that new policies have been introduced, in three main waves:

1990–2000: The NPM Wave Since 1990 a stream of national reforms introduced innovations inspired by NPM in local government such as contracting out, privatisation, self-financing and 'value for money'. These reforms were promoted by the centre-left majority government in the name of efficiency and mostly affected service delivery. Separate acts of parliament for water (1994), waste (1997), transport (1997), energy (1999) and gas (2000) created a 'new regime' (Cassese 1996) combining liberalisation, regulation, and user rights with a view to actual privatisation. The regime was based on separation of providers from regulators, full cost recovery, the rationalisation of areas of service (embodied most effectively in the creation of ATOs, *Ambiti Territoriali Ottimali*, 'optimal districts' within which municipalities would jointly contract out and regulate services); these policies and principles were the tools of systematic reform in all fields, although such reform was not always consistent or coordinated.

2001–10: De-structuring of the NPM Agenda After a decade of enthusiasm, the intentions of earlier reformers were frustrated by a variety of

factors: firstly, municipal resistance and the lack of credible market players; secondly, the lack of a stable legislative framework and the frequent recourse to court litigation at all levels; and finally, hesitation and lack of commitment at national government level from the weak centre-left governing coalition (2006–8) and political resistance from the parties to the centre-right coalitions (2001–6, 2008–11), particularly the Northern League, Silvio Berlusconi's main partner, resulted in the obstruction of liberalisation in favour of distribution policies, protectionism and the safeguarding of pre-existing local interests. As a result, the decade was dominated by the negotiation of conditions for in-house service provision; by the imposition of compulsory competitive tendering often proposed as a panacea but always weakened by loopholes and exceptions; and by lack of monitoring, evaluation, user protection and systematic, stable and general legislation on tendering and concessions (Lippi et al. 2008).

2011 to Present: The Times of Crisis In 2011 high turnout and a large majority in a referendum forced the repeal of a 2009 Act which had imposed compulsory competitive tendering. Successive governments sought to circumvent this provision, but were stopped by rulings of the Constitutional Court which stated that compulsory competitive tendering could not be reinstated after the referendum. This forced government to limit its intervention to incentives for liberalisation. The referendum also led to the abolition of the system of fixed profit for investors in water concessions, making the sector less appealing to private investors. In parallel, ATOs were abolished in 2010 in an attempt to save public money, but this left the system of regulation virtually unsupervised; the national agency for water services was also dismantled and its responsibilities transferred to the energy agency. Today, municipal companies are described in the media as a costly, inefficient, and mostly corrupt 'jungle' and both the present government and the (recently dismissed) spending-review commissioner Carlo Cottarelli, have deemed a substantial reduction in their number essential.

In this climate of constant reform private investors have only shown limited interest in Italian utilities, as the following sections will illustrate. Multinationals, especially in the water sector, have indeed bought shares in water companies, but almost invariably in partnership with Italian companies, often public companies which are more familiar with, and better able to react to the constant political and legal turmoil.

The following sections analyse water and waste services in more detail to illuminate the dynamics of local government. The strong influence of EU directives on the energy sector and the nationalisation of energy services in 1962 (Prontera and Citoni 2007), and the even more complex multi-level organisation of public transport and its close relationship to infrastructure policy (Di Giulio 2014) require separate discussion.

Water and Sanitation Services

Water and sanitation services were the first to be subjected to NPM reform. The 1994 Galli Act had three objectives: (1) reduce the number of service providers, which remained as high as 7800 in 1999 (ISTAT 2006); (2) increase industrial capacity through efficiency and economies of scale; and (3) introduce full cost recovery through user tariffs.

The core component of the system was the separation of planning, regulation and control functions—which were entrusted to ATO Authorities composed of municipalities situated within water basin areas defined by regions—from service delivery functions, which were contracted out by ATO authorities through concessions awarded to public, mixed or private companies. Both sides of this system suffered serious problems in the following years.

Ninety-one ATO districts were initially defined, usually on the basis of provincial boundaries rather than water basin criteria. Later in 2010, ATOs were abolished and regions had to define their own systems: some reverted to a very similar system; others created regional authorities or assumed direct control of water services; yet others did nothing and are now under compulsory administration. The abolition and reform of ATO authorities were intended to save money at a time of crisis, and their number has indeed decreased to 70; but the situation now appears more chaotic and uncontrolled than ever.

The ATO authorities' ability to identify one or a limited number of firms to deliver service within their territory has also been a highly problematic issue. Norms on concessions have been very unstable and controversial: in-house provision, competitive selection of a private partner in a public-private partnership and competitive tendering have been competing options in a very unclear legal framework.

Against the background of these problems, more than 2200 service providers still exist, 1957 of which are (mostly small) individual municipalities directly delivering services; more than 60% of the remaining roughly 300

providers are publicly owned companies, 23% are mixed companies, and only 16% are private companies. Forty-three per cent of the 115 service contracts awarded according to the rules introduced in the Galli Act were awarded directly to public companies owned by the contracting municipalities (in-house provision); 13% (covering 26% of the population) went to mixed companies; and competitive tendering was used in a very limited number of cases representing just over 3% of municipalities and residents (Utilitatis 2014a). The situation is thus not radically different from that which prevailed before the reform, when about 3–4% of providers were private companies (ISTAT 2006).

Overall, reforms which were meant to promote privatisation and managerialism have resulted in large-scale corporatisation; they have had only a limited impact on fragmentation and service provision continues to be dominated by municipalities, both directly and through their public companies. Corporatisation and limited privatisation have been widely perceived as threats to public control of water services, which explains the result in the referendum on repeal of competitive tendering legislation, but the repeal has not led to significant remunicipalisation or 'decorporatisation' except in a limited number of mostly symbolic cases such as Naples.

Over two decades, the clear-cut model defined by the Galli Act has been progressively contested and has fragmented into myriad regional and local variations, and it is now further challenged by constant changes to the tariff system. A new system of national regulation and monitoring which places additional powers to regulate water and sanitation services in the hands of the national energy authority is currently being trialled.

Municipal Solid Waste Management

The field of waste collection and disposal is somewhat more complex than water. Here we deal only with municipal household waste services and not with 'special'—as Italian law terms it—waste deriving from industrial and commercial processes, because municipalities are not responsible for special waste; its management is the responsibility of separate national industrial consortia for specific raw materials (plastic, glass, wood, etc.).

The reform of 1997 was strongly influenced by EU directives, and it was later revised in 2006, 2008 and 2010. Generally speaking, the aims of reform were the following: the end of excessive fragmentation; the rationalisation and integration of the industrial chain; the financing of the over-

all system via user tariffs; and the continuation of municipal pre-eminence, together with wider coordination and planning among municipalities and by provinces and regions in accordance with principles of territorial self-sufficiency and proximity. The law imposed a hierarchy on the options for waste disposal: reduction, reuse, recycling, energy recovery and disposal to landfill; however, massive use is still made of landfill (over 40% of municipal waste goes to landfill), and it generates constant emergencies in many large and medium-sized cities with low levels of recycling.

As with water services ATO authorities were originally created to plan and regulate services and award concessions, but were abolished in 2010 and the decision about how to replace them was left to the regions. There is wide regional variation in the territorial definition and the structure and powers of the newly instituted authorities. Some regions have created one district covering the whole region; others have established districts which replicate the structure of provinces, or merged several provinces together, or broken some of them up, or isolated major cities; some regions have used a mixture of approaches. Some regions have reinstated regulatory structures in the form of a convention or consortium of municipalities, replicating the original ATO authorities; some have created independent regional authorities. Others have assigned the powers to the regional administration, others to the provinces; still others have delegated the powers directly to municipalities. Some regions have created a two-tier system, with smaller districts for the regulation of waste collection and larger ones for waste disposal. Again, as in the case of water, a clear national design has been fragmented in the name of regional autonomy.

The continual changes to the tariff system are a good indicator of the inconsistency of legislation in this area: between 1997 and 2014 a series of different tariff systems—TARSU, TIA1, TIA2, TARES, and TARI—with different criteria and tax bases were in force for varying periods of time. The initial principle that service costs should be recovered in full has been largely maintained, but that of having families pay according to their waste production has been partially abandoned in favour of a tax based on the size of the dwelling, as in the past. Moreover, the idea that the service provider should collect the payment from users has been largely set aside; at present different municipalities use different systems of taxation, and there is no simplification in sight.

The awarding of concessions by municipalities and ATO authorities has, as with water, been subject to varying and inconsistent legislative provisions. Compulsory competitive tendering has only occasionally been the

rule, and a general tendency towards privatisation is far from apparent. Once again corporatisation appears to be the dominant trend. In the context of this fragmentation it is hard to obtain systematic data. However, a telephone survey of municipalities carried out by *Assoambiente* (the waste industry association) showed that direct public management of waste collection and transport decreased from 24% of municipalities (and 19% of residents) in 1998 to 11% of municipalities (and a mere 5% of residents) in 2005. Over the same period, however, management by private companies also decreased from 46% to 38% of municipalities (and from 39% to 31% of residents); management by municipal corporations and mixed companies grew over those years at the expense of both private and direct public deliveries. The role of mixed companies in the management and ownership of landfills and plants also increased in the early 2000s.

More recently (Utilitatis 2014b), data show that over half (55%) of the 409 companies delivering municipal waste services across Italy are publicly owned, 28% are mixed public-private companies and only 17% are fully private; these different company structures account for 46%, 38% and 16% of the value of production respectively, which shows that the mixed companies are on average the largest. Fragmentation is still an issue, with only 30% of these companies concerned with multiple stages in the waste collection, transportation and disposal chain, and over 52% only involved in collection.

It should be clear that there are similarities with water services, but the degree of public discontent with the system is much more limited, although local protests against plants attract very strong support. The system is heavily supported by public capital and both the regulation and delivery of waste services are highly fragmented. Like the water sector, the waste services sector has undergone 18 years of incremental redefinition replete with contradictions and ambiguities.

8.3 Social Services

The Original Design

Many features of the system of social services in Italy have remained constant since the original Church-based interventions of the seventeenth century. In 1890 Church-based organisations were transformed into local semi-public charitable institutes (*Istituzioni pubbliche di assistenza e beneficenza*, Ipab) supported by municipal charity and assistance boards; specific

national institutions for 'maternity and childhood', 'war orphans' and so on were created under Fascist rule; and all these elements persisted in the constitutional republic. The system has remained chronically underfunded and highly fragmented; strong inequalities persist between regions and between the labour force and the more peripheral sectors of society. The system has largely favoured protection against standard risks (old age, invalidity, short-term sickness etc.) whereas more general domains of social policy (long-term care, poverty, childcare, etc.) have been neglected; it has been based mainly on transfers in cash, as opposed to provision of services in kind, which remained rudimentary (Fargion 1997).

Unlike in the domain of public utilities, the role of municipalities in the direct delivery of services was negligible compared with that of family networks and not-for-profit organisations (NPOs) whose contribution remained crucial although not formally recognised in law or government programmes.

The situation changed slightly in the late 1970s, when the newly instituted regions were given powers to legislate on social policy and social assistance, and to delegate duties and financial resources to municipalities.

In the 1980s, in the absence of a national regulatory framework, each region interpreted the task according to its history, strategic relationships with local stakeholders and institutional capacity. As a result, in the south most regional governments provided for direct financial transfers to specific categories of people and charity-like organisations, whereas central and northern regions, particularly those with Christian Democratic governments, favoured a pluralist system of governance whereby municipalities and other service providers—semi-public entities and private organisations—shared resources and duties. Some regions governed by leftist parties or coalitions opted for a more ambitious system based on regional planning and direct intervention by municipalities (Fargion 1997). The result was a scattered and fragmented institutional setting largely dependent on previous territorial legacies and characterised by huge territorial disparities in service provision and protection of social rights.

The 1990s

As we noted in Sect. 8.1, the 1990s posed political and administrative challenges which favoured the NPM experiment. Greater attention was paid to ensuring efficient service provision through marketisation and the awarding of contracts to private agencies, mainly NPOs. This development

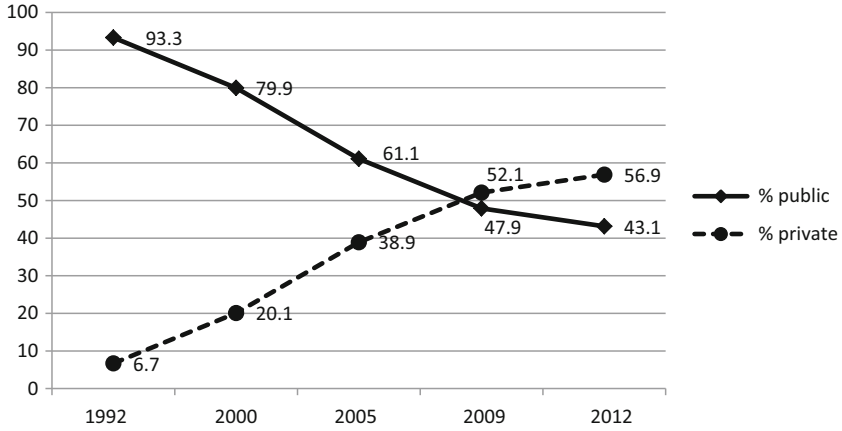

Fig. 8.1 Percentage of nursery schools under public and private management (Source: Centro nazionale di documentazione e analisi per l'infanzia e l'adolescenza—Istituto degli Innocenti (various years))

was most marked in innovative services (e.g., work-life balance support), but the change also affected services to which there had traditionally been an explicit state commitment (e.g., care services for elderly and disabled people) (see Figs. 8.1 and 8.2 below). The extent of private involvement in service delivery cannot be considered a novelty; the greatest change was in the method local authorities used to fund NPOs, which was increasingly based on transparent cost and quality criteria rather than individual negotiations as in the past (Ascoli and Ranci 2002).

During the second half of the 1990s cooperation between public and private actors received further formal acknowledgment from the centre-left governments. In 1997 a Parliamentary Commission published a proposal for comprehensive reform and in 2000 parliament approved Law 328 (the first general law on social assistance) which marked a paradigm shift in the organisation of competences and responsibilities according to (a) the principle of vertical subsidiarity whereby local governments are given full responsibility for local planning and the delivery of services, whilst the regions and the state undertake organisational and regulatory tasks, respectively (e.g., the setting of minimal standards); and (b) the principle of horizontal subsidiarity, according to which policies, services and allocation of benefits should be planned and decided through formal partnerships across institutional levels and sectors (public, private, third sector).

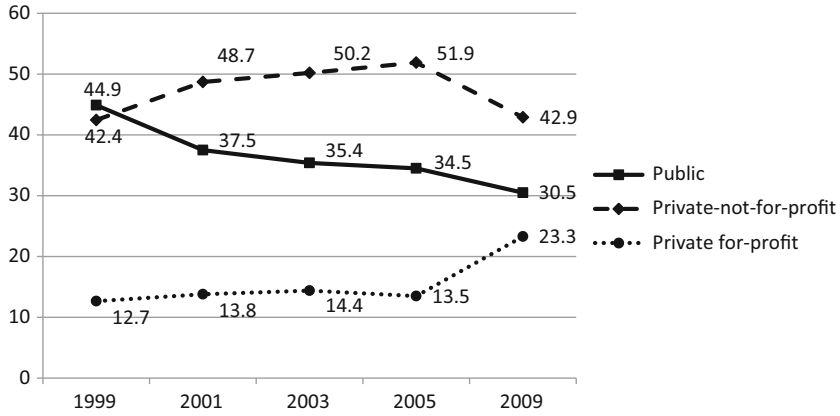

Fig. 8.2 Percentage of beds provided in residential care structures under public, private and NPO management (Source: ISTAT (various years))

The clear purpose of the reform was the creation of a national regulatory framework which would reduce territorial diversity in the organisation and quality of social services. However, the constitutional reform passed by parliament just one year later (Law 3/2001) invested the regions with exclusive legislative competence in the domain of social assistance, which meant that in practice they had the power to decide 'whether or not their social service system should comply with the principles of Law 328/2000' (Agostini 2011: 476). This further change produced divergent, even contradictory effects and undermined attempts at integration, instead favouring localism and resulting in the persistence of very diverse legacies (Agostini 2011).

Social Policies in the Crisis

After the 'big' reform of 2000, social services were subject to a stream of micro-legislation which did not overturn the original arrangements. All these acts were the result of contingent agreements among coalition partners and reflected the different preferences of diverse governmental majorities. For example, centre-right governments led by Berlusconi (2001–6 and 2008–11) emphasised the key role of the family, private caregivers and even enterprises in the delivery of services (Palier 2010), and privileged demand-driven privatisation through voucher schemes or other

individual benefits—lump-sum benefits for low-income earners and the anti-poverty social card introduced in 2008—which gave users freedom of choice among different providers. In contrast the short-lived centre-left government which held office from 2006 to 2008 sought to complement the general framework of Law 328/2000 with sectoral national plans and specific funds for specific branches of social care. Overall, from early 2000 to 2011 national intervention in all sectors of social policy was subject to two trends: (a) the strengthening of a 'welfare mix' approach where public and private service providers, as well as families and associations, were required to interact in the delivery of care services; and (b) the growing recourse to targeting mechanisms based on means-testing.

Targeting and private care solutions become more important as public finances diminish and societal demand increases dramatically, as happens during economic downturns. Between 2008 and 2011 state transfers to local governments for social policies dropped from €1437 million to €211 million (Cittalia 2012), obliging municipalities to rely mostly on their own tax revenues, which in 2011 covered almost 70% of local social expenditure. In a country where fiscal federalism is still substantially incomplete this translates into difficulties in setting up direct provision and also limits the capacity to fund delivery of services by NPOs, which is ultimately to the advantage of for-profit private actors (see Fig. 8.2 on residential care). Stretching the point somewhat one might argue that the economic downturn has been a more effective driver of marketisation, and specifically privatisation, of social services than NPM. NPM mostly had the effect of substituting more transparent procedures of contracting out for the informal negotiations between public and not-for-profit organisations that had previously been the norm; however the austerity policies imposed by national governments had the direct effect of further making public social services residual and forcing people to rely ever more heavily on private provision (Palier 2013). In addition, especially in the domains of care for the elderly and childcare, growing unemployment and decreasing household incomes encouraged people to fall back on family safety nets and spurred the search for informal, and possibly cheaper, solutions such as 'grey' care by migrants (Gori 2013).

Local government responses to economic recessions seem to replicate the traditional north–south divide in Italy, reproducing the structural differences rooted in the past such that the least money is spent where it is most needed. The same north–south divide exists where policy innovation is concerned: some local and regional governments (such as Lombardy and Emilia-Romagna) have launched interesting experiments, mainly based on cash benefits, vouchers, mixed corporations (especially in the childcare

domain), or even the promotion of *second welfare* measures, that is, a mix of social provision and investments funded from non-public sources and delivered by a range of socioeconomic entities: private companies, philanthropic foundations and so on (Maino and Ferrera 2013). In the absence of a clear, consistent national framework, the economic crisis may thus further exacerbate territorial dualisms and hamper the capacity of local governments to satisfy social needs.

8.4 Concluding Remarks

As described in this chapter, local public services in Italy have been affected by NPM-inspired reforms aimed at rationalising provision and increasing efficiency for over two decades. As Dente put it in 1991, local government and services have long been treated as a complex, incoherent 'puzzle' across multiple levels of authority (Dente 1991). In this framework the governance of tasks between the state (law-making), the regions (regional law-making, planning and geographical definition of areas) and the municipalities (service management and delivery) has had the effect of greatly increasing power at the local level at the expense of the intermediate levels, leading to widespread fragmentation. Such fragmentation has paved the way to an unclear definition of responsibilities; and the marked decentralisation of decision-making has implied poor integration and an inefficient scale of service delivery.

Disjointed incrementalism affecting institutional reforms, the lack of a coherent, binding central regulation or political vision, and the current economic crisis have severely limited the impact of the numerous attempts made to rationalise and improve the efficiency of local service management and delivery since the early 1990s.

Three main points can be made about the current state of local services:

1. The system remains incoherent and unintegrated. In the case of public utilities, the regulatory bodies created after the abolition of ATO authorities are complex and inconsistent in terms of territorial definition, structure and functions. Planning and control are weak at all levels. In the case of social services a general regulatory framework was issued in 2000, but the subsequent devolution of full legislative power to the regions, coupled with the incomplete implementation of fiscal federalism greatly curtailed its impact; the original disparities in social citizenship across the country are thus reproduced.
2. The extent of change in the public-private balance in services is the best indicator of the impact of reforms and the relative influence of

the policy legacies and original institutional structures. In the domain of public utilities, where direct or indirect municipal delivery was dominant, outsourcing has not gained much ground. The attempt to create a competitive market 'by decree' has failed; it has instead strengthened the local public hand in the form of municipal corporations. There has been little private investment, and application of tariffs which achieve full cost recovery is inconsistent and ineffective. In social services, however, privatisation has come about through formalisation of the role of third sector organisations, which was previously strong but largely informal. In both fields, however, territorial disparities are so great that no generalisation is possible.

3. Amid this uncertain process of change, however, the municipal government has been strengthened and not weakened: municipalities still play a central role in delivery of local services, and strong localism is in place where performance is good and service efficient. Discretion by municipalities, although limited by budget constraints, is significant, and so too is the political conflict that comes with it.

In summary, attempts at reform are indeed to be acknowledged, as well as some degree of change: the reorganisation of services, especially in the field of public utilities, has led to mergers and a reduction in the number of players; tools and logics imported from the private sector have impacted on the mode of service management; rudimentary systems of regulation and control have been put in place. However, these changes have allowed local legacies to influence the substance of local arrangements. The impact of the current economic crisis on local government budgets will need to be further assessed, because it may make the strategies of conservation and adaptation all the stronger.

References

Agostini, C. (2011). Social services and deviation from the Bismarckian model in Italy: The absence of a nationwide trend of change. *International Review of Sociology, 21*, 469–481.

Ascoli, U., & Ranci, C. (Eds.). (2002). *Dilemmas of the welfare mix*. New York: Springer.

Bobbio, L. (2005). Italy: After the storm. In L. Rose & B. Denters (Eds.), *Comparing local governance. Trends and developments* (pp. 29–46). New York: Palgrave.

Bolgherini, S. (2014). Can austerity lead to recentralisation? Italian local government during the economic crisis. *South European Society and Politics, 19*, 193–214.

Cassese, S. (1996). La trasformazione dei servizi pubblici in Italia. *Economia Pubblica, 5*, 5–14.

Cittalia. (2012). *Ripensare allo sviluppo del welfare locale*. Roma: Fondazione ANCI ricerche.

Dente, B. (1991). The fragmented reality of Italian local government. In J. J. Hesse (Ed.), *Local government and urban affairs in international perspective* (pp. 517–550). Baden-Baden: Nomos Verlag.

Di Giulio, M. (2014). Strong interests, weak groups? The structure and strategies of interest groups in Italian transport policy. *Contemporary Italian Politics, 6*, 261–272.

Fargion, V. (1997). *Geografia della cittadinanza sociale in Italia*. Bologna: Il Mulino.

Gori, C. (Ed.). (2013). *L'assistenza agli anziani non autosufficienti in Italia*. Santarcangelo di Romagna: Maggioli.

ISTAT. (2006). *Il sistema di indagini sulle acque, Informazioni n. 16/2006*. Roma: ISTAT—Istituto Nazionale di Statistica.

ISTAT. (2014). *Le partecipate pubbliche in Italia, Statistiche Report*. Roma: ISTAT—Istituto Nazionale di Statistica.

Kuhlmann, S., & Wollmann, H. (2014). *Introduction to comparative public administration. Administrative systems and reforms in Europe*. Cheltenham: Edward Elgar.

Lippi, A. (2011). Evaluating the 'Quasi Federalist' programme of decentralisation in Italy since the 1990s: A side-effect approach. *Local Government Studies, 37*, 495–516.

Lippi, A., Giannelli, N., Profeti, S., & Citroni, G. (2008). Adapting public-private governance to the local context. The case of water and sanitation services in Italy. *Public Management Review, 10*, 619–640.

Maino, F., & Ferrera, M. (Eds.). (2013). *First report on second welfare in Italy*. Torino: Centro Einaudi.

Palier, B. (Ed.). (2010). *A long goodbye to Bismarck?* Amsterdam: Amsterdam University Press.

Palier, B. (2013). Social policy paradigms, welfare state reforms and the crisis. *Stato e Mercato, 33*(1), 37–66.

Prontera, A., & Citroni, G. (2007). Énergie et administrations locales en Italie: Dénationalisation, libéralisation et concurrence. In *Les collectivités territoriales et l'énergie: Annuaire 2007 des collectivités locales* (pp. 191–208). Paris: CNRS Éditions.

Utilitatis. (2014a). *Blue e-book. I dati sul servizio idico integrato in Italia*. Roma: Fondazione Utilitatis pro acqua energia ambiente.

Utilitatis. (2014b). *Green e-book. Aspetti economici della gestione dei rifiuti in Italia*. Roma: Fondazione Utilitatis pro acqua energia ambiente.

CHAPTER 9

Delivery of Municipal Services in Spain: An Uncertain Picture

Jaume Magre Ferran and Esther Pano Puey

9.1 Local Government in Spain: An Overview

The Spanish local government system is highly fragmented, with a large number of local territorial entities including municipalities and provinces (throughout the country) and island councils, counties and metropolitan areas (in some regions). Moreover, 5 out of 17 'autonomous communities' consist of a single province, which means that the autonomous community assumes the functions of the province. Table 9.1 shows the extent of organisational fragmentation, which does not reflect the more concentrated population distribution.

Spain has not followed the European trend of reducing the number of municipalities; in fact, it has moved in the opposite direction. In 1978 the total number of municipalities stood at 8046 and by 2013 it had risen to 8117. There was an interlude in which the number reduced to 8022 in 1981, but from then onwards the number of municipalities once more increased as autonomous governments, with quasi-federal status, assumed exclusive control over changes to municipal boundaries (Rodríguez Álvarez 2011).

The Local Government Act (*Ley 7/1985 de las Bases del Régimen Local*) also recognised the association of municipalities and a great number of other kinds of non-territorial-based local entities as local entities.

J. Magre Ferran (✉) • E. Pano Puey
Barcelona University, Barcelona, Spain

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_9

Table 9.1 Municipalities and population in Spain (2013)

	Municipalities			
Population	*Frequencies*	*Percentage*	*Frequencies*	*Percentage*
0–250	2.701	33.30	319.532	0.70
251–500	1.157	14.30	416.567	0.90
501–1000	1.038	12.80	742.532	1.60
1001–2500	1.210	14.90	1.960.788	4.20
2501–5000	693	8.50	2.452.375	5.20
5001–10,000	560	6.90	3.921.464	8.30
10,001–20,000	355	4.40	5.034.822	10.70
20,001–50,000	257	3.20	7.593.871	16.10
50,001–100,000	83	1.00	5.965.524	12.70
100,000 to +	63	0.80	18.722.308	39.70
Total	**8.117**	**100.00**	**47.129.783**	**100.00**

Source: Authors, based on data from National Statistics Institute, 2013

9.2 Modes of Municipal Service Delivery

The set of laws related to service delivery includes not only the Local Government Act, but also a group of regulations related to contracting out (Law on Public Sector Contracts, *Real Decreto Legislativo 3/2011, por el que se aprueba el texto refundido de la Ley de Contratos del Sector Público*). The Spanish administrative system is highly regulated. The different modes of service management and delivery are summarised in Table 9.2 (Sosa 1999; Martínez-Alonso 2007).

As shown in Table 9.3, the number of corporatised bodies rose during the first decade of the twenty-first century, and then began to decline gradually.

Table 9.4 shows the evolution of municipal associations (*mancomunidades*) and consortia (*consorcios*) between 2007 and 2013. The decrease is not as obvious as in the functional decentralisation case, but still some contention in figures may be noted. The process of dissolution of the legal entity involves different parties and therefore the reduction may be less likely.

Table 9.2 Modes of public service delivery in Spain

	Mode of delivery	*Specification*	*Characteristics*
Single municipality		*Type of institution or arrangement*	*Legal entity*
	In-house (*gestión directa*)	Own administrative units and own means	No
	Corporatised (*personificaciones instrumentales*)	Autonomous organisation (*Organismos Autónomos*)	Yes
		Public business entity (*Entidades Públicas Empresariales*)	Yes
		Public company (*Empresas Públicas*)	Yes
	Outsourcing (*gestión indirecta*)	Different types of public contract	No
Inter-organisational			
	Inter-municipal	Municipal association (*mancomunidad*)	Yes
	Inter-organisational	Consortia (*consorcio*)	Yes

Source: Authors, based on Public Contracts Act and Sosa 1999 and Martínez-Alonso 2007

Table 9.3 Functional decentralisation in Spain (2007–13)

Year	*Autonomous organisation*	*Public business entity*	*Public company*
2007	1802	17	1396
2009	1876	34	1227
2012	1542	50	1580
2013	1250	56	1590

Source: Adapted from Martínez-Alonso 2013

Table 9.4 Inter-institutional service provision in Spain (2007–13)

Year	*Municipal associations*	*Consortia*
2007	998	1014
2009	1008	1055
2012	1011	1028
2013	1003	976

Source: Adapted from Martinez-Alonso 2013

9.3 Old and New in Municipal Service Deliveries in Spain

Municipal System Under the Franco Regime

Prior to the restoration of democracy the regulatory system did not allow municipalities any autonomy. The articulation of functions of the municipalities was envisaged by the Local Act of 1955 that implemented previous legal provisions of 1953 and 1945. Under the Franco regime the province, a second-tier institution, was accorded great importance in the system of local government. In general terms, in the distribution of functions between the two local levels public utilities were generally a municipal responsibility whilst roads and communications were a provincial responsibility; the provinces were also responsible for providing healthcare and social services and had a general duty to assist the municipalities.

Public Utilities

The main municipal functions were related to safety and sanitation. Citizens did not have any mechanisms for demanding the provision of public services. This meant that although there was a list of services for which the municipal authority was legally responsible, in practice even very basic services were lacking in many towns and small-to-medium cities.

Personal Services

Some health and social services were supposed to be provincial responsibilities. The provision was characterised by a patronising conception of governing and a low level of service provision (Cerdeira 1987).

The Spanish Constitution and the Local Act: Expansion of Local Services

After the Franco regime, Articles 140 and 141 of the Spanish constitution recognised the principle of municipal and provincial self-governments. Responsibility for territorial planning and local government was shared between the central state and the quasi-federal autonomous communities. The strict meaning and scope of the principle of self-government is subject to interpretation by the Constitutional Court, which has traditionally been quite respectful of local autonomy.

The 1985 Local Government Act (*Ley 7/1985 de las Bases del Régimen Local*) is the basic law regulating local government throughout Spain. This law, which was reformed in December 2013, defines the services and activities for which municipalities are responsible. Some autonomous communities have used their legal powers to implement their own local government laws in addition to those passed by the Spanish national parliament. Local government is also affected by laws on other specific issues. The harmonisation and consolidation of all the applicable laws are a matter for sophisticated juridical interpretation and sometimes result in court cases.

Articles 25 and 26 of the Local Government Act set out which services and activities are local responsibilities. The responsibilities of a municipality vary according to the population. All municipalities are supposed to provide essential services, these include street lighting, cemeteries, waste collection, street cleaning, supply of domestic drinking water, sewage services, access to populated areas, paving and maintenance of streets and roads and monitoring the safety of food and drink.

The law recognises three more groups of services which it may or may not be compulsory for the municipality to provide, depending on its population. Municipal authorities for towns over 5000 inhabitants are also expected to provide public parks, public library, public market and waste treatment and a further group of services is compulsory for cities over 20,000 inhabitants: civil defence, social services, fire protection and fire-fighting services, municipal sport facilities and a slaughterhouse. Finally, cities of more than 50,000 inhabitants must also provide public transport and environmental protection.

Article 28 of the Local Government Act empowered municipalities to provide other services in order to meet the needs of their population and thus municipalities offered a variety of non-mandatory services (such as childcare and care for the elderly). The estimated cost of these additional services was 27% of the municipal budget for municipalities of Catalonia (Vilalta 2011); comparable data for other regions of Spain are not available, but it seems likely that the resources involved would be similar.

This fact has always been itself controversial. One segment of public opinion and part of the political elite considered provision of additional services an example of self-government and expression of political will; others argued that local elites were using these activities to create patronage networks and increase municipal expenditure, and that there was duplication of functions. In the current climate of austerity, provision of non-compulsory services has become a major issue and has attracted considerable political attention.

The 2013 Reform of the Local Act

First announcements of the content of the reformed law justified the reform in the context of the economic crisis and the indications of European and international organisations. Thus, the bottom line was clearly dominated by the overall objective of ensuring the financial sustainability of the local institutional network. The drafting of the law was a tortuous process and it is unclear whether the text finally adopted will achieve its objectives. One of the main points of the reform was to reorganise services and competences. This process might be interpreted as a *de facto* re-scaling process. Another important objective was to promote private sector provision of public services; the text of the law actually explicitly states this: 'to promote private economic initiative and avoid disproportionate administrative interventions' (preamble of the *Ley 27/2013, de 27 de diciembre, de racionalización y sostenibilidad de la Administración Local*). It is difficult to say whether this is intended only as an aspiration; the law does not include effective provisions for achieving this, but the will of parliament remains clear.

The amendments related to essential and compulsory services are minor in terms of the content of services, although some services have been modified and others have been deleted from these lists.

The main change relates to responsibility for service provision. The law makes the second tier, the province, responsible for the coordination of provision and management of municipal services for all municipalities of less than 20,000 inhabitants (90% of the 8117 municipalities). It is difficult to define 'coordination' precisely but in this legal context it is clearly intended to have connotations of control and oversight. These reallocations of responsibility introduce a new element into the Spanish system: the idea of the effective cost of municipal services. Non-compulsory services appear to be more strongly affected. The law seems intended to remove the option of providing such services. A strict interpretation of the law suggests that non-compulsory services should be abolished; however, the data available one year after the law came into force suggests that this is not what has happened in practice.

Finally, the law transferred responsibility for all services related to education, health and social services to the autonomous communities, who might in turn decentralise them to municipalities granting sufficient funding. Municipal funds and resources related to these services should be transferred to the autonomous communities, but again the data we have collected from municipalities indicates that this process is stalled.

The main measures in the reform related to local public service responsibilities and functions can be summarised as follows:

1. Slight reduction in minimal and essential services.
2. Introduction of coordination and oversight of provinces,[1] which might be considered to imply a re-scaling process.
3. Attempted elimination of non-compulsory services.
4. Transfer of welfare services to the autonomous communities.

9.4 Modes of Public Delivery in Spain: Impact of New Public Management Reforms

The extension of local public services in Spain began in the mid-1980s, progressing in parallel with other deep reforms to the structure of the state and the setting up of a welfare state. As Wollmann (2011) highlighted, this period was also characterised by three political and ideological challenges: first, criticism of the welfare state and its size; second, arguments that the public sector lacked flexibility and economic efficiency; and third, the debate about the relative merits of Weberian administrative and managerialist models. Spain was affected by all three debates, even though it did not have an advanced welfare state providing the full range of public services.

The international discussion about new forms of provision and new public management (NPM) attracted increasing interest in Spain and influenced the organisation of public services (Ramió and Salvador 2006, 2012). However, it should be remembered that many of the NPM mechanisms have an analogous notion in classic Spanish administrative law. As Kickert pointed out, 'in Spain the municipal provision of public utilities like water and electricity was carried out in public-private partnerships, long before this became a modern management technique' (Kickert 2007: 44). With the emergence of NPM theories, these mechanisms achieved greater popularity, sometimes in a slightly revised form. This meant that in Spain the widespread adoption of NPM doctrines was followed by a rise in the use of NPM tools, but did not necessarily represent a change in the logic underlying service provision as the NPM discourse assumed. As Torres and Pina pointed out (2004: 458) 'Spanish advances in the implementation of NPM doctrine is a story of isolated changes rather than the carrying out of some kind of reform package plan'.

During this period the expression 'flight from the administrative law'[2] became very popular among academics and scholars. This expression referred to the fact that the new structures inspired by NPM represented an attempt to escape public law. Contrary to this approach, Spanish administrative law did not seem to have much problem in adapting the new structures to traditional regulations. Actually, Spain is still rooted in a public law system in which all new techniques are submitted to legal institutionalisation (Pérez et al. 2011).

9.5 Municipal Service Delivery in Spain: Some Empirical Hints

Spain has always lacked a system for providing comprehensive data on service delivery. This is particularly important in the case of the local level, with more than 8100 municipalities. However, it is possible to identify trends in public service provision. The central issue for this chapter is the impact of the introduction of NPM tools. One of the key points in this field is the complexity of monitoring and finding explanatory models that could provide knowledge about this process and its evolution over time. In this chapter we explore this question and approach what Wollmann and Marcou (Wollmann and Marcou 2010; Wollmann 2011) refer to as privatisation and remunicipalisation.

Methodology and Sources

Given the lack of a comprehensive data registry we have based our analysis on data from different sources and studies and we have also developed our own database. We used diverse sources that cannot be merged in one single database, but still comparison is possible with caution. Table 9.5 displays information about the different studies and database used. The databases identified as *Observatori de Govern Local* and *Servicios Públicos* include primary data gathered for service delivery research. The latter is sample-based and data come from 150 semi-structured interviews with municipal executives (*secretarios*). The municipalities were chosen using a stratified sample design, with size as the stratification criterion.

Public Utilities

In general terms, public utilities are an area where there are opportunities for the private sector. Different models of outsourcing are used for different services, such as waste collection, street cleaning and supply of

Table 9.5 Main characteristics of the studies and data sources

Study or database	*Authors*	*Cases*	*Number of cases*	*Territorial reference*	*Year of field work*	*Services*
Bel et al. (2013)	Bel et al. (2013)	Above 10,000 inhabitants	85	Spain—Aragon	2008	Solid waste
Observatorio de Gobierno Local de Andalucía	Centro de Estudios Andaluces	Above 10,000 inhabitants	152	Spain—Andalusia	2010	Municipal services
Observatori de Govern Local ObsCat6	Fundació Carles Pi i Sunyer	Above 500 inhabitants	620	Spain—Catalonia	2013	Municipal services
Servicios Públicos	Fundació Carles Pi i Sunyer	Sample	150	Spain	2014	Municipal services

Source: Authors

drinking water (Bel and Fageda 2007; Bel and Miralles 2003; Bel and Warner 2008).

Bel, Fageda and Mur (2013) found that the degree of private production in the municipalities of Aragon had remained very stable since 2003. Data for 2008 showed that private companies delivered solid waste services in about 60% of municipalities covering about 80% of the population. This figure was similar to that based on 2003 data collected by the same authors.

In the case of Andalusia data for municipalities serving more than 10,000 inhabitants showed that outsourcing was widely used for a range of services including general waste collection (62%); selective waste collection (48%); supply of drinking water (53%); sewage systems (50%) and street cleaning (40%), but was very rare in others such as street lighting (4%) and road paving (1.6%).

In Catalonia, analysis of the collected data led us to conclude that the mode of delivery depended on the nature of the service. The proportion of services provided directly by local government institutions was higher for roadworks and access to populated areas owing to the widespread practice of contracting out specific activities rather than the service as a whole (Table 9.6). Direct provision of waste collection and street cleaning was less common.

Although the distribution of modes of provision is different for each service, similar factors may be driving decisions about provision. Small to medium municipalities tend to delegate or deliver services in cooperation

Table 9.6 Modes of municipal service delivery in Catalonia (N = 620)

	Direct (%)	*Outsourced (%)*	*Cooperation (%)*	*Assistance or delegation (%)*	*Not provided (%)*
Public street lighting	82.1	17.8	0.2	0.0	0.0
Cemetery	82.3	12.4	1.0	1.0	3.4
Waste collection	10.7	38.3	16.7	34.3	0.0
Waste collection II (separate collection)	8.4	26.6	18.5	45.4	1.1
Street cleaning	19.4	69.3	3.2	8.1	0.0
Supply of drinking water	37.4	56.5	2.6	2.7	0.8
Sewage services	70.5	24.4	1.9	1.0	2.2
Access to populated areas	91.3	0.8	0.2	2.1	5.6%
Paving and maintenance of streets and roads	96.6	2.8	0.0	0.7	0.0%
Food and beverage control	35.4	0.5	2.0	35.4	26.8%

Source: Observatory of Local Government (ObsCat6); Carles Pi i Sunyer Foundation

with other entities. Larger municipalities, on the other hand, tend to provide services by outsourcing. This pattern is common to all services due to similar factors. Small and medium municipalities in Catalonia have limited capacity, and as the administrative procedures for some services are quite complex enlisting assistance from larger institutions may be sensible. Under these circumstances, inter-institutional entities or second-tier entities (namely county councils) can play an important role. Larger municipalities have more resources for managing the contracting out process and may therefore prefer to remain in control of procurement.

Data from the Spanish project show a similar behaviour, although some differences might be noted (Table 9.7). The services most commonly contracted out are supply of drinking water, sewage system, street cleaning and waste collection. The proportion of outsourcing is most different from the figures for Catalonia in the case of the last two services. There are two possible reasons for this. First, Catalonia has a third type of second-tier institution. Second, data for Catalonia are based on all the municipalities and the Spanish data come from a sample; although general trends follow the same logic, differences might exist.

Table 9.7 Modes of municipal services delivery in Spain (%) n = 150

	Directly (%)	*Outsourced (%)*
Public street lighting	82.2	17.8
Cemetery	87.4	12.6
Waste collection	35.0	65.0
Street cleaning	65.6	34.4
Drinking water supply	48.3	51.7
Sewage system	65.0	35.0
Access to populated areas	98.3	1.7
Paving and maintenance of streets and roads	94.3	5.7

Source: Carles Pi i Sunyer Foundation

Social and Personal Services

Social and personal services are largely the responsibility of autonomous communities. Even so, many municipalities are active in this field. The Spanish system for meeting social needs is based on four pillars (Alemán and Garcés 1996):

1. Informal services and care provided by family, friends and neighbours. Informal social care is still prevalent in Spanish culture and the latest economic crisis has only revived this tradition.
2. Services provided by charities, many of them related to the Catholic Church. These charities (e.g., *Cáritas*) are normally non-governmental organisations (NGOs). Since the start of the economic crisis the number of civil initiatives has risen, particularly in the area of housing problems. Nevertheless, most civil initiatives focus on advocacy and channelling of demands rather than direct provision of services (e.g., *Plataforma de Afectados por la Hipoteca*, literally 'platform of people affected by the mortgage').
3. Services provided on a commercial basis. Most services for the elderly, residential services and childcare are market-oriented.
4. Public sector services. The Spanish social system was not considered a public service until the end of the twentieth century and the economic crisis brought an abrupt end to its expansion. All levels of government are involved in what is a fragmented system. Autonomous communities are legally responsible for providing most services, but some have devolved its provision to the municipal level. Municipalities

provide social services in a two contexts, when responsibility has been devolved to them by the autonomous community or when the service area is one in which there is municipal autonomy.

The intervention of municipalities is one of the issues dealt with in the revised Local Act. According to the legal text, all devolved services should be returned to the autonomous community, which is ultimately responsible for them; they can be devolved again, provided that the autonomous community makes available sufficient resources to enable the municipalities to deliver the service. The effect of this process remains uncertain at the moment, but a high number of autonomous communities reacted with regulations to avoid the implementation of the reform.

The complexity in the pattern of provision makes it difficult to find comprehensive data on service delivery. According to the Council of Social Workers (2013), 82 % of social workers who took part in the study noticed a tendency to outsource social services and 75 % of them regarded this as a negative development. More than a half of them considered that outsourcing would not guarantee equal access and would reduce the quality of service.

Data from the Spanish questionnaire reveal important differences between service sectors. Because these data are not based on an official register, our findings should be considered preliminary. Table 9.8 shows sharp differences in the level of provision of each service due mainly to the lack of a legal obligation. We did not find enough municipalities providing housing services to provide meaningful statistics.

The questionnaire also included questions about collaboration with charities and other NGOs. Collaboration was most common in the area

Table 9.8 Modes of municipal service delivery in social and personal services

	Percentage of municipalities providing the service	*Percentage of cases in which the service is provided directly*
Social services	82.6	94.4
Eldercare[a]	14.7	56.3
Childcare	88.1	71.9
Housing services	–	–

Source: Carles Pi i Sunyer Foundation

[a]Only residential services

of care for the elderly; municipalities collaborated with both religious and non-religious organisations. It is difficult to know if the low response rate regarding this subject was due to a lack of collaboration or officials' lack of knowledge about practices on the ground.

9.6 Remunicipalisation in Spain? Perhaps Not Yet

Remunicipalisation appears to be growing in popularity in some EU states. Wollmann and Marcou (Wollmann and Marcou 2010; Wollmann 2011) discuss this putative trend and reports such as PSIRU (2012) provide relevant evidence and analysis.

Although specific data were not available at the time of writing, remunicipalisation does not seem to be gaining ground in Spain. Spain has always been a 'late adopter' of trends in public management and maybe this is once again the case. The data seem to indicate that in some geographical areas and some service sectors there is still limited private sector involvement in the provision of public services.

The Revision of the Local Government Act required that municipal services be opened up to private sector bodies; two of the main aims of the reform were an increase in outsourcing and use of market mechanisms. However, in the context of the current severe economic crisis, the local government community may begin to shown more interest in remunicipalisation; problems have arisen with some contractors and remunicipalisation may come to be seen as a possible solution.

9.7 Concluding Remarks and Discussion

During the years after 1985 (when the Local Act was implemented), the Spanish system of municipal service delivery underwent a rapid transformation as it entered the twenty-first century. The municipalities increased their provision of public services, going beyond their statutory obligations to offering a wide range of services. The introduction of NPM techniques has been scattergun and not part of a coherent reform programme. Some of the mechanisms resulted in mixed institutions combining the traditional structure, logic and values of the classic administrative law with the new principles of NPM.

Even though outsourcing became very popular, there are still some service sectors in which the level of private sector involvement remains low.

Contracting out is more common for services generally recognised as 'public utilities', particularly those related to street cleaning, waste collection and supply of drinking water.

Spain has traditionally been a 'late adopter' of new trends in public policy, and some NPM proposals are still in the process of implementation. The last reform was based on the premise that there is still too much public intervention in municipal services and that there should be more private sector involvement. This reform may create obstacles to remunicipalisation.

It is also interesting to note that although the level of private intervention in some areas appears to be low, professionals and practitioners, particularly in social services, perceive that there has been an increase in private sector involvement and in the use of market tools, and they believe this has had a negative impact on quality of service.

In conclusion, there is heterogeneity in the modes of provision for different municipal services. Some sectors, such as public utilities, have been more open to private sector involvement, whereas in others, such as street lighting, the for-profit sector has a negligible presence. Moreover, the perceptions of social services practitioners and professionals reveal a reluctance to accept increased private sector participation in public services.

Although the last reform made reference to the need to open up provision of services to private competition, it is still uncertain whether such policies will be put into practice or whether this will remain merely a statement of intent. It is important to carry out further research on this issue, monitor developments and set them in the context of European trends.

Acknowledgements This was supported by the programme CSO2013-48641-C2-1-R Local Government Reform, efficiency, re-scaling and democracy (LoGoRef) and from the Catalan government 2014 SGR 838. We would also like to thank the Centro de Estudios Andaluces for the use of the Local Observatory of Andalucía data.

Notes

1. In those autonomous communities with just one province, they act as the same body.
2. In Spanish '*la huida del derecho administrativo*'.

References

Alemán, C., & Garcés, J. (1996). *Administración social: servicios de bienestar social.* Madrid: Siglo XXI de España Editores.

Bel, G., & Fageda, X. (2007). Why do local governments privatise public services? A survey on empirical studies. *Local Government Studies, 33*(4), 517–534.

Bel, G., & Miralles, A. (2003). Factors influencing privatization of urban solid waste collection in Spain. *Urban Studies, 40*, 1323–1334.

Bel, G., & Warner, M. E. (2008). Challenging issues in local privatisation. *Environment and Planning C: Government and Policy, 26*(1), 104–109.

Bel, G., Fageda, X., & Mur, M. (2013). Why do municipalities cooperate to provide local public services? An empirical analysis. *Local Government Studies, 39*(3), 435–454.

Cerdeira Gutiérrez, I. (1987). Los servicios sociales del Franquismo a la Constitución. *Cuadernos de Trabajo Social, 0*, 135–158.

Council of Social Workers. (2013). *Informe de los Servicios Sociales en España*. Available from http://cgtrabajosocial.es/. Accessed 1 Apr 2015.

Kickert, W. J. M. (2007). Public management reforms in countries with a Napoleonic state model: France, Italy and Spain. In C. Polllit, S. van Thiel, & V. Homburg (Eds.), *New public management in Europe: Adaptation and alternatives* (pp. 27–51). Basingstoke: Palgrave Macmillan.

Martínez-Alonso, J. L. (2007). *Los Servicios públicos locales: concepto, configuración y análisis aplicado.* Barcelona: Bayer Hnos.

Martínez-Alonso, J. L. (2013). Les personificacions instrumentals locals: estat de la qüestió. *Revista catalana de dret públic, 47*, 63–86.

Pérez, G., Ortiz, D., Zafra, J. L., & Alcaide, L. (2011). De la New Public Management a la Post New Public Management, evolución de las formas de gestión de las administraciones públicas españolas. *Revista de Contabilidad y Dirección, 13*, 129–150.

PSIRU. (2012). *Remunicipalisation municipal services in Europe*. A report commissioned by EPSU to Public Services International Research Unit (PSIRU). London: University of Greenwich, Business School.

Ramió, C., & Salvador, M. (2006). Los referentes internacionales en los procesos de externalización de servicios públicos: experiencias y cuestiones clave. *Revista Vasca de Administración Pública, 77*, 177–208.

Ramió, C., & Salvador, M. (2012). Provisión de servicios públicos en el contexto de la administración local de España. *Gestión y Política Pública, 2*, 375–405.

Rodríguez Álvarez, J. M. (2011). El gobierno local en España desde mediados del siglo XX: Continuidades y cambios. In M. Arenilla Sáez (Ed.), *La administración pública entre dos siglos: Ciencia de la administración, ciencia política y derecho administrativo: Homenaje a Mariano Baena del Alcázar* (pp. 627–640). Madrid: Instituto Nacional de Administración Pública.

Sosa, F. (1999). *La gestión de los servicios públicos locales*. Madrid: Civitas.
Torres, L., & Pina, V. (2004). Reshaping public administration: The Spanish experience compared to the UK. *Public Administration, 28*(2), 445–464.
Vilalta, M. (Ed.). (2011). *Despesa dels municipis catalans en serveis no obligatoris 2003–2009*. Barcelona: Diputació de Barcelona.
Wollmann, H. (2011). Provision of public services in European countries. From public/municipal to private and reverse? *Croatian and Comparative Public Administration, 11*(4), 889–910.
Wollmann, H., & Marcou, G. (2010). From public sector—Based to privatized service provision. Is the pendulum swinging back? In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 240–260). Cheltenham: Edward Elgar.

CHAPTER 10

From Municipal Socialism to the Sovereign Debt Crisis: Local Services in Greece 1980–2015

Theodore N. Tsekos and Athanasia Triantafyllopoulou

10.1 Social-Democratic Governance Between 1980 and 1995: 'Corporatised Municipal Socialism'

The Political and Institutional Framework

From the post-war period to the rise to power of the social democrats at the beginning of the 1980s, the powerful, autarchic central government of Greece took a very cautious approach to the institutional and operational frameworks for local government (Lalenis 2002; Hlepas 2010). The central government formally allocated responsibilities to the municipalities; however, it was reliant on them for the financial and operational resources it needed to exercise power effectively.

Under the socialist governments of the 1980s, the responsibilities and resources of Greek local governments were significantly expanded. Municipalities and communities were granted the authority to establish corporations to manage waste treatment, district heating and renewable energy production as well as water supply and sewage treatment. In the same period, social policy became for the first time a core local government responsibility, although central government did not cede control completely; responsibility

T.N. Tsekos (✉) • A. Triantafyllopoulou
Institute of Technological Education of Peloponnese, Kalamata, Greece

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_10

was shared. Responsibility for development was also allocated to local government, and local governments exercised their responsibilities through innovative institutional tools such as inter-municipal 'developmental associations', which were subject to public law. There were also 'programmatic agreements' between municipal and state agencies and between municipal organisations and the public and social economy sectors whose purpose was to drive development according to the French model of 1983. In fact, only a limited number of the programmatic agreements were development-oriented; the majority functioned as a mechanism for transferring authority and funds from central to the local government (Triantafyllopoulou 2012a).

Law 1416/1984 is of particular importance as it authorised the establishment of municipal companies for financial reasons as well as policy and operational reasons. The law stipulates that local governments can set up enterprises to build and operate public utilities or provide services to generate public income.

Municipal companies could take the following legal forms:

(a) 'Pure' (or 'unmixed') municipal companies: a type of company which is subject to private law but not commercial company law. A pure company's sole capital holder is the relevant municipality. Special legal provisions permit the direct awarding of municipal contracts up to the amount of 45,000 euros to these companies and grant them enduring tax exemptions.
(b) SAs (*sociétés anonymes* or public limited companies) founded jointly by cooperatives, which hold 80-100% of the shares and state agencies which hold up to 20% of the share capital.
(c) SAs with broad citizen participation ('popular basis companies'): municipalities and cooperatives hold the majority of shares and the remainder are distributed to the general public with a limit of 2% on individual shareholdings.
(d) SAs with municipalities and cooperatives as the majority shareholder and private investors as minority shareholders; these are subject to commercial company law.

Pure companies were used for small-scale public service delivery. Joint companies with cooperatives or broad public participation were used to promote the social economic sector. Finally, joint companies with private capital were typically involved in large-scale projects where additional private funding was required and commercial management considered advantageous.

Starting in the mid-1990s, a new legal framework, based on the principle of subsidiarity (described in Greek public law as 'the presumption of local government competence in local affairs') significantly extended the sphere of local authorities' responsibilities to encompass local development, environmental protection and sustainability, urban services and quality of life, employment, social protection, education and training, as well as culture, sports and civil protection.

Between 1984 and 2004, about 1000 municipal companies were established, of which 70% were pure companies. In 2010, the total number of municipal companies (both those subject to public law and those subject to private law) exceeded 6000,[1] whilst the total number of municipalities was about 1000, giving an average of roughly six corporations of various types per municipality, a figure which highlights the extent of municipal corporatisation during this period.

Municipal corporatisation was dominated by the 'pure' legal form for the following reasons: (1) It was simpler for local governments to establish pure companies as neither municipal nor private nor other public capital was required and the municipal authority did not have to share responsibility for management with other stakeholders. (2) Private investors were rather sceptical about investing in local public projects in such an environment dominated by political clientelism where, by law, the majority of shares and consequently control of the company would remain with the municipal authority. (3) The weakness of Greek civil society means that social economic initiatives are rare, thus, very few joint enterprises with cooperatives or 'popular basis companies' were established.

An Overview of Municipal Service Provision from the Early 1980s to the Mid-1990s

Water Management

The Athens water management corporation (EYDAP) and the corresponding public entity in Salonika (EYATH), which provided water and sewage services to about 55% of the total population,[2] were transformed into state-owned enterprises during the 1980s; in the 1990s, they were converted into public companies listed on the Athens Stock Exchange although the state remained the majority shareholder. This history makes it clear that despite formal privatisation, the state continued to control the water supply to the country's two major metropolitan areas.

Energy
A limited number of municipal or joint municipal and agricultural cooperative companies of various legal forms (pure, SAs, popular basis, etc.) were created, mostly in the fields of greenhouse heating, district heating and hydroelectric production.[3]

Waste Management
In the 1980s, the construction of sanitary landfill sites by local authorities was financed through a special scheme managed by the Ministry of the Interior. However, the programme was hampered by difficulties in applying the expropriation laws, and more significantly, opposition from local populations so only a very small number of sanitary landfill sites were constructed (about 35 were in operation in the early 2000s) whilst there were over 3000 uncontrolled waste disposal sites in existence. A 1986 Law (1650/1986) provided for the creation of Solid Waste Management Agencies (FODSA), in the form of inter-municipal public law associations or inter-municipal SAs, with responsibility for integrated waste management across broader districts.[4]

Welfare Services
The Municipal Code of 1995 (P.D. 410/1995) authorised the establishment of municipal facilities for care of children and the elderly under public law and without prior central government authorisation. In parallel, local governments took advantage of general legislation covering the establishment of corporations for 'service provision to the citizens' to found municipal enterprises, mostly pure companies, to handle their new responsibilities in the domain of social and welfare services, including kindergartens and nurseries, Children's Creative Centres, Senior Citizens Centres, Elderly Daycare Centres and the Help at Home programme which provided assistance with activities of daily life to elderly and disabled people.

Profit-Seeking Activities of Local Governments
In the mid-1980s, following a Law (1416/1984) that authorised the establishment of profit-making municipal companies as a means of increasing local government revenue, 981 municipal SAs were created in the primary sector (agriculture, fisheries and mining), the secondary sector (manufacturing, construction, agro-food, green energy, etc.) and the tertiary sector (tourism, retail, entertainment and leisure, etc.).

Local Government Policies and Their Political Implications

Local government policies in Greece during the 1980s and the early 1990s had several notable features. First of all, local policymaking was reactive in nature, especially in the social domain. Municipal welfare programmes were created in response to external stimuli such as financial incentives, for example the national funding available to support Senior Citizens Centres and European funding to support programmes in a wide range of areas. In addition, the Children's Creative Centres, the Elderly Daycare Centers and the Help at Home programme, as it is the usual case for European 'social' programmes, become eligible for funding as active labour policy and not as a welfare policy. This resulted in management problems and inefficiency as municipalities strived to implement welfare programmes under the active labour policy criteria.

Since the mid-1990s, the main driver of local welfare policy was the European Social Fund programmes. These were perceived by the local politicians mainly as a source of funding; the municipalities reacted to the availability of this pot of money by embarking on diverse European Union (EU) projects with no strategy, no coherent policy and no proper plans. This meant that all local welfare programmes faced serious financial difficulties after the end of the relevant European funding programmes.

The second notable feature is the spread of municipal corporatisation in Greece between the early 1980s and the late 1990s. This development had less to do with the predominance of radical social democratic policies and more with the traditional clientelistic factors that prevail in the country's political administrative system. One of the main reasons for the expansion in organisations with this legal status after 1994 is that municipal corporations, especially those active in the health and social service sector, were eligible for European funding whereas *en régie* activities were not. Very few of the new companies were actually self-sustaining—those that were mostly in the field of leisure and entertainment—they tended to function as instruments of policy and were subsidised by local governments, and most importantly, received EU funds.

Municipal companies could hire staff outside the restrictions and controls of the public recruitment system. Between 1984 and 1997, there was no legal obligation to advertise vacancies or follow transparent, meritocratic selection procedures and no legal requirement to purchase goods and services through a public tender process. Local governments also had the right to enter into contracts with municipal companies without issuing

public invitations to tender and could thus transfer public money directly to them. Finally, the boards of directors for these companies constituted a pool of remunerated positions that could be used to reward political supporters and clients. The whole situation favoured clientelist practices.

This situation cannot only be described as favouring 'municipal socialism' but insofar as the establishment of municipal corporations becomes the main instrument for carrying out local government functions, it can be termed 'corporatised municipal socialism'. Since it is clear that the flexibility arising from corporatisation is used chiefly for clientelist purposes rather than to further operational development or improve performance, one might also refer to 'clientelist corporatisation'.

At the same time as local governments were acquiring more responsibilities and greater operational flexibility, antagonism between local (mayors, councillors) and central (ministers, MPs) political elites prevented them from taking advantage of the financial opportunities presented by municipal corporatisation, and more generally, the potential for local policymaking. Local elites tried to increase funding of local initiatives—mostly through state subventions to avoid imposing unpopular local taxes—whereas central elites aimed to distribute public funds through de-concentrated state structures and policies (Hlepas 2000), in ways which would increase their local electoral influence (Psycharis and Georgantas 2004). This kind of political tug-of-war resulted in restricted state funding of municipal policies and programmes. This lack of financial support produced two kinds of negative effect. Firstly, implementation of local policies became largely dependent on European funding and thus, local policy became purely reactive, exacerbating the lack of strategic planning inherent in the Greek administrative system (Tsekos 2013). Secondly, the expansion of local responsibilities combined with a lack of financial resources to fulfil them encouraged municipalities to borrow money and accumulate significant debt.

10.2 From the Gradual Reversal of Greek 'Corporatised Municipal Socialism' to the Sovereign Debt Crisis: 1995–2014

Deceleration and Reversal of Greek 'Municipal Socialism'

Since the mid-1990s, there have been systematic efforts to limit clientelist corporate practices and reduce the momentum behind 'municipal socialism'. There are two main drivers of this strategy. First, the requirement

for Greek institutions to comply with European policies on open markets and competition. Second, the clientelist conflict between central and local political elites and the consequent efforts of central governments to put the brakes on the increasing political clout of local government. European pressure to abolish opaque, selective and preferential terms and practices in the public sphere and introduce compulsory public tendering has resulted in widespread use of such tendering processes between municipalities and for procurement of goods and services from municipal corporations. The central political elites (members of the national parliament and the national government) have attempted to restrict local elites' (mayors, councillors) authority to appoint staff to deprive them of a powerful form of political patronage.

In 1994, the construction of public works by municipal companies was brought under the special public procurement legislation, which requires the use of public tender processes.

Major territorial reforms implemented under the 'Kapodistrias' programme (Law 2539/1997) reduced the number of municipalities and communities from about 6000 to 1034 and resulted in compulsory mergers among local government enterprises. However, the number of municipal corporations has not decreased substantially because urban municipalities and their corporations were excluded from the merger programme. The new legal framework thus had no significant effect on the institutional structures and operational practices of municipal corporations or the existing funding schemes.

In 1997, tax exemptions for municipal companies were abolished with the exception of those for companies involved in water supply, sewage and public cleaning services (Law 2459/1997). In the same year, the hiring of blue-collar and secretarial staff was brought within the sphere of public recruitment legislation.

By 2002, all staff with the exception of the top management were subject to a selection regime enforced by the High Commission of Public Personnel Selection. In 2006 (Law 3463/2006), the right to establish pure municipal companies was abolished and only public benefit companies subject to private law and also to public law on human resource management and procurement restrictions could be founded, and then only in the fields of social services, art and culture, environmental protection, education and training and sports. Existing pure companies had to be transformed into public benefit companies by 2010 although existing SAs were permitted to continue. Existing pure companies in the construction business had to be transformed into SAs. New SAs were permitted

on condition that the municipality held the majority of the shares. Finally, establishing and maintaining 'developmental companies' (SAs) with the sole function of providing scientific and technical support for local government activities were also permitted.

Because it deprived municipalities of their main instruments of expansion, the 2006 reform led to a serious deceleration of 'municipal socialism'.

The Effects of the Current Sovereign Debt Crisis

The Effects of Greek Adjustment Programmes on Local Government

The sovereign debt crisis that hit the country at the end of 2009 impinged severely on the functioning of local governments. The two Adjustment Programmes (2010 and 2012) and the corresponding memoranda of understanding (MoUs) accompanying the financial assistance agreements contained numerous provisions affecting local administration. The 2010 programme provided for large savings at the local level by limiting replacement of retiring employees to 20% and consolidating municipalities and local councils to reduced operating costs and the wage bill (European Commission 2010). The second programme, which was launched in March 2012, was intended to implement 'deeper restructuring of government operations […] closing and downsizing general government units, identifying opportunities to outsource functions, identifying redundancies, and restructuring both central and local public administrations' as well as 'reducing the number of fixed term contracts' and […] 'operational expenditure in local governments' (European Commission 2012: 99, 116, 124).

In 2010, the 'Kallikrates' reform of the local governance system (Law 3852/2010), which was aligned with the structural reforms stemming from the Greek Adjustment Programmes, further altered the framework for municipal corporatisation. Local governments were limited to establishing two legal entities subject to public law; one had to be involved in social services and the other in culture, sports and education activities. This launched a wave of consolidation among local government enterprises which reduced the number of municipal corporations by 70%.

The Greek Adjustment Programmes also resulted in significant cuts in municipal funding and staff. Between 2008 and 2014, state subsidy to local government decreased by approximately 60% whilst the workforce was reduced by 12%[5] and the new recruitment policy was restricted to one new employee for every five retirements.

Pressure for Privatisation of Water Supply

After April 2012[6] all the remaining state-owned shares in EYATH and EYDAP were transferred to the Hellenic Republic Asset Development Fund (HRADF), the Greek government's privatisation fund, until May 2014. Suez SA (which already owned 5% of EYATH shares) expressed interest in acquiring a majority stake, and Veolia SA, according to press speculation, was interested in obtaining control of Athens' EYDAP. The municipal associations of the Thessaloniki area put forward an alternative proposal for the establishment of an inter-municipal company which would manage water supply and sewage for the region, and the local activist organisation 'Initiative 136' campaigned for the acquisition of the company by a Union of Non-Profit Water Cooperatives of the Thessaloniki area under the name 'Citizens' Union for Water' using a fund consisting of contributions of 136 euros from each user-stakeholder. The union submitted an offer that was rejected by HRADF. In 2013, the Economic and Social Council of Greece issued an Opinion against water supply corporations' privatisation. Finally in May 2014, the Supreme Administrative Court (Council of State) put a provisional end to the privatisation process by upholding the action brought by a group of citizens who were against the privatisation of EYDAP. The rationale for the court's judgment was that 'the conversion of a public company into a profit-driven private corporation, makes uncertain the provision of high quality and affordable services of general interest'.[7] HRADF subsequently halted the privatisation of both companies and thus, the state retains control of 74% of EYATH shares and 63% of EYDAP shares. The former Minister of Development proposed a merger of the two companies which would have seen EYDAP purchase the state's share in EYATH and expand its activities by developing new desalination facilities on the islands. The January 2015 elections have temporarily halted moves in this direction. The new Syriza government reiterated its electoral commitments '[…] to support private investment that can play a key role in the productive reconstruction of the country [but] not to sell off networks and infrastructure that are the country's national capital'.[8] However, the third Greek bailout agreement, concluded during the European summit of 12 July 2015, states that 'the Greek authorities shall…develop a significantly scaled up privatisation programme with improved governance. Valuable Greek assets will be transferred to an independent fund that will monetise the assets through privatisations and other means'.[9]

Relations Between Local Government and the Voluntary and Social Economic Sectors

Greece is characterised by individualism, very low social trust and a lack of social capital and thus, a generally weak civil society (Jones et al. 2008; Paraskevopoulos 2007; Sotiropoulos 2004). Broader expressions of solidarity, outside extended family and kinship networks, are rare. One might expect emergency situations such as the current sovereign debt crisis and economic crisis to enhance collective spirit, solidarity and altruism; however, such attitudes are only enhanced in the context of high pre-existing social capital (Bolino et al. 2002; Dynes 2006), which is not the case in Greece. This explains why there is evidence that even under the current critical conditions, social capital remains low (Helliwell et al. 2013), and consequently, there has been no effective bottom-up, collective mobilisation which might help to manage the 'unnecessarily high' (Matsaganis 2013: 33) social cost of the Greek crisis.

There has been a marked increase in voluntary activity and voluntary organisations since the outbreak of the crisis. A number of local voluntary projects throughout the country are supporting vulnerable groups and promoting fair trading and time-banking. Some voluntary initiatives attract substantial membership and support, for example, the 'Athenistas' movement in the capital city, which collects clothes, food, books and stationery for poor families and promotes collective activities such as restoration and improvement of public parks, group cycling and promenading in the city. However, despite their increasing number, voluntary initiatives remain inadequately coordinated, scattered and disparate, and therefore, inefficient and ineffective. It also remains the case that overall engagement in such initiatives is low despite the expansion in voluntary work since the outbreak of the crisis. A public opinion survey carried out for Human Grid/TedxAthens revealed that although active volunteering has doubled since 2010, no more than 5% of the total population are involved.[10] The most effective form of volunteering seems to be volunteering embedded in institutionalised activities. Local governments organise a wide spectrum of services targeted at social groups severely affected by the humanitarian crisis. Social grocery stores, public dispensaries and pharmacies, free classes for low-income students set up under the aegis of municipalities are spreading across the country; about 20% of the staff involved—doctors, teachers, pharmacists, and administrative personnel—are volunteers.[11]

Local governments have tried to harness the social economy and relevant European funds to make up for the dramatic decrease in public

funding for municipal activities and the severe decline in staffing levels. Whilst the social economic sector in Greece has always been particularly weak, for the reasons discussed above, an innovative legal framework was introduced in 2011[12] to boost social entrepreneurship and align the country with European policy in this area (Triantafyllopoulou 2012b). Although municipalities and municipal corporations are not allowed to participate in social enterprises, they can support them by subsidising their activities and granting them the use of premises and other assets. They can also reach programmatic agreements with them for purchase of goods or services outside the constraints of the competition rules and tendering procedures. As a result, a considerable number of municipalities have encouraged the establishment of social enterprises within their geographical constituency and used programmatic agreements to make them responsible for the delivery of a wide spectrum of services mostly in the social sector (childcare and care for the elderly), but also in the fields of environmental protection and waste management. In some cases, social enterprises have also become involved in communication services and manufacturing. About 10% of the 500 social enterprises established since the introduction of the new legal framework (European Commission 2014), are closely involved in local government activities. The trend towards social entrepreneurship in local government services has prompted strong reactions from both political and institutional bodies; it is viewed either as indirect privatisation or as a form of clientelism. Left-wing political parties consider the involvement of social enterprises in local services as a Trojan horse for privatisation. Municipal employees' unions see it as a staff reduction strategy. In fact, the main reason local governments are outsourcing services to social enterprises is that there have been drastic staff cutbacks in the core municipal services as a result of the austerity measures. It should be noted, however, that the Court of Audit refused to authorise some contract payments to social enterprises as it judged that the delegation of core services such as cleaning and social services exceeded the limits of the law. The General Inspector of Public Administration has adopted a similarly a restrictive interpretation of the municipal right to conclude programmatic agreements with social enterprises, considering concession of core services an abuse of their mandate. Finally, the former Minister of Interior admitted that in a limited number of cases, there may have been clientelist recruitment through social enterprises during the municipal pre-election period.[13]

10.3 Synopsis and Concluding Remarks

The socialists' first rise to power in 1981 coincided with the international dominance of neoliberal policies and the prescriptions of new public management (NPM), so whilst most European countries were adopting NPM and moving towards privatisation of municipal services, Greece was heading in the opposite direction; embarking on an extensive programme of 'municipal socialism' heavily based on corporatisation and riddled with clientelist practices.

The current phase of development, which began in the mid-1990s, was the result of three driving factors. Firstly, there was European pressure to apply competitive principles routinely (Spanou and Sotiropoulos 2011). Secondly, the clientelist conflict between central and local political elites was intensified by the significant increase in the size, responsibilities and resources of Greek municipalities brought about by the Kallikrates Programme. Thirdly, the more recent and most important effect of the austerity policies introduced as a result of the sovereign debt crisis has been the deprivation of local governments of substantial financial and human resources; this has had a serious impact on local government services and hence, severe repercussions on social cohesion. Financial dependence also renders Greece more vulnerable to institutional pressure from lenders who use their influence to impose policies that accelerate the general shrinkage of the public space.

In combination, these factors act as drivers of privatisation of public utilities and services and make Greece ride a different pendulum moving inversely from re-municipalisation (Wollmann 2014).

Might the recent political change in the country reverse this movement? The Syriza government which has been in power since January 2015 plans 'a major administrative reform with a key role to the strengthening of local government based on a new institutional framework through the radical revision of the 'Kallikrates' law'.[14] The party's programme for local government includes '[…] and increase in public investment, as a central lever of regional development, the adjustment of the EU National Strategic Reference Framework (NSRF) objectives so as to give priority to social cohesion and employment, […] and a special employment support programme to ensure the sustainability of existing municipal social structures as well as the establishment of new ones'.[15]

Since the preservation and development of local public services depend on receipt of adequate funding, the only way to reverse the decline is

to upgrade tax collection mechanisms and increase public revenue. Only consolidation of public finances will enable the pursuit of redistributive policies and restore Greece's capacity for independent decision-making with respect to the extent and the institutional forms of public activities at the local level.

Notes

1. According to data produced by ADEDY (Civil Servants' Confederation) in 2014. See 'Local Government: Economic situation, allocation of competences, and impact on human resources and on public goods', Athens, Editions ADEDY-Koinoniko Polykentro, May 2014, p. 9 (in Greek).
2. The remaining 45% is covered by municipal companies (EYAs).
3. Fewer than ten companies were established under Laws 1475/1984, 1416/1984 and 1559/1995.
4. In total, 110 FODSA were established.
5. ADEDY (Civil Servants' Confederation), 'Local Government: Economic situation, allocation of competences, and impact on human resources and on public goods', Athens, Editions ADEDY-Koinoniko Polykentro, May 2014, p. 5, 8 (in Greek).
6. Decision of the Interministerial Committee for Restructuring and Privatization 206 (25 April 2012).
7. Decision of the Plenum of the Council of State no. 1906/2014.
8. Inaugural speech to the Cabinet by Prime Minister Alexis Tsipras, 8 February 2015, www.primeminister.gov.gr/2015/02/08/13322. Accessed 9 February 2015.
9. Euro Summit Statement, SN 4070/15, Brussels, 12 July 2015, p. 4.
10. *Volunteering and solidarity collective actions: Upwards trend despite the low startpoint* (in Greek). Human Grid Blog. Available from http://blog.humangrid.gr. 17 July 2013 (accessed 15 March 2015) and Lina Giannaros (2013), The crisis turns us towards volunteering. *Kathimerini* (Athens daily newspaper), 22 May. Available from www.kathimerini.gr/39943/article/epikairothta/ellada/h-krish-mas-strefei-pros-thn-e8elontikh-prosfora. Accessed 15 March 2015.
11. Survey by the Hellenic Agency for Local Development and Local Government (E.E.T.A.A.), Press release. 6 December 2012.
12. Law 4019/2011 on Social Cooperative Enterprises (Koin.S.Ep).
13. Minister A. Dinopoulos during a debate on the Athens' TV station Star Channel, 7 November 2014. Available from http://koinoniakpronoia.blogspot.gr/2014/11/blog-post_55.html. Accessed 4 January 2015.

14. Inaugural speech to the Cabinet by Prime Minister Alexis Tsipras, 8 February 2015. Available from www.primeminister.gov.gr/2015/02/08/13322. Accessed 3 August 2015.
15. Syriza Programme for Local Government January 2014, www.syriza.gr/page/keimena-diaboyleyshs.html#.Vb9Tfvnjfm4. Accessed 2 August 2015.

References

Bolino, M. C., Turnley, W. H., & Bloodgood, J. M. (2002). Citizenship behavior and the creation of social capital in organizations. *Academy of Management Review, 27*(4), 505–522.

Dynes, R. R. (2006). Social capital dealing with community emergencies. *Homeland Security Affairs*, 2, 2. Available from http://calhoun.nps.edu/bitstream/handle/10945/25095/79.pdf?sequence=1. Accessed 28 May 2015.

European Commission. (2014). *A map of social enterprises and their eco-systems in Europe. Country Report: Greece*. Available from http://ec.europa.eu/social/keyDocuments.jsp?pager.offset=10&langId=en&mode=advancedSubmit&type=0&advSearchKey=socentcntryrepts&orderBy=docOrder. Accessed 4 Aug 2015.

European Commission, Directorate-General for Economic and Financial Affairs. (2010). The economic adjustment programme for Greece. *European Economy Occasional Papers,* No. 61. Available from http://ec.europa.eu/economy_finance/publications/occasional_paper/2010/op61_en.htm. Accessed 26 Feb 2014.

European Commission, Directorate-General for Economic and Financial Affairs. (2012). The second economic adjustment programme for Greece. *Occasional Papers,* No. 94. Available from http://ec.europa.eu/economy_finance/publications/occasional_paper/2012/op94_en.htm. Accessed 11 Mar 2014.

Helliwell, J. F., Layard, R., & Sachs, J. (Eds.). (2013). *World happiness report 2013*. New York: UN Sustainable Development Solutions Network.

Hlepas, N. K. (2000). Decentralization and de-concentration: Towards the re-arrangement of an 'antagonistic co-existance [in Greek]. *Greek Political Science Review, 15*, 36–67.

Hlepas, N. K. (2010). Incomplete Greek territorial consolidation: From the first (1998) to the second (2008–2009) wave of reforms. *Local Government Studies, 36*(2), 223–249.

Jones, N., Malesios, C., Iosifides, T., & Sophoulis, C. M. (2008). Social capital in Greece: Measurement and comparative perspectives. *South European Society and Politics, 13*(2), 175–193.

Lalenis, K. (2002). The evolution of local administration in Greece. In M. de Jong, K. Lalenis, & V. Mamadouh (Eds.), *The theory and practice of institutional transplantation* (pp. 71–86). Dordrecht: Springer Science & Business Media.

Matsaganis, M. (2013). *The Greek crisis: Social impact and policy responses*. Berlin: Friedrich Ebert Stiftung Publications.

Paraskevopoulos, C. J. (2007). *Social capital and public policy in Greece*. Greece Paper No. 9. Hellenic Observatory Papers on Greece and Southeast Europe, London School of Economics and Political Science. Available from http://eprints.lse.ac.uk/5610/1/GreeSE%2520No9.pdf. Accessed 4 Aug 2015.

Psycharis, I., & Georgantas, E. (2004). Political dimensions of the regional distribution of public investment in Greece. In G. Kontogeorgis, K. Lavdas, M. Mendrinou, & D. Chryssochoou (Eds.), *Thirty years of democracy. The political system of the third Greek Republic 1974–2004 [in Greek]* (pp. 92–118). Athens: Kritiki Editions.

Sotiropoulos, D. A. (2004). *Formal weakness and informal strength: Civil society in contemporary Greece*, Discussion Paper No. 16, Hellenic Observatory, London School of Economics and Political Science. Available from http://eprints.lse.ac.uk/5683/1/sotiropoulos16.pdf. Accessed 2 Aug 2015.

Spanou, C., & Sotiropoulos, D. A. (2011). The odyssey of administrative reforms in Greece, 1981–2009: A tale of two reform paths. *Public Administration, 89*(3), 723–737.

Triantafyllopoulou, A. (2012a). *Local government and local economy. Local economy as local affair: The Hellenic case*. Saarbrücken: Lambert Academic Publishing.

Triantafyllopoulou, A. (2012b). Social entrepreneurship–social enterprises: European experience and the Greek case. *Review of European Studies, 4*(1), 115–124.

Tsekos, T. (2013). Structural, functional and cultural aspects of the Greek public administration and their effects on public employees' collective action. *Comparative Labor Law & Policy Journal, 34*(2), 457–477.

Wollmann, H. (2014). Public services in European countries. Between public/municipal and private sector provision—And reverse? In C. Nunes Silva & J. Bucek (Eds.), *Fiscal austerity and innovation in local governance in Europe* (pp. 49–76). Farnham: Ashgate.

CHAPTER 11

Mixed System: Transformation and Current Trends in the Provision of Local Public Services in the Czech and Slovak Republics

Juraj Nemec and Jana Soukopová

11.1 Introduction

This chapter contributes to the debate about the transformation and current state of local public service provision in two new EU member states, the Czech Republic and Slovakia. These two countries have a long shared history which invites comparative analysis. The chapter focuses on the period from 1948 to 2015, which covers two main phases: the socialist era, which lasted from 1948 to 1989, and the transformation of the municipal service system after 1989.

11.2 Brief Characteristics of the Local Government System

After the Second World War Czechoslovakia was re-established as a unitary democratic state. The Communist Party played a very important role in the political system, winning democratic elections in 1947. In February

J. Nemec (✉) • J. Soukopová
Masaryk University, Brno, Czech Republic

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_11

1948 it took over all state powers; this marked the beginning of the centralised 'socialist' state era, based on 'socialist democracy' and a planned economy. There were no real local self-government structures; local government functions were combined with local state administration under the aegis of 'national committees', which were formally democratic institutions with elected assemblies, but in reality just tools of the Communist Party (Bercik and Nemec 1999).

The 'Velvet Revolution' of 1989 marked the start of the transition in Czechoslovakia and included large-scale reforms on the public administration system. The leading role of the Communist Party was abolished immediately in 1989, and real divisions between executive, legislative, and judicial powers were created at all levels of government. Functional local self-government structures were established in 1990. In 1992 the division of Czechoslovakia into two independent sovereign states became inevitable and the split happened on 1 January 1993. Regional self-government structures were not established until much later in either country; in the Czech Republic the process began on 1 January 2000, whilst in Slovakia regions were established in 1996 and they received self-governing status in 2001.

In 2013 there were 6253 municipalities in the Czech Republic, divided into several different types: 5437 common municipalities, 214 market towns, 577 cities, 23 statutory cities[1] and the capital, Prague. There are 13 self-government regions (NUTS III level) in the Czech Republic (Czech Statistical Office 2014).

Two types of local self-government exist in Slovakia: municipalities and cities. Today, there are almost 2900 municipalities in Slovakia (including 138 cities) and eight self-government regions (Statistical Office of the Slovak Republic 2014).

The status of local government in both countries is still very similar. Within the limits of the law municipal governments can set their own budgets, hold assets and issue ordinances which are binding on all individual or corporate bodies within their jurisdiction. Local authorities have their own and delegated powers. Statutory exceptions aside, local authorities are independent of the national government. Local bodies are elected directly by the inhabitants. Municipal authorities are headed by mayors or lord-mayors, who are directly elected in Slovakia but not in the Czech Republic.

In both countries municipalities provide an array of municipal services, including police and fire-fighting; local public transportation in big cit-

ies; elementary education; construction, maintenance and management of public space, local roads and parking areas, green areas, public lighting, market places, cemeteries, local water resources and wells; wastewater treatment plants; sewerage services; construction, maintenance and management of local cultural facilities, healthcare facilities and sport, leisure and tourist facilities; infant homes; and basic social services (day care).

11.3 Local Public Services During Socialism

During the socialist period local public services were classified into two groups, public utilities (material services)—most of which belonged to the 'local economy'—and personal social services (non-material services). All local services were the responsibility of a given level of national committee—local (village or city), district or regional national committees—and the role of respective branch ministries (like Ministry of Industry) was very marginal.

Local Economy

The structure and size of the local economy are outlined in Table 11.1 and Fig. 11.1. The local economy included a wide range of different services and small-scale production of goods for local needs according to national, legally defined standards. Local services were financed partly from the state budget and partly from fees paid by users.

The structure of the local economy was very complicated and consisted of the following units and organisations:

- *Self-employed people*. After 1965 a small number of tradespeople were granted permission by the national committees to establish and run private enterprises to improve the scale and quality of local services in the following areas: small crafts, repairs, personal services, cleaning services and certain very specific services (e.g., ferry transport). The number of licences granted began to increase dramatically towards the end of the socialist era.
- *Municipal (city) bodies for direct delivery of services.* This was the lowest level of state-owned body responsible for the delivery of services. In 1985 municipal service delivery bodies were abolished in small municipalities as a result of amalgamation of delivery structures. Municipal bodies were part of the national commit-

Table 11.1 The scale of the local economy in Czechoslovakia

Indicator and location		*Years*			
		1975	*1980*	*1985*	*1987*
Local enterprises (legal bodies)	ČSR[a]	382	229	224	219
	SSR	152	106	101	99
In it: Number of 'delivery points' of local enterprises	ČSR	19,435	17,482	17,233	17,484
	SSR	7181	7328	8146	8050
Recycling enterprises (purchasing paper, metals, and so on)	ČSR	1650	1692	1887	1866
	SSR	324	315	463	440
Housing bodies	ČSR	443	160	156	160
	SSR	115	59	56	61
Organisations for local services	ČSR	234	213	222	245
	SSR	114	136	118	117
Municipal (city) bodies delivering local services	ČSR	2013	1725	1618	
	SSR	253	288	307	
Municipal (city) bodies for small-scale production of goods	ČSR	1689	1407	1665	1769
	SSR	1047	886	1050	1139
Self-employed citizen delivering services	ČSR	21,265	13,159	27,423	31,487
	SSR	5022	3303	5641	5902

Source: Adapted from Kontra and Šulajová 1988: 57

[a]*ČSR* Czech Republic, *SSR* Slovakia

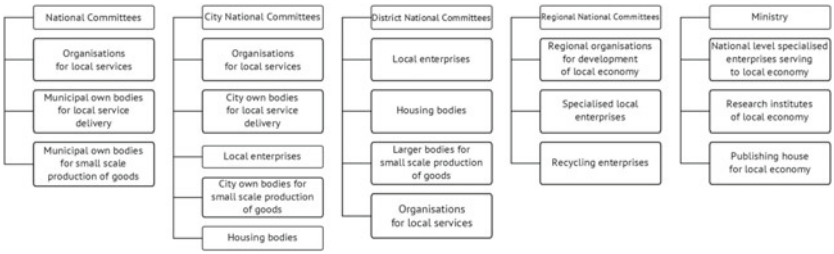

Fig. 11.1 The organisation of the local economy (*Source:* Adapted from Kontra and Šulajová 1988: 56)

tee and constituted a form of in-house production; they did not have independent legal status and did not charge citizens for the services they provided.

- *Municipal (city) bodies for production of goods.* This was a special category of local enterprise, without independent legal status, producing goods and sometimes services for a fee (revenues from fees went to the relevant national committee).
- *Organisations for local services.* These were legal entities delivering services and producing small goods, in most cases related to communal services of common interest (public green spaces, lighting, etc.). These organisations had 'budgetary' or 'semi-budgetary' status. Budgetary organisations for local services mainly delivered 'free' services and their very limited revenue was part of the budget of the relevant national committee, which covered all the costs of the organisation directly. Semi-budgetary organisations derived substantial revenue from fees charged to service users or from the sale of goods; they had their own internal financial management system, but were still dependent on subsidy from 'their' national committee.
- *Local enterprises.* These were legal entities with full financial independence and autonomy.
- *Housing bodies and recycling enterprises.* These were specialised local enterprises with full financial independence.

Waste management services were delivered by municipal bodies in small municipalities and by organisations for local services in larger municipalities. In both cases the service was free and fully financed by the national committee (via subsidy where the service was delivered by a semi-budgetary organisation).

Centralised Public Utilities: Water and Energy

During socialism delivery of some services was organised centrally by the branch ministry. The reasons for this were purely ideological: water and energy were classified as 'productive industries' according to the National Classification of Economic Branches (Benčo 1988) and therefore delivery was organised centrally, whereas other services were part of the 'non-productive' sphere and therefore devolved to national committees. Citizens paid directly for water and energy but prices were heavily subsidised.

Personal Social Services

Responsibility for delivery of personal social services—education, health, culture, social care—was devolved to the national committees (real non-profit sector did not exist in socialist Czechoslovakia).

There were three social care systems (Benčo 1988):

1. Residential social care: residential care for elderly people, disabled people and children without families.
2. Home-based social care: usually nursing services provided to elderly or disabled people.
3. Services for children and families: nurseries, advisory services for families.

All personal social services were provided free of charge to users.

Most care services for the elderly were delivered via the residential care system in 'homes for the elderly'. Such homes existed in all larger municipalities and were budgetary organisations without independent legal status. The capacity of the residential care system was inadequate throughout the 'socialist' era (Strecková 1985).

The only specific non-state service was sports. Almost all sports activities were organised by the officially independent, not-for-profit organisation the Czechoslovak Union for Physical Culture, which also owned a large part of the sports infrastructure, and not via the system of national committees.

11.4 Transformation of Public Utility Services After 1989 and Their Current Status

Before 1989 almost the entire organisational structure for service delivery was 'owned' and operated by the socialist state. In this section we describe the transformation which took place immediately after the 1989 Velvet Revolution, and the current situation, focusing on energy, water and waste services.

Energy

In this sector change has taken place step by step. In the first phase (1990–2) national providers in the form of state-owned share companies were

created as the part of splitting of Czechoslovakia. There were important changes in the early 2000s, very much as the result of the implementation of EU rules, directives and policies on de-monopolisation and the creation of a quasi-market in energy supply; some of the shares in the state-owned companies were sold to foreign companies (partial asset privatisation) and the energy market was liberalised.

Today, electricity and gas supply are regulated, quasi-market industries with competition amongst a few suppliers; a greater number of companies have the right to use distribution networks and compete for customers on price and quality (maximum prices are set by the national regulators, *Úrad pre reguláciu sieťových odvetví* in Slovakia and *Energetický regulační úřad* in the Czech Republic).

Today the main providers are ČEZ[2] in the Czech Republic and ENEL-Slovenské elektrárne[3] and SPP[4] in Slovakia. ČEZ is a state-owned share company with marginal private shareholdings (Chase Nominees Limited: 5.24%; other legal companies: 17.59%; private individuals: 4.34%). ENEL-Slovenské elektárne is a foreign capital-owned share company (Italian ENEL SpA: 66%; Slovak state: 34%). After transformation in 2002, SPP was state-controlled (51% stake), with the remaining 49% of shares originally owned by Ruhrgas and Gaz de France. The 49% share has been sold to different bodies and definitively purchased back by the state on 20 June 2014.

Several fully private suppliers have a minor share of the market. Owing to space constraints, we give only one example, the existing network of suppliers in the Banská Bystrica region (all private, most with foreign capital): Europe Easy Energy, AC energia, Slovenský plynárenský priemysel, Right Power Energy, Slovakia Energy, ČEZ Slovensko, Energie 2, Slovenské elektrárne, Magna E.A. and Business Commercial Finance. The prices charged by the various suppliers for a given product category range from 452 to 472 euros per year.

Heating is the only part of the energy sector which is decentralised; most heating services are delivered directly by municipal companies.

Water

During the 1990s local water supply services in the Czech Republic were transformed. In 1993 there were 11 state enterprises (nine in the regions; two in Prague) providing water and sewerage services in the Czech Republic. These state enterprises were transferred to regional and munici-

pal control and some have been sold (asset privatised). About 40 public district water-management companies and more than 1200 mostly small municipal operators were established. Property rights were initially transferred to municipalities, and in most cases they remain the owners of the infrastructure although the water supply service has been outsourced to service providers who pay to use it.

In Slovakia the government approved the transformation of state-owned enterprises, waterworks and sewerage systems in September 1994, and the transformation process was complete by 2003. Municipalities (and self-governing regions) were given the responsibility and the regulatory powers for this service.

At the time of writing water supply and sewerage services in both countries are predominantly based on public ownership and outsourcing. The organisational structure is very complicated. There are four basic models for water and sewerage services in the Czech Republic:

1. *Outsourcing*. Water supply services are outsourced although the infrastructure remains in public hands. This is the most widespread model in the Czech Republic.
2. *Mixed model*. Water infrastructure is operated by 'mixed' public-private companies. The mixed model applies to 18% of the cases.
3. *Municipal company provision*. This accounts for a very small proportion of services in the Czech Republic (about 2%). Under this model the public sector is the sole owner of the operating company as well as the owner of the infrastructure.
4. *In-house operation*. The municipalities can also decide to operate water infrastructure separately, directly by the branch of the municipal office. This model is the least popular (1% of the market).

In the Czech Republic there are about 40 district water-management companies and more than 1200 smaller operators under various forms of ownership. The proportion of shares in companies providing outsourced water supply services owned by foreign investors is increasing continuously. At present the most important foreign investors in the Czech water services market are Veolia CZ (a French company, formerly Vivendi Water), Suez Environment/Ondeo Services CZ (a French company), Energie AG Bohemia (subsidiary of Austrian Energy AG), Aqualia (subsidiary of FCC Group) and the German company Gelsenwasser AG Gelsenkirchen (Table 11.2).

Table 11.2 Profiles of the five largest foreign companies involved in water supply in the Czech Republic (2014)

	Veolia	*SUEZ Environment*	*Energie AG Bohemia*	*Aqualia*	*Gelsenwasser AG*
The number of inhabitants supplied with drinking water (in thousands)	3700	1050	1048	737	85
The number of inhabitants connected to the sewage system (in thousands)	3400	1000	696	500	77
Ownership share in the Czech water supply system (in per cent)	9	6	4	1	1

Source: Authors

In Slovakia water services are the direct responsibility of local governments and, as in the Czech Republic, most of the infrastructure is in public hands (the law states that public water or sewage infrastructure can only be owned by the legal person with the company seat location in Slovakia, so although private ownerships is legally possible it is unusual). Ten regional and sub-regional mixed or public share companies are the dominant suppliers, charging consumers directly (prices are strictly regulated by the state because of the lack of competition). This means that outsourcing is the dominant model in Slovakia, as it is in the Czech Republic (and as in the Czech Republic foreign companies have stakes in water supply companies, in particular Veolia). A few small municipalities provide water services directly (in-house model).

Waste Management

Belajová et al. (2014: 48) summarised the data to show the transformation which has taken place in the local economy. Twenty-two per cent of assets were transferred from the municipal to the central level directly after 1989 and 68% privatised. In this first phase only 10% of assets were transferred to municipalities. During later decentralisation reforms (especially in Slovakia, through changes made during 2000–4) part of centralised assets was returned to municipalities and regions.

The existence of privatised bodies capable of delivering local services was critical to the implementation of outsourcing. Data are only available for the period from 2000 and indicate that already during the period 1989–2000 a large proportion of local services had been contracted out (Meričková et al. 2010; Nemec et al. 2008).

In both countries waste management is a municipal responsibility and the organisational profile of providers is very diverse, as Tables 11.3 and 11.4 illustrate. Domestic and business users met most of the cost of services.

Remark: the difference between budgetary and semi-budgetary organisation is explained in the first part of the text.

As both tables show, many different modes of delivery are in use. The first four modes listed in the tables represent forms of in-house production and corporatisation. Where delivery is described as 'external' it is outsourced, that is, it is delivered by legal entities not owned by the municipality (various private for-profit and not-for-profit or public entities, some

Table 11.3 Profile of organisations providing waste management services in the Czech Republic, ranked in ascending order of cost to the user (2010–13)

Institutional form/Size	*<1000*	*<5000*	*<10,000*	*<30,000*	*<50,000*	*>50,000*
Municipality-owned (internal)						
Municipal house staff	7					
Municipal budgetary org.	5	5	1	1		
Municipal semi-budgetary org.						
Municipal limited company	2	2	4	2	4	
Municipal shareholder company						
Privately owned (external)						
Private individual	4	6	6			
Limited company	3	4	2		2	
Share company	4	3	5		3	
Mixed						
Mixed limited company						
Mixed share company						
Municipal association	1	1	3		1	1

Source: Table prepared by authors using Soukopová et al. 2015

Table 11.4 Profile of organisations providing waste management services in Slovakia, ranked in ascending order of cost to the user (2003)

Institutional form/size	*<1000*	*<5000*	*<10,000*	*<30,000*	*<50,000*	*>50,000*
Municipality-owned (internal)						
Municipal house staff	4–5	11	3		2	
Municipal budgetary org.	8					
Municipal semi-budgetary org.		6	7	3	1	
Municipal limited company		2	1	4	4	
Municipal shareholder company	2	8				
Publicly owned (external)						
Public non-municipal budgetary org.	3	7				
Public non-municipal semi-budgetary org.		10				
Privately owned (external)						
Private individual	4–5	9				
Limited company	6	4	6		3	1
Share company	7	5	4	2	6	
Mixed						
Mixed limited company		3	2	5	5	2
Mixed share company						3
Municipal association	1	1	5	1		

Source: Table prepared by authors using Majlingová 2005

with foreign capital). In mixed bodies the municipality is one of the owners, but private investors have a minority or majority stake. Municipal associations are a special case; the legal entity delivering the service is jointly owned by several municipalities.

11.5 Transformation of Personal Social Services After 1989 and Current Delivery Modes

Immediately after 1990 the state monopoly on provision of all types of social services was abolished (eg, the monopoly on provision of social care was abolished by Law 180/1990). This change allowed for a three-track system of transformation:

1. Step-by-step transfer of former national committee facilities to municipalities and, later, also to regions.
2. Asset privatisation and corporatisation (the typical example is healthcare, where primary and secondary care were privatised step by step, but the hospital sector was both privatised and corporatised: the main hospitals remain state share companies).
3. Creation of new private for-profit and not-for-profit providers. The emerging new providers are predominantly of two types; this is illustrated clearly by developments in education and social care. Some of the new providers are church-related organisations (primary and secondary schools, social care bodies) delivering services via reinstated or new infrastructure (the assets the Church had owned in 1948 were restored to it). The remaining group of new providers are completely new non-state providers with their own infrastructure.

In the case of social services, municipalities and regions sometimes own facilities. Their main function is to register private for-profit and not-for-profit bodies involved in service delivery (registration by region is compulsory in Slovakia: unregistered organisations cannot deliver services). Financing of social services is based on user fees and local (regional) government subsidies (Matoušek 2011; Průša and Wildmannová 2014). In the following paragraphs we described the situation in three core services, care for the elderly, healthcare and education.

Care for the Elderly

Compared to almost all other services de-nationalisation—the dismantling of state-based services—of care for the elderly is still in the very early phases. The legislative framework in both republics discriminates against private sector providers. For example, Law 195/1998 in Slovakia stipulates that private providers can receive financial support from local government only if the publicly provided service is inadequate and the provider is a not-for-profit organisation. As the ability of private citizens to pay for services for the elderly remains very limited, these conditions mean there is little room for private initiatives. The private sector (see below) is involved in small-scale services, but the most expensive services—for example, residential homes for the elderly—are entirely in public hands in both republics. As of today 54% of the 2980 different social care providers

in the Czech Republic are private providers, and in Slovakia some 30% of 1762 providers are private (Káčerová et al. 2013).

The most important (by number of employees, clients and budget) forms of social services for the elderly are residential homes (only elderly people with a regular pension who require routine nursing are eligible for such places) and old age pensions (all elderly citizens are entitled to use this service). There are 938 providers of 'domiciliary' (care in the user's own home) services in the Czech Republic and only 105 in Slovakia (Káčerová et al. 2013). Table 11.5 shows trends in the development of institutional care capacity.

Healthcare

Compared with care for the elderly, healthcare in both countries has been significantly de-nationalised, but not sufficiently de-institutionalised (all sources agree that inpatient hospital care consumes too high a proportion of healthcare costs). Pluralistic compulsory health insurance (ensuring universal access) is the main source of finance (one dominant public insur-

Table 11.5 Capacities of main forms of in-house elderly care in the CR and Slovakia

			1991	*1994*	*2000*	*2006*	*2010*
Number of establishments	Residential home for the elderly	CR	269	290	338	390	471
		SR	92	109	154	201	267
	Old age pension	CR	56	106	148	142	
		SR	32	35	30	13	
	Total per thousand elderly	CR	0.25	0.29	0.34	0.36	0.29
		SR	0.22	0.25	0.30	0.33	0.40
Number of beds	Residential home for the elderly	CR	31,915	32,798	36,163	38,672	36,529
		SR	9765	10,684	13,204	13,258	10,999
	Old age pension	CR	5903	10,159	12,129	11,428	
		SR	3640	4179	3039	1703	
	Total per hundred elderly	CR	2.89	3.18	3.40	3.41	2.26
		SR	2.43	2.57	2.62	2.34	1.64

Source: Authors

ance company and several private insurance companies in both republics). Municipalities and regions are responsible for maintaining the network of healthcare providers and licencing and supervising providers; the Ministry of Health is responsible for university hospitals and strategic planning. The level of direct private payment is much higher in Slovakia (about 70% of health services are covered by insurance or the state budget, compared with almost 90% in the Czech Republic). As already stated, outpatient care is almost fully privatised, but the asset privatisation of hospitals is a subject of ongoing debate in both republics (Bjorkman and Nemec 2013). At present the main university hospitals are still in public hands, but most regional hospitals are not-for-profit, non-state bodies (Table 11.6 shows the situation in Slovakia).

Education

Education at all levels in both republics takes the form of a mixed system with public and private deliveries, although the public sector is clearly the

Table 11.6 Ownership of hospitals in Slovakia (all types of hospitals, 2012)

Ownership	*Western Slovakia*			*Central Slovakia*		*Eastern Slovakia*		*Bratislava*	*Total*
	TT	*TN*	*NR*	*BB*	*ZA*	*PO*	*KE*		
State—Ministry of Health establishments (teaching and specialised hospitals)	4	3	6	13	6	8	11	10	61
State—Other state specialised hospitals and similar bodies	0	1	0	0	1	2	0	2	6
Public regional or local hospitals (owned by self-governments)	4	4	2	2	5	3	1	1	22
Other (profit and not-for-profit private regional and local hospitals)	4	8	6	14	5	21	11	14	83
Total	12	16	14	29	17	34	23	27	172

Source: Authors, using data from the National Health Information Centre, Slovak Republic (2014)

Note: Abbreviations for regions *TT* Trnava, *TN* Trencin, *NR* Nitra, *BB* Banska Bystrica, *ZA* Zilina, *PO* Presov, *KE* Kosice

Table 11.7 Regional education system in the Czech Republic (school year 2013–14)

The founder	*Nursery schools*	*Elementary schools*	*Secondary schools*	*High schools and vocational schools*
Ministry of Education, Youth and Sports	7	45	32	0
Municipalities	4707	3625	25	0
Regions	80	259	927	111
Other Public Bodies	0	0	4	5
Private sector	249	99	306	46
Church	42	35	37	12
Total	5085	4063	1331	174

Source: Authors, using data from the Ministry of Education, Youth and Sports, Czech Republic (2014)

dominant player. The main pro-market feature is the method of financing: at all levels, funding is currently rated using a performance-based formula.

Primary education is a mixture of own (original) and delegated responsibility of municipalities (e.g., in Slovakia the original responsibility is with municipalities which finance local art schools and cater to all pupils), and is the largest part of their expenditure. A formula-based funding system in which the number of pupils is the main determinant of resource allocation is used in both countries. Existing private schools can charge fees but are also eligible for state subsidy. Secondary education is the responsibility of regional governments and is delivered under the same financial system. The ownership structure is illustrated in Table 11.7.

High school (university) education is coordinated by the Ministry (supported by a national accreditation committee) and delivered by publicly owned (largely autonomous) universities free of charge. Public universities are financed from the state budget according to a formula based on the number of students and the research output of the institution. Private high schools charge fees and are sometimes eligible for state support (e.g., see Dudová 2013).

11.6 Conclusion

As indicated in the previous section, local public services in the Czech Republic and Slovakia were transformed significantly after 1989. A mix of public and private sector providers has emerged in most areas in a relatively short time, but there is noticeable sectoral variance.

Main local public utilities (waste, green, communications, lighting, cemeteries and similar facilities) were first transferred from national committees to local governments, and soon afterwards the process of at least partial asset privatisation and hence outsourcing began. Data on service structure are only available from 2000; they indicate that the proportion of services which has been outsourced to the private sector has remained steady between 2000 and 2015. During recent years some municipalities have switched from in-house delivery to outsourcing or vice versa (because private providers failed to meet the quality criteria or for other reasons), but there is no clear trend in either direction. The core problem is the fact, as all our research and other similar studies (see references) indicate, that local decisions about the best mode of service delivery are not evidence-based and in many cases rent-seeking factors are behind concrete decisions on service production mode (for more detailed discussion, see, e.g., Meričková et al. 2010).

The pattern of changes in services that were centrally delivered under socialism—water and energy, for example—is variable. Today water and sewage services are delivered in a non-competitive environment by many different legal entities with various ownership structures. Energy supply is, very much as the result of EU accession, a regulated service provided by a small number of suppliers using common infrastructure and competing on price.

The transformation of social services has also been variable (perhaps in some cases the transformation process is incomplete). Rather surprisingly education and healthcare, which were formerly centrally delivered, have been converted into a real public-private civil sector mix of forms of delivery (financing is predominantly public) whilst there has been comparatively little de-institutionalisation and de-nationalisation of care for the elderly.

In both countries the governing and opposition political parties do not envisage major changes to public services in the future. This signals that in the short term, there is unlikely to be substantial change to the current structures for delivery of local public services in the Czech Republic or Slovakia. At least for the next few years the system will remain much as it is today—decentralised, but fragmented and very different in different sectors.

Acknowledgement This research is supported by the Czech Science Foundation under contract No. *GA15-08032S* 'Unfair competition and other economic factors influencing the efficiency of the provision of public services'.

Notes

1. The labels 'market town' and 'city' are formal and do not indicate any particular legal status; however, statutory cities may be divided into smaller units for local government purposes.
2. www.cez.cz, accessed 15 May 2015.
3. www.seas.sk, accessed 25 April 2015.
4. www.spp.sk, accessed 25 April 2015.

References

Belajová, A. I., Dudová, P., Berčí, B., Konečný, M., Muška, D., Achbergerová, B., Gindlová, J., Turčany, & Lubelcová, A. (2014). *Analýza, monitor fungovania trhu práce z hľadiska zvyšovania zamestnania*. Bratislava: Národny projekt Centrum sociálneho dialogu.

Benčo, J. (1988). *Ekonomika nevyýrobnej sféry*. Bratislava: Ekonomická univerzita.

Bercik, P., & Nemec, J. (1999). The civil service system of the Slovak Republic. In T. Verheijen (Ed.), *Civil service systems in Central and Eastern Europe* (pp. 184–212). Cheltenham: Edward Elgar Publishers.

Bjorkman, J. W., & Nemec, J. (2013). *Health reforms in Central and Eastern Europe*. Hague: Eleven International Publishing.

Czech Statistical Office. (2014). *Statistical yearbook of the Czech Republic 2014*. Praha: Czech Statistical Office.

Dudová, I. (2013). *Ekonómia vzdelávania*. Bratislava: Wolters Kluwer.

Káčerová, M., Ondačková, J., & Mládek, J. (2013). Social services for seniors, types, size and spatial differentiation—A comparison of Czech and Slovak Republics. *Regionální studia, 1*, 51–66.

Kontra, M., & Šulajová, I. (1988). *Ekonomika miestného hospodárstva a výrobného družstevníctva v etape postupnej a úplnej prestavby*. Bratislava: Vysoká škola ekonomická.

Majlingová, L. (2005). *Spôsoby zabezpečovania služieb odpadového hospodárstva v SR*. Banská Bystrica: EF UMB.

Matoušek, O. (2011). *Sociální služby: legislativa, ekonomika, plánování, hodnocení* (2nd ed.). Praha: Portál.

Meričková, B., Nemec, J., Sičáková, B. E., & Beblavý, M. (2010). *Kontrahovanie služieb vo verejnom sektore*. Adin: Prešov.

Ministry of Education, Youth and Sports, Czech Republic. (2014). *Statistical yearbook of the ministry of education, youth and sports 2013/2014*. Praha: Author.

National Health Information Centre. (2014). *Health statistics yearbook of the Slovak Republic 2012*. Bratislava: National Health Information Centre.

Nemec, J., Meričková, B., & Ochrana, F. (2008). Introducing benchmarking in the Czech Republic and Slovakia: Processes, problems and lessons. *Public Management Review, 10*, 673–684.

Průša, L., & Wildmannová, M. (2014). Funding social services in the Czech Republic in the light of EU legislation. In O. Deev, V. Kajurová, & J. Krajíček (Eds.), *European financial systems 2014* (pp. 492–498). Brno: Masarykova univerzita.

Soukopová, J., Hřebíček, J., & Valta, J. (2015). National environmental data facilities and services of the Czech Republic and their use in environmental economics. In R. Denzer, M. Argent, G. Schimak, & J. Hřebíček (Eds.), *Environmental software systems. Infrastructures, services and applications* (pp. 361–370). Heidelberg: Springer International Publishing.

Statistical Office of the Slovak Republic. (2014). *Statistical yearbook of the Slovak Republic 2014*. Bratislava: Publishing House of the Slovak Academy of Sciences.

Strecková I. (1985). *Vývojové tendence postavení a struktury vybranných odvětví nevýrobní sféry*. Závěrečná zpráva z řešení dílčího úkolu SPEV 906 601 01 (901 505 01) Státního programu ekonomického výzkumu. Brno: Purkyně univerzita.

CHAPTER 12

The Evolution of Local Public Service Provision in Poland

Łukasz Mikuła and Marzena Walaszek

12.1 Introduction

Until 1990 the provision of public and social services in Poland was largely shaped by the centralised state under Communist party rule. The evolution in provision of local public services in Poland was inspired, especially in 1990s, by developments in Western Europe. The major decentralisation reforms empowered local governments and made them the dominant service provider in many sectors. Similarly neoliberalism, which was seen as a departure from 'real' socialism, served as the ideological basis for further transformations of local public services in Poland, including partial commercialisation and privatisation. The remunicipalisation of local waste management systems imposed by central government in 2013 is the first reversal of these trends.

Ł. Mikuła (✉)
Institute of Socio-Economic Geography and Spatial Management, Adam Mickiewicz University, Poznan, Poland

M. Walaszek (✉)
Institute of Socio-Economic Geography and Spatial Management, Adam Mickiewicz University, Poznan, Poland

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_12

12.2 Local Government in Poland: General Framework

After the Second World War local government was significantly affected by the general political changes and the introduction of a communist regime. In 1950 the system of local governments was dissolved and replaced with a 'unified state authority'. The responsibilities of local governments and local state administrations were wholly taken over by 'national councils' which were, in fact, only territorial representation of central state authority. The national councils did not have real decision-making power or financial autonomy. There were no democratic elections for representation at these levels and the centralised system restricted local units' responsibility for most public services. Since 1975 Poland has been divided into 49 relatively small provinces (*województwa*) and about 2,500 municipalities (*gmina*).

A new stage began with the major administrative reform of 1990, which followed in the wake of transformations resulting from the reintroduction of local government at the municipality level. But after this there was no further reform of territorial divisions until 1998. The reform of 1990 is generally considered one of the greatest successes of the political transformation in Poland because it contributed to a significant change in the approach to managing public affairs, empowering local communities and encouraging them to take up functions and responsibilities previously held by central government and its territorial units (Table 12.1).

The reform of 1998 produced significant changes in the Polish administration system. It introduced two new tiers of territorial division: 380 counties (*powiat*), including 66 cities with county status, which were secondary units of local government and 16 regions with a two-tier administration (*wojewoda* as the head of regional state administration and a regional government in the form of a directly elected regional council with its own executive and administrative staff). There were, however, no territorial changes at municipal level, which is still organised in the same way as in 1975.

Currently the Republic of Poland is a unitary state, but local and regional governments have a relatively strong position as the Constitution is based on the principle of subsidiarity. Under the provisions of Chap. 7 local government is granted the capacity to carry out all public tasks not reserved to other public authorities by the Constitution or by statute. Local government revenue consists of direct revenue (mainly local taxes and a proportion of national taxes; in large cities and suburban municipalities these sources typically account for 60 to70 % of all revenue), as well as general subsidies and grants from the state budget.

Table 12.1 Distribution of responsibilities and functions across governmental levels in Poland

Cities with county status (66)		*Regions (16)*	*Central government*
Municipalities (2,413)	*Counties (314)*		
Spatial planning	County roads	Strategic planning	Motorways, express and national roads
Local roads	Secondary schools	Regional roads	Inter-regional railway
Local public transit (tram, bus, metro)	Special and art schools	Regional public transport (rail, coach)	Public universities
Water supply and sewage systems	General hospitals	Water management	Educational supervision
Waste collection and management	Social welfare houses	Higher vocational schools	Police
Social housing	Personal social services	Teachers training	Fire protection
Nurseries	Employment	Special hospitals	National cultural institutions
Kindergartens	Local museums and theatres	Regional museums, theatres, libraries	National parks
Primary and middle schools	Building permits	Landscape parks	
Social assistance	Car and drivers registration		
Local libraries	Consumers protection		
Green areas			
Sport and leisure facilities			

Source: Authors

12.3 Transformation of Local Public Service Provision in Poland

Pre-1990 Period

Before the Second World War there were more than 10,000 associations and 3,000 foundations registered in Poland and they played a huge role in providing social services; in 1937 they were running more than 50% of all child-care facilities. The ethnic and religious diversity of pre-war Poland greatly influenced the character of many welfare associations, which in many cases reflected the shared religious and ethnic background of the members. In the post-war period the role of non-government organisations was drastically

reduced and they were subjected to strict political and administrative control (Modzelewska 2012).

The Soviet Union introduced fundamental political, social and economic changes to Poland in the period 1944-1950 which defined the principles on which the system of local public service provision was based and meant that the system was highly centralised. Until 1990 local public utilities were provided by state-owned companies, which were subordinate to the Ministry of Public Utilities. They usually operated at provincial level and had branches in several cities and municipalities, despite the fact that the network infrastructure they managed (e.g., infrastructure for the management of water and sewage) was not physically integrated (Kulesza 2012).

Despite the democratic provisions of the Constitution of 1952, the numerous social organisations were dissolved and their property seized by the state. The Communist government replaced them with centralised, nationwide quasi-state organisations subordinate to public authorities (e.g., Red Cross, Polish Social Welfare Committee, Society of Friends of Children). Only a few Catholic secondary schools affiliated to religious orders and congregations survived, most of them for girls only (Wojtas 2009). The non-state sector was largely restricted to sports or hobby associations, scientific societies and agricultural cooperatives. To a large extent the accumulated achievements of non-governmental organisations (NGOs) during the pre-1939 period were lost and civic activity was deprecated (Modzelewska 2012).

Municipalisation and Rebirth of Civic Activity After 1990

The local government reform of 1990 meant that within a few years most of the state-owned companies responsible for public utilities at provincial level had been broken up and turned over to municipal ownership and operation. It was not always possible to divide these companies according to municipal boundaries, so in some cases new forms of inter-municipal cooperation (associations of municipalities or inter-municipal agreements) had to be established.

The new political conditions, together with the creation of a simple registration procedure encouraged citizens to organise many new social associations whose aim was to complement (or even replace) the role of state institutions in addressing social problems. These processes were reflected in an explosion in the number of NGOs at the beginning of the 1990s. In the 3 years between 1989 and 1992 23,138 associations and 2,901 foundations[1] were registered. The following years saw a reduction in the number of new associations and foundations established

(16,451 associations and 2,547 foundations registered over 7 years between 1992 and 1999), but it was also a period of economic growth and strengthening in the position of the NGO sector (Nałęcz 2002).

Corporatisation and Partial Privatisation of Public Utilities After 1996

The Local Public Services Act of 1996 resulted in transformation of the existing municipal companies (which had until then operated mainly under pre-1990 regulations designed for state-owned companies) into the municipality-owned 'budgetary institutions' or municipality-owned private law limited companies. A budgetary institution is not an independent legal entity, but its revenue and spending are not included in the municipal budget. Budgetary institutions providing public services charge service users a fee, but there is no requirement that these fees should cover the full cost of providing the service. The service can be subsidised from the municipal budget up to a maximum of 50% of maintenance costs and municipal grants are available to fund investment. Private law-based municipal limited companies are subject to the same regulations as other commercial companies. At annual general meetings of shareholders, the company the mayor represents is the municipality; the mayor is also responsible for appointment of municipal representatives to the supervisory board.

Corporatisation of municipal companies was in some cases the first step towards material privatisation. One of the main driving factors for this process was the anticipation of European Union (EU) accession; this finally took place in 2004. The majority of Polish public utility companies did not meet the new environmental requirements imposed by the EU and external funding to enable modernisation of the sector was much needed. Large foreign companies such as Remondis, Dalkia or Saur were able to provide capital and expertise to support new investment. Revenues from privatisation were also an important source of funding for other municipal investment projects, especially after 2008 when the issue of municipal public debt became an important topic in the more general political debate about the economic situation of the government. The annual deficit of the municipal sector rose from an average of 2% in the 1999-2008 period to 10% in 2009-2010 period and many local governments used privatisation of public utilities to fill this gap. Privatisation is still under way, mainly in the areas of heat energy, water supply, wastewater treatment and public transport; however, it often provokes social and political debates about the effects of loss of public control over important infrastructure and resources.

12.4 Institutional Forms of Public Service Provision

The budgetary unit, the public institution whose revenue and spending are fully included in the municipal budget, is the organisational structure local authorities in Poland use to carry out most of the tasks assigned to them. These include providing schools, kindergartens, nurseries, day-care centres, homes for the elderly and a number of other specialist institutions. Together with the previously mentioned 'budgetary institutions' these units constitute a large group of organisations without independent legal status.

The local independent legal entity is another category of public service provider; these bodies have a separate legal identity from the municipality or county to which they are related but are part of the public sector for financial purposes. Most are cultural institutions (public libraries, cultural centres, theatres and museums) and hospitals operating as independent public healthcare units.

The third category of local public service provider is those using the legal forms typical of the private sector. Most of the private providers are public utility companies, although foundations and associations are also involved to a much smaller extent. The income and expenditure of these organisations are not included in the municipal budget but their economic condition may affect the financial position of local government units.

The condition of the various local government entities and the range and standard of services they perform depend mainly on the funding they receive from the relevant local government's budget. This applies particularly to cultural institutions whose functioning is dependent on local government funding as they provide services which are free to users or subsidised significantly by local authorities. Hospital expenditure is not met solely by local governments, but also from the National Health Fund; however, local governments are legally responsible for their liabilities.

12.5 Public Utilities

Energy Sector

In Poland generation and supply of electricity are generally outside the scope of the municipal government. There are several large regional electricity companies; some are still state-owned, whereas others have been

privatised through public offerings or partially sold to large foreign companies such as EDF or Vattenfall. In the case of heat supply, many municipal companies have been materially privatised. Regulation of the prices charged for electricity and heat is the responsibility of state authority, the Energy Regulatory Office.

In the near future the Polish energy sector will need to make substantial investment in infrastructure. Nearly 40% of the power generation units in Poland are more than 40 years old, and over 15% are more than 50 years old and should be shut down as soon as possible (PAIiZ 2012). Investment in modernisation is also driven by the need to comply with EU requirements, especially those on the reduction of carbon dioxide emissions. The total cost of the necessary modernisation of the Polish energy sector is estimated at 40–50 billion euros over the next 15 years. Current plant owners cannot afford such a large investment so it will be necessary to find external funding. There is also a very marked consolidation under way in the sector, with a significant number of mergers and acquisitions. According to the Central Statistical Office, in 2010 there were 451 active companies in the electricity, gas, steam and hot water production sectors, which were at least 10% foreign-owned. The largest foreign investors are the French group EDF (responsible for 10% of electricity production and 15% of heat production in Poland), GDF SUEZ and Dalkia, which has acquired large municipal heat supply companies in Warsaw and Poznan (PAIiZ 2012).

Water and Sewage

Water services are regulated by the municipalities. Water and sewage companies present their proposed investment programmes for the next 5 years to the mayor and council, who must approve them. The company proposes water and waste-water tariffs for the next year, basing them on the cost of maintaining and investing in the system (the algorithm is set by the Ministry of Infrastructure). The municipal council cannot reject or modify the proposed tariffs if they are calculated correctly, but it may agree to meet part of the cost by making a direct payment in order to subsidise the cost of services for local users. Privatisation of water companies in Poland is not very common and is usually based on the model in which infrastructure remains in public hands whilst service delivery is outsourced to private providers. This model of service provision has been implemented only in a few medium-sized cities, with the notable exception of Gdansk Waterworks. In 1992 a joint stock company called Saur Neptun Gdansk

(SNG) was created; the shareholders are the city of Gdansk (49%) and the French company Saur International (51%). SNG entered into a 30-year contract with the city of Gdansk (Jerzmanowski and Sobieralski 2012). The other major cities of Poland did not follow this example and the privatisation of the two largest water companies (in Warsaw and Upper Silesia) is still the subject of much political debate.

Public Transport

The Public Transport Law of 2010 clearly separated the functions of the organisers (municipalities or their associations) and operators. Post-1990 these two functions were often combined and were typically the responsibility of municipal budgetary institutions or limited companies. Under the provisions of Public Transport Act the operating market was opened up to free competition, but many municipalities decided to give their own companies the status of 'in-house operator' for a transitional period (usually 15 years). Municipal companies can retain their monopoly on existing public transport routes for the duration of this transitional period. Foreign investors are usually interested in inter-city coach lines (e.g., *Polski Bus*, part of Stagecoach group) and have not become significant players in the market in local transport services.

Waste Management

The system for collecting and processing waste was largely de-monopolised after 1990, although most of the landfill sites continued to be owned and operated by the municipalities. Dozens of private waste collection companies were established, creating a genuinely competitive market, especially in larger cities; however, in smaller municipalities there was usually still only one municipality-owned entity (a budgetary institution or a limited company) operating in the field of waste management. All property owners were legally required to sign an individual contract with the waste collection company of their choice; the problem was that in practice not all owners did so. A large proportion of waste was removed and dumped illegally and enforcement of the regulations was very poor.

In order to comply with EU directives on re-use and recycling of waste, municipalities were handed full responsibility for household waste management on 1 July 2013. The collection and processing of waste are now the responsibility of municipalities or their associations. The charge for

garbage collection which individual property owners paid to the company has been replaced by a public 'waste tax', the rate of which is set by the municipal council. Under the new system municipalities are obliged to put the contract for operation of waste collection and disposal out to tender, with municipal and private companies freely competing under provisions of Public Procurement Law ('cheapest wins'). This disappointed the municipalities whose budgetary institutions or limited companies had had a monopoly (or very large share of the market) on waste collection and waste disposal services as their existence was threatened by the potential entry into the market of new, aggressive private sector competitors with access to foreign capital and who would be able to set loss-making prices for the first few years in order to gain market share. However, industrial waste, which is economically profitable, has not been handed over to municipalities. All in all, the reform is controversial and has been subject to widespread criticism from private waste management companies, property owners and citizens (lower quality of service in the transitional period), resulting in political tensions and conflicts.

12.6 Education

In the communist period the Polish education system shared the characteristics of the Soviet system—strong centralisation, politicisation and an ideological orientation. The size of the non-state education sector was negligible owing to the government's negative attitude to private ownership and fear of losing control over the ideological message (Dolata 2005). The decentralisation process started with the transfer of kindergartens to municipalities in 1990 and ended in 1999 with the transfer of secondary schools to the newly created counties. Currently, the Polish education system is decentralised to a degree rarely seen in Europe (Herbst 2012).

The biggest problem affecting Polish education is a dramatic drop in the number of children and young people in schools. At the local level there is a need to adjust the number of schools to take account of the declining number of students (this is often achieved by closing schools) and the increasing costs of education. During the period 1999-2013 the number of primary schools in Poland decreased from 15,986 to 12,682 (a 20.6% decrease), whilst over the same period public expenditure on education in Poland increased from 115 to 225 billion euros (a 96% increase).

A relatively new trend is the 'outsourcing' of municipal public schools—the transfer of responsibility for maintenance and running schools from

local governments to non-profit-making associations of parents, private foundations or religious congregations. In these cases the municipality subsidises schools (at a level comparable with a subsidy of municipal schools) and has a very limited regulatory role with respect to organisation and staffing. At first, the use of this kind of external provision was mostly confined to small, rural schools in poorer municipalities and was used mainly as an alternative to school closure. The Education System Act of 12 February 2009 states that in Poland only public schools with 70 or fewer pupils can be transferred to external providers and that such transfers require special approval from the Superintendent of Education.

In recent years, however, demographic changes (declining student numbers) and financial restrictions on local governments have led to outsourcing of schools in larger cities, often in the face of conflict with teaching staff, parents and local communities. To avoid the legal restrictions on transfers (see above), the municipal school is formally closed and the next day a new, non-municipal school is opened in the same building, usually with the same pupils and teachers. Another reason outsourcing causes social tensions is that 'outsourced' schools usually offer better conditions for learning than municipal schools and therefore attract pupils from municipally run schools in the district, resulting in these schools feeling that their existence is threatened by the outsourcing process (Table 12.2).

In recent years there has also been a significant increase in the number of Catholic kindergartens and schools, from 465 in 2000 to 585 in 2011, but they remain a small proportion of the total number of schools and kindergartens (more than 37,000) in Poland. The number of students in Catholic schools in the 2011-2012 academic year exceeded 58,000 but this is still less than 1.5% of the total; the increase in the number of students in Catholic schools should be set against the overall decrease in student numbers (GUS 2014). Catholic schools in Poland are generally thought to provide a moral education as well as having high academic standards; however, at present they are too small a fraction of the total to provoke ideological conflict about the extended role of the churches in 'secular' education system and the political parties are not particularly interested in this ideologically sensitive field.

Transferring schools to non-public operators helps municipalities to reduce public expenditure on education. Schools which are not run by the municipalities are still obliged to follow a curriculum approved by the Minister of Education. Some of the main negative aspects of outsourcing are the lack of a legal requirement for municipalities to conduct an

efficiency analysis in relation to school closures, ambiguity in the regulations surrounding school transfer and the lack of clear criteria for selecting operators to run outsourced schools (Sześciło 2014).

12.7 Healthcare

The transformation of the healthcare system in Poland took place in 1999, almost 10 years after the political and economic breakthroughs of 1989 and 1990, as part of the second wave of territorial-administrative reforms. The introduction of new rules for financing healthcare was based on the Universal Health Insurance Act, which was passed in 1997 and came into force in 1999. This Act introduced significant changes to the healthcare system. Sixteen regional health funds corresponding to the new administrative divisions became the main commissioners of public health services (Kolwitz 2010). The decentralisation of the healthcare system also meant that most hospitals (ownership of infrastructure and responsibility for managing the service) were transferred to counties and regional governments (Surówka 2010).

During the first years of the new system a lack of funding exacerbated the healthcare crisis and people were quick to blame decentralisation for the problems. In 2003 new legal and organisational changes were introduced which meant recentralisation of financing and the creation of a sin-

Table 12.2 Comparison of public and non-public education in Poland

Feature	*Public*	*Non-public*
Operator of school	Local authorities or central government	Foundations, associations, private companies, churches
Costs to students	Free of charge	Free of charge or tuition fees
Recruitment	The principle of universal accessibility	Principles are laid down in the school statutes
Financing	Local government budget	Local government budget and tuition fees
Teacher's Charter (sets out rights and working conditions for teachers)	Applies	Does not apply
Eligibility for cost-free handbook from the Ministry of Education	Yes, if not chosen—other books financed by the municipality	Yes. If handbook from Ministry not chosen by teachers — other handbooks financed by the municipality

Source: Authors

gle National Health Fund with 16 regional offices. Kolwitz (2010) argued that the retreat from the 1999 reform had negative consequences for the system, pointing out that the new system was not allowed to stabilise, and that the planned second stage of the reform programme—the introduction of private health insurance schemes—had not been implemented.

Currently healthcare services in Poland are commissioned by a public body, the National Health Fund. Delivery of services is organised at three levels of administration: region, county and municipality. Decentralisation of healthcare made local governments responsible for managing hospital budgets. In many cases the money hospitals receive from the National Health Fund does not cover the full cost of providing services, and local and regional governments are responsible for making up for the shortfall or managing the service to avoid such a shortfall. Revenue from the system of health insurance is not sufficient and so healthcare institutions are getting deeper into debt. Commercialisation and partial privatisation of public hospitals are now much discussed in Poland, but it is politically and socially very controversial and is proceeding at a moderate pace. By the end of 2013 only 169 of 924 public hospitals had been transformed into limited companies, most of which are still controlled by local and regional governments (PMR 2014).

The rapid development of private healthcare is based not on privatisation of large public hospitals but on an expansion in the number of private medical practices (especially dental practices), pharmacies and compact hospitals and clinics (Dziubińska-Michalewicz 2004). Public opinion in Poland is that the standard of care is better in the private sector than the public sector. There are long waiting times for specialist medical services in the public sector; however people on lower incomes often cannot afford private medical care as the National Health Fund offers only very limited co-financing for most of the services provided by the private sector.

12.8 Personal Social Services

In the early 1990s steps were taken to decentralise social care. The reorganisation of the system was not simply politically motivated; it was also based on the belief that social needs should be diagnosed and met at the local level. The 2004 Social Assistance Act specified that municipalities were responsible for providing shelter, food and clothing for people who needed them, for payment of benefits, for social work services and organ-

isation and provision of care services. The counties organise social assistance centres for children and young people with intellectual disabilities as well as special educational centres, social welfare homes and crisis intervention centres.

Personal social services in Poland can be provided in the user's own home or in special homes and institutions offering residential care. Residential care homes for the elderly may be managed by local government units, the Church or by other religious organisations, NGOs or private individuals. The Catholic Church is a very important provider of personal social services. Of the 782 residential care homes for elderly or disabled people in Poland, 580 (63,960 places) are run by local government and 202 (13,400 places) by non-governmental bodies. In the vast majority of cases these are religious orders and congregations, some of which have a tradition of providing such services which goes back many decades and was unbroken even during the Communist period (Grabusińska 2013). The Catholic Church manages over 200 hospices, more than 300 orphanages, almost 2000 family counselling services, 40 centres for addicts and over 3,000 different local charitable institutions.

A positive aspect of the personal social care system in Poland is the cooperation between the state and NGOs. The Public Benefit and Volunteerism Act passed on 24 April 2003 enabled public services to be outsourced to NGOs and this has resulted in NGOs working in partnership with local authorities to meet the needs of society. NGOs are active in promoting a healthy lifestyle, fighting against addiction and coordinating assistance for people with specific needs. The dynamic activity of NGOs is often seen as a form of 'social capital' and is regarded as a remarkable symbol of the positive shift which has taken place since the end of the socialist period. NGOs have undoubtedly had a substantial impact, but often the effects of the activities of the non-profit sector remain outside the reach of government evaluation.

12.9 Conclusions

In Poland the evolution of local public service provision has followed a different development course from that taken in most of Western Europe, yet perhaps somewhat typical of central and eastern European countries. The starting point in 1990, at the beginning of a complex political and economic transformation process, was a centralised system dominated by

state-owned providers. In early 1990s there was a very strong political impetus for privatisation as two important political parties, the Freedom Union and Liberal-Democratic Congress made the ideological case for it. The subsequent changes to the governing coalition have had little impact on the discourse and ideological consensus on privatisation. The post-Communist left-wing coalition continued with liberalisation and privatisation when it was in power between 1993-1997 and 2001-2005. Only the smaller, radical parties of both left and right have opposed privatisation from different perspectives (a general rejection of 'market principles' in the case of the former; opposition to foreign investor involvement in the case of the latter).

For many years the international discussion about new public management (NPM) was absent from Polish political discourse. Modernisation, 'Europeanisation' and 'catching up with the West' were intellectually and rhetorically identified with support for free markets, private ownership and encouraging foreign investment in all sectors of industry and services. The availability of EU funds after 2004 encouraged many local governments to institute ambitious investment programmes which resulted in higher public debt. The international economic crisis had a less negative effect on GDP growth in Poland than in other central and eastern European countries; nevertheless, central government imposed new financial restrictions on local authorities to avoid growing public deficit. If local governments have to cut current expenditures in order to have funding for investment in 2014–2020 EU perspective, they can stay open for privatisation of public utilities and outsourcing of public services. Public control and democratic responsibility are becoming issues of public debate mainly because of the development of dynamic, urban grassroots movements and the rise of a new generation of left-wing activists who are contesting the perspective of the traditional political parties. In the face of an uncertain political and economic future public support for liberalisation and privatisation seems to be weaker than 10 or 20 years ago, but the future of local public services in Poland is far from being clear.

Note

1. Under Polish law an 'association' is a membership organisation with independent legal status, whereas a 'foundation' is a legal entity based on property dedicated for specific purpose.

References

Dolata, R. (2005). *Najważniejsze wyzwania stojące przed polską oświatą*. Warsaw: Instytut Spraw Publicznych.

Dziubińska-Michalewicz, M. (2004). *Sektor prywatny w systemie ochrony zdrowia w Polsce*. Warsaw: Biuro Ekspertyz Sejmowych.

Grabusińska, Z. (2013). *Domy pomocy społecznej w Polsce*. Warsaw: Koordynacja na rzecz aktywnej integracji.

GUS. (2014). *Kościół katolicki w Polsce 1991–2011*. Warsaw: GUS.

Herbst, M. (Ed.). (2012). *Decentralizacja oświaty*. Warsaw: Biblioteczka Oświaty Samorządowej.

Jerzmanowski, Z., & Sobieralski, R. (2012). Prywatyzacja zadaniowa wodociągów. Available from http://wspolnota.org. Accessed 17 Apr 2015.

Kolwitz, M. (2010). *Polski system ochrony zdrowia—perspektywy i możliwości zastosowania systemów ochrony zdrowia i innych państw Unii Europejskiej*. Szczecin: Annales Academiae Mediacae Stetinensis.

Kulesza, M. (2012). Gospodarka komunalna—podstawy i mechanizmy prawne. *Samorząd Terytorialny, 7*(8), 7–24.

Modzelewska, E. (2012). Polityka państwa wobec sektora społecznego w ujęciu historycznym. *e-Politikon, 1*, 30–41.

Nałęcz, S. (2002). Tendencje rozwojowe sektora non-profit w III RP. In A. Juros (Ed.), *Organizacje pozarządowe w społeczeństwie obywatelskim.-wyzwanie dla środowisk akademickich*. Lublin: Lubelski Ośrodek Samopomocy.

PAIiZ. (2012). *Sektor energetyczny w Polsce*. Warsaw: PAIiZ.

PMR. (2014). *Sytuacja finansowa szpitali w Polsce*. Warsaw: PMR.

Surówka, K. (2010). *Decentralizacja czy centralizacja zarządzania systemem opieki zdrowotnej*. Warsaw: Forum Ochrony Zdrowia. Wyzwania i Możliwości Rozwiązań.

Sześciło, D. (2014). O wątpliwościach wokół powierzania prowadzenia szkół samorządowych. *Samorząd Terytorialny, 3*, 5–13.

Wojtas, A. (2009). Kościół 20 lat wolności—szkolnictwo katolickie. Available from http://ekai.pl. Accessed 15 Apr 2015.

CHAPTER 13

From Municipalisation to Centralism: Changes to Local Public Service Delivery in Hungary

Tamás M. Horváth

13.1 Introduction

Over the last quarter of a century the system of local government in Hungary has passed through several phases, from 'Goulash communism', through radical system change, to crises and 'illiberal democracy'. A cross-sector analysis of developments in Hungary may provide a relatively extreme example of recent trends in the development of local government and local services in Europe; countries are trying to implement clearly defined models, notwithstanding the obstacles they encounter. The basic research[1] underpinning this study is intended to provide a more or less complete account of developments in management of local services including public works and social services.

This chapter offers an account of policy in various sectors based on central and eastern European research on transition (Baldersheim et al. 1996). It also follows explanatory studies of the collapse of state communism and crisis studies (Hajnal 2014; Hajnal and Rosta 2014) of the

T.M. Horváth (✉)
MTA-DE Public Service Research Group, Debrecen, Hungary

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_13

recent turn in the development of the country. Additionally, it offers a special assessment of remunicipalisation (Hall 2012; Pigeon et al. 2012; Water Remunicipalisation Tracker 2013) and the re-emergence of municipal corporations (Wollmann and Marcou 2010).

13.2 Starting Conditions (Period to the Late 1980s)

During the 40 years of communist the state had a monopoly on the provision of public utilities and communal services in Hungary. Large national, urban or county council monopoly enterprises fulfilled these functions. The state operated utility services through public utility companies, which it both owned and ran (at national level for electricity; typically at regional level for water and sewage services and at local council level for solid waste services, district heating, park maintenance and public cleaning services). These firms had independent budgets. Council budgets contained only subsidies for their companies; however, public utility companies were under the strict control of the territorial committees of the Communist party, in the same way that local councils were. In this way, the administrative party hierarchy brought about the integration of communal political will.

Personal public services were provided by local budgetary institutions whose income and expenditure were incorporated into the local budget. The whole system was centrally financed. All citizens had a right to free education and healthcare; however, users had to pay after additional services. The relatively low prices led to excessive demand and permanent shortages at several levels of provision. Local responsibilities for primary and secondary education and healthcare were wide-ranging. Social care services, especially personal care services, were paid by the social security until 1984, after which they were centralised by the state administration. Local councils were involved in the administration of care for the elderly and childcare as they maintained the institutions providing these services. At the end of the 1980s there was a series of economic and political crises. In Hungary, in contrast with most eastern and central European countries (Horváth 2007), there was no distinction between political municipalisation and functional municipalisation during this period. The first free local elections were linked to the establishment of a genuinely new system of local self-government. Municipalities were handed much wider responsibilities and a new financial mechanism was established.

13.3 System Change (Early 1990s)

The new Local Government Act was one of the first laws passed by the freely elected parliament. Municipalities were given responsibility for a fairly wide range of services. Infrastructure services—the provision of drinking water, public lighting, solid waste management, the maintenance of roads and cemeteries—became an exclusively local responsibility. Urban local bodies were also made responsible for public transport, sewer systems and district heating. Municipalities were also made responsible for kindergarten education, primary education, basic healthcare and basic social services for the elderly. Cities had additional responsibilities, namely for secondary schools, basic hospitals and specified care homes for the elderly. The legal solution of discharging tasks ensured the equality of settlements. However, in spite of the fragmentation of small settlements, their functions were very wide and expensive. Initially budget instruments were to follow the breakdown of responsibilities stemming from the discharging of tasks.

At the same time there was a radical privatisation in the production and services sectors, led by the State Property Agency. The role of the counties was reduced significantly and most county-owned companies were sold to private investors.

In the 1990s various international programmes (PHARE, USAID, British Know How Fund, World Bank programmes, Soros Foundations OSI, and pre-accession EU support programmes such as ISPA and SAPARD) focused on the development of democracy or the provision of public services at the local level (Horváth 2007) were implemented. For instance, a countrywide network of integrated landfill sites for solid waste was established with the support of USAID and ISPA.

The transformation of the utility sector (Fleischer 1993) began in the early 1990s. The first step was the restructuring of state monopolies. This meant that the companies providing monopoly services were audited then transferred from state ownership to local government ownership. At this point the former budgetary companies were transformed; they were made subject to company law although all their shares remained the property of municipalities. At this stage there was also a division of assets; some were sold (fully privatised), but in some cases it was considered more beneficial to retain them in public ownership and in these cases a minority stake would be sold (partially privatised), or the asset would remain wholly publicly owned.

In Hungary there was extensive fragmentation of former state-owned water companies. During 1991-1992 around 400 local government service organisations and five state-owned regional companies replaced the previous five national and 28 regional companies. In contrast solid waste management services were integrated on a scale which produced entities capable of operating services economically. In the case of district heating services, 290 local heat generation and distribution companies were transferred to 103 urban local governments (Horváth and Péteri 2004). The restructuring process included the establishment of semi-independent regulatory authorities for the energy sector (gas, electricity, district heating). In other services central state offices or municipalities were responsible for operational oversight and had some powers to regulate the prices charged to users.

There was a far-reaching decentralisation of personal public services. The main features of the process were as follows:

(i) The role of the non-governmental organisation (NGO) sector in the provision of social services increased.
(ii) Churches and private charitable organisations once again became providers of social care, secondary schools and to a lesser extent, initially, elementary schools.
(iii) The terms of operation of state-owned and municipal institutions were also changed, allowing for the spread of sector-neutral financing and quasi-market practices.

After this preparatory phase the liberalisation process was extended and intensified. This phase started around the middle of the 1990s. In the public utility sector it led to privatisation. In the area of electricity, after restructuring the industry and service delivery relationships of ownership became different. It means that productivity, maintenance of the distribution network and service provision were divided. The Hungarian Electricity Board became a commercial company (MVM) but remained state-owned. Shares in the six regional electricity trade companies were sold to three big investors, the German companies RWE and E.on and the French company EDF. By law the state retained 25% of shares plus one vote in gas distribution companies. The Budapest Gas Works, traditionally linked to the capital, remained partially owned by the Budapest city government after the transition.

Personal public services, especially care for the elderly, were increasingly outsourced to not-for-profit organisations. There was a dramatic increase in the number of civil sector organisations during the transition; in 1997 there were 430 civil organisations per million inhabitants in Hungary; the Czech Republic had the second highest figure for the east-central European region, with 400 (Civic Atlas 1997).[2]

13.4 Further Transition (Mid-1990s to Mid-2000s)

By the middle of the 1990s the transfer of state-owned core assets to local governments was complete. This was followed by two parallel developments. A proportion of the transformed companies were privatised. There were at least three good reasons behind the decision to seek to privatise public companies. Firstly, privately owned companies seemed to be more efficient than public sector organisations. Secondly, a price competition arose due to the privatisation tender (which includes consumers' pricing formulae for a longer time period). Thirdly, private providers became operators of that services for which local authorities were responsible. On the other hand, in the 1990s and 2000s large western European energy, water, and waste companies were ready to enter the newly open, regulated markets. In general, these companies acted in their own interests and ultimately their shareholders' interests. The whole EU pre-accession process very much supported this process.

Other companies were not privatised and the reasons for this 'failure' were varied. The most commonly mentioned main reasons for not pursuing privatisation were as follows: First, the fees paid by consumers did not cover costs, and subsidies were not defined clearly and normatively in advance. Second, privatisation would have involved selling the infrastructure as well as the right to operate the service. The strategy of separating maintenance of network infrastructure and operation of the service was intended to motivate service providers to improve efficiency. The companies which remained in public hands were nevertheless radically reorganised to improve their effectiveness and efficiency.

It is hard to say that high or low level of privatisation is concentrated on one type of service or another type. Indeed, the particular model depended on municipality policy. In the water sector different local governments pursued very different policies. Some of them even sold off core

local assets, such as pipe networks, whereas others retained ownership of infrastructure and regulated the activities of service providers, including setting prices. There are also cases where there was a shift in local strategy after the failure of privatisation. In the city of Szeged outsourcing of water supply initially led to dramatic increases in the cost to consumers creating a scandal, and the municipality was compelled to re-commission the service on a completely different basis. Under the new contract the service was much more tightly regulated by the municipality than it had been before.

13.5 The Effect of Crises (2005–2010)

In 2005-2006 Hungary faced a severe financial crisis. Restrictions on overspending on social services became clearly visible to the public. Decentralisation of school maintenance for every settlement including the very small ones seemed to be unsustainable. Some hospitals operated by smaller town authorities had to be closed in spite of demonstrations by local residents. In addition although 63% of care homes for the elderly were maintained by local government institutions, 17% by churches and 20% by NGOs, the previous arrangements for sector-neutral financing and regulation were changed. Experts have been talking about the re-emergence of state dominance in service provision (Gyekiczky 2009) since this period. Budgetary institutions under state direction have been given exclusive contracts to deliver public services at the expense of NGOs and commercial bodies.

An approach to coping with the financial crises which was specific to larger, urban municipalities was the establishment of integrated institutions to provide personal public services. Similarly, municipally owned companies were reorganised as holding companies. Some remunicipalisation took place in the early stages of this period. The effect of financial crises was the integration of public service provision in order to save money.

From 2010 a clear trend towards greater public control over services was evident. First, larger municipalities and then the central government started to buy back shares in the privatised companies providing public services. The motivations for doing this were to control the increase in costs to service users directly and to limit investors' profits.

Municipal owners started to transform the companies that were still in public hands into multi-utility companies. Multi-utility holding companies were established from single utility-based municipal companies to exploit the potential for synergies. At the same time 'in-sourcing' emerged

as an alternative to the universal preference for outsourcing which had previously prevailed. This development was not independent of the changes in the EU legislation on the provision of general economic (and non-economic) services. The changes to municipal corporate governance which are occurring in Hungary (Grossi and Reichard 2008; Grossi and Thomason 2011) appear to be similar to increase municipal proportion is some of the other European countries. However, one difference is that the legal environment changed in a more radical way. The stages in the development of companies which were originally under municipal ownership are shown in Fig. 13.1.

At first, in Hungary the privatised public service providers tended to be owned by foreign investors, that is, western European groups of monopolistic providing companies, such as the German companies RWE, E.on, EnBW, the French companies GDF and EDF and the Italian company ENEL in the energy sector; RWE, BerlinWasser (German companies), SUEZ, Veolia (French companies) in the water sector and ASA (Austrian company) in waste services. There are crucial differences between remu-

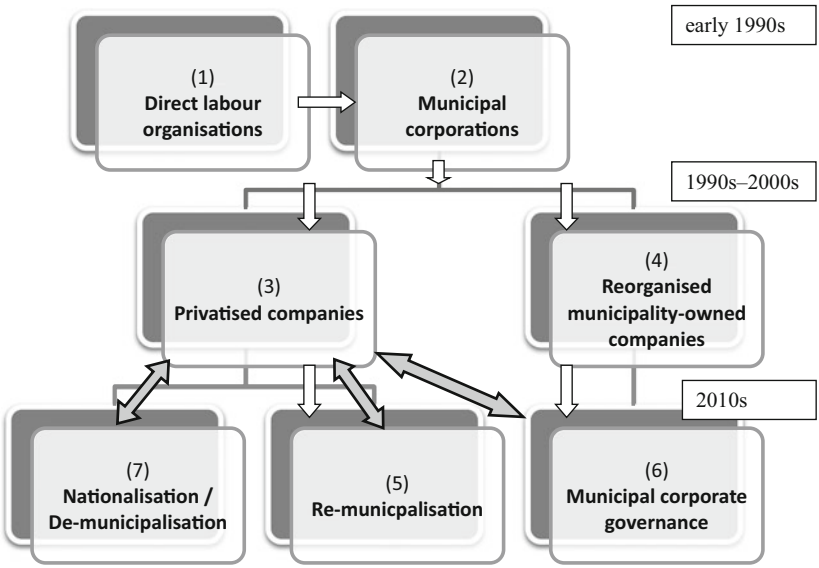

Fig. 13.1 Development scheme of municipality-owned companies in ECE (*Source*: Author)

nicipalisation and nationalisation. The Hungarian government from 2010 placed focused on the change of ownership structure. Developments in Hungary, which represent a rather extreme approach to addressing the challenges facing Europe, may illustrate the key challenges. The main characteristic of developments in the 2010s was the emergence of governmental opposition to privatisation. This is illustrated in Fig. 13.1 by bidirectional arrows (⇔).

13.6 An Illiberal Turn

A factor specific to Hungary is that in 2010 and 2014 national-conservatives won the elections, gaining a two-thirds majority in both the national parliament and most of the city assemblies. Prime Minister Viktor Orbán argued that private companies had abused their dominant position by overcharging for their services and stated that the conservative government wanted to buy back their shares. This was one of the key motivations for changing the political system (Hajnal 2014) and market relations, including public service provision. Paradoxically the national-conservative ideology includes a preference for state-centred solutions to all social and economic problems. The market-oriented strategy of previous governments shifted to a state-centred defence of what the national-conservatives considered the national interest.

The process of democratisation was restricted under the national-conservative government from 2010. The electoral system was changed at both national and local level in order to make it easier for governing parties to win a majority. The new regimes neglected the need for a balancing of powers. The majority of members of the constitutional court and ombudsmen were replaced. The judicial system was reorganised in order to fire leading judges. Quite a few of the laws passed were applied retrospectively.

A law was passed which fundamentally changed the constitutional settlement in Hungary and affected the institutions of liberal democracy. It was quickly amended on several occasions to suit the majority party. Power has been concentrated in the hands of the executive, by weakening the constitutional court and the ombudsmen and by firing the leaders of the higher courts throughout the country. Freedom of religion and the activities of non-historical churches have been restricted. Most of the results of the decentralisation that took place during the transition process have since been eliminated. According to Orbán, an ‘illiberal democracy’ is to

be established. The term was taken from a symposium in the July issue of the *Journal of Democracy* (Hajnal and Rosta 2014: 3). According to international observers this so-called 'illiberal democracy' is based on violations of the rule of law and basic democratic values (Tavares 2012).

The local government system has become extremely centralised. County government offices have been strengthened and newly established district offices are now subordinate to them. Some important public services are provided at this level, such as basic and secondary education. Maintenance of public schools used to be a municipal statutory obligation, but now it is not. There is in fact no mechanism of civil control over the education system. County governments have lost their remaining service-provision functions. The institutions which they used to maintain—social care homes, hospitals, and specialist schools—have been brought under central government control. Regional development has also been centralised. District administrative offices have taken over most of the bureaucratic work of mayors' offices. By 1 January 2013 the average urban government had lost one-third of its public servants; these workers have become 'state servants' and the infrastructure and equipment they used (rooms, computers, office furniture) became central government property.

In general, central government plays a very active role in determining the economic framework for public utility service provision in Hungary. From 2010 onwards several measures were taken to centralise profits from the energy, water and waste sectors and other public utility sectors (funeral services, park maintenance, chimney-sweeping services). Providers are now burdened with a central tax levied on public utility networks. They are required to cut the prices charged to users and a new supervisory fee has been introduced to fund an administrative regulatory authority. Originally, municipal utilities were exempted from some of the taxes, but this is no longer the case and the financial burden on municipal utilities is now heavier.

Recent parliamentary acts relating to service provision clearly state that newly built infrastructure must become the property of municipalities or the state, although private companies may be given the right to operate services. It is central government policy to buy back shares in companies. However, the banks believe that the risks in these transactions are too high and they are reluctant to participate in such credit agreements. This means that in practice the municipalities have to pay, and hope to recover the cost from expected future profits. The cost of maintaining infrastructure should be covered from user charges although tariffs are set directly

by parliament and the government notwithstanding real cost calculation. National legislation has been crucial to remunicipalisation. The aim of the national government seems to be to transform public utilities into not-for-profit services. The role of municipalities in this process has not yet been determined.

13.7 Changes in Public Service Provision

For reasons specific to Hungary there is currently a movement by towns towards establishment of unified companies as municipal holdings in order to gain more direct power over the operation of public services and infrastructure. Although the early experiments with this model took place a relatively long time ago, their popularity increased after the recent period of international crises and especially under the present government. Today, corporations of this type are operating in half the large- and medium-sized cities. They are municipally owned conglomerates (holding companies) controlling diverse service-provision companies. Their governance structure belongs to one of two different types, strategic or operational holding companies, depending on activities and rights to influence. The governance structure also has implications for human resources, internal structure, and so on.

Does municipal corporate governance matter compared with remunicipalisation? Yes it does, because the former is an extended form of company governance for non-privatised local service providers. Its position was stabilised when it was granted exclusive rights to provide public services in a particular municipality or area.

In the second stage of the whole service management transformation process, central government started to take ownership of utility companies formerly owned by private investors or municipalities with the aim of establishing a huge, state-dominated, non-profit-making organisation to provide some of the public network service functions, such as waste management, central heating and gas and electricity services.

Centrally ordered cuts in tariffs for household energy, solid waste and similar services are about 25% on average. Direct regulation of user fees for utility services has been one of the key policies of the Orbán government. This popular policy (according to the government, it 'decreases the burdens on families') also became a central feature of the manifesto for the 2014 elections and was highly successful in winning support for the nationalist right-wing in the general EU and local elections.

13.8 Administrative Changes in the Delivery of Welfare Services

There was also administrative change in all the main fields of welfare provision in Hungary. Initially, a very decentralised system emerged following the transition from socialism. Since then signs of a gradual return to a more centralist, bureaucratic model of control have emerged, mainly due to under-funding. However, the centralisation of social care, education, and health in the 2010s also brought about radical changes at the level of the providing institutions. The contrast between the current regime and the regime of 1990 is extreme.

In social care services the decentralised model which emerged after 1990 meant that local governments had wide responsibilities in the fields of personal social care and social benefits. As a whole, of course, it was a mixed system. Social insurance and unemployment benefits were administered by centrally managed agencies. Municipalities were responsible for means-tested benefits, child protection and personal social care. In the 1990s a block grant system was introduced; this was later replaced by a model in which more and more funding was earmarked for specific purposes. The sphere of central government responsibilities was widened by the public administration reforms of 2011-2013. The use of earmarked grants has spread and this has reduced the role of alternative (non-state) forms of service delivery.

As Table 13.1 shows, the operation of residential care homes has been centralised since the beginning of 2012. The proportion of places managed by local governments decreased from two thirds to one third. Apart from the central government, churches, especially the so-called historic churches, were well placed to benefit from these reforms. Historic churches such as the Catholic and Protestant churches have better positions from the point of view of budgetary grants. Institutions managed by churches have an advantage over care homes managed by other providers. These rules were formalised in the electoral term which began in 2010.

Basic and secondary public education was transferred to the central government in Hungary at the beginning of 2013. A huge budgetary institution has been established to act as a maintenance centre for schools. Municipalities have lost their influence over schools. Schools operated and controlled by the central government have lost their organisational and budgetary independence; the school directors do not have influence over human resource management or economic rights. The central institution

Table 13.1 Places in residential care homes in Hungary, 2006–2012

Operated by Year	*Total [figure (%)]*	*Local government*	*Church*	*Non-profit*	*For-profit + others*	*Central government*
2006	87,479 (100%)	59,091 (68%)	9,078 (10%)	17,996	97 + 50	1,167
2008	89,771 (100%)	58,802 (66%)	12,167 (14%)	17,573	107	1,122
2011	93,079 (100%)	56,566 (61%)	16,916 (18%)	18,223	307	1,067 (1%)
2012	93,436 (100%)	30,720 (33%)	17,358 (19%)	18,278	217	26,863 (29%)

Source: Szilágyi (2014: 264), based on KSH (Central Statistics Office)

has a staff of around 130.000 (KLIK 2014) involving an overwhelming majority of teachers and other employees in state sector education. The maintenance of almost 3,000 schools has been centralised. Municipalities remain responsible for maintenance of buildings in schools with a catchment area population of over 3,000, but in smaller municipalities even this option is restricted. Of the non-state players only historic churches have increased their maintaining position from 21% of grammar schools in 2003 to 37% in 2013.

In 2012 specialist healthcare (inpatient, integrated outpatient, and independent outpatient specialist care) became a state responsibility. Legislation was passed making hospitals and outpatient care institutions owned by county governments and the healthcare institutions operated by the Budapest municipal government as property of the state. Then the state took over inpatient and outpatient specialist care institutions owned by municipal governments. Hospitals managed by the municipalities were also brought under a central administrative organisation in the same year. Only 12 out of 112 municipal and county hospitals remained as local budgetary institutions. The total number of hospitals in Hungary is 174. The official explanation for the reorganisation was a lack of financial resources. A model based on state-owned providers is expected to respond better to patients' needs and ensure that the healthcare system is financially sustainable. The original aim of the reforms was to manage patient pathways much more efficiently, something which has not been achieved yet.

13.9 Conclusion

Several policy initiatives currently being implemented in Europe are likely to result in remunicipalisation and municipal corporate governance. One is public (based on local democratic control and/or social control), the other is central administrative (bureaucratic). Figure 13.2 depicts the stages described in Sects. 13.5, 13.6 and 13.7, namely

- remunicipalisation: returning services to municipality control in a public or administrative, bureaucratic way;
- re-emergence of municipal corporations in a public or administrative, bureaucratic way.

The relatively extreme Hungarian case from 2010 means something special in this process, namely quite a strong campaign against private organisations being given responsibility for the provision of public services. It means not only sector policies, but direct political measures influencing the market of public utility services. Some of the measures which have been implemented in Hungary—specific taxes, central administrative regulation of prices and legislation to compel providers to cut

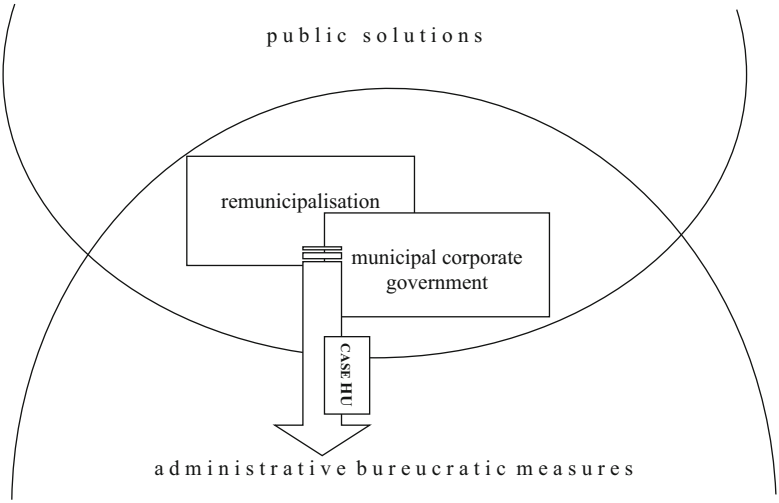

Fig. 13.2 Basic types of recent public service management initiative and their movement in the case of Hungary in 2010s (*Source*: Author)

prices—run completely counter to the regulatory principles and instruments permitted in a contemporary liberalised market. Developments in Hungary provide an example of overemphasis on administrative-bureaucratic problem-solving focused on de-municipalisation rather than simply remunicipalisation.

In summary, remunicipalisation (returning responsibility for service provision to public hands) and municipal corporate governance (municipalities hold a controlling stake in private provider companies) have both a public and a more administrative meaning. The Hungarian case represents an extreme example of particular interest-based voluntarism, because in Hungary there has been a move towards massive state intervention at the expense of public civic solutions. It is not yet clear what the final goal of the current policy is, whether there will be further nationalisation or directed re-privatisation. Very radical centralisation has taken place in Hungary, destroying the relatively liberal system of local government which was established in 1990. However, the motivation for this policy seems to be different in infrastructure services and personal social services. Developments in infrastructure services seem to have been determined mainly by economic factors, whereas the changes in education and social care were driven to a greater extent by ideology.

Notes

1. In the framework of the MTA–DE Public Service Research Group. The study is also sponsored by project OTKA no. K 101147.
2. The corresponding figures for other European countries are 470 (Germany), 380 (Spain), 1070 (Austria), 1210 (France) and 1940 (Sweden).

References

Baldersheim, H., Offerdal, A., Rose, L., & Swuainiewicz, P. (Eds.). (1996). *Local democracy and the processes of transformation in East-Central Europe*. Oxford: WestviewPress.

Civic Atlas. (1997). *The new civic atlas: Profiles of civil society in 60 countries*. Washington, DC: Civicus.

Fleischer, T. (1993, June). *Privatisation of the urban services in Hungary*. Paper presented at conference on 'La privatisation des service urbainsen Europe', Observatoire du Changements Social en EuropeOccidentale, Poitiers.

Grossi, G., & Reichard, C. (2008). Municipal corporatization in Germany and Italy. *Public Management Review, 10*(5), 597–617.

Grossi, G., & Thomason, A. (2011). Jointly owned companies as instruments of local government: Comparative evidence from the Swedish and Italian water sectors. *Policy Studies, 32*(3), 277–289.

Gyekiczky, T. (2009). *Újraállamosítás. Idősotthonok Magyarországon 1993–2008.* Budapest: Gondolat–DE ÁJK.

Hajnal, G. (2014, April). *Unorthodoxy at work: An assessment of Hungary's post-2010 governance reforms.* Paper presented at IRSPM XVIII Annual Conference, Ottawa, Canada.

Hajnal, G., & Rosta, M. (2014). The liberal state on the local level: The doctrinal foundations of subnational governance reforms in Hungary (2010–2014). *Working papers in political science*, 2014/1. MTA TKI Politikatudományi Intézet, Institute for Political Science, Centre Social Sciences, HAS.

Hall, D. (2012). *Re-municipalising municipal services in Europe.* Report for European Federation of Public Service Unions (EPSU). Greenwich, Public Services International Research Unit (PSIRU), Business School, University of Greenwich. Available from www.psiru.org. Accessed 19 Sept 2013.

Horváth, T. M. (2007). 'Humpty dumpty': Globalization issues illustrated by local self-government development. *International Journal of Public Administration in Central and Eastern Europe, 2*, 2–19.

Horváth, T. M., & Péteri, G. (2004). Threats of transformation failures: Local public utility sector in Central and Eastern Europe. *Society and Economy, 26*(2–3), 295–324.

KLIK. (2014). *Klebersberg Intézményfenntartó Központ.* Klebersberg School Maintenance Centre. Available from http://klik.gov.hu. Accessed 7 Jan 2014.

Pigeon, M., McDonald, D. A., Hoedeman, O., & Kishimoto, S. (Eds.). (2012). *Re-municipalisation: Putting water back into public hands.* Amsterdam: Transnational Institute.

Szilágyi, B. (2014). *Az egyházak finanszírozásának kérdései*. Ph.D. thesis, University of Debrecen.

Tavares, R. (2012) *Report on the situation of fundamental rights: standards and practices in Hungary.* Committee on Civil Liberties, Justice and Home Affairs, European Parliament, (2012/2130(INI)).

Water Remunicipalisation Tracker. (2013). Corporate Europe Observatory and Transnational Institute Initiative. Available from http://www.remunicipalisation.org. Accessed 19 Sept 2013.

Wollmann, H., & Marcou, G. (Eds.). (2010). *The provision of public services in Europe: Between state, local government and market.* Cheltenham: Edward Elgar.

CHAPTER 14

Local Government and Local Public Services in Croatia

Ivan Koprić, Anamarija Musa, and Vedran Đulabić

14.1 Introduction

Croatia is a relatively small country that became independent at the beginning of the 1990s, after the violent dissolution of socialist Yugoslavia. The position of the local government during socialism was fairly strong, but local government was not a democratic institution because the system was controlled by a single political (communist) party. Although the self-management doctrine weakened state control and introduced some sort of citizen participation (self-management), building a democratic state in post-Yugoslav Croatia was not an easy task. The transformation was profound and entailed political, economic, and social reforms.

In spite of the influence of new public management (NPM) doctrine, the European Union's (EU) liberalisation and privatisation policy and the efforts of domestic private sector players, the Croatian public sector is still strong and able to provide a wide array of services to its citizens. Although privatisation has taken place in many sectors and services, there remains a vigorous public *esprit de corps*. Private sector involvement in the provision of local services appears to be developing gradually, with cautiousness that enables careful weighing of the advantages and risks of privatisation.

I. Koprić (✉) • A. Musa • V. Đulabić
Administrative Science Department, Faculty of Law, University of Zagreb, Zagreb, Croatia

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_14

This chapter analyses the development of local government in Croatia, as well as developments in the provision of local public services. The socialist period is compared with developments after 1990. Special attention is devoted to modalities of public service provision at the local level, and to the status of local social services (care for the elderly, education, healthcare).

14.2 Local Government in Croatia

A system of local government began to be established in Croatia in the second half of the nineteenth century, mainly following the German model.[1] In the period between the two world wars, the system of local government was based on the French model of a unitary, centralised state. Socialist Yugoslavia, created after the Second World War, was organised as a federal state consisting of six republics with considerable autonomy. The fragmented territorial organisation was consolidated in several waves of reform, starting in 1955. At the end of socialist period, local units in Croatia were large, monotypic communes, with an average of 42,000 inhabitants.

After independence the commune structure and its local institutions were retained. The 1993 reform introduced substantial changes. A two-tier local governance system with towns and municipalities at the lower tier and counties at the second tier was established. Territorial organisation became fragmented since the number of units was quintupled. Local scope was narrowed, and local finances reduced—the whole system was centralised.

The first attempt to decentralise the country happened in 2001 and applied to education, social care, healthcare and firefighting. The fragmented structure of local government and lack of capacity meant that only counties and 33 towns were able to take over these services. A significant part of the budget for these services still comes from the central budget, indicating that local revenues are limited. In 2013 local and county budgets made up about 17% of overall state expenditure.[2] In 2009 direct election of mayors was introduced. There has not been any other significant change to the local government system, even after EU accession in July 2013.

At present, local government consists of 576 units (128 towns, 428 municipalities and 20 counties). The vast majority of local units (80%; 446) have fewer than 5,000 inhabitants. They all employ about 42,500 local civil servants compared with the roughly 210,000 civil servants paid from the central state budget. About 26,500 local civil servants (62%) work in local social and other institutions (kindergartens, libraries, cultural

institutions, etc.). In 2008 local communal companies (190) employed about 30,000 employees.[3] However, some of the communal utilities have been liberalised and separated from communal companies during the harmonisation with EU standards.

The main characteristics of the current Croatian system of local government are fragmented territorial organisation; rather limited administrative and financial capacity of most municipalities; a relatively weak county level with counties of 175,000 inhabitants on average; slow adjustment to EU standards; generally low capacity to apply for EU structural funds; and problems with transparency and corruption.

14.3 Development of Provision of Local Public Services

Local Public Services Before 1990

During the socialist period communes had substantial decision-making autonomy and very wide responsibilities; they received a high proportion of public revenues and were responsible for a correspondingly high proportion of public expenditure (more than 40%). There was weak inter-municipal cooperation in the form of 'communities of communes'. Official 'communal doctrine' was that the commune was the basic political unit and component of the 'self-management system'. The commune was responsible for almost all public services,[4] social welfare, employment opportunities, provision of cheap housing, leisure, and many others. Formally, there was a high level of citizen and worker participation in local politics and because of this communes were genuinely autarchic, very powerful political units by the end of the socialist period.

In the 1945-1990 period the two main forms of legal entity involved in the provision of local services were public institutions for not-for-profit services, and public companies for other services, mostly utility services. The private sector had limited influence. In the first part of this period (1946-1950) local companies and public institutions were regarded as state bodies. After 1950 they were transformed into self-management organisations (Pavić 2001).

In general, the main reforms of public services, including local services, were related to the constitutional and legal reforms reflecting the turn towards self-management, 'social ownership' and weakening of centralisa-

tion. In the period 1950-1953, 'workers' committees' were introduced as a form of management for public companies and public institutions. In 1954 separate communal companies were introduced to provide 'communal services of economic nature' (water, sewage, urban traffic, cleaning, gas, electricity). Social welfare was underdeveloped due to the doctrine of 'social welfare automatism' which held that social problems would automatically disappear as economic progress brought about better living conditions (Puljiz et al. 2008).

During the 1960s communal services were under local jurisdiction: communes had wide statutory powers to regulate the provision of communal services. Both the establishment of separate social welfare centres and decentralisation in social services were gradual.[5] Where such centres did not exist, social services were the responsibility of special administrative departments of the communes, 'social protection departments' (Puljiz et al. 2008).

In 1974 a special type of 'organisation for the accomplishment of tasks and provision of services of special social interest' was introduced for communal services, amongst other sectors. The management structure for these organisations included service users and employees. Prior to the enactment of the Law on Communal Services in 1979, local representative bodies had been in charge of determining the list of communal services to be performed by local communal companies (e.g., the city of Zagreb had a list of 19 services in 1975). The 'self-managing interest community' was a special mechanism for giving citizens and service users influence over local and public services and protecting their rights and interests. It consisted of user representatives, employees of service delivery organisations and politicians.

At the end of the 1980s, in line with the economic and social changes preceding the fall of the socialist system, communal services could also be delivered by private entrepreneurs although local public companies remained the main providers. For example, in the city of Zagreb there were 22 communal companies involved in gas and electricity distribution, water management, sewage, cemeteries, maintenance of parks and roads, forest management and so on.

Local Public Services After 1990

After 1990 the local services sector in Croatia experienced several challenges including radical centralisation. In the first half of the 1990s war resulted in huge material and social losses, an economic slowdown and the

creation of a large pool of refugees and displaced persons with problems that had to be addressed by the much-weakened system of social protection. Without various forms of self-help and civil sector engagement the losses and damages would have been even greater and more tragic. Civil sector activity and other forms of self-help which complement the formal social services have an impact which is also detectable in other unexpected situations—natural catastrophes such as floods, crises such as terrorist attacks and so on. However, the civil sector has not played a very prominent role; its involvement underlines the continuing lack of capacity of local institutions when it comes to provision of timely, efficient and effective public services.

The Social Care Act of 1997 is considered the first significant step towards decentralisation of social services. The Act specified that local units and counties had to spend 5% of their revenue on social services, mostly to finance social housing. The Act made it legal for private sector organisations to provide social services; the main effect of this was the establishment of private residential homes for the elderly (Puljiz et al. 2008).

The transition from a planned economy to a market economy was reflected in local public service provision in general, not just in the social services sector. However, changes have occurred slowly and incrementally and there have been no abrupt reforms. Although two basic types of organisation—public companies and public institutions—have remained the main providers of local services, more and more private organisations are becoming involved in local services.

There has also been a noticeable increase in the role of not-for-profit organisations. They are active in local services such as culture, preschool education, sports, social care and many others. There are a few hundred sports associations, and they are particularly prominent in firefighting services. Religious communities, most notably the Catholic Church, are among the not-for-profit suppliers of local social services, but they cannot be said to play a prominent role (see below).

The long tradition and large number of voluntary firefighting associations which organise non-professional firefighters has resulted in their being included in the firefighting system, although ensuring an effective firefighting service remains a local government responsibility. The types of organisation involved in the provision of firefighting services include public firefighting organisations which are established by local governments (61) and voluntary firefighting associations (about 1,830). Only about 5% of firefighters are professionals (3,350 out of more than 65,000 firefight-

ers). The network of firefighting organisations includes 248 local associations, 21 county associations, and the Croatian Firefighting Association (established in 1876). Local governments spend 2-5% of their budget on public firefighting services.

14.4 Local Communal Services

Since 1979, Croatia has a tradition of using a single law to regulate all communal services, the latest such law is the Communal Services Act of 1995, which includes a list of communal services and sets out the legal regime and modalities of provision of communal services. A provider of communal services has an obligation to ensure continuity and quality of service, to maintain the relevant facilities and take measures to preserve and protect the environment. Local government has a strong influence over the provision of communal services as it has many instruments which it can use to influence how they are delivered.

During the last two decades, there have been changes in the list of recognised communal services and the modes of provision. In 2001 the principles of sustainable development and transparency were introduced (environmental protection was excluded, but environmental protection

Table 14.1 Communal services recognised in the CSA

1995	*2015*
Water supply[a]	Local transport
Sewage (drainage and waste water management)[a]	Local roads maintenance[b]
Gas supply[a]	Street and public areas cleaning
Local heating plants[a]	Maintenance of parks and public areas
Local roads maintenance[a]	Local market places
Local transport	Cemeteries, crematoria
Street and public areas cleaning	Chimney services
Communal waste disposal[a]	Public lighting
Maintenance of parks and public areas	
Local market places	
Cemeteries, crematoria, funeral services[a]	
Chimney cleaning services	
Public lightning	

Source: Authors' legal analysis

[a]Gradually exempted from the CSA and now regulated by separate laws

[b]Still a communal service, but now regulated by a special law

legislation provides a comprehensive regulatory framework). Certain services have been gradually exempted from the CSA and subjected to specific legislation. They have been partially liberalised (gas supply, components of waste management, local heating plants and, most recently—in 2015—funeral services) in order to comply with EU legislation (Table 14.1).

Under the CSA, users of local communal services are protected by a regime of sanctions which are imposed on service providers if the service is suspended or prices are raised unduly. The Consumer Protection Act (2014) contains a special section related to public services, such as electricity and gas supply, water and sewage disposal, chimney maintenance, public transport and so on. The company providing a public service must establish a complaints commission including a user representative.

The provision of local communal services can take several forms, which are comparable to those found in other countries. Private sector organisations can provide public services (Koprić et al. 2014). Common institutional forms for the provision of utilities are (a) locally owned company, (b) local public institution, (c) local administrative unit (in-house provision by an administrative department without separate legal personality), (d) concession to the private sector (under a contract lasting for up to 30 years), (e) delegation of service provision to the private sector (flexible, short-term arrangements; used extensively in, for example, cemeteries and local road maintenance, public lighting and so on), (f) public procurement of particular local services, especially certain communal utilities, and (g) public-private partnership (contractual or institutional).

There are about 190 publicly owned communal utility companies operating in Croatia (Bajo and Primorac 2014). Zagreb Holding Ltd., founded on 1 January 2007, is the largest locally owned company in Croatia. It consists of 15 branches which fulfil the functions of the separate municipal companies it replaced. Zagreb Holding Ltd. owns nine companies and public institutions and employs approximately 12,000 people.

By law, gas supply must be provided by locally owned public companies. Local radio broadcasting, which is not listed as a communal service, can also be provided by special local companies. Apart from companies set up to deliver utility services, local governments and counties own or have a stake in almost 400 other companies involved in various activities (radio broadcasting, economic development, sport infrastructure and so on). In 2015 the total number of local companies was 572.

Inter-municipal cooperation in the field of local service provision is significant, because there are many small, local units. In 2013 there were 119

locally owned companies providing communal utilities for several local units (67 communal companies; 33 water supply and sewage companies serving 314 local units), 16 gas supply companies serving 90 local units and 3 waste management companies serving 32 units. There were also 26 local radio-broadcasting companies, jointly owned by 125 local units (Škarica 2013).[6]

Water supply and wastewater management are among the services where marked fragmentation makes the system inefficient and impedes adjustment to EU policy. Small public companies used to manage 68 water supply zones and 43 local water supply systems with poor results. Prior to the 2009 reform, leakage was high (8-64%) and only 74% of the population was connected to the water supply system.[7] Only about 43% of the territory is covered by a public wastewater service and only 23% of the territory has access to a public wastewater treatment service. Amendments to the Water Act of 2009 mandated the establishment of separate public companies for water supply and wastewater management at the county level and this has reduced the number of public companies providing water supply and wastewater management services to 21. There are no private companies, domestic or multinational, involved in this sector.

Rather limited use is made of concessions as a mode of provision of local services, and only in specific services. Data from the concessions register (Ministry of Finance 2015) show that in addition to 38 concessions covering communal services, local governments also use the concession model for chimney services (320), funeral services (279), waste collection and/or waste disposal (107), local transport (24), gas distribution and supply (82), distribution of thermal energy (11) and maintenance of parking lots (27). There are but few concessions granted for sewage (2), road maintenance (1) and maintenance of public areas (4).

14.5 Local Social Services

Care for the Elderly

The system of care for the elderly is, in terms of workforce size, the biggest of the three categories of institutional care, employing about 60% of the workforce in this field.[8] It was radically centralised after 1990, but was decentralised in the wave of constitutional reforms and general decentralisation which began in 2001. Responsibility for residential institutions for the elderly was transferred to second-tier units (counties) and large

towns. Today, counties are the main founders of public care homes for the elderly. The majority of private care homes for the elderly were established after 2000 due to lack of capacity in the publicly owned homes, increased demand for this type of accommodation, and the significant earning potential such homes represent (Puljiz et al. 2008).

There are three main categories of institution providing residential care for the elderly in Croatia: (a) state-owned, (b) decentralised (established and owned by counties and/or local units following the decentralisation of 2000) and (c) non-state (established and owned by the private sector). According to data from the Ministry of Social Policy and Youth, the vast majority of users (69%) of residential care for the elderly have places in decentralised homes for elderly and disabled people (MSPY 2013).

Table 14.2 shows that in 2013 there were 45 care homes for the elderly established and owned by the counties and local units, providing places for almost 70% of elderly people requiring residential care. This makes the local sector the major provider of this social service. Although the private sector manages about two-thirds (83) of care homes for the elderly, these homes provide places for only 30% of users. Private homes tend to have fewer places and are often family run businesses.

As Table 14.3 shows, the majority of users pay the full cost of their accommodation regardless of the type of home. As high as 76% of users meet the full cost of their accommodation, while only 14% of users have these costs paid in part or in full by the state. Residential care is thus a highly commercialised service.

Although the impact the new Social Care Act (2013) on care for the elderly remains to be seen, it seems likely that the trend towards privatisation and requiring users to pay accommodation costs will continue.

Table 14.2 Residential care for the elderly in Croatia in 2013

Type of home for elderly and disabled persons	*No. of homes*	*No. of users*
State-owned	3 (2%)	164 (1%)
Decentralised (county and local government)	45 (34%)	10,666 (69%)
Non-state (private)	83 (64%)	4,658 (30%)
Total	131 (100%)	15,448 (100%)

Source: Calculated by the authors on the basis of MSPY (2013)

Table 14.3 Modalities of accommodation payment

Type of home	*How cost of accommodation is met (number of users in each category)*				
	Full cost met by user	*Both user and state contribute*	*Full cost met by the state*	*Other sources*	*Total*
State-owned	91	31	10	32	164
Decentralised	8,646	977	511	532	10,666
Non-state	3,032	299	349	978	4,658
Total	11,769 (76%)	1,307 (8%)	870 (6%)	1,542 (10%)	15,448 (100%)

Source: Calculated by the authors on the basis of MSPY (2013)

Education

Primary schools, secondary schools and preschools (nurseries, kindergartens) are the responsibility of local governments and counties. The financing of primary and secondary education is shared by the state, local governments and counties, with local governments and counties being mainly responsible for school infrastructure and school transport. Preschool services are the responsibility of local governments, which define needs, and then establish and fund preschool institutions.

Since the beginning of the 1990s, when privatisation started, the founders of preschools have included private entities (mostly private individuals), associations which adhere to a specific educational philosophy or programme (e.g., Waldorf, Montessori) and religious communities as well as local governments. The first private schools were established in 1993 (in Pula and Split).

In 2010 there were 673 kindergartens, 435 (65%) were public kindergartens established by local governments and 238 (35%) were private kindergartens. Most of the private kindergartens (175) were established by individuals, 50 by religious communities and 13 by other associations.

There were 887 elementary schools (first to eighth grade; compulsory education starting from seven years), including schools with special programmes and dormitories. There were only eight elementary schools established by private individuals and four by religious communities. There were also 730 secondary schools (gymnasia, vocational schools and other types). A rather small number of private secondary schools (38) and secondary schools were run by religious communities (18). The secondary school sector included 184 gymnasia: 139 public (founded by local governments and counties), 27 private and 18 religious (Table 14.4).[9]

Table 14.4 Profile of the founders of educational institutions by sector

Type of founder	*Preschool*	*Elementary school*	*Secondary school*	*Total*	*Overall percentage share*
Public	435	875	664	1,974	86.6
Private	188	8	38	234	10.3
Religious community	50	4	18	72	3.1
Total	673	887	720	2,280	100.0

Source: Authors, based on the official state statistics

The main challenge local governments face is to ensure high-quality education and an adequate standard of teaching and support (psychologists, educationists and others) as well as maintaining and investing in school infrastructure in the face of financial constraints and the decline in population which is affecting a large part of the country. This has proven difficult to achieve.

Healthcare

Healthcare services are organised into primary, secondary, and tertiary sectors. Primary healthcare institutions include community health centres, healthcare facilities, services providing care for people in their own homes and institutions providing palliative care. Primary public healthcare services may be delivered by private health professionals based on a concession.[10] The secondary sector encompasses outpatient centres, hospitals and treatment centres, whilst tertiary healthcare is that performed in clinics, clinical hospitals and clinical hospital centres. Primary and secondary healthcare services are mainly the responsibility of local governments and counties. Although healthcare is financed through compulsory health insurance, local governments and counties are responsible for healthcare infrastructure and capital investment in health institutions but they receive a subsidy from the central state budget for this.

In addition to five clinical hospitals and five clinics established by the state, at the county level there are 20 general hospitals, 24 special hospitals, three health resorts, 49 community health centres, 21 emergency units and 11 polyclinics. The protection of public health is organised through a network of public health institutes (21, one in each county and one in the capital), under the direction of the Croatian Public Health Institute. Healthcare services delivered in the patient's home and palliative care are

predominantly provided under concession contracts and are included in the list of 330 private healthcare institutions which have the contracts with the Croatian Health Insurance Institute. There are also private providers of health services (private polyclinics, hospitals and other institutions, individual doctors) which offer their services on commercial basis. Finally, the health services network includes pharmacies which are established to serve certain local area, either as county pharmacies or private pharmacies. In 2012, there were 1,082 community pharmacies and 46 hospital pharmacies; 66.5% were privately owned pharmacies, 11.9% were publicly owned and leased to the private sector and 21.6% were owned by the counties and the City of Zagreb.

The privatisation of health services is a trend which began in the mid-1990s. In the healthcare sector, privatisation has affected access to services. For example, in the case of pharmacies, where privatisation is most widespread, there is currently one pharmacy per 4,000 inhabitants, compared with the EU average of one pharmacy per 3,000 inhabitants. The large cities have seen most new pharmacies whereas rural and underdeveloped areas still have an inadequate pharmacy network.

At present, healthcare services are unevenly distributed; the number of inhabitants covered by specific health institutions varies by area, and in more isolated geographical areas access to secondary and tertiary level services and emergency care is somewhat restricted. The state's new strategic approach focuses on strengthening the management and scope of local community health centres and on increasing use of telemedicine and information technology to improve the service offered to patients, and make it possible to access high-quality services in all regions.

14.6 Conclusion

During the socialist period the governance system in Croatia was locally oriented, with strong, autarchic communes which provided a wide range of public services to the people in their territory. The period between the end of Second World War and dissolution of socialist Yugoslavia was characterised by the self-management experiment, the introduction of elements of social autonomy in different forms and fields, and a strong tradition of public sector provision of local services.

Along with democratisation, the 1990s were the years of strong *étatisation* and centralisation; privatisation saw the transformation of the 'social ownership economy' into an economy dominated by private and

state ownership. In the public sector privatisation was limited to certain services, such as primary healthcare, telecommunications and waste management, and carried out in accordance with NPM doctrines and EU polices on privatisation. However, many services remained in public hands, albeit under strong central state control. Local government was significantly weakened and its role in the provision of public services diminished accordingly.

The dynamic, even chaotic developments during this period of massive political, economic and social transformation were intensified by the aggression of the Yugoslav Army towards Croatia, Serb rebellion and war (1991-1995). At this time, state and local institutions were not very strong and some of them were still being established. In such circumstances, when a significant proportion of Croatian territory was under occupation and there were large numbers of refugees and displaced persons, the capacity of welfare institutions proved insufficient.

After the specific decentralisation of education, social care, healthcare and firefighting, during the last decade the rather fragmented local system has been increasingly influenced by EU policies on liberalisation, commercialisation and privatisation. EU influence has been especially strong in regard to services of general economic interest, including energy, water and waste services, but it has also affected the non-economic (social) services of general interest.

There are no signs of remunicipalisation. Many services are still under public control, even at the state level (e.g., electricity supply) and decentralisation is urgently needed. Private sector entities are still searching for ways to become involved in the provision of local services. They are constantly trying to gain a foothold in the sector, but so far their influence has been neither strong nor particularly successful. The public sector, local self-government system included, still has a dominant role in the provision of public services. The division of services between state and local government is perhaps still a more important issue than the potential failure of the private sector to provide quality local public services.

However, the opportunities for private sector involvement in public services are still widening, both in communal utilities and social services. Care for the elderly provides a good example of the benefits of private provision. Today almost two thirds of all care homes for elderly people are privately owned and private homes accommodate around one third of users of this service. In the utility sector, private sector involvement in waste management may offer a similar illustration of successful private provision.

Legal regulation of local public services is fragmented. There is no overall strategy for reform of local public services, which means that public policy in this important sector is still incoherent and immature. There is no single regulatory concept that would attract majority public and political support in any debate. Legislation on local public services is influenced by political circumstances and other volatile factors. The only constant is the influence of the EU concept of services of general interest, which provides the basis for incremental changes.

Path dependency can be traced in the inability to reverse the marked local-level fragmentation which started in 1993 and the failure to reorganise local services to improve efficiency, provide access to services for all citizens and ensure high-quality services. There is no window of opportunity for a genuine reform, not even in a form of economic crisis.

Notes

1. For detailed overview of developments in local government in Croatia see Koprić (2003).
2. The total amount is about 22.2 billion kuna (less than 3 billion euros). About 60% of this (13.3 billion kuna) is allocated to schools, healthcare and social care institutions and firefighters in 20 counties and 33 towns. All local units spend only 40% (8.9 billion kuna) of their budgets on the rest of their responsibilities.
3. Almost 12,000 were employed in Zagreb Holding Ltd.
4. Communes even controlled the police, parts of the army, judiciary, tax collection and so on.
5. The first social welfare centre was established in 1959 in Pula. This was followed by establishment of other centres across the country. In 1962, there were already 10 and by 1964 there were 15 communal social welfare centres in Croatia (Puljiz et al. 2008).
6. Other forms of inter-municipal cooperation include tourist boards for wider areas (11 of covering 54 municipalities), common fire brigades (15 serving 110 local units), common developmental agencies (six established by 50 local governments), common entrepreneurial centres (three serving eight local units), kindergartens established by several local governments (four of them established by 13 municipalities), etc.
7. About 70% were very small companies supplying less than a million cubic metres of water per year.

8. Three main categories of institutional care are (a) children and youth, (b) adults with mental, physical or mental illnesses and (c) elderly and disabled persons (Puljiz et al. 2008).
9. The only educational sector in which the private sector has a more prominent role is higher education. However, public higher education institutions are usually established by the state, not by local governments. In summary, there are 21 public and 26 private higher education institutions.
10. There are 4,590 concessions for health services, most relating to physicians and dentists working in primary care.

References

Bajo, A., & Primorac, M. (2014). Dug i fiskalni rizici jedinica lokalne i područne (regionalne) samouprave. *Newsletter Instituta za javne financije, 93*, 1–8.

Koprić, I. (2003). Local government development in Croatia: Problems and value mix. In H. Baldersheim, M. Illner, & H. Wollmann (Eds.), *Local democracy in post-communist Europe* (pp. 181–210). Opladen: Leske & Budrich.

Koprić, I., Marčetić, G., Musa, A., Đulabić, V., & Lalić, N. G. (2014). *Upravna znanost—javna uprava u suvremenom europskom kontekstu*. Zagreb: Pravni fakultet.

Ministry of Finance. (2015). Registar koncesija. Available from www.mfin.hr/hr/registar-koncesija. Accessed 20 June 2015.

MSPY. (2013). *Godišnji statistički izvještaj o domovima socijalne skrbi i njihovim korisnicima za 2013*. Zagreb: Ministarstvo socijalne politike i mladih.

Pavić, Ž. (2001). *Od antičkog do globalnog grada*. Zagreb: Pravni fakultet.

Puljiz, V., Bežovan, G., Matković, T., Šućur, Z., & Zrinščak, S. (2008). *Socijalna politika Hrvatske*. Zagreb: Pravni fakultet.

Škarica, M. (2013). *Lokalni poslovi i suradnja jedinica lokalne samouprave*. Ph.D. thesis, University of Zagreb, Zagreb.

CHAPTER 15

Local Service Delivery in Turkey

Ulaş Bayraktar and Çağla Tansug

15.1 Introduction

Very much inspired by the French model, Turkish public administration has been marked by a centralism that has traditionally resulted in the eclipse of local government. The current constitution defines local governments as 'public corporate bodies established to meet the common local needs of the inhabitants of provinces, municipal districts and villages, whose principles of constitution and decision-making organs elected by the electorate are determined by law'. The relevant article of the constitution states that the system has three layers: villages, provinces and municipalities. With the introduction of metropolitan governments, first in the three largest cities—Istanbul, Ankara and Izmir—in 1984, another layer of local government was added to this scheme. At the very bottom of the hierarchy are rural village governments, which function rather like administrative bodies and have no significant political or financial power. They are headed by elected *muhtar*, who tend to be without political party affiliation. A couple of years ago a draft law which would have given villages greater autonomy was debated but not put to the vote.

U. Bayraktar (✉)
Mersin University, Mersin, Turkey

Ç. Tansug
Galatasaray University, İstanbul, Turkey

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_15

The municipality is the governmental unit responsible for urban settlements. The law of 1930, which remained in force for 75 years subject to numerous amendments, specified 76 different municipal responsibilities in areas such as urban infrastructure, basic urban services, town planning and control, the provision and the regulation of clean food, health services and some religious services, cultural activities, housing and social aid facilities and so on. Instead of enumerating the responsibilities one by one, the law now in force identifies broad areas of activity such as water, urban transport, hygiene, environment, cleaning and refuse collection, municipal police, firefighting, cemeteries, parks and gardens, housing, culture, tourism, youth, sport, civil registration, economy, trade, construction of schools and so on. The head of the municipal executive is a directly elected mayor who presides over directly elected councillors.

The metropolitan governments introduced in 1984 have strategic and operational responsibility for urban planning, transport, construction of facilities (social, educational, cultural, sports) and environmental protection in their area. Besides these direct service delivery responsibilities, they also supervise and coordinate district municipalities by, for example, controlling and validating construction plans and approving their budgets. Although metropolitan mayors are directly elected, metropolitan councils are made up of municipal councillors drawn from the municipal councils in the relevant metropolitan area.

The governmental body responsible for delivering public services to the whole province, but especially to rural settlements and areas, is the special provincial administration which consists of a general provincial council made up of directly elected councillors presided over by a centrally appointed prefect. In 2004 the Villages Services Department was abolished and its staff and equipment were transferred to provincial governments, thus increasing the scope of their responsibility for services and their delivery capacity. But the legal amendment which increased the number of metropolitan municipalities from 16 to 30 by extending municipal jurisdiction to provincial borders also abolished provincial governments in these metropolitan territories.

The abolition of provincial governments and small municipal and village councils increased the authority of the already very powerful metropolitan mayors. These 30 mayors now have hegemony over local developmental policies and service delivery policies. The excessive power of mayors can be seen as a reflection of public management principles in Turkish local governments tuned to be *governedas* if they are private firms.

In this chapter we discuss whether this managerial trend can also be observed in other service domains. To this end we examine how service provision methods have evolved over time. First, however, we give a brief overview of the history of local government in Turkey.

15.2 A Short Note on the History of Local Government in Turkey

The subjects of the Ottoman Empire had no political or social rights. Most did not even own the land that they cultivated. All Ottoman land was divided into military fiefdoms; the peasants farming the land were required to tithe to the fief-holder who was in turn responsible for the organisation and upkeep of a group of soldiers who participated in the conquests of the Sultan. The only way to keep ownership of land within a family was to consecrate it to a public service through foundations; in consequence such foundations became the main provider of local services in Ottoman settlements (Onar 1966). Streets were cleaned by ordinary people in neighbourhoods and by guilds in commercial areas. Social needs were met through the charitable activities of individual believers or collectives, but mosques did not organise these activities as the Christian Church did in European countries.

The delivery of urban services through foundations and individual or collective endeavours did not, however, lead to the emergence of local governmental bodies as these functions were not institutionalised or legally formalised in a sustainable way until the late nineteenth century. The only legal aspect to delivery of local services was the role of the *kadı* who acted as the administrative and military heads of Ottoman settlements as well as the *de facto* supervisors of *ad hoc* delivery of local services.

By the nineteenth century the provision of urban services by these civil organisations was facing significant problems due to weakening of the Empire as a result of consecutive military defeats and losses of territory on the one hand, and the growing power of local notables on the other. The Sultan granted entrepreneurs, often foreigners, licence to build infrastructure and deliver public services based on these infrastructures (Yayla 2009). In hindsight these concessions may perhaps be considered as the first examples of 'outsourcing' of public services in Turkey.

The proclamation of the Republic in 1923 meant that these enterprises were nationalised (Tekeli 2009) and by default public services were pro-

vided by the state. The first Municipal Law of 1930 brought into being a system of local government that was perceived mainly as an extension of the central government with responsibility for providing local public services in accordance with the national modernisation process. To this end, local governments were seen as apolitical service providers and local public resources and works were placed under the strict control of the central government (Bayraktar 2007).

The neoliberal turn which followed the military coup of 1980 and the coming to power of the Motherland Party in 1983 meant that public services were once again delivered by the private sector (Karahanoğulları 2004) in accordance with the neoliberal maxims that became the dominant ideology throughout the world. Until the constitutional amendment of 1999 public-private partnerships (PPPs) for the delivery of public services had been subject to administrative law in the form of either administrative agreements (the most common type being 'concession agreements') or unilateral authorisation by the administration. Since then, public services have been delivered through private law contracts which provide for arbitration in the event of disputes arising from concession agreements. Companies founded by municipalities and metropolitan municipalities are also considered private law entities with which municipalities may conclude contracts for the provision of public services.

Since 2002, *Adalet ve Kalkınma Partisi* (AKP) governments have passed a number of laws transferring responsibility for the management and/or delivery of public services in certain domains from local governments to local branches of the central administration. This recentralisation of public service delivery does not conflict with neoliberal doctrine since it has not had any detrimental effect on the involvement of the private sector; in fact, private involvement has actually increased as the government can now put services out to tender on a nationwide scale.

Our last brief comment is to note that there was a European dimension to these changes as they coincided with negotiations on the accession of Turkey to the European Union (EU). Surprisingly, this process of candidacy to the EU does not seem to have had much impact on provision of local public services since none of the reforms refer directly to the 'national plan for the adoption of the Community acquis' (Bayraktar and Massicard 2012).

Having provided a very broad outline of local public service delivery at different periods during Turkey's past, we discuss different delivery methods in more detail, taking several service domains as examples. First we

discuss the provision of public utilities, using the water and public transport sectors as examples. We then examine social services using housing and social assistance as examples.

15.3 Public Utilities or Services of General Economic Interest

Developments in the provision of local services general economic interest are analysed using the water and public transport sectors as examples.

Water Supply Services

Legislation on municipalities and villages defines urban water supply as a local government responsibility. Nevertheless central governments have traditionally played effective roles in the financing and realisation of urban water supply projects through the General Directorate of State Hydraulic Works (DSI) and Iller Bank (Public Bank of Provinces) from the 1950s to the early 1980s (Çınar 2009). Law No. 7478 on Village Drinking Water (1960) allocated responsibility for supplying villages with potable and non-potable water to the DSI, in cooperation with prefectures when required. Although established by the central government, these water facilities were operated by local governments. In 1985 water and sewage services in villages and neighbouring settlements were recentralised, becoming the responsibility of the General Directorate of Village Services under the Ministry of Agriculture and Rural Affairs. When the Directorate was abolished two decades later these tasks were largely handed over to special provincial administrations and the metropolitan municipalities of Istanbul and Kocaeli.

During the neoliberal transition of the 1980s, these water-related services, which were delivered by municipalities as not-for-profit public services, were then commercialised without privatisation through cost-profit pricing. A system based on public subsidy was gradually replaced with one in which users paid the full cost of the used services (Çınar 2009). The Istanbul Water and Sewerage Administration (ISKI) is a public corporate entity which was established in 1981 using a World Bank (WB) loan and put in charge of delivering water and sewerage services by establishing or outsourcing any facilities necessary for this purpose, by taking over established facilities and operating them centrally. Law No. 2560 stipulated that

tariffs should be cost-based, and also allow operators to make a 'reasonable profit'. In 1986 the ISKI model was applied in other metropolitan cities. In the 1990s loans offered by Iller Bank to municipalities were put under the approval of the central government before they were entirely abolished in 2002. The Iller Bank then also started taking WB loans (Çınar 2009).

The current Municipal Law stipulates that municipalities must either provide local services and common municipal infrastructure services such as water and sewerage services directly (in-house provision) or outsource them. The same law also gives municipalities the authority to provide potable, domestic utility water and industrial water; to treat wastewater and rainwater; to build or commission the building of facilities for the provision of these services and to operate or commission their operation and to operate directly or outsource spring water services. Where municipalities contract out these services to private sector providers, the maximum permitted duration of the concession agreement is 49 years. Services related to water treatment plants can be contracted out to third parties through a tender process (Toprak 2012). By law metropolitan municipalities are responsible for water supply and sewerage services and are allowed to build and operate dams and other facilities for this purpose or to contract private entities to do so under their supervision.

In short, water services were delivered directly by municipalities in cities and in rural areas by a central public corporation on a not-for-profit basis, as a 'service for the public', but from the 1980s onwards they have been commercialised and profit-based tariffs now apply. Although the 'pure' public service approach to water services fell afoul of current laws and regulations encouraging outsourcing and permitting profit-making, in metropolitan areas water services are still delivered by public corporate entities established in line with the ISKİ model and in non-metropolitan areas they are delivered directly by municipalities as an in-house activity.

Public Transport Services

For more than a century, urban public transport has, in principle, remained the responsibility of municipalities in Turkey. It should be noted, however, that the central government has occasionally assumed the role of operator and/or controller of various public transport services, for example urban marine transport in Istanbul (Öztürk 2011).

The first Municipal Law of 1930 granted municipalities the authority to operate tram and boat public transport directly or through concession

contracts (for a duration not exceeding 40 years) with private sector providers. Municipalities were also given authority to licence private agents to carry passengers, but after 1939 bus, underground and funicular transport services within municipal boundaries were exclusively a municipal responsibility. In 1988 private entities or partner companies were granted the right to deliver passenger transport services.

Under current legislation, municipalities (or metropolitan municipalities, where they exist) are responsible for all public transport systems. They are also responsible for determining all details (numbers, routes, stops tariffs) of other means of urban public transport, and for planning and managing parking facilities. Metropolitan municipalities also have powers to set up transport coordination centres to facilitate transit and public transport services, to establish and operate public transport infrastructure and devise transport master plans for their area.

Although municipalities are authorised to operate urban infrastructure services directly or to outsource them, the central government still enjoys remarkable powers in this domain. For instance, the Ministry of Transportation, Maritime Affairs and Communications is authorised to examine and approve investments in railway, harbour and airport infrastructure ordered by public institutions and organisations, municipalities and special provincial administrations. Planned investment in metro and urban rail transit systems required the approval of the Ministry. Last but not least, it has the authority to take over the operation of urban rail transport and metro systems from metropolitan municipalities, as it has done in Ankara and Istanbul.

In short, urban transport services were initially delivered directly by municipalities or by organisational units they owned or partly controlled, but by the 1980s companies[1] founded by municipalities (including metropolitan municipalities) in accordance with Turkish Trade Law and other private entities were actively involved in this domain. The private sector companies operate under concession agreements and licences (granted so as not to constitute a concession of monopoly); they lease public transport infrastructure and the municipalities purchase services from them through tender. Municipal corporations appear to be particularly common in the field of public transportation, especially in metropolitan areas.

In conclusion, we argue that the major public services of general economic interest have gradually been gradually taken over by profit-making entities (including municipal companies) through different methods and under the control of the central government. The incorporation of EU

regulations into Turkish law should not, however, be seen as the main reason for the increasing involvement of the private sector in delivery of these services. The 'pure public service' doctrine has largely disappeared in the case of electronic communications services (Tansug 2009), but we note that it remains in force, albeit in weakened form, in other sectors where tariffs permitting a reasonable profit can be set.

In the next section we consider whether the concept of a 'pure' public service still influences delivery of social services.

15.4 Local Social Services

In this section we discuss the delivery of social services at local level to see whether there are differences in this domain of public utilities. For this purpose we focus on two domains, housing and social aid.

Housing

Housing constitutes one of the major responsibilities of local governments in Turkey. The duty to house provision is mentioned not only in Article 14 of the current Municipal Law, but also in Article 69 under the heading 'Production of Land and Housing'; moreover, Article 70, which pertains to 'Urban Transformation', explicitly mentions municipalities' authority to provide housing and social housing. Nevertheless a quick evaluation of Turkish local government involvement in housing services indicates that they have not been important players in the sector, despite the fact that it was noted as early as the 1930s that there was a need for state intervention (Sey 1998). The 1930 law on municipalities explicitly mentioned the need for construction of cheap municipal housing for rent. Although initially an optional function, the provision of cheap housing for rent became mandatory in 1950 (Law No. 5656) (Keleş 2012). Despite this, the public sector generally confined itself to addressing the housing needs of civil servants by offering residences tied to the job (*lojman*). Both municipalities and public institutions initially focused on the needs of targeted groups of civil servants. Large-scale industrial companies also offered tied residences to their employees.

The very limited investment in housing by the public sector was thrown into sharp relief by the rural exodus, which from the 1950s onwards triggered a very severe housing shortage in urban areas. Although one of the main functions of the Ministry of Development and Housing (founded

in 1958) was the development and implementation of national housing policies, it did not manage to find solutions to the growing demand for housing, particularly in urban areas.

In the absence of government initiatives addressing their needs the new urban dwellers developed their own solutions, such as illegal settlements, usually on publicly owned land. The *gecekondu* (literally 'built overnight') thus became the main self-help instrument of the urban settlers and has, in effect, relieved the public authorities of the requirement to allocate resources to provision of housing. Local authorities did not merely acquiesce in this illegal urbanisation; gradually they began to provide infrastructural services to these informal settlements. According to statistics presented by Keleş (2012) in 2002 27% of the urban population, or 11 million people, were living in 2.2 million *gecekondus*.

The quasi-indifference of the public sector to housing need was offset to a certain extent by policies which encouraged construction cooperatives. The Turkish Real Estate and Credit Bank, which was founded in 1926, subsidised the construction of approximately half a million houses between 1933 and 1984. In addition to the funds provided by the Bank, the Social Security Institution also financed the construction of about 7,000 houses per year between 1952 and 1984 (Keleş 2012: 412–413). These funding bodies were central agencies, but their financial support enabled communities and local governments to undertake construction projects, although very few local governments have actually done so.

The two major exceptions to the general failure of local governments to establish housing cooperatives were Izmit and Ankara in the 1970s; in both cases social democrat mayors were involved. Erol Köse, the mayor of Izmir (1972-1977), planned the construction of 30,000 houses on 740 ha and in Ankara Mayor Vedat Dalokay planned the construction of 60,000 houses on 1,035 ha. Both projects were planned between 1974 and 1975, but the former was never realised as Köse was not re-elected in 1977 and his successors did not pursue the initiative. The mayors who succeeded Dalokay in Ankara implemented his plans and the project became a massive umbrella organisation for construction cooperatives (KENT-KOOP), uniting about 600 cooperatives constructing on an area of 300 million square metres (Niksarlı n.d.). The coordination of the multitude of organisations involved in this massive housing project constitutes one of the first examples of governance-type service delivery in Turkey.

In the context of the minimal involvement of local governments and the small number of collective initiatives in the housing sector, in the

1980s under Motherland Party governments, the emergence of a powerful central agency was not met with any political or social opposition. The Housing Development Agency (TOKİ) rapidly acquired considerable financial and administrative clout and has become the dominant player in the housing sector. The urban transformation reform legislation gave TOKİ exceptional powers to acquire or requisition public land, expropriate private land and amend urban plans; it also enjoys important financial exemptions (Özdemir 2011; Penbecioğlu 2011). Despite its extraordinary powers and authority, TOKİ does not act as a direct constructor and provider of houses. In almost all cases TOKİ collaborates with private construction companies, either through subcontracting arrangements or profit-sharing schemes. Most of the leading construction firms have worked in close partnership with TOKİ, particularly on prestigious, large-scale housing projects. Thus, although it appears that a specialised central agency is carrying out extensive housing projects, most of the construction is undertaken by subcontractors and hence they make most of the profits.

In short, during the Republican era Turkish local governments have traditionally played a restricted role in housing services. This limited involvement has been totally overwhelmed by the recent expansion in the powers of a central agency, TOKİ. We argue that the close cooperation between this central agency and private construction firms constitutes indirect privatisation of this domain.

Social Aid

Since 1961 the Turkish state has been defined constitutionally as a social state. As a consequence of this fundamental legal principle local governments have been put in charge of the provision of social services.

The previous legislation on municipalities listed material aid and care for poor families as municipal responsibilities. The amendments of 2004 and 2005 provided more explicit statements of municipal social responsibilities, making them responsible for all social and cultural services for adults, the elderly, persons with disabilities, women and children.

Stipulating in law that a body has a responsibility to provide social assistance does not ensure that the responsibility will be met. As a matter of fact social expenditure in Turkey is well below the Organisation for Economic Cooperation and Development (OECD) average and well below that of the EU21 countries for the period between 1980 and 2013

(OECD 2013). One of the reasons for this is the tradition of informal support based on close familial bonds, and the long-standing, important tradition of charitable support, including support provided by religious communities. Religious communities, in particular, extended their social aid and support activities as a means of enhancing their political influence. However, their activities should not be compared to those of the Christian church in western Europe as the religious gatherings and sense of solidarity on which they are based are not of an institutional character and the activities are almost always managed informally. In other words Islam's traditional role in the provision of social assistance is an informal one; religiously motivated charitable instincts' have been mobilised and instrumentalised by outwardly secular public bodies and civil organisations. Mosques have not been a formal venue or medium for delivery of social support.

However, it should be noted that there has been an increase in the total expenditure on social support in recent years, probably because the prevailing neoliberal orthodoxy restricts public involvement in socioeconomic life and imposes principles of efficiency and economy on this minimal state involvement. This has resulted in the erosion of social justice and an increase in inequality, and paved the way towards creation of a 'precariat' dependent on social aid in cash (financial transfers) and in kind (clothes, food, fuel and so on). As Fig. 15.1 illustrates, in the 6 years from 2002 to 2008, the amount spent on social expenditures has more than quadrupled since the ruling AKP made social aid and assistance a theme of its political programme.

More important to our discussion is the contribution of local governments to this rise in social spending. Figure 15.2 shows that local government social spending appears negligible when compared with that of central agencies. Until 2008 even the universities allocated more money in social assistance than the municipalities. Within the central agencies that appear to be the main deliverers of social services (both care and financial support), one can distinguish various corporate bodies specialising in different domains such as care for the elderly, care of orphans, services for persons with disabilities, support for athletes, services for women and so on.

Of these specialised corporate bodies, social aid solidarity foundations (SYDVs) warrant closer examination as they are based in localities but with a wider and richer scope of activities than local governments.

SYDVs are quasi-governmental organisations with some of the legal characteristics of both governmental and civil bodies. In provinces they are

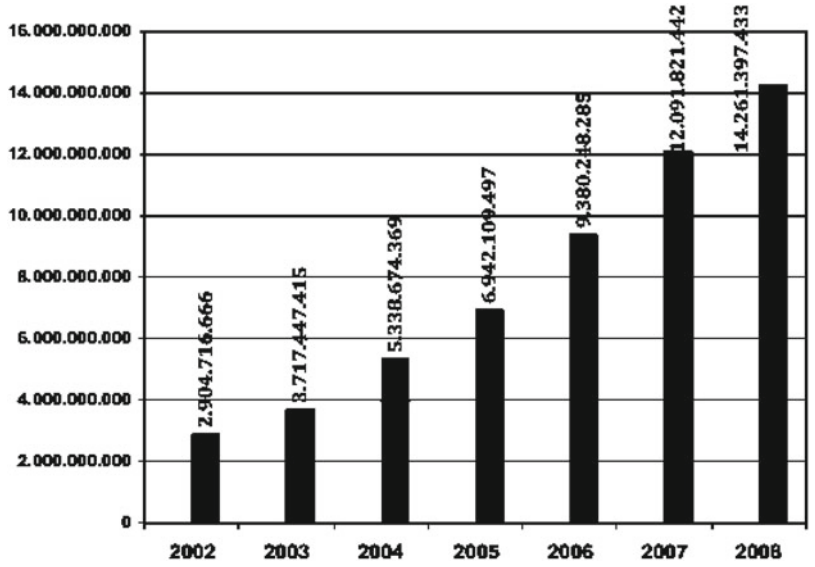

Fig. 15.1 Social expenditure in Turkey (*Source:* Cumhurbaşkanlığı Devlet Denetleme Kurumu (2009))

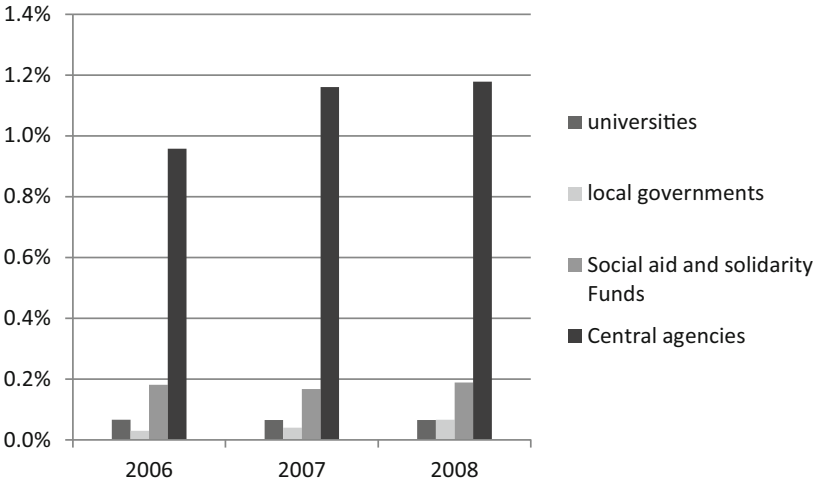

Fig. 15.2 Social expenditure of different public bodies (percentage of GDP) (*Source:* Authors, based on Cumhurbaşkanlığı Devlet Denetleme Kurumu (2009: 14))

administered by prefects and in the towns by sub-prefects. Their boards of trustees consist of a mayor, the heads of certain administrative departments, one town or neighbourhood *muhtar*, two local philanthropists and two representatives of local non-governmental organisations. This hybrid composition, based on local representatives and bureaucrats, is dominated by central government not only because the prefects and sub-prefects who head these local foundations are directly linked to the central government, but also because the foundations are linked to a general Directorate of Social Assistance and Solidarity, which is responsible for administering the Social Assistance and Solidarity Fund that was introduced in 1986 (Hacımahmutoğlu 2009).

SYDVs represent an alternative mechanism for governance and delivery of social services. Rather than resources being allocated directly to municipalities, the municipalities are required to work in partnership with the SYDVs to deliver social services and are strongly influenced by the SYDVs. Although the SYDVs are nominally local organisations they are administered by an agent of the central government. The role of local governments in the legally defined domain of public service seems once again to be subordinate to that of centrally managed institutions. Even a new local corporate structure introduced to take responsibility for delivering social assistance is strongly influenced by the central government.

15.5 Conclusion

As stated in the 'Introduction' to this book, three divergent trends in public service provision can be identified: the maintenance and even intensification of the NPM model, remunicipalisation of public services and the renaissance of grassroots civic activities. From this perspective our exploration of the delivery of certain public services in Turkey suggests that the NPM model still represents the main reference point for organisation of public services provision and thus developments in Turkey fall into the first category.

We have noted that municipal and private corporations are playing a growing role in delivery of public services, particularly services of general economic interest. The central government gets involved in urban infrastructure projects that are unaffordable for municipalities. The main trend in provision of public services has been de-municipalisation in the form of centralisation of provision and/or outsourcing. Even in domains that

remain a municipal responsibility, the use of hived off municipal corporations is more common than in-house delivery.

De-municipalisation in the form of recentralisation of the delivery of social services is another clear trend in policy. Social services that are formally the responsibility of municipalities are mainly under central government control, whether this is via a central agency such as TOKİ or governance bodies such as the SYDVs. We can therefore conclude that NPM principles have not been influential in this domain of social services, with partial exception of social aid, where a governance body, SASF, has become an important agent, albeit under the direct influence of the central government. In social services, as in other public services, we found no evidence of a tendency to municipalise social services; on the contrary, central government seems to be becoming more and more involved in the provision of such services.

In short, we argue that in Turkey private entities continue to play an important role in delivering services of general economic interest whilst the central government plays a significant role in delivery of social services. What is perhaps more interesting is that the opposition political parties are not offering an alternative strategy; they adopt the same modes of delivery in the cities where they are in power. We can conclude, therefore, that there has not yet been a general debate about the NPM agenda, which thus remains the main reference point for provision of public and social services.

Note

1. All types of municipality can transfer the right to operate public transport services to companies in which they have a majority stake, or to other companies which are controlled by companies in which they have a majority stake, under Law No. 5216. This practice is most common in metropolitan municipalities. Some scholars have indicated that although municipal companies are formally considered commercial institutions, they are in a sense isolated from commercial pressures and act strictly in parallel with the local administrations to which they belong; they are not intended to be profit-making and receive considerable funds from the municipalities and administrations of which they are subsidiaries (İlhami 2013).

References

Bayraktar, U. (2007). Turkish municipalities: Reconsidering local democracy beyond administrative autonomy. *European Journal of Turkish Studies*. Available from http://ejts.revues.org/1103. Accessed 8 Mar 2015.

Bayraktar, U., & Massicard, E. (2012). *Decentralisation in Turkey*. Paris: Agence Française de Développement.

Çınar, T. (2009). Türkiye'de su yönetiminin yapısal değişimi. In K. Yönetimi (Ed.), *Yapı İşleyiş Reform* (pp. 124–143). Ankara: AÜSBF.

Cumhurbaşkanlığı Devlet Denetleme Kurumu. (2009). Sosyal Yardımlar ve Sosyal Hizmetler Araştırma ve İnceleme Raporu. Available from http://www.tccb.gov.tr/ddk/ddk29.pdf. Accessed 16 Dec 2014.

Hacımahmutoğlu, H. (2009). *Türkiye'deki Sosyal Yardım Sisteminin Değerlendirilmesi*. Ankara: DPT.

İlhami, İ. (2013). Türkiye'de belediyeler ve şirketleri arasındaki ihale ilişkileri üzerine bir araştırma. *Sayıştay Dergisi, 88*, 5–25.

Karahanoğulları, O. (2004). *Kamu Hizmeti*. Ankara: Turhan.

Keleş, R. (2012). *Kentleşme Politikası*. Ankara: İmge.

Niksarlı. (n.d.). Sunuş. Available from www.kent-koop.org.tr/sunus.htm. Accessed 9 Apr 2014.

OECD. (2013). Social Expenditure Database (SOCX). Available from www.oecd.org/social/expenditure.htm. Accessed 18 Apr 2014.

Onar, S. S. (1966). *İdare Hukukunun Umumi Esasları*. İstanbul: İsmail Akgün Matbaası.

Özdemir, D. (2011). The role of the public sector in the provision of housing supply in Turkey, 1950–2009. *International Journal of Urban and Regional Research, 35*(6), 1099–1117.

Öztürk, A. İ. (2011). Belediyeler ve deniz ulaşımı: İstanbul Şehir Hatlarının Belediyeye Devri. *Çağdaş Yerel Yönetimler, 20*(4), 1–23.

Penbecioğlu, M. (2011). Kapitalist kentleşme dinamiklerinin Türkiye'deki son 10 yılı: Yapılı çevre üretimi, devlet ve büyük ölçekli kentsel projeler. *Birikim, 270*, 62–73.

Sey, Y. (1998). Cumhuriyet Döneminde Konut. In Y. Sey (Ed.), *75 Yılda Değişen Kent ve Mimarlık* (pp. 273–300). İstanbul: Tarih Vakfı Yurt Yayınları.

Tansug, Ç. (2009). *La régulation des services publics de réseau en France et en Turquie*. Paris: L'Harmattan.

Tekeli, İ. (2009). *Cumhuriyetin Belediyecilik Öyküsü (1923–1990)*. İstanbul: Tarih Vakfı Yurt Yayınları.

Toprak, E. (2012). *Türkiye'de Hizmet Alım İhaleleri*. Ankara: Seçkin.

Yayla, Y. (2009). *İdare Hukuku*. İstanbul: Beta.

CHAPTER 16

Local Government and the Energy Sector: A Comparison of France, Iceland and the United Kingdom

Roselyne Allemand, Magali Dreyfus, Magnús Árni Skjöld Magnússon, and John McEldowney

16.1 Introduction

Since the 1980s, climate change has become a key issue in international discourse (Corfee-Morlot et al. 2007). As a result, the energy policy has become a strategic issue as the energy sector is one of the major emitters of greenhouse gases. This has been reflected in the growing number of energy and climate-related legal obligations in international, European and national law.[1] These requirements place a heavy burden on local governments in relation to their involvement in the energy sector, which they do not always have the institutional capacity or resources to deal with; sometimes, however, these obligations align with local needs.

R. Allemand
CRDT, Reims University, France

M. Dreyfus (✉)
CNRS - CERAPS, Lille University, France

M.Á. Skjöld Magnússon
Bifröst University, Borgarnes, Iceland

J. McEldowney
Warwick University, Coventry, UK

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_16

Against this backdrop, this chapter looks at changes to management of energy supply. It focuses on electricity production and provision. In it, we try to address the question of how energy delivery is managed at local level and what impact the various combinations of localism, centralisation and decentralisation have had on the energy sector. Increasingly, energy supply is dependent on multi-level governance and this may affect modes of delivery and management. It may also encourage diversity and innovation.

In this chapter, we compare the evolution of the local energy service in three countries, France, Iceland and the UK. Although Iceland is not part of the European Union (EU), it is part of the European Economic Area (EEA), the most detailed of the EU's trade agreements, which extends the 'four freedoms' of trade in goods and services and the movement of capital and people to Iceland. Iceland is also unusual in that it obtains almost 100% of its energy from renewable sources, which makes it a particularly interesting comparison. We split the chapter into four parts: historical background (Sect. 16.2), production of renewable energy (Sect. 16.3), electricity distribution (Sect. 16.4) and conclusions (Sect. 16.5). To facilitate comparative analysis, the next section provides some historical background on energy supply services in the three countries.

16.2 Historical Background

In order to understand the evolution of local energy policies, it is important to review the developments that led to the changes currently taking place.

France

In France, municipalities developed the first gas and electricity networks, which they managed directly or outsourced, at the end of the nineteenth century; yet for almost half a century now the state has played a major role in the energy sector (DGCT 2013).

After the Second World War electricity and gas were nationalised. The Act of 8 April 1946 centralised the production, transmission and supply of electricity, and these became a unitary national public service. Production, transmission and provision were outsourced to a national company, Electricité de France (EDF). Municipalities continued to own the distribution networks but they were bound by law to outsource provision to EDF and thus lost some autonomy over energy services. Only 5% of provision remained in the hands of local providers (Allemand 2007)[2]

who managed the service directly or outsourced it. Municipalities could also undertake production activities but this remained rare.

Although the nationally organised service proved to be very efficient, meeting growing demand in spite of capped tariffs, changing circumstances slowly led to a change in energy policy and the institutional framework. The Act of 15 July 1980, which related to energy conservation and the use of heat, made it possible for local governments or groups of local governments to create and manage a heating network powered by municipal waste, thus combining production and distribution.

Other laws have also created opportunities for local governments: the decentralisation acts (2 March 1982; 7 January 1983; 22 July 1983; 13 August 2014 and the Constitutional Law of 28 March 2003), the liberalisation of the market of production (Energy Code, Art. L 311–1 and following), the Energy Transition Bill of 2014[3] which provided for a reduction in production of nuclear energy and use of fossil fuels, the development of renewable energies and the management of energy demand.

Indeed, meeting the national commitment under the European Climate Energy Package objectives (20% of energy production from renewable sources, 20% savings through energy efficiency and a 20% reduction in greenhouse gas emissions by 2020), which was adopted in 2008 will depend largely on the activities of local governments.

The state remains the leading authority in regulation, nuclear energy, energy mix definition, long-term investment strategy and large-scale public service projects. But since the 2005 Energy Policy Guidance Programme Act (Centre d'analyse stratégique 2008) the central government has acknowledged the need to work closely with local governments to promote the transition to greener sources of energy. The centralised, sectoral, productivity-driven approach is thus slowly evolving towards a more holistic, localised and participatory approach.

United Kingdom

The UK has a long history of local innovation in energy supply dating back to the nineteenth century, with investment by small private companies as well as larger corporations. Self-sufficiency in coal meant that Britain was able to become the 'workshop of the world'. In the post-Second World War period, there was a massive nationalisation programme and the main utilities, including railways, gas and electricity companies, were taken into public ownership in 1947. Coal continued to be the main source of electricity. In 1990, 68% of

the UK's electricity came from coal-fired power stations and the remainder from nuclear energy (21%) and oil (9%) (HCL 2014a). Local governments' role in energy provision was limited (Fudge et al. 2011). Following the privatisation of the state-owned gas and electricity industries in the 1980s, the UK industry is today mainly privately owned. Between 2010 and 2014 there has been a 26.6% decline in the use of coal as an energy source, as it has been rapidly replaced by natural gas (47% share of electricity generation in 2014) (HCL 2014b). This has radically changed the nature of the energy industry but also made the UK newly vulnerable, as gas supplies peaked in 2012.

The UK energy sector is undergoing substantial change, including real increases in the price of domestic gas and electricity (HCL 2013a). After 25 years as a net exporter of energy, in 2004 the UK became a net importer. UK production of natural gas in 2012 was the lowest since 1985 (HCL 2014c). The first and second generations of nuclear power stations are coming to the end of their lives. These factors are having serious repercussions for energy providers and government policy on energy security and supply (Houses of Parliament 2012), particularly given the need for reductions in CO_2 emissions. Ofgem, the UK energy industry regulator, has become concerned about whether electricity generation is sufficient to meet projected demand. Central government is decommissioning older power stations, and promoting nuclear power as a source of electricity by agreeing to long-term contracts for new nuclear capacity, financed by Chinese investors, with the intention of limiting CO_2 emissions (HCL 2013b). Oil prices peaked at $150 per barrel in July 2008 and fell sharply in the second half of 2008, but prices were volatile in 2011–2012. In 2014 spot prices were set around $107 per barrel but projections for the future suggest that oil prices are set to rise to $250 per barrel by 2035. The UK is particularly vulnerable because of the decommissioning of older nuclear power stations, delays in building a new generation of nuclear power stations and reliance on diminishing supplies of natural gas. Gas and electricity prices are politically sensitive and overall government policy is to encourage innovation in energy production, including use of shale gas and fracking, carbon capture and storage technology, new technology-based energy, the use of smart meters and the use of renewable sources. The role of local government in energy services is limited but may become more significant as it has acquired more powers over energy usage; the devolution of substantial powers to Scotland, Wales, Northern Ireland and also England may also have an impact.

Iceland

Icelandic energy generation underwent dramatic changes in the latter half of the twentieth century. At the beginning of the century imported coal was the main source of energy for power and heat; in 1939 domestic sources accounted for only 6% of energy supply, but by 1989 this had become 61%, mainly hydroelectric energy and geothermal energy for space heating. Today over 99% of power in Iceland is generated from renewable energy resources; hydro still dominates, at around 75% of supply, but the proportion of geothermal energy has increased significantly in recent years (Ásgeirsdóttir 2011).

Basic research on hydro energy production in Iceland began in the first decades of the twentieth century, and in the 1930s, large hydro-dams were built together with cables to the largest towns in Iceland, Reykjavík in the southwest and Akureyri in the north (Ministry of Industry 2011).

Until the middle of the 1960s the main emphasis was on power distribution in the rural areas and the building of distribution networks. The electricity laws of 1946 mandated that the state should produce energy for public consumption and distribute it between and within regions where no internal distribution network was in place. In 1984 the country's electricity grid was finally connected and thus the reliance on imported sources of energy production for previously unconnected areas ended (Ministry of Industry 2011).

The Icelandic energy market has been almost entirely dominated by publicly owned organisations, mostly central state-owned, although the largest municipalities have also played an important part. Independent engineering firms have however been important as collaborators of these organisations from the start and in recent years private companies have become involved following moves to open the market up to competition (Ministry of Industry 2011).

In 2003 a new law on sale and generation of energy was implemented. It draws a distinction between elements of the process which are subject to competition—generation and sale of power—and areas where an exclusive licence is granted to a single operator—district heating and distribution of power. A state agency, the National Energy Authority (Orkustofnun) monitors and regulates prices, and quality and security of delivery of exclusive licence operations (Ásgeirsdóttir 2011).

Under the EEA much of the EU regulatory framework pertaining to energy services is valid in Iceland, although Iceland has negotiated several exemptions and adjustments, for instance on nuclear energy, which is not used in Iceland, and the Directive on the energy performance of buildings (2002/91/EC). The 2003 laws on energy generation and sales were, however, based unambiguously on the relevant EU directives (Ministry of Industry 2011).

16.3 Production of Renewable Energy (Including for Heating Networks)[4]

Renewable energy sources contribute to diversification of the energy mix, to energy security and to the fight against climate change. Decentralised development of renewable energy can also contribute to local economic development through job creation and growth.

France

The French electricity mix is dominated by nuclear energy, which still accounted for three quarters (75.8%) of French electricity generation in 2012; however, the 2014 Energy Transition Bill requires the share of nuclear energy to be reduced to 50% by 2025. Renewable energies are the second most important source of electricity (15.6%), ahead of fossil fuels (8.2%). Considering only the renewable sector, hydropower (71.6%) has a clear lead over onshore wind power (17.1%), biomass (6.1%), solar photovoltaic cells (4.6%) and offshore wind power (0.6%).[5] Heating networks are the biggest users of renewable energy, mostly biomass. Overall, renewable energy sources accounted for 10% of gross final consumption in 2005 and 14.2% in 2013; the national target is 23% by 2020. With the exception of hydraulic sources, which are almost entirely controlled (90%) by Electricite De France (EDF) and Gaz De France (GDF), electricity from renewable energy sources and combined heat and power (CHP) units is often produced by small entities, and local governments are key players in this area.

The law allows local authorities and public institutions to build, operate and develop plants producing electricity or heat from renewable energy (Local Governments Code Art. L 2224–32). The French state provides financial support for producers of renewable energy through purchasing obligations at a guaranteed minimum price.

French local governments can use different kinds of legal entities, which differ mainly in their financial capacity, to promote renewable energy production. Traditionally, these would have been purely public entities wholly owned and directly controlled by local authorities: internal services (*régies*) or public corporate bodies (*sociétés publiques locales*). Where private expertise and capital are required other forms of company are available, such as local mixed companies (*sociétés d'économie mixte locales*, SEML) in which local authorities can retain a majority stake (between 50% and 85%). For example, the city of Metz converted its *régie* into an SEML for the co-generation of heat and electricity and hence was allowed to sell outside of its jurisdiction. Some companies also allow the participation of citizens, directly or through the creation of a public interest cooperative company (SCIC). Since the Act of 31 July 2014 local authorities have been allowed to own at least 50% of the capital of SCICs. In 2009 a SCIC named *enocoorp energie*, was set up in the Champagne-Ardenne region to install and operate a wind farm.

The Act of 1 July 2014 also granted local governments the power to create single purpose (SEMOU) SEMLs to build and operate renewable energy production units. Local authorities can hold between 34% and 85% of the shares in such enterprises.

Ultimately, EDF remains the leading player in renewable energy production, mostly because it owns hydropower plants, although central government has proven willing to open the market to other stakeholders. Against this background, some local governments are striving to become 100% self-sufficient in energy (e.g., *Communauté de communes du Mené* in Brittany).

There are no official data on the share of electricity generated locally and although it appears to have increased, most energy generation remains in the hands of the former EDF.

United Kingdom

The UK generates most of its electricity from fossil fuels (68%) and nuclear energy (19.4%) but behind the scenes it is making great efforts to develop renewable energies and these now provide 12.2% of its electricity mix. The wind-power sector is the most highly developed, and accounts for 5.4% of production, followed by biomass (4.2% of the total); the UK biomass sector is one of the fastest-growing in Europe. Hydropower contributes 2.3% of electricity and the solar sector is about to take off; in 2012 it produced 0.3% of overall electricity supply.

Wind farms are owned by a few small, private companies and larger energy companies but are not owned directly by local authorities. Local authorities may invest in energy companies through commercial contracts. Biomass power stations are often owned and run by local authority-led consortia. From January 2014 the 'Community Energy Initiative' has allowed community-owned renewable electricity installations under funds provided under the Government's 'Green Deal' (Department for Environment, Food and Rural Affairs 2013).

Devolution of national climate change targets to local and regional level has encouraged local authorities to engage in strategic energy planning. In fact there are a variety of renewable energy resources available and the local planning authorities are in a pivotal position because they make decisions about the heating for many public buildings and institutions. In 2010 the Department of Energy and Climate Change (DECC) enacted legislation applicable to the whole of the UK which allows local authorities to sell electricity generated from specified renewables. Previously local authorities were only permitted to sell electricity from waste or CHP. In 2011 a Memorandum of Understanding between central and local government (DECC 2011) was signed taking forward an earlier pledge, made in 2000, to address climate change through local government initiatives, particularly the reduction of carbon emissions. The Memorandum is a not a legally binding agreement but it is a realistic set of assumptions that operate as working practices. The Localism Act 2011 enshrined the principles of localism and local autonomy in law, but did not entail local authority empowerment; there are some countervailing tendencies towards centralisation. Local authorities are also able to make use of feed-in tariffs and renewables obligation certificates for small- and large-scale generation of power from renewable sources. District heating schemes are also covered through the Renewable Heat Incentive launched in mid-2011. Statistics on uptake of these options by local authorities are not collected. The main forms of energy generation that local authorities engage in include wind farms, electricity from anaerobic digestion, electricity from waste (Department of Environment, Food and Agriculture 2013) and solar energy. There are provisions for CHP under the climate change arrangements.

Municipal power companies are not common and until relatively recently there has been little demand or motivation for local generation of power in urban areas. Gas and electricity are delivered through private companies that are often part of larger international consortia. Since 2010 it has been possible to establish 'local enterprise partnerships'; these are

joint local authority business ventures designed to promote local economic development. There are 'business improvement districts' which allow partnerships to be formed between local authorities and businesses for the purposes of general improvement of the area. Public–private partnership (PPP), an instrument created under the Private Finance Initiative (PFI), is also used for co-generation schemes. Some of the earlier PFI contracts have proven controversial as they led to high costs for public sector bodies (Her Majesty's Treasury 2012). Local authority engagement through PFI contracts is intended to place financial risks on the private sector. The Local Carbon Frameworks Pilot, which is part of the localism agenda also provides examples of local authority investment. There are also initiatives such as the Community Energy Saving Programme (CESP), a pilot scheme to explore the potential for partnerships between energy companies and local authorities. CESP is a critical part of future strategy and there are many types of partnership which vary according to the level of local authority engagement, from arms-length projects where the local authority makes no financial input but simply creates an opportunity for the energy companies, such as solar panels on council housing paid for by tenants (Scottish Futures Trust 2011). Local authority participation in energy renewables is mainly through the 214 anaerobic digestion schemes operating in the UK. Many are fed by waste from local authority sources (Environmental Data Services 2012).

There are no data on the percentage of energy generated locally, but in key areas of renewables, local authority wind farms account for almost 15% of the UK's energy needs. It seems likely that the increase in joint commissioning of services by local authorities will encourage more local energy-related activities.

Iceland

Iceland has a unique climate and geography. It is the only country to produce all of its electricity from renewable sources. Its hydropower sector contributes 70.3% of the country's electricity mix, while geothermal power supplies the remaining 29.7%. Together, these two sectors cover the country's electricity requirements.

In Iceland permission to build and run a power station exceeding one megawatt in capacity is granted by the National Energy Authority. Permission is only granted for plants which use renewable energy sources. Most power companies are still owned by the government or municipalities.

The largest exception is HS Orka, which has been recently acquired by private investors, including an investment company acting on behalf of large Icelandic pension funds (HS Orka HF 2014).

Landsvirkjun, the state-owned power generating company, is by far the largest power generator in Iceland. It was responsible for approximately three quarters of all power generation in 2013. Around 85% of its power is sold to heavy industry (Orkufyrirtæki í almannaeigu 2014). Other large companies include Reykjavik Energy (Orkuveita Reykjavikur), which is jointly owned by the city of Reykjavík (93% stake) and the municipalities of Akranes (5.5%) and Borgarbyggð (1%), and was responsible for around 17% of power generation in 2013; HS Orka was responsible for around 8%, with the remaining 3% split between other producers (Íslandsbanki 2012). Other minor, municipally owned producers are Orkuveita Húsavíkur, owned by Norðurþing municipality, and Norðurorka, jointly owned by six municipalities in the Eyjafjörður region (Íslandsbanki 2012).

Since the deregulation of the energy market in 2003, there has been a trend towards more diverse ownership of energy companies, compared with the latter decades of the twentieth century. Private players have been making inroads into the sector, notably the purchase of HS Orka and the purchase of a substantial stake in HS Veitur. However, the state remains by far the largest player, with municipalities, especially the city of Reykjavík, in second place.

16.4 Electricity Distribution

Electricity distribution connects producers with end consumers and involves management of a distribution network.[6]

France

In France, the transmission and distribution market is not open; it is regulated by the Regulatory Commission of Energy, an independent national public agency. Distribution of electricity is in the hands of one main company (EDF) in which the state has a majority stake, and a number of small municipal corporations.

The public distribution network which is managed and used by Electricité Réseau Distribution de France (ERDF), a branch of EDF, distributes electricity to domestic households, businesses and public bodies. High or very high voltage lines (over 225 kV) transmit electricity from power stations to the distribution networks which are managed and operated by Réseau de

Transport d' Electricité, another branch of EDF. ERDF manages 95% of the public electricity network, which belongs to local authorities (municipalities or group of municipalities). The local authorities subcontract the management of their network to ERDF through concession agreements. The local authorities control the network operator and provide guidelines for energy efficiency, but in practice it is hard for them to implement measures to manage energy demand; they rely mainly on financial incentives funded from the local budget.

Most of the delegation contracts with ERDF will come to an end within 10 years and the opening up of the markets on the basis of the new EU Concessions Directive 2014/23/EU is being discussed. Against this background the current strategy is to reinforce the municipalities' negotiating power and their control over contractors.

Local distribution companies are responsible for managing public electricity distribution across 5% of mainland France and serve three million inhabitants. Local authorities directly control some of the 160 local distribution companies but most are public companies or semi-public companies.

Finally, the authorities in charge of energy distribution are now also managing local electricity production plants (Local Governments Code Art. L 2224–33).

United Kingdom

In the UK, there are four privately owned, commercial bodies permitted to develop, operate and maintain a high voltage distribution system: National Grid Electricity for England and Wales, Scottish Power Transmission, whose authority is limited to southern Scotland and Scottish Hydro-electric Transmission whose authority is limited to Northern Scotland (including the islands), and Northern Ireland Electricity which covers Northern Ireland. Licences are granted by the UK national regulatory authority (Ofgem) on a competitive basis. Ofgem regulates these natural monopolies. Six privately owned generation and supply networks operators—E.On (French), E.On (German), RWE (German), Iberdrola (Spanish), Centrica UK and Scottish and Southern (UK)—own and operate the distribution network, each in a different area of the UK.

There are currently 14 distribution network operators owned and operated by seven companies, including some energy generators and suppliers. Electricity is traded through the British Electricity Trading and

Transmission Agreements. This is a computerised trading system to ensure that demand and supply are met. The National Grid has an arms-length company, Elexon, which is engaged in ensuring that the transmission system is in balance and operates on the basis of retaining a share of savings where costs of transmission and operating the computer trading arrangements are below a target set by Ofgem. Since 2013-2014 use of coal and oil for electricity generation has declined and National Grid has had to provide additional incentives to ensure that electricity supply is maintained.

Iceland

In Iceland, as in France, a distinction has to be made between electricity transmission and distribution. There is by law only one transmission system, operated by Landsnet, in the country, but many distribution systems. The Landsnet company began operating in early 2005 and is responsible for the transmission of the national power company (Landsvirkjun) which is the biggest shareholder, with 64.73%. Other owners include RARIK (a small state-owned energy producer, 22.51%), Reykjavik Energy (6.78%) and OV, another small state-owned energy producer (5.98%) (Landset 2014). The transmission system includes all power lines, substations and 30 connected structures that transmit power at voltages of 66 kV or higher.

Under Icelandic law, distribution of electricity is a licensed operation. A licence is needed to operate in a certain area, and a licence is also needed to seize operation, that is, companies cannot just stop distributing energy out of hand. The licence grants the holder the exclusive right and obligation to distribute electricity in the specified area. In 2011 there were seven distributors in operation, two owned by the state (RARIK and OV) and five owned by municipalities, including one in which private investors owned a significant proportion of shares (HS Veitur: 34.4% owned by private investors, the rest by three municipalities).

16.5 Conclusion

A look at the history of energy services reveals common trends in the three countries. At first energy supply and distribution was essentially a local service, sometimes outsourced to private partners. After the Second World War these activities were centralised and the state became the central player in energy policy. The liberalisation process in the 1990s acted as a driver of decentralisation. Although local governments now have wider powers to

take action in the energy sector, their lack of resources has allowed the private sector, and in particular the large utility companies, to remain the main players in the production and distribution services. This has led to an increase in partnerships between local authorities and private companies in France and the UK, whereas in Iceland decentralisation and PPPs are still very rare.

Iceland has quite simple features with respect to France and the UK regarding renewable energy production. In fact, its power is almost exclusively derived from renewable sources, and power generation is mostly in the hands of the state, with some local government involvement and very limited opportunities for private companies. In France and the UK renewable energy represents between 10% and 15% of the total electricity mix. Local governments are becoming more important players in power production (for a long time their involvement was limited to urban heating networks) but their involvement is still relatively infrequent and usually undertaken in partnership with private bodies, thanks to the opening up of the market. PPPs can be based on contracts—the usual arrangement in the UK—or on institutional partnerships through mixed public-private companies, as is often the case in France. In both cases, the participation of public authorities is voluntary and mostly in response to European climate targets and potential economic co-benefits.

In France and Iceland transmission is managed by the state whereas distribution is managed either by the state or municipalities. This is different from the UK, where transmission and distribution are organised through a highly competitive market, albeit one dominated in practice by larger companies. France, Iceland and the UK are currently attempting to modernise models and procedures for electricity generation, transmission and distribution to improve storage and delivery of affordable, low-carbon energy.

Notes

1. For instance, obligations under international agreements such as the 1992 United Nations Framework Convention on Climate Change and the 1997 Kyoto Protocol, or later the European Effort Sharing Decision (Decision 406/2009/EC of the European Parliament and of the Council of 23 April 2009 on the effort member states must make to reduce their greenhouse gas emissions in order to meet the Community's greenhouse gas emission reduction commitments by 2020, OJ L 140, 5 June 2009).
2. A full description of management modes in France is provided by Marcou *in this volume*.

3. The 2014 Energy Transition for Green Growth Bill is currently being discussed in the French parliament.
4. This section focuses on the production of electricity through renewable energies.
5. Data for France, Iceland and the UK for 2012. Available from www.energies-renouvelable.org, accessed 4 August 2015.
6. This section focuses on transmission and energy distribution. We deal with these two issues in one section because local governments have influence over transmission. We do not deal with sale of electricity to end users, which has been open to competition since 2007 (Directive 2003/54/EC) although the historic providers remain the main suppliers.

References

Allemand, R. (2007). Les distributeurs non nationalisés d'électricité face à la concurrence. In H. Wollmann & G. Marcou (Eds.), *Annuaire 2007 des Collectivités Locales* (pp. 31–47). Paris: CNRS.

Ásgeirsdóttir, M. O. (2011). *Power markets and possible power export from Iceland*. M.Sc. thesis, University of Reykjavík, Reykjavík.

Centre d'analyse stratégique. (2008). Perspectives énergétiques de la France à l'horizon 2020–2090. Government of France. Available from http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/074000660.pdf. Accessed 28 Sept 2015.

Corfee-Morlot, J., Maslin, M., & Burgess, J. (2007). Global warming in the public sphere. *Philosophical Transactions of the Royal Society A, 365*, 2741–2776.

DECC. (2011). Memorandum of agreement between local government group and the Department of Energy and Climate Change. Government of United Kingdom. Available from www.gov.uk/government. Accessed 4 Aug 2015.

Department for Environment, Food and Rural Affairs. (2013). Energy from waste a guide to the debate. Government of United Kingdom. Available from www.gov.uk/government. Accessed 4 Aug 2015.

DGCT. (2013). *Collectivités territoriales et énergie. Ambitions et contradictions*. Paris: Le Moniteur—GRALE.

Environmental Data Services. (2012). Environmental trends, *ENDS report* (449), p. 52.

Fudge, S., Peters, M., & Wade, J. (2011). *Locating the agency and influence of local authorities in UK energy governance*. University of Surrey. Available from www.surrey.ac.uk/ces/files/pdf/01-12_Paper_Fudge_Peters_Wade.pdf. Accessed 4 Aug 2015.

HCL. (2013a). Energy prices. Parliament of the United Kingdom. Available from www.parliament.uk/commons-library. Accessed 4 Aug 2015.

HCL. (2013b). Nuclear power. Parliament of the United Kingdom. Available from www.parliament.uk/commons-library. Accessed 4 Aug 2015.
HCL (House of Commons Library). (2014a). Clean coal technology. Parliament of the United Kingdom. Available from www.parliament.uk/commons-library. Accessed 4 Aug 2015.
HCL. (2014b, March 27). Statement on energy markets competition assessment. Available from www.parliament.uk/business/news/2014/march/statement-on-energy-market-competition-assesment. Accessed 4 Aug 2015.
HCL. (2014c). Shale gas and fracking. Parliament of the United Kingdom. Available from www.parliament.uk/commons-library. Accessed 4 Aug 2015.
Her Majesty's Treasury. (2012). A new approach to public private partnerships. Government of United Kingdom. Available from www.gov.uk/government. Accessed 4 Aug 2015.
Houses of Parliament. (2012). Measuring energy security. Parliament of the United Kingdom. Available from www.parliament.uk/commons-library. Accessed 4 Aug 2015.
HS Orka HF. (2014). Eignarhlutir. Available from www.hsorka.is/HSCompanyInfo/HSCompanyShares.aspx. Accessed 4 Aug 2015.
Íslandsbanki. (2012). Íslenski orkumarkaðurinn. Available from www.islandsbanki.is. Accessed 5 Sept 2014.
Landsnet (2014). Um Landsnet. Available from http://landsnet.is/landsnet/. Accessed 23 April 2016.
Landsvirkjun. (2014). Orkufyrirtæki í almannaeigu. Available from http://arsskyrsla2013.landsvirkjun.is/orkufyrirtaeki-i-almannaeigu. Accessed 27 Sept 2014.
Ministry of Industry. (2011, June). Preparation for the roll-out of smart meters. HC 1091, 2010–12.
Scottish Futures Trust. (2011). Report on the commercial aspects of local authority renewable energy production. Government of Scotland. Available from www.scottishfuturestrust.org.uk/. Accessed 4 Aug 2015.

CHAPTER 17

Water Provision in France, Germany and Switzerland: Convergence and Divergence

Eva Lieberherr, Claudine Viard, and Carsten Herzberg

17.1 Introduction

Water provision in Western Europe has fluctuated between being a public and private activity in the past. Until the 1970s in-house provision by the local government was the norm (Citroni 2010). This mode of water provision was called into question under neoliberalism and since the 1970s and 1980s liberalisation and new public management (NPM) have taken hold (Citroni 2010). These reforms have in their turn also attracted criticism. Since the start of the twenty-first century there have been cases of remunicipalisation of privatised water provision (Pigeon et al. 2012).

This sector-specific chapter provides a comparative analysis of local water provision reforms in France, Germany and Switzerland. We use the

E. Lieberherr (✉)
Swiss Federal Institute of Technology, Zurichs, Switzerland

C. Viard
University of Cergy-Pontoise, Cergy-Pontoise, France

C. Herzberg
nexus Institute for Cooperation Management and Interdisciplinary Research, Berlin, Germany

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_17

terms 'water provision' and the 'water sector' to cover supply of water and sanitation services to domestic households. Our aim is to assess the main trends in institutional reforms of water provision over time and across these three countries. We trace the history of water provision from the nineteenth century until the present day. Our unit of analysis is the country, not the municipality, since general trends are not clear at the municipal level.

We are interested in exploring the 'what' and 'why' of institutional change. To do so we have used 'different operational rationales and logics for service provision' (Wollmann, *in this volume*) to analyse the motivations and rationales for the various institutional reforms and models of water provision. Following Wollmann we have distinguished between 'economic rationales' based on efficiency and profit and linked to NPM and market liberalisation reforms (Considine and Lewis 2003) and 'political rationales' linked to municipalisation and a focus on the public interest (Mühlenkamp 2012). It is also possible to identify a hybrid rationale, based on an amalgamation of the above two models (Wollmann, *in this volume*; Montin, *in this volume*).

We have used two European Union (EU) member states (Germany and France) and one non-EU country (Switzerland) to assess the degree of convergence with respect to reforms both inside and outside the EU. In fact EU regulations on water service provision give member states more leeway than in other areas (e.g., agriculture or trade). This partly explains why, in the logic of path dependency, different countries have followed varying trajectories. Germany and France have diverse traditions of managing and governing water as local services and although Switzerland takes a similar approach to Germany, the Swiss approach to public services remains under-researched.

This chapter consists of three parts. In the next section we trace the evolution of institutions involved in water provision from the nascence of public water provision in the 1880s, through the years of neoliberal modernisation, which lasted until the 2000s, up to and including the emerging trend for remunicipalisation. Following from this we focus on the most recent phase, addressing the factors behind these reforms and the responses of national, regional and local governments and public and private companies to modernisation and remunicipalisation. We conclude with some reflections on the extent to which water reforms in the three countries have converged or diverged.

17.2 Institutional Evolution of Water Provision

In all three countries water provision has historically been a municipal responsibility and hence small-scale, fragmented structures have predominated, with municipalities typically in charge of their own waterworks (Citroni 2010; Lieberherr 2012; Pontier 2011). There is, however, divergence in relation to the operation of the service. In Germany and Switzerland the municipalities have traditionally provided water services directly (in-house operations), whereas in France the infrastructure is in public ownership, but services may be operated directly by municipalities or outsourced to private providers (Pontier 2011). This initial institutional constellation has led to path dependency, as a similar trend can be seen across the three countries in their evolution, which is sketched below.

In-House Provision and Outsourcing until the 1970s

In Germany and Switzerland publicly subsidised, large-scale infrastructure and public service institutions were created in the late nineteenth and early twentieth centuries (Wissen and Naumann 2008; Lieberherr 2012). The extensive water infrastructure and supply systems that exist in Germany and Switzerland today were largely funded from the public purse. As the value of supplying safe drinking water to households was recognised, local government began to take responsibility for the provision of this basic service (Citroni 2010).

In contrast, in France private companies began to provide water services as early as the mid-nineteenth century, resulting from the freedom given to trade and industry; in consequence public authorities were only authorised to provide the service if basic needs were not satisfied by private operators (Pontier 2011). Several types of contracts were possible between private companies and municipal bodies, for example, concession contracts and *affermage*. The former are long-term contracts in which the private company is responsible for infrastructure investments, whereas the latter is a shorter-term contract only relating to the responsibility for infrastructure maintenance. In both cases the municipal body remains the owner of the infrastructure; only service provision and billing are delegated. The municipalities can decide whether to end or renegotiate the contract after a predetermined period of time (Bauby 2009). Historically, private companies have tended to supply water to dense urban areas where it is profitable. In contrast, the rural population mostly received its water from small

local public suppliers, subsidised by a special public fund created in 1954 (*Fonds national pour le développement des adductions d'eau potable*). Rural public authorities have often cooperated to provide water services.

We found that the three countries used divergent rationales in this phase. Because of the political imperative to provide universal water supply, safeguard against cherry-picking of profitable segments and ensure widespread service provision, public intervention and public subsidies had gradually become accepted in all three countries (Citroni 2010; Pontier 2011). In Germany and Switzerland institutional developments can be fully accounted for by this logic; in France, we also find a model based on a semi-economic rationale: outsourcing to private companies in urban areas where the service is profitable, although assets once built are owned by the public authority.

Modernisation Between the 1970s and the Turn of the Century

Germany and Switzerland experienced declining political control over public water services since the 1970s and 1980s. In contrast, France experienced little change during this period, albeit there was an increase in the proportion of the population supplied by a private operator. In all three countries, there was an increase in the number of inter-municipal associations involved in water services.

Both Germany and Switzerland experienced a shift towards corporatisation of their water utilities. Although the utilities remained in public ownership (usually municipal ownership), their legal status changed and they became private rather than public entities (e.g., limited liability companies or joint-stock corporations). However, corporatisation is also possible under public law; the key requirement is that public utilities gain organisational, operational and financial autonomy from the 'core' administration (Grossi and Reichard, *in this volume*). In Germany, the percentage of German Water Association operators subject to private law increased from 20% in 1986 to 64% in 2005 (BDEW et al. 2005, 2011). In comparison, corporatisation was much less significant in Switzerland. Less than 2% of all public wastewate utilities are organised as joint-stock corporations (Herlyn and Maurer 2007).

The main development in France during this period was the rise in the proportion of the population who received water from a private supplier (Bordonneau et al. 2010; Boiteau 2007). The first European directives on water quality, together with the decline in the quality of the resource, made more investment in water services necessary and large private com-

panies were regarded as being in a better financial position to deliver this (Barraqué 2010). The private companies have invested heavily in research and development, historically with central government support, in order to meet the technical challenges of providing a universal, high-quality water service (Lorrain 1995). Tax legislation also provided an incentive for municipalities to agree upon contracts with private suppliers (Marcou 2010). Until recently, France had not been affected by corporatisation; unlike in Germany and Switzerland the French municipalities were not allowed to have sole ownership of providers with the legal status of a private company. Municipalities could only organise their services as *société d'économie mixte* under public-private partnerships (PPPs, here defined as shared ownership models). In France corporatisation mainly occurred, and still does occur, under public law status by establishing legally autonomous entities, such as a *régie dotée de la personnalité morale et de l'autonomie financière*.

In Switzerland the water market was, and remains, non-competitive. However, within the constraints of a model based on public ownership and public control, it has been common for private companies to have short-term contracts for specific tasks such as implementing new technology; thus, there is modest competition in the service and maintenance market (Lieberherr 2012). French water provision was theoretically competitive before the EU set the goal of establishing 'a highly competitive social market economy' (Art. 3.3 of the Treaty on European Union) as local authorities were able to choose between public or private operation. In Germany market competition was, and remains, an option for municipalities, but most opt for in-house solutions, which preclude competition.

We find a degree of convergence in the rationales underlying the abovementioned reforms in the three countries. In light of public fiscal pressure, the need for more investment and rising water quality standards reform in all three countries were based on economic or hybrid rationales. France has continued to outsource water services to private companies, but the contractual arrangements now focus on investment to meet quality criteria as well as on profit. In Germany there has been a significant shift towards corporatisation. These two developments are much less pronounced in Switzerland, where a hybrid logic has prevailed.

Reforms Since 2000

There has been a move back to public involvement in the water sector since the beginning of the twenty-first century. Some authors (Lobina

et al. 2015) have emphasised the trend to remunicipalisation and municipalisation by drawing on examples of towns and cities in Europe and internationally. However, we have assessed municipalisation in terms of the proportion of citizens supplied by public rather than private operators, as we consider this a better way of representing the overall trend.

There is convergence between the countries in that there has been an overall increase in public operations; however the extent of remunicipalisation has been variable. In France, the majority of the population currently receives water services from private operators (61-65% for water supply; 42-47% for wastewater and sewerage) (France Eau Publique 2014), although the assets are publicly owned. Conversely, in Germany, municipal control remains the dominant model in the water sector, although there has been an growth of partial privatisations (PPPs; in other words, shared-ownership enterprises) since the beginning of the twenty-first century. This has partly been due to the prevailing neoliberal orthodoxy, which has assumed that private companies are more cost-efficient than public providers. With this expectation, following the liberalisation of the energy market, some water utilities also started to be involved in PPPs. There is another simple explanation for some of the privatisation reforms which have taken place in Germany: in a significant number of cases water companies merged with public energy companies that were already subject to private shareholder participation (Libbe et al. 2011; Bönker et al., *in this volume*; Kuhlmann and Wollmann 2014). As a consequence, almost a quarter (24%) of the members of the German Association of Energy and Water Industries have undergone partial privatisation, including the largest water providers (BDEW et al. 2011). In such PPPs, municipalities would have to compensate the private partner if they wanted to return to a fully public service model of provision. Despite this obstacle, some cities, such as Berlin, have negotiated the remunicipalisation of water services (Hecht 2015).[1] This constitutes a significant contrast to the French model where the municipality can return to public provision of a service at the end of an outsourcing contract without paying compensation.

In Switzerland we find a high degree of municipal control and no cases of remunicipalisation of water services. There is one private water supply operator, but all the rest are publicly owned. A small percentage of wastewater service operators (5.2%) are jointly owned by public and private bodies, the rest are publicly owned (Lieberherr 2012).

Again, there is some convergence regarding rationales for remunicipalisation; in all three countries the political argument that reforms should

take account of the public interest has been made more or less strongly since the turn of the twenty-first century. Arguably, the political imperative for (re)municipalisation (because of lack of privatization in Switzerland).

17.3 Factors Affecting Reforms and Responses to Modernisation

Below we discuss three key influences on the above-mentioned reforms: (1) shortcomings of private companies, (2) legislation favouring publicly owned companies and (3) the role of citizens. We then address the responses of national, regional and local governments as well as private companies' reactions to modernisation and remunicipalisation reforms.

Shortcomings of Private Companies

In all three countries the general public opinion is that private water sector companies have various shortcomings. In Switzerland, privatisation of water services has attracted criticism from citizens, public servants and politicians. For them, privatisation is linked to generating profits which they consider incompatible with the ethic of public water provision (Pfammater et al. 2007). Similarly, in Germany, the private parties to PPPs have been blamed for price rises after partial privatisation; this became an important civil political issue, for example, in Potsdam and Berlin (Herzberg 2015; Lieberherr et al. 2012). Due to these negative examples, there has been a loss of support for private sector involvement in water services, and it is now more difficult for private operators to get involved in PPPs. Nevertheless, it seems reasonable to assume that most PPPs are running well and that people may not even be aware of the public-private-ownership structure.

In France private companies have also often been blamed for rising prices, poor maintenance and the cutting off of supply as a penalty for unpaid bills. In contrast to Germany and Switzerland, this criticism has not prevented outsourcing to private providers from remaining the dominant water-provision model. Some municipalities have considered remunicipalisation, but the numbers doing so are small; there are between two and four cases of remunicipalisation occur per year, out of the hundreds of outsourcing contracts which come to an end each year (FP2E 2007).

Legislation Favouring Publicly Owned Companies

There is convergence across all three countries with regard to the attraction of in-house provision for municipalities; this can be linked to historical path dependency. However, we find more similarities between France and Germany than with Switzerland. Both France and Germany, for example, have had to deal with the consequences of the Teckal case, (CECJ, C-107/98, 18 November 1999), whereas Switzerland has not (see Marcou, *in this volume*). In response to the ruling in the Teckal case the French parliament recently introduced a new form of wholly publicly owned organisation, which is subject to private law, the *société publique locale* (Act No. 2010–559, 28 May 2010). This form can only be used for inter-municipal cooperation and was introduced to make it possible for municipalities to sign contracts without a tender procedure; however, to comply with EU case law on in-house provision, the contracting authority has to exercise the same control over the public corporation as it does over its own departments (Nicinski 2010; Devès 2015). This can cause problems. Although contracts should not be longer than 20 years, at least one 99-year contract has been signed (Cuillandre 2013), with no legal consequence so far.

In Germany the Teckal case made municipalities very sceptical of partial privatisation (see Bauby and Similie, *in this volume*). Since many public providers are subject to private company law, municipalities may be obliged to use competitive tender procedures to award contracts if they enter PPPs. However, many of the existing PPPs can still be run (in-house) without tender procedures. Having the legal status of a public entity offers certain advantages, such as exemption from some taxes, a better credit rating and cheaper loans (Ochman 2005).

Financial advantages seem to be more important in France than in Germany. After a protracted legal dispute, judges have decided that it is legal for a French *département* to subsidise rural towns more generously when the operator is public than when it is private on the grounds that public operation is cheaper than private operation (Combeau 2014). However no *département* is allowed to impose a public operation on a town that benefits from the principle of free administration (Pauliat 2014).

Remunicipalisation appears to be permitted under EU law, even if the intention has been to discourage it. In Germany municipalities protect themselves from competition by avoiding PPPs. The French parliament created a new legal entity to be used by municipalities and for

inter-municipal cooperation. Switzerland is, of course, not affected by these EU rules, but observes from the sidelines.

Expectations of Citizens

Citizens' expectations and influence on water services in the three countries converge to a degree. Citizens' influence has traditionally been strongest under the Swiss model of water provision; citizens can vote on substantive measures in the water sector and can virtually block corporatisation and privatisation (Lieberherr 2015). Swiss citizens expect public services to be under public control and are wary of privatisation. In Germany citizens also have considerable influence via tools such as referenda and citizen initiatives. As noted above, recent privatisations in Germany have been criticised by the public. Social movements made use of the tools of direct democracy in order to stop partial privatisation, such as in the case of Berlin plans (Lieberherr et al. 2012).

Although citizens cannot initiate referenda in France, it is the country with the most remunicipalisations in Europe. In some cases, citizens have also gained representation on the boards (*conseil d'administration*) of public utilities. In Germany the social movements also reclaim more power. However, citizens are not yet members of the boards.

Responses to Modernisation and Remunicipalisation

The three factors discussed above (the shortcomings of private companies, legislation and citizens' expectations) have led to a series of reactions by national, regional and local governments as well as public and private operators. These responses reflect the perceived need for a stronger political rationale for water sector policy to balance the excessive dominance of economic arguments. This has had implications for both public and private providers. Surprisingly, private companies have not only complied with new laws, but also voluntarily adapted their actions. In this case we see convergence across all three countries although there are differences in the detail of the responses.

A key question in the context of modernisation is that of regulation. Rather than becoming deregulated, the water sector has experienced substantive *re*-regulation (Menard 2009). In recent years supervisory institutions, such as the Federal Cartel Authority in Germany, have become influential, which is related to their control of water prices. In

the water sector, *tariffs* and *prices* constitute two different billing systems. Meanwhile, public utilities having public law status have a choice between the two systems, public utilities of private law status have to rely on *prices*. In such cases, the Cartel Authority compares costs with other providers; many municipalities are wary of this because the comparison procedure does not take account of local factors (AöW 2011). The national price regulator plays an important role in municipal control in Switzerland, as it assesses not only prices but also tariffs. The national price regulator can put pressure on operators to lower their prices or tariffs. In France a national body, the *Office national de l'eau et des milieux aquatiques*, collects and publishes data on private and public operators as comparisons between operators. Furthermore, public and private modes of operation are deemed essential to preserve operation reversibility. That means it must be possible to change back to the former mode of operation (Conseil d'Etat 2010).

In France regulations are much stricter than in the other two countries. Before the 1990s, French local authorities enjoyed considerable freedom of choice with respect to the delegation of water services. The legislature set up procedural rules governing the choice of a private company under Acts No. 93–122 of 29 January 1993 and No. 95–101 of 2 February 1995. As a consequence, unsuccessful competitors now have the possibility of challenging a lost contract before an administrative judge in an emergency hearing. Furthermore, the maximum contract duration has been set at 20 years (Conseil d'Etat 2010) and it has been decided that this rule should apply retroactively to contracts signed before the 1993 and 1995 Acts (Conseil d'Etat 2010: 72).

An notable reaction to modernisation in France is that the attitudes of private companies and municipalities have changed. Some French authors, such as Barraqué (2012), argue that remunicipalisation has increased competition, with the consequence that private companies readily lower prices. Municipalities now endeavour to intensively (re-)negotiate their contracts, whereas in the past they freely signed contracts drafted by the companies. In any case, municipalities can outsource the delivery of a service, but they remain responsible for ensuring that the service is, in practice, delivered to all those entitled to receive it, at an appropriate quality standard (Mogno 2010; Raséra 2010; Eckert 2014). In the last months, the concern of organising inter-municipal (as opposed to municipal) water services has prevailed, be they publicly or privately run (Acts No. 2014–58 of 27 January 2014 and No. 2015–991 of 7 August 2015).

In Germany public providers try to be more competitive. Instead of going down the French path of market competition the German government has opted to use benchmarking and similar performance management strategies to improve standards and mimic the effects of competition. Public providers are invited to compare and analyse their performance (costs, user satisfaction, quality, etc.) among themselves. More and more providers are involved in such projects and the German water industry regularly publishes reports on comparative performance (BDEW et al. 2011). In Switzerland the largest water operators engage in similar national and international benchmarking although there is no national policy or strategy on this.

17.4 Conclusion

Our analysis of the period from the very early years of the provision of water as a public service to the present day has shed light onto the ways in which institutional reforms in Germany, France and Switzerland converge and diverge. During the first phase (up until the 1970s) the picture is largely one of convergence, and a strong political imperative to adopt policies perceived to be in the public interest. Even in France, where private bodies have been involved in water provision since early on, the central government intervened to ensure that rural areas were provided with water. We also found convergence in terms of the fiscal pressures leading to privatisation and modernisation. In France outsourcing of service delivery to private companies is common; yet this is rare in Germany and very rarely occurs in Switzerland. Germany has taken a rather conservative approach to NPM reforms, although it has adopted NPM to a greater extent than Switzerland. There also appears to be more impetus towards both corporatisation and material privatisation in Germany than in Switzerland. In Switzerland the civil service reforms were strongly influenced by NPM; however, they have had rather limited effect in the water sector, due to the political preference for a high level of municipal control (Pfammater et al. 2007). France experienced the most significant wave of remunicipalisation, facilitated by the outsourcing model prevalent there. In Germany there has been limited remunicipalisation in the water sector, whilst in Switzerland there has been almost privatisation outsourcing and no privatisation in the first place and therefore no scope for *re*municipalisation. The only form of private involvement which is common in the water sector in Switzerland is the use of short-term service contracts for a specific task (such as implementing new technology). Because civil service

traditions vary from sector to sector and across the three countries, our observations only apply to the water sector.

Overall, we find historical path dependency across the three countries. Early models of water provision in all three countries dictated the context and terms of later reforms. France has historically outsourced operating tasks to private players although assets are in public ownership, and we concluded that this model remains dominant despite some cases of remunicipalisation since the start of the twenty-first century. Germany has experienced modest NPM and market liberalisation reforms and there is greater public scepticism about privatisation than in France. It was in Switzerland that we found municipal control to be strongest and public criticism of privatisation most marked; this is a pattern which has remained robust since the end of the nineteenth century despite some corporatisation, which hints at the emergence of a hybrid rationale. Our analysis has shed light on the degree of convergence in water provision reforms across the three European countries, on how the modes of water provision are linked to the rationales used to justify them and on factors such as the perceived shortcomings of private operators, legal rules favouring one model over the other and citizens' expectations of and influence on water service providers.

Note

1. This only applies to the bigger providers in Germany; the small ones and the entire sanitation sector are considered wholly public.

References

AöW. (2011). *Öffentlich-rechtliche Entgelte für Trinkwasser—Schlüssel für mehr Transparenz und Bürgernähe*. AöW-Positionspapier. Berlin: Allianz der öffentlichen Wasserwirtschaft.

Barraqué, B. (2010). Le financement des services publics d'eau et d'assainissement. In G. Marcou (Ed.), *Les enjeux de la gestion locale de l'eau, Droit et gestion des collectivités territoriales* (pp. 69–85). Paris: GRALE, Le Moniteur.

Barraqué, B. (2012). Return of drinking water supply in Paris to public control. *Water Policy, 14*, 903–914.

Bauby, P. (2009). *The French system of water services*. Liège: CIRIEC.

BDEW, ATT, DBVW, DVGW, DWA, VKU. (2005). *Profile of the German water*. Bonn: Wirtschafts Verlag.

BDEW, ATT, DBVW, DVGW, DWA, VKU. (2011). *Profile of the German water*. Bonn: Wirtschaft Verlag.

Boiteau, C. (2007). *Les conventions de délégation de service public: transparence et service public local*. Paris/Dexia: Le Moniteur.

Bordonneau, M.-A., Canneva, G., Orange, G., & Gambier, D. (2010). Le changement de mode de gestion des services d'eau. In G. Marcou (Ed.), *Les enjeux de la gestion locale de l'eau, Droit et gestion des collectivités territoriales* (pp. 131–147). Paris: GRALE, Le Moniteur.

Citroni, G. (2010). Neither state nor market: Municipalities, corporations and municipal corporatization in water services: Germany, France and Italy compared. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 191–216). Cheltenham: Edward Elgar.

Combeau, P. (2014). Le retour de la jurisprudence Département des Landes? *L'actualité juridique, droit administratif, 32*, 1830–1835.

Conseil d'Etat. (2010). *L'eau et son droit. Annual Report*, Paris, La documentation française, France. http://www.ladocumentationfrancaise.fr/rapports-publics/104000255/.

Considine, M., & Lewis, J. (2003). Bureaucracy, network, or enterprise? Comparing models of governance in Australia, Britain, the Netherlands, and New Zealand. *Public Administration Review, 63*(2), 131–140.

Cuillandre, F. (2013). Gestion de l'eau potable, une société publique locale. *Contrats publics,* (Le Moniteur), *131*, 50–51.

Devès, C. (2015). *Sociétés publiques locales et sociétés publiques locales d'aménagement, Jurisclasseur administratif, fascicule 163*. Paris: Lexis Nexis. http://boutique.lexisnexis.fr/5599-jurisclasseur-administratif/.

Eckert, G. (2014, October 13). La SEMOP, instrument du renouveau de l'action publique locale? *L'actualité juridique, droit administratif*, pp. 1941–1948.

FP2E. (2007). *Collectivités et services publics de l'eau: la contribution des entreprises au dialogue local*. Paris: FP2E.

France Eau Publique. (2014, Novembre 13). Conference *Gestion publique de l'eau, gestion d'avenir*. Poitiers, organised by France Eau Publique, interview of one member of the organisation.

Hecht, C. (2015). German municipalities take back control of water. In S. Kishimoto, E. Lobina, & O. Petitjan (Eds.), *Our public water future. The global experience with remunicipalisation* (pp. 50–56). Amsterdam: Transnational Institute.

Herlyn, A., & Maurer, M. (2007). Status quo der Schweizer Abwasserentsorgung: Kosten, Zustand und Investitionsbedarf. *Gas Wasser Abwasser, 3*, 171–176.

Herzberg, C. (2015). *Legitimation durch Beteiligung*. Hamburg: VSA.

Kuhlmann, S., & Wollmann, H. (2014). *Introduction to comparative public administration. Administrative systems and reforms in Europe*. Cheltenham: Edward Elgar.

Libbe, J., Rottmann, O., & Albrecht, R. (2011). *Rekommunalisierung—Eine Bestandsaufnahme*. Berlin: Deutsches Institut für Urbanistik.

Lieberherr, E. (2012). *Transformation of water governance and legitimacy: Comparing Swiss, German and English water supply and sanitation service providers*. Ph.D. thesis, Swiss Federal Institute of Technology, Lausanne.

Lieberherr, E. (2015). Trade-offs and synergies: Horizontalization and legitimacy in the Swiss wastewater sector. *Public Management Review* (the following needs to be updated: 2016 Volume 18, Issue 3.

Lieberherr, E., Klinke, A., & Finger, M. (2012). Towards legitimate water governance? The partial privatization of the Berlin waterworks. *Public Management Review, 14*, 923–946.

Lobina, E., Kishimoto, S., & Petitjean, O. (2015). *Here to stay: Water remunicipalisation as a global trend*. London: Public Services International Research Unit [PSIRU], Transnational Institute [TNI] and Multinational Observatory.

Lorrain, D. (1995). France, Le changement silencieux. In D. Lorrain & G. Stoker (Eds.), *La privatisation des services urbains en Europe* (pp. 105–129). Paris: La Découverte.

Marcou, G. (2010). L'eau, enjeu global et gestion locale. In G. Marcou (Ed.), *Les enjeux de la gestion locale de l'eau, Droit et gestion des collectivités territoriales* (pp. 33–42). Paris: GRALE, Le Moniteur.

Menard, C. (2009). From technical integrity to institutional coherence: Regulatory challenges in the water sector. In C. Menard & M. Ghertman (Eds.), *Regulation, deregulation, reregulation: Institutional perspectives* (pp. 83–108). Northampton: Edward Elgar Publishing.

Mogno, Y. (2010). Les contraintes techniques dans la gestion globale de l'eau. In G. Marcou (Ed.), *Les enjeux de la gestion locale de l'eau Droit et gestion des collectivités territoriales* (pp. 61–68). Paris: GRALE, Le Moniteur.

Mühlenkamp, H. (2012). Zur relativen (In-)Effizienz öffentlicher (und privater) Unternehmen- Unternehmensziele, Effizienzmaßstäbe und empirische Befunde. In C. Schaefer & L. Theuvsen (Eds.), *Renaissance öffentlichen Wirtschaftens* (pp. 21–47). Baden-Baden: Nomos.

Nicinski, S. (2010, September 27). La loi du 28 mai 2010 pour le développement des sociétés publiques locales. *L'actualité juridique, droit administratif*, pp. 1759–1765.

Ochman, D. (2005). *Rechtsformwahrende Privatisierung von öffentlichen Anstalten: Dargestellt am Holdingmodell zur Teilprivatisierung der Berliner Wasserbetriebe*. Ph.D. thesis, Universität Bochum, Bochum.

Pauliat, H. (2014, March 10). La remunicipalisation: obligation ou faculté? *Jurisclasseur périodique/La semaine juridique-Edition administrations et collectivités territoriales*, pp. 27–31.

Pfammater, R., Zysset, A., Abegg, C., Hugi, C., Dübendorfer, C., Bolliger, R., Bitterli, C., Ribi, F., & Tiefenbacher, A. (2007). *Wasserwirtschaft Schweiz 2025: Herausforderungen und Handlungsmöglichkeiten, Ein Diskussionsbeitrag zur Zukunftsgestaltung*. Zollikon: Bundesamt für Umwelt und BaslerFonds.

Pigeon, M., McDonald, D. A., Hoedeman, O., & Kishimoto, S. (2012). *Remunicipalisation: Putting water back into public hands*. Amsterdam: Transnational Institute.

Pontier, J.-M. (2011). Les problèmes de l'eau en Europe. In J.-M. Pontier (Ed.), *Annuaire européen d'administration publique 2010* (pp. 15–24). d'Aix-Marseille: Presses universitaires.

Raséra, M. (2010). La responsabilité des autorités locales dans la gestion des services publics d'eau et d'assainissement. In G. Marcou (Ed.), *Les enjeux de la gestion locale de l'eau Droit et gestion des collectivités territoriales* (pp. 115–129). Paris: GRALE, Le Moniteur.

Wissen, M., & Naumann, M. (2008). Raumdimensionen des Wandels technischer Infrastruktursysteme: Eine Einleitung. In T. Moss, M. Naumann, & M. Wissen (Eds.), *Infrastrukturnetze und Raumentwicklung. Zwischen Universalisierung und Differenzierung* (pp. 17–34). München: Oekom Verlag.

CHAPTER 18

Hospital Privatisation in Germany and France: Marketisation Without Deregulation?

Tanja Klenk and Renate Reiter

18.1 Introduction

Provision of inpatient medical care to the general population is a core public service in a modern welfare state. The social and political importance of the health sector meant that national governments throughout the OECD did not leave the supply of hospital services to private bodies and the market for long (Schölkopf 2010). Yet, since the early 1990s the highly regulated hospital sectors of various western European nations came under strong pressure to reform. The Europe-wide movement to open up health services in general and the hospital sector in particular has become an issue for scholarly debate in comparative research on social and health policy. The influence of 'neoliberal' ideas to reduce state regulatory intervention in the public hospital service to a minimum and to base public governance of hospitals fundamentally on the market mechanism is widely debated (Tiemann et al. 2012; Mou 2013; Clemens et al. 2014).

T. Klenk (✉)
Universität Kassel, Potsdam, Germany

R. Reiter
FernUniversität in HagenDepartment of Political Science (Faculty KSW), Universitätsstraße 33 / C 58084 Hagen, Hagen, Germany

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_18

In this chapter we provide insights into the restructuring of the hospital sector and its governance in two major European countries, Germany and France. These two countries belong to the so-called 'Bismarckian regimes' of welfare state governance and follow similar health policies. They also have well-established mixes of public and private for-profit and not-for-profit providers of hospital services (welfare mix). However, they do differ with respect to the public administration regime, with a tradition of decentralised governance of public service delivery in Germany which contrasts with the tradition of strongly centralised governance in France. We compared developments in these two countries in order to explore how factors related to the institutional landscapes have affected privatisation-related changes in hospital policy. We suggest that particular approaches to integrating private for-profit providers into the hospital services framework are linked to specific strategies, policies and attitudes on the part of the public authorities charged with planning and purchasing hospital services. The choices of strategy and policy instruments are embedded in the national health policy structures and thus influenced by the institutional configuration of the national health system.

In the next section, we first discuss the concept of 'privatisation' and then show how, in the hospital sector, different forms of privatisation are related to different mixes of public policy instruments and, hence, models of public governance. On this basis, we explore developments in German and French hospital policy over time. In the fourth section, we compare the reform trajectories and enquire whether the two countries develop in a convergent or divergent way. We then discuss our findings. Finally, we present a number of hypotheses relating the institutional arrangements of national health systems to choice of instruments for the governance of hospital services.

18.2 Defining Privatisation

In this chapter 'privatisation' is defined as the growing involvement of non-state or non-public 'third parties' (Salamon 2002) in the provision of hospital services. There is a broad range of different techniques for involving private bodies in health service delivery, ranging from limited cooperation to the complete sale of public assets to private investors (Grossi and Reichard *in this volume*). There are three main variants of privatisation: material privatisation, where ownership passes fully or partially into private hands; functional privatisation, where core or non-core functions are out-

sourced to private bodies on a temporary basis and corporatisation, that is, changing the legal status of an entity, so that it is subject to private law rather than public law, without changing the ownership structure (Maurer 2009).

The decision to privatise a public function in full or in part entails the abandonment of hierarchic or active, monopolistic regulation and/or direct, in-house production of the equivalent public function (*active state*) which is reported to be typical of the modern welfare state. Governments which decide to privatise a function must switch instead to another mode of public governance (Benz 2007) of service provision. Scholars of public governance and public policy instruments have distinguished at least three basic models of public governance in addition to the active state model: (1) the regulation and production of public tasks within public-private networks which are meant to encourage or enable private involvement (Lascoumes and Le Galès 2004) (*partnership activating state*); (2) the negotiated coordination of primarily private actors under the 'shadow of hierarchy', that is, on the grounds of a potential intervention that may occur directly at any time in order to secure the production of public services or the fulfilment of functions (*guaranteeing state*); and (3) the competition-based coordination of private actors 'within the market' which is structured by the state's basic framework of regulation (*market regulatory state*) (Salamon 2002). We use this classification scheme to analyse developments in hospital governance and in the landscape of privatised hospital services, focusing on developments since the 1970s. We apply the scheme to the four dimensions of the regulation of public hospital policy (Chevalier and Lévitan 2008), namely hospital supply and hospital ownership structures; financing of medical treatment and care services; investment financing; and territorial allocation of hospital services. We suggest that in each of these dimensions, a given set of policy instruments is linked to a specific type of state governance (Table 18.1).

When analysing hospital privatisation, it is important to keep in mind that this field differs in crucial aspects from other fields of public administration. In other fields of public administration, for example, electricity, postal administration and telecommunication, the state has developed over recent decades from being a monopoly producer of public services to being the guarantor, enabler, coordinator and regulator of a complex structure of institutions involved in public service provision (Grossi and Reichard 2008). In Germany and France, there has been a plural institutional landscape in the hospital sector since the evolution of the modern

Table 18.1 Relationship between form of state governance and hospital policies

	Active state	*Partnership activating state*	*Guaranteeing state*	*Market regulatory state*
	←			→
Hospital supply and hospital ownership structures	Self-production	Welfare mix	Contracting out and public-private partnerships (PPPs)	Material privatisation
Medical treatment and care service financing	Full financing (per diem charges)	Budgets (combined with DRG[a]-financing)	DRGs (+ price-competition on elective services)	Full price-competition
Investment financing	Full public financing	Flat-rated public financing	Flat-rated public combined with market-based financing	Fully market-based private financing
Territorial allocation	Detailed planning	Framework planning	Framework planning performance-based (shadow of hierarchy)	Private allocation decisions

Source: Authors

[a]*DRG* Diagnosis Related Groups

hospital in the mid-nineteenth century. Inpatient care, like social services in general, has been based on a *welfare mix*, namely a combination of the state, the markets and voluntary organisations. However, there have been significant changes in the mix over time. Distinguishing between the 'old' and the 'new' welfare mixes is not easy as it is more a matter of degree than of kind, as we show below.

18.3 Development Over Time

Germany

Historical Emergence of Public and Social Services Provision

The predecessors of the modern hospital were charitable guesthouses, almshouses and mental asylums run by churches, fraternities or big cities. The evolution of the modern hospital from these charitable organisations

in the middle of the nineteenth century was influenced by a number of social and cultural developments. First of all, medical progress helped to increase the functional and organisational differentiation between poor relief and medical and nursing care. Steady population growth, urbanisation and industrialisation all increased public demand for new types of medical care; at the same time the introduction of statutory health insurance enabled working-class patients to access the new services. As a result, the number of hospitals increased. In 1877 the German empire had, on average, 25 hospital beds per 10,000 inhabitants; by 1910 this figure had increased to 64 (Goerke 1980).

Despite the introduction of statutory health insurance at the end of the nineteenth century, hospitals were still subsidised undertakings and patients were not expected to pay the full cost of their treatment and care (Wiemeyer 1984). Religious hospitals were dependent on donations, public hospitals on subsidies from the city treasurer's office. In this early phase in the evolution of the modern hospital, we already find some hospitals being run for profit, although the number is negligible at this point. Upper-class patients, who had the resources to pay for inpatient care, had a strong preference for home care as inpatient hospital care still carried a high risk of serious infection. Only when medical care became much more technology-based and when new modes of treatment were introduced did hospitals become attractive to wealthy patients. When the growing number of wealthy patients made hospitals profitable, physicians began to found and run hospitals on a for-profit-basis. The years between the turn of the century and the beginning of the Second World War were the boom years for private hospitals in Germany. Regular stays in private hospitals became an indispensable part of upper and middle class lifestyles; however, these private hospitals were more like health spas than hospitals as we understand the term today and provision of general healthcare was only a minor activity for them.

Public Service Provision in the Developing and Mature Welfare State

In Germany it was not until the 1970s that hospital care became a national health policy issue. The years immediately after the Second World War were characterised by conflicts between the owners of general inpatient care facilities (local communities and charitable organisation) and health insurers. Wartime destruction had made comprehensive investment in hospital infrastructure necessary; however, there was no formal mechanism for hospital owners to recoup these costs from health insurance funds (Simon 2000) and as a result many hospital owners failed to make the necessary

investment. Finally, in the early 1970s, an expert commission assessed the standard of inpatient care in Germany as being far below international standards, both with regard to the number of beds per head of population and the quality of care (Wiemeyer 1984). In reaction to this devastating report the German federal government, acting in concert with the health insurance funds and *Bundesländer* governments introduced the Federal law on hospitals (Krankenhausgesetz, KHG) which came into force in 1972. The KHG introduced the 'dual-financing principle', according to which the states were responsible for funding hospital infrastructure and the central government was responsible for funding patient treatment. With regard to the latter, a full cost-coverage principle was established. In short, this law provided the legal basis for the entry of the state into the hospital infrastructure policy, which had previously been a regulation-free zone (Leisner 1983).

The KHG aimed at a rather ambitious extension and modernisation of the German hospital sector. However, as early as 1975, in the context of the first major post-war economic crisis and recession, the federal government asserted that the objectives of the KHG were no longer 'justifiable from a macroeconomic point of view' (Deutscher Bundestag 1975: 9) and German hospital policy entered a phase of 'traditional cost containment' (Gerlinger et al. 2009: 144).

A 'Neoliberal' Policy Shift?

The liberal shift in policy which began in Anglo-Saxon countries in the 1980s did not emerge in Germany until a decade later. Beginning in the early 1990s the German hospital sector underwent remarkable change as a result of an unprecedented wave of privatisation, which particularly affected local hospitals and also contributed to a decline in the number of publicly owned houses. Interestingly, increasing competition and privatisation were not official aims of the reforms. The rapidly increasing proportion of private, for-profit hospitals was instead a by-product of other developments. The first of these was the stepwise introduction of a prospective funding system based on DRGs; this forced hospital managers to manage and rationalise. Second, local communities suffered a severe financial crisis, which also pushed privatisation processes forward. Although the German hospital sector experienced a clear move towards for-profit service provision, deregulation, the second feature associated with neoliberalism, did not occur. On the contrary, regulation (e.g., with regard to quality management) has gradually increased.

Development Since the 1990s

In 1991 only about 15% of all hospitals were private, for-profit hospitals; since then this proportion has more than doubled: in 2013 34.8% of all hospitals operated on a private, for-profit basis and today there are more private, for-profit hospitals than public hospitals (29.9%) (Statistisches Bundesamt 2013). In terms of hospital beds, however, public hospitals are still the largest player: 48.1% of all hospital beds are provided by public owners, compared with only 18% in private, for-profit hospitals.

After material privatisation, corporatisation (running public hospitals as private legal entities) is the most often used reform strategy. In 2013 59.2% of all public hospitals were managed as private legal entities.

Contracting out is also a common reform strategy. In 2010 27.8% of all public hospitals reported that they had contracted out 'non-core' functions such as cooking, cleaning and laundry to private, for-profit companies or that they had founded their own companies to run these services on a for-profit basis (DKI, Deutsches Krankenhausinstitut 2010). Interestingly, contracting out has been used less often for construction and renovation than in the hospital sector in other parts of the public sector. Although public-private partnerships (PPPs) have become the preferred approach to building schools and sports facilities in a lot of under-funded cities and communities, they are less common in the healthcare sector. The complexity of hospital construction, the amount of investment necessary, and the level of political regulation may explain the reservations private investors have about infrastructure investment in the healthcare sector.[1]

France

Historical Emergence of Public and Social Services Provision

The tradition of French hospitals goes back to medieval times. Their predecessors were the pilgrims' homes and orphanages which were generally managed by the churches and fraternities (Joerger 1977). From the seventeenth century onwards, municipalities and the monarchy gradually became involved in the provision of hospitals. Medical progress, the increasing population and industrialisation and urbanisation led, as in Germany, to the separation of social and medical functions. In 1898 more than half of the 1,684 hospitals were medical care facilities and the number of hospital beds had doubled, from about 100,000 a hundred years previously to about 200,000 at this time (Bouinot and Péricard 2010).

At the end of the eighteenth century, hospitals were first nationalised and then municipalised (Bouinot and Péricard 2010). In the aftermath of the French Revolution, the central executive wanted to create a hospital system based on the principle of civic assistance rather than charity. Under a law of the Directorate of 1796 the existing hospitals were given the legal status of communal public interest bodies and on this basis municipalities were granted the right to manage the local hospital and were obliged to finance its operations and make the necessary capital investments (Bouinot and Péricard 2010). However, the high and ever-rising costs meant that hospitals were taken back under central state control during the nineteenth century (Molinie 2005).

Since the establishment of an embryonic national social insurance system in 1928, social insurance has gradually replaced municipal funds as the main source of finance for hospitals (Molinie 2005), the other sources being donations and subventions from the state. During the nineteenth century, private hospitals also experienced change. By this point it was becoming common for wealthy donors (primarily industrialists) to support the foundation of not-for-profit hospitals to provide medical treatment to their workers. The first private, for-profit establishments were founded by individual doctors; they specialised in specific areas (surgery, obstetrics) and offered inpatient services for wealthy patients. In 1851 the central government passed the first 'hospital charter' which made it the hospitals' mission to give public assistance to any sick person in need of medical treatment (Molinie 2005). In this context private clinics were formally accredited as inpatient care facilities. Shortly before the beginning of the Second World War the private hospital sector thus accounted for about one third of the approximately 250,000 hospital beds in France (Bouinot and Péricard 2010).

Public Service Provision in the Developing and Mature Welfare State

In the years after the Second World War hospital care became a national health policy issue. Hospital care was generally funded through the statutory social insurance system, which was fully established in 1945. With the creation the Fifth Republic in 1958, however, the central state initiated several investment programmes and began to control hospital investment financing. As a result, the French hospital sector expanded strongly in the following years: approximately 100,000 hospital beds were created across the public and private sectors (Bouinot and Péricard 2010).

In 1970 the central government recognised that there was an overcapacity in terms of beds. The hospital reform law of December 1970 established a 'public hospital service' and, for the first time, defined what medical treatments and care services should be permanently available to the general public (Couty 2009). All public hospitals and selected private, not-for-profit clinics participated in the public hospital service. The government also introduced a '*carte sanitaire*', the first instrument of centralised hospital planning (Couty 2009).

Private, for-profit hospitals contributed considerably to provision of inpatient services in certain fields of medical treatment, such as surgery or obstetrics, even though they were generally not affiliated to the 'public hospital service'.

On the basis of the 1970 law, classic austerity instruments (what were known in Germany as 'cost containment' policies) dominated French hospital policy until the 1990s. This meant a radical curtailment of national subventions, and public hospitals suffered from non-investment and obsolescence as a result.

A 'Neoliberal' Policy Shift?

During the 1990s the relationship of friendly coexistence which had prevailed between public and private hospitals after 1945 gradually came to an end. By this time the public hospital sector was under strong pressure to modernise; public hospitals and (in a wider sense) hospital infrastructure belonging to the public hospital service was visibly outdated when compared with that of private clinics (Bouinot and Péricard 2010; Mosebach 2009).

There was no 'neoliberal' shift in policy in the strongest sense; in other words, there was no massive deregulation of the hospital sector and full privatisation of public hospitals did not occur. However, from the late 1990s onwards central government enacted a number of 'liberally inspired' (Couty 2010: 39), privatisation-oriented policy reforms in order to make public hospitals more competitive with the private sector and to alter the state's role in the provision of public hospital services. First, the Social Security Financing Law of 2004 abolished the old system of lump-sum financing of medical treatment and care, replacing it with a new system of diagnosis-related financing (*Tarification à l'activité*, T2A) for private clinics and public hospitals (Couty 2010). Second, the central government hospital reform decrees of 2003 and 2004 formed part of the *Plan hôpital 2007*, which laid the foundation for

PPPs. The objective of these decrees was to promote private investment in public hospitals and contractual cooperation between public hospitals and private clinics with respect to provision of services (Couty 2010). Third, via the hospital reform decree of 2005 the central government introduced a new system of hospital governance to replace the bureaucratic administration of public hospitals (Couty 2010). Fourth, the central government's 2009 hospital reform law (*Loi Hôpital, patients, santé et térritoires*, HPST) abolished the public hospital service with the consequence that public hospitals and private clinics competed directly to provide inpatient services. At the time of writing, however, a new law "on the modernisation of our health system" is making its way through the French parliament; this is intended to restore the public hospital service (new article L.6112-1 Public Health Code) within the framework of a more comprehensive national public health organisation (Assemblée nationale 2015, Art. 26).

Development Since the 1990s

The major changes in hospital ownership since the 1990s have occurred in the private sector, rather than the public sector, as a result of the formal conservation of public hospitals in France. Whilst there was only a minor decrease in the number of public hospitals between 1990 and 2010 (from 1,062 to 956 establishments; an 11% decrease) as a result of mergers ordered by the state's deconcentrated controlling authorities, the Regional Health Agencies, the number of private clinics fell from 2,460 to 1,754 (a decline of 40.2%) over the same period, often as a result of small clinics being taken over by big, international health groups (Drees 2012). Measured in terms of number of beds the reduction was not as marked, but still important. Between 2000, when data began to be collected, and 2010, the number of private clinic beds fell from 166,564 (out of a total of 484,346) to 103,475 (out of a total of 364,117) (Drees 2012). PPPs, the new contractual instrument for joint investment in hospital infrastructure, were barely used. Over the course of the five-year investment programme *Plan hôpital 2007* (2003-2007), a total of 1,868 construction and modernisation projects were carried out at a cost of 16.76 billion euros (ANAP 2009) and of these only 18, with a total cost of 613 million euros, were based on a PPP (ANAP 2009). Nevertheless, contracting out, particularly of non-core functions such as cleaning or cooking, has become a common hospital reform strategy (Péricard and Ballet 2010) since the reform of hospital management.

18.4 Cross-Country Comparison: Convergence or Divergence?

From a comparative perspective the developments described point to meaningful change in the provision of hospital services in both Germany and France. In both countries the role of private bodies has been strengthened considerably over the past two decades; however, the results of the privatisation reforms have been quite different in the two countries.

Indeed, Germany and France seem to converge only at the level of the central themes and ideas guiding hospital policy reforms ('marketisation'). Although in both countries the aim was to integrate private, for-profit players more fully into the traditional welfare mix there were significant differences between the approaches taken. In Germany there was a clear shift towards full functional privatisation of hospitals, whereas in France full privatisation of public hospitals remains forbidden by law (Art. L6148-1 Code de la Santé Publique [CSP]) (Chevalier and Lévitan 2008). Instead, France has seen a rise in competition between public and private hospitals (Bartoli et al. 2012). Both Germany and France have introduced systems of diagnosis-related financing for medical care and treatment. In France, however, public hospitals have kept some of their privileges given their traditionally strong functions in terms of the public hospital service (Bartoli et al. 2012). There are also differences with respect to how capital investment in hospitals is financed. Various German *Bundesländer* have linked state subventions for the raising of bank loans to the hospitals' performance. In France no such tight coupling between public subsidies and hospital performance is envisaged and the state remains an important source of finance for hospital investment. Overall, the shift towards a market regulatory state in the hospital sector has been much stronger in Germany, although neither country has pursued deregulation as part of hospital policy reforms.

18.5 Explaining the Developments

How can we explain these developments? In the literature on recent changes in hospital governance, prominence is given to theories of economic and functional pressure (Tieman et al. 2012; Clemens et al. 2014). The continuing shift to expensive, high-technology medicine not only has profound implications for surgical procedures, it also increases the overall cost of healthcare dramatically. Demographic change is also considered

an important catalyst for reforming hospital governance (Mou 2013). The aging population means that there is rising demand for inpatient care which increases healthcare costs.

The change in the theme of national hospital policy (from extension to cost control) coincided with, and reinforced, changing ideas about hospital governance. The rise of new public management philosophy also affected the hospital sector. New financing systems based on prospective funding (e.g., DRGs) and new models of service delivery which use corporatisation, contracting out or privatisation to increase efficiency which originated in the Anglo-Saxon world have diffused across the world.

However, the reform trajectories observed in Germany and France cannot be explained solely in terms of problem-solving dynamics or the international diffusion of policy tools. Even though the two countries chose similar instruments and organisational models to reform their hospital sectors, they have taken a very different approach to implementing their reforms. These national variations can be attributed to differences in institutional context and the distribution of power. Reforms with a common international dimension are shaped by national institutions, social and cultural systems (Marmor et al. 2005). The centralist tradition of the French healthcare system resulted in a very hierarchical approach to implementation of privatisation-oriented reforms (Couty 2010), whereas in Germany the traditional decentralised, multi-body structure of hospital governance has proven to be an obstacle to implementing solutions consistently across the nation. To summarise, processes of marketisation are contingent and are carried out in a path-dependent manner.

18.6 Conclusion

We propose to do further research on the following three hypotheses, which might explain the variation in the market-oriented modification of the role of the state in Germany and France. Our first hypothesis is that marketisation constitutes a common international basis for public policy reform which nevertheless plays out very differently from state to state, even in cases where the organisation of welfare capitalism appears similar. Second, we hypothesise that institutional factors are an important contributor to national variation in the implementation of marketisation; they constitute a national filter imposed on the international trend towards marketisation of public services. Our third hypothesis is that the effects of marketisation on the public service role of the welfare state depend on the traditional relationship between state and societal actors. In traditionally

hierarchical states, the state tends to play a bigger role in the provision of public services than in traditionally cooperative states.

Note

1. At the time of writing, 25 projects were listed in the PPP database of the Federal Ministry for Economics. Only projects following a lifecycle approach (planning, building, funding, operating) are documented in the database. PPPs where only one task, for example, planning or building, is contracted out are not included in this database (www.ppp-projektdatenbank.de/index.php?id=9; accessed 19 July 2015).

References

ANAP. (2009). *La réalisation du plan d'investissement national 'Hôpital 2007'*. Paris: ANAP.

Assemblée nationale. (2015). *Projet de loi de modernisation de notre system de santé, Session ordinaire de 2014–2015*. Paris: Assemblée nationale. 14 April.

Bartoli, F., Destais, N., & Yeni, I. (2012). *Évaluation de la place et du rôle des cliniques privées dans l'offre des soins. Rapport de l'Inspection générale des affaires sociales*. Paris: IGAS.

Benz, A. (2007). Nationalstaat. In A. Benz, S. Lütz, U. Schimank, & G. Simonis (Eds.), *Handbuch Governance. Theoretische Grundlagen und empirische Anwendungsfelder* (pp. 339–352). Wiesbaden: VS Verlag für Sozialwissenschaften.

Bouinot, C., & Péricard, B. (2010). *Les hôpitaux et l'investissement*. Paris: L.G.D.J.

Chevalier, F., & Lévitan, J. (2008). *Les hôpitaux dans les 27 pays de l'Union europeìenne*. Paris: Dexia.

Clemens, T., Michelsen, K., Commers, M., Garel, P., Dowdeswell, B., & Brand, H. (2014). European hospital reforms in times of crisis: Aligning cost containment needs with plans with plans for structural redesign? *Health Policy, 117*(1), 6–14.

Couty, É. (2009). Les restructurations dans le secteur hospitalier. In P.-L. Bras, G. Pouvourville, & D. Tabuteau (Eds.), *Traité d'économie et de gestion de la santé* (pp. 247–254). Paris: SciencesPo Les Presses.

Couty, É. (2010). Hôpital public: le grand virage. *Tribunes de la Santé, 28*, 39–48.

Deutscher Bundestag. (1975). *Bericht der Bundesregierung über die Auswirkungen des Gesetzes zur wirtschaftlichen Sicherung der Krankenhäuser und zur Regelung der Krankenhauspflegesätze*. BT-Drucksache 7/4530, 30 December.

Deutsches Krankenhausinstitut (DKI). (2010). *Das erfolgreiche kommunale Krankenhaus, Forschungsgutachten des Deutschen Krankenhausinstituts im Auftrag des Interessenverbandes kommunaler Krankenhäuser e.V.* Düsseldorf: IVKK.

DREES. (2012). *Le panorama des établissements de santé. Édition 2012.* Paris: DREES.

Gerlinger, T., Mosebach, K., & Schmucker, R. (2009). Die Gesundheitspolitik der Großen Koalition. In K. Eicker-Wolf, S. Körzell, T. Niechoj, & A. Truger (Eds.), *In gemeinsamer Verantwortung. Die Sozial- und Wirtschaftspolitik der Großen Koalition 2005–2009* (pp. 143–180). Marburg: Metropolis.

Goerke, H. (1980). 260. Krankenhausbau und Milieuveränderung im Wandel der Geschichte. *Langenbecks Archiv für Chirurgie, 352*(1), 577–582.

Grossi, G., & Reichard, C. (2008). Municipal corporatization in Germany and Italy. *Public Management Review, 10*(5), 597–617.

Joerger, M. (1977). La structure hospitalière de la France sous l'Ancien Régime. *Annales. Économies, Sociétés, Civilisations, 32*(5), 1025–1051.

Lascoumes, P., & Le Galès, P. (2004). Conclusion. De l'Innovation instrumentale à la recomposition de l'État. In P. Lascoumes & P. Le Galès (Eds.), *Gouverner par les instruments* (pp. 357–369). Paris: SciencesPo Les Presses.

Leisner, W. (1983). Das kirchliche Krankenhaus im Staatskirchenrecht der Bundesrepublik Deutschland. In H. Marré & J. Stüting (Eds.), *Das Krankenhaus in kirchlicher Trägerschaft: Essener Gespräche zum Thema Staat und Kirche* (pp. 9–29). Münster: Aschendorff.

Marmor, T., Freeman, R., & Okma, K. (2005). Comparative perspectives and policy learning in the World of Health Care. *Journal of Comparative Policy Analysis: Research and Practice, 7*(4), 331–348.

Maurer, H. (2009). Die verfassungsrechtlichen Grenzen der Privatisierung in Deutschland. *Juridica International, 16*, 4–13.

Molinie, E. (2005, June). *L'hôpital public en France: Bilan et perspectives.* Study presented to the Conseil économique in Paris, on behalf of the Department of Social Affairs.

Mosebach, K. (2009). Zwischen Konvergenz und Divergenz: Privatisierungs- und Ökonomisierungsprozesse in europäischen Krankenhaussystemen. In N. Böhlke, T. Gerlinger, K. Mosebach, R. Schmucker, & T. Schulten (Eds.), *Privatisierung von Krankenhäusern. Erfahrungen und Perspektiven aus Sicht der Beschäftigten* (pp. 43–65). Hamburg: VSA.

Mou, H. (2013). The political economy of the public-private mix in health expenditure: An empirical review of thirteen OECD countries. *Health Policy, 113*(3), 270–283.

Péricard, B., & Ballet, L. (2010 janvier). L'économie de l'hôpital. *La Revue Française de Comptabilité, 428*, 40–45.

Salamon, L. M. (2002). The new governance and the tools of public action: An introduction. In L. M. Salamon (Ed.), *The tools of government: A guide to the new governance* (pp. 1–47). Oxford: Oxford University Press.

Schölkopf, M. (2010). *Das Gesundheitswesen im internationalen Vergleich. Gesundheitssystemvergleich und die europäische Gesundheitspolitik.* Berlin: Medizinische Verlagsgesellschaft.

Simon, M. (2000). *Krankenhauspolitik in der Bundesrepublik Deutschland: historische Entwicklung und Probleme der politischen Steuerung stationärer Krankenversorgung*. Wiesbaden: Westdeutscher Verlag.

Statistisches Bundesamt. (2013). *Fachserie 12, Reihe 6.1.1 Grunddaten der Krankenhäuser 2013*. Wiesbaden: Destatis.

Tiemann, O., Schreyögg, J., & Busse, R. (2012). Hospital ownership and efficiency: A review of studies with particular focus on Germany. *Health Policy, 104*(2), 163–171.

Wiemeyer, J. (1984). *Krankenhausfinanzierung und Krankenhausplanung in der Bundesrepublik Deutschland*. Berlin: Duncker&Humblot.

CHAPTER 19

Models of Local Public Service Delivery: Privatisation, Publicisation and the Renaissance of the Cooperative?

Hartmut Bauer and Friedrich Markmann

19.1 From Privatisation to Publicisation Via Remunicipalisation

For a long time, privatisation was seen by many as the key to successful modernisation of public services. As a result, many local authorities pursued systematic privatisation policies (see Kästner 2011). Almost all municipal responsibilities were affected by the drive for privatisation: utilities (water, electricity, gas, district heating, telecommunications and other grid services), waste management (sewage, waste removal, street cleaning) as well as public transport, medical facilities (hospitals, rescue services, etc.), social and cultural institutions (nursery schools, youth centres, senior citizens' centres, sports facilities, museums, theatres, etc.), social housing and, last but not least, public safety.

For the past several years, however, a fundamental reorientation has been evident. The effects of privatisation have fallen far short of expectations, and there is increasing awareness that the private sector does not necessarily operate better, more efficiently or more cost effectively than the public sector. Moreover, the crises that have occurred (and not just those in the financial sec-

H. Bauer (✉) • F. Markmann
Potsdam University, Potsdam, Germany

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_19

tor) have shaken confidence in the market and have prompted calls for a 'more powerful state' (Brüning 2009: 453). For some time now, there has been a change of thinking in town halls. There is currently an unexpected renaissance in local public service delivery, and remunicipalisation has become a central issue in contemporary debate about modernisation (Bauer 2012; Budäus and Hilgers 2013; Burgi 2012a; Guckelberger 2013; Leisner-Egensperger 2013; Libbe and Hanke 2011; Röber 2009; Schmidt 2014; Scholle 2010; Wollmann 2014; Bönker et al., *in this volume*). Remunicipalisation is generally considered to represent the opposite (the *actus contraries*) of privatisation (Schmidt 2014). Dramatic examples of bringing privatised functions back within the purview of the municipalities can be found in the water and sewage sectors (Hachfeld 2009; Kuhlmann and Wollmann 2014: 199 ff.; Water Remunicipalisation Tracker 2014). Moreover, remunicipalisation is conceivable in all of the other areas mentioned at the outset and, at least in some areas, has already occurred (Bauer 2012; Bauer et al. 2012; Schmidt 2014).

Meanwhile, however, the widespread preoccupation with returning to the public sector (see Candeias et al. 2009) demonstrates that the term 'remunicipalisation' does not fully and accurately capture the phenomenon. The prefix 're' implies that something is being reversed, restored to its original state or started afresh (Guckelberger 2013). The focus has thus been placed on the reversal of earlier privatisations and the restoration of previous conditions. This approach is, in many respects, too narrow. For one thing, the process of remunicipalisation does not necessarily entail a smooth reversal of earlier privatisation measures and the restoration of the *status quo ante*. Rather, 'remunicipalisation' creates space for new models of service delivery which give municipal authorities more control, leading to a deeper entrenchment within the public realm than was previously the case; the new system need not be identical to the earlier one. Second, giving local authorities responsibility for a particular function is not always a reversal of an earlier decision, that is, a *re*municipalisation. It should be recognised that, in some cases, it is the first time that local authorities have been given responsibility for, or have been empowered to, carry out certain functions, for example, the provision of electricity, gas and water, which, until that point had always been, in that municipality, in the hands of the private sector (Brüning 2009). This process and outcomes related to this kind of municipalisation—'new municipalisation' (Leisner-Egensperger 2013), largely correspond to those of remunicipalisation. It thus makes sense to use the term '(re)municipalisation' to cover both processes (Brüning 2009: 453).

But even the term '(re)municipalisation' captures only part of the process of 'bringing the public sector back in', because the return of the public sector

is not limited to local level; it also affects federal and European Union (EU) levels (Bauer 2014). In the water, sewage and energy sectors, renationalisation has taken place at state (*Länder*) level. In many states, there are also moves in a wide range of domains-economic, transport, social and cultural infrastructure–to legislate to remove the legal and constitutional obstacles to the sale of shares in state enterprises (Böhme-Nestler 2013). Examples of this trend to reverse the effect of privatisation are also found at federal level. These include the long-stalled privatisation of the national rail service, the rescue of banks threatened with insolvency during the financial crisis, and the army. Even at the EU level (where the focus is normally on the internal market), a growing desire for more involvement of the public sector is discernible. A clear illustration of this can be seen in the European citizens' initiative 'right2water', which recently succeeded in keeping water management out of the scope of the EU Concessions Directive, thus moving away from an internal market in water services and towards public management of water supply and sewage (European Citizens' Initiative 2013). This case is a globally important example of remunicipalisation (Kishimoto et al. 2015).

Overall, there is a development, on a multiple level, 'towards the public sector', and new terms are needed to describe the process. It has been suggested that the neologism 'publicisation' (*Publizisierung*) (Bauer 2014: 1021) is appropriate. Publicisation focuses on public service-oriented modernisation of public services (*Gemeinwesen*) by way of a reallocation process 'towards the public'. The term 'publicisation' is used flexibly to encompass the phenomena outlined above and has a primarily heuristic function. By getting rid of the prefix, 're', this new term avoids focusing disproportionately on the restoration of previous conditions. Because it references the 'public', rather than the state or the municipality or some other level of government, the term implies a broader perspective on the players, levels and sectors which might be involved. Using the word 'publicisation' thus opens up space for a fundamental debate that has, until now, been neglected. It also provides a conceptual framework for the analysis of public service-oriented forms of operation and organisation for the production and provision of goods and services.

19.2 Change or Broadening of Perspective

This terminological reframing sheds new light on the processes traditionally discussed under the heading 'remunicipalisation'. Moreover, it inspires, if not a change in perspective, then, in many respects, a broadening of perspective. It is worth briefly addressing three specific aspects of this adjustment.

First, publicisation does not entail replacing undiscerning euphoria about privatisation with equally undiscerning euphoria about remunicipalisation nor is it concerned with ideological battles about whether the state or the private sector is to be preferred and all the prejudices such battles excite. Far more important is the implicit recognition that privatisation and municipalisation or remunicipalisation are complementary strategies for the modernisation of public services, and hence, that both aspects are required when local authorities need to decide which is the most optimal form of organisation and operation for the provision of services. Setting aside the notion that the two possibilities are mutually exclusive facilitates decision-making, enabling authorities to consider the entire spectrum of available organisational forms and modes of operation when making decisions about service provision. The effectiveness of each option in a specific case can then be evaluated in a clear-headed way, without ideological blinkers (Bauer 2012).

Second, classifications of remunicipalisation which are based on familiar forms of privatisation, for example, distinguishing between remunicipalisation of assets, organisational remunicipalisation and functional remunicipalisation (see Libbe and Hanke 2011; Burgi 2012a; Schmidt 2014), turn out to be superficial and insufficiently complex. This is because, in practice, hybrid forms of publicisation are common. Analysis of such hybrids is high on the publicisation agenda, as is the generation of innovative models that meet the demands for increased citizen participation and democratic accountability, or legal frameworks permitting the implementation of new or modified ways of providing local goods and services. From this perspective, publicisation can be viewed as paving the way for a creative *plurality of forms of organisation and operation*, which takes into account 'epistemological and methodical knowledge to capture the problems of public, multiple and […] conflicting goals and their feasibility' (Budäus and Hilgers 2013: 708).

Third, this analysis, which goes beyond the polarisation of municipalisation and privatisation or public and private, makes it clear that when it comes to selection decisions, networks and collaborations often play an important role, whether in the form of public-private partnerships (PPPs) or in the form of public-public partnerships (PuPs). These new forms of partnership are a spur to the development of a comprehensive legal framework for regulating cooperation among public bodies. But this is not just about using orthodox regulatory policy to solve problems within 'a bipolar model of division of responsibilities between state and market' (rightly criticised by Budäus and Hilgers 2013: 703). It is also particularly impor-

tant to include those instances of publicisation in the thoughts that have until now received little or no attention, although they have the potential to make an important contribution to the modernisation of public services. Examples of this kind of publicisation would include the public service-oriented activities of third sector institutions. At this point, we consider only the activities of cooperatives, charities and not-for-profit organisations.

19.3 Cooperative Contributions to Fulfilment of Municipal Responsibilities in Publicisation Scenarios

Recognising publicisation as a concept draws attention to several forms of organisation and operation. This is not the place for a comprehensive discussion of all these forms, and so we have focused on one specific form of organisation which has so far been almost completely absent from academic debates although it is becoming more common in administrative practice: the cooperative.

From Dusty Old Relic to Model for the Future

An opinion one comes across quite frequently in Germany is that the cooperative is a dusty old relic from the past (Bauer and Markmann 2014). In addition to the associations with socialism (Stappel 2012), the image of an antiquated institution of 'savers, tenants and farmers' (Klemisch and Vogt 2012: 12) has clung to the cooperative. This kind of assessment is no longer appropriate. Partly as a result of numerous international and national campaigns, today, the cooperative is increasingly viewed as a modern, future-oriented organisational model, the legal and empirical significance of which is confirmed thereby. Cooperatives constitute a formidable part of the global economy. They operate in 100 countries, provide over 100 million jobs and have over 800 million members (Deutscher Genossenschafts- und Raiffeisenverband 2015). Against this backdrop, it is not surprising that the United Nations proclaimed 2012 the International Year of Cooperatives (UN Resolution 64/136 2009); as a result of the efforts of the International Cooperative Alliance (ICA), this has gone on to become the 'Decade of Cooperatives'.

In addition to the traditional fields in which cooperatives operate, those in Germany are increasingly becoming involved in new areas, including local service delivery. In this context, the cooperative was recently declared

'trendsetting as a model for cooperation in municipalities and for innovative future management in municipalities' (Eisen 2010: 135). In spite of this and other similar public demands for the increased involvement of cooperatives in the 'discussion about models for fulfilling public responsibilities and the future design of villages, cities and regions' (Eisen 2010: 135), academic study in this area is conspicuously lacking (Bauer and Markmann 2014). There is clearly scope for a more in-depth study of the legal and empirical role of cooperatives in the sphere of local service delivery. In what follows, we provide an empirical analysis (Sect. 19.3.2), followed by an analysis of the reasons for the establishment of cooperatives (Sect. 19.3.3) and, finally, a description of the various cooperative organisational models (Sect. 19.3.4).

Empirical Analysis: Cooperative Activity in the Fields of Local Service Delivery

For a long time, the number of cooperatives in Germany was falling. Between 1960 and 2010, the total number of cooperatives in the Federal Republic of Germany fell from over 27,000 to around 7,600 (see Bauer and Markmann 2014 for details). Since then, however, cooperatives have been experiencing a new boom. The figures tell an impressive story. Corporate, employee and membership numbers have risen steadily over the past several years (Bauer and Markmann 2014). The decrease in numbers as a result of mergers or liquidations has, since 2009, been compensated for by the formation of new cooperatives (Stappel 2012). According to the latest figures, there are more than 8,000 cooperatives with approximately 933,000 employees and almost 22 million members in Germany today (Stappel 2014a). In statistical terms this implies that, on average, one in every four residents in Germany is a member of a cooperative. It should be noted that cooperatives play an important role in vocational training. They currently provide about 48,000 young people with a training position (Stappel 2014a).

Cooperatives are active in highly diverse fields. In Germany, they are traditionally divided into five different sectors. A distinction is made between the cooperative banks, agricultural and commercial cooperatives, and consumer and housing cooperatives (Stappel 2011). These sectors can be further divided; for example, the commercial sector encompasses 'municipal services cooperatives' (Stappel 2014b) which include, at the time of writing, water, public swimming pool and school cooperatives.[1] 'Municipal services cooperatives' cannot, however, remain restricted to these three areas. If one takes an unbiased approach, then, in the terms of Article 28 II 1 of the German Constitution (GG), all other 'affairs of the local com-

munity' that are normally classed as municipal responsibilities and are now carried out by cooperatives, should also be included. Considered in terms of the nature of the activity in which they are involved, there are municipal services' cooperatives operating in all the economic, social and cultural fields that are traditionally within the scope of municipal service delivery.

Cooperatives are currently also highly active in these sectors. In the economic sphere, for example, one finds energy cooperatives (which include 'bioenergy villages', photovoltaics cooperatives and wind energy cooperatives, as well as cooperative local heat networks); in the social and educational services sphere, one can find cooperatives involved in provision of nursery schools, services for elderly people and families and in primary and secondary healthcare; in the cultural sphere, there are cooperative arthouse cinemas and art and cultural institutions. The figures for start-up cooperatives suggest that there is particularly strong potential for growth in the social services field. In this area, the number of new cooperatives set up each year has increased sixfold, from five in 2005 to 31 in 2013 (Stappel 2014b). During this period and the first half of 2014, a total of 168 social cooperatives were set up (Stappel 2014b). The creation of cooperatives in new areas of municipal service delivery, such as the supply of Internet through a nationwide broadband network (Schröder 2014), is also being encouraged. In the meantime, inter-municipal cooperatives have been formed in narrower administrative fields, for example, for the optimisation of citizens' advice and the development of e-government (for numerous examples in the field of traditional municipal service delivery and beyond, see Deutscher Genossenschafts- und Raiffeisenverband 2014; Bauer and Markmann 2014 and references therein).

It is still important to broaden one's perspective to include the range of services that is not conventionally considered municipal responsibilities, but which is undoubtedly in the interest of the municipality to see delivered ('service delivery in the municipal interest') because they are strongly linked to the municipality and its residents. An important example of 'service delivery in the municipal interest' would be the basic and local supply of food easily accessible to and available for everybody. This is not traditionally a municipal responsibility although it is of huge significance to municipalities and their residents (see also Budäus and Hilgers 2013). In recent years, there has been a boom in the establishment of village shop cooperatives to guarantee local availability of basic foods. Between 2005 and mid-2014, 52 village shops were set up (Stappel 2014b).

The trend for cooperative delivery of services for which the municipality has responsibility is in no way limited to Germany. There are coopera-

tives involved in delivery of local services in other European countries, and sometimes, they are ahead of their counterparts in Germany. In the next paragraphs, we give brief examples of cooperative delivery of municipal services in the UK and Italy.

In the UK, since the proclamation of the International Year of Cooperatives, at the latest, there has been concrete action to support cooperatives which are active in the field of municipal responsibilities. This action has included the presentation to the House of Commons of a comprehensive 200-page report commissioned by the Communities and Local Government Committee on 'Mutual and co-operative approaches to delivering local services' (House of Commons 2012). In addition to presenting cooperative models, the report contained an empirical analysis and concrete suggestions for reform, as well as recommendations for increased promotion and propagation of these two forms of organisation. Cooperatives and mutuals in the UK 'have already spun out of a wide range of local government services, including adult social care, libraries, children's services, housing, integrated health and social care' (UK Government 2013: 4).

In Italy, so-called 'social cooperatives' play a particularly important role in supporting municipalities. They are active, above all, in the field of 'social, health and education-related' services (Raiffeisenverband Südtirol 2015) and in handling the integration or reintegration of socially disadvantaged people (Raiffeisenverband Südtirol 2015). It is estimated that at present, there are around 14,000 social cooperatives in Italy; in statistical terms, this is equivalent to at least one active social cooperative in each Italian municipality (Raiffeisenverband Südtirol 2015).

Reasons for the Creation of Cooperatives in Selected Sectors of Local Service Delivery

There are many reasons behind the trend for collaboration-in the form of cooperative entities-in municipal service delivery or delivery of services in the municipal interest. First, it increases citizen participation and control over services such as energy supply, in which the private sector is dominant. Choosing a cooperative organisational structure means that all available resources can be pooled to provide a more democratic, transparent and grassroots alternative to failed attempts at privatisation. Broadly speaking, the cooperative is seen by many as a 'middle way organisation' lying somewhere between the private sector and the state; it is a private legal entity with a public character (Eisen 2010). Second, cooperatives guarantee the continued existence of a minimum level of local infrastruc-

ture. Demographic developments, including migration of young people to urban areas hit rural areas particularly hard and can lead to the disappearance of entire villages. Only by combining all resources still available is it possible to retain some social and cultural opportunities in rural areas in the face of these challenges. Another factor is that increased citizen involvement in municipal service delivery, and the social capital associated with this, lighten the burden on strained municipal budgets.

Variety of Models of Organisation and Levels of Complexity

The wide range of fields in which cooperatives can operate and the wide variety of actors they bring together have led to the creation of various organisational models with varying degrees of internal complexity. In addition to well-known forms of collaboration, such as PPPs and PuPs, there are two further important forms of collaboration which are still relatively unknown in German administrative science and law: the municipal-citizen partnership and the multi-stakeholder partnership. Our discussion focuses on these models.

A municipal-citizen partnership involves the coming together of municipalities and citizens to form a cooperative which will carry out municipal functions (Münkner 2012). Under such partnerships, municipal services are either replaced by or complemented by civic engagement (Schopf and Paier 2007). These kinds of projects arise when citizens are directly affected by proposals for changes to services, such as the threatened discontinuation of a municipal service (Münkner 2012). In such situations, citizens' willingness to get involved is particularly high (Münkner 2012). Considering demographic developments, municipal responsibilities within the social sphere, such as childcare and care of the elderly, have particular potential here (Reiner et al. 2010). In addition to the mobilisation and maintenance of civic engagement (social capital) in general (Reiner et al. 2010), ensuring a balance between citizens' and municipality interests through appropriate control mechanisms is a particular challenge for these kinds of models (Karner et al. 2010: 98). Municipal-citizen partnerships can exist with or without direct municipal participation in the cooperative. The municipality may restrict itself to supporting the cooperative as, say, an 'investing' member (see paragraph 8 II Genossenschaftsgesetz, GenG) whilst staying out of the operational side (Karner et al. 2010: 87). The purely citizen-owned cooperative is another option; in this case, the municipality might provide support, for example, by leasing property on favourable terms.

Multi-stakeholder cooperatives are, however, a form of organisation with a 'heterogeneous membership' (Münkner 2012: 336) which has joined forces to deliver a specific municipal function. An example of this can be found in the cooperative Stadtteilgenossenschaft Sonnenberg e.G. in Chemnitz. Here, the housing industry, local businesses, institutions and public providers have joined forces to take responsibility for carrying through plans for urban redevelopment and to tackle social-political problems and problems related to the labour market (Bayerisches Staatsministerium für Arbeit und Soziales, Familie und Integration 2013: 18). The 'one member one vote principle' (paragraph 43 III 1 GenG) can be a particular challenge for multi-stakeholder cooperative under German law as it requires the 'alignment of interests' within a 'heterogeneous membership' (Münkner 2012: 337).

Municipal-citizen partnerships and multi-stakeholder cooperatives are, of course, cooperatives based on PPP or PuP models. Municipalities have formed innovative alliances across a diverse range of areas for the purposes of inter-municipal cooperation and the following list is by no means exhaustive: inter-municipal hospital cooperatives; joint municipal purchasing groups which exist to procure goods and services on more favourable terms (for details on these and further examples see Deutscher Genossenschafts- und Raiffeisenverband 2014: 46 *et seq.*); inter-municipal information technology cooperatives which, through the development of a digital town hall, attempt to facilitate and encourage e-government within and between municipalities, and other public bodies and/or the economy (see Wandersleb 2014).

In addition to diverse cooperative structures involving a wide range of participants and stakeholders, one can occasionally find more complex internal structures. Under certain circumstances, the municipality may have a particular interest in maintaining control over a service or area of activity, perhaps because they have a legal responsibility to do so, or because wider municipal interests are at stake (see for example, Burgi 2012b). This creates a problem for cooperatives, because paragraph 43 III 1 GenG, states that the 'one member one vote principle' is applicable. In these circumstances, a 'two-tier cooperation model' may be established to ensure that the municipality nevertheless has the control it requires. One type of two-tier model involves the creation of a predominantly inter-municipal cooperative in which other interested parties (citizens) hold a participating interest through membership of a citizens' cooperative, which is, in turn, a member of the inter-municipal cooperative. Another option is the creation of a 'two-tier cooperative model with voting rights according to

equity investment'. Paragraph 43 III 3 Nr. 3 GenG makes provision for cooperatives 'whose members are exclusively or predominantly themselves registered cooperatives' to set their own rules for the weighting of votes contained in their articles of association, for example, members voting rights' might be weighted according to their share capital. The following Figs. 19.1 and 19.2 demonstrate possible organisational models.

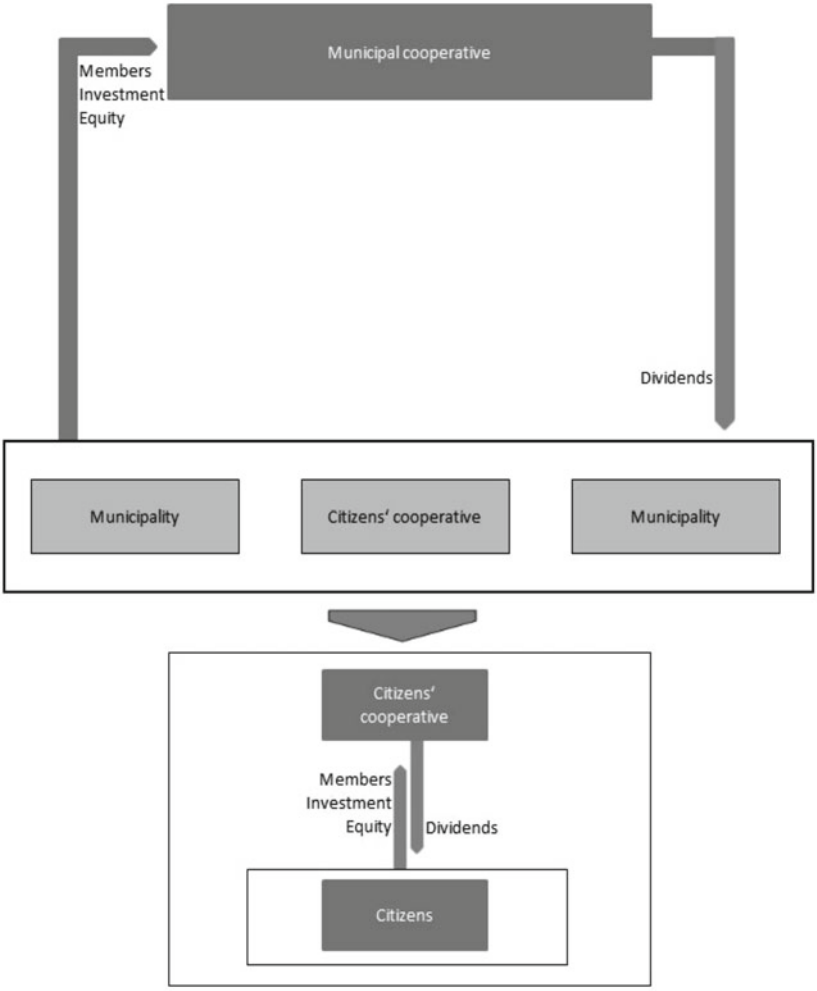

Fig. 19.1 Two-tier cooperative model (*Source:* Genossenschaftsverband and Bayern 2012: 26)

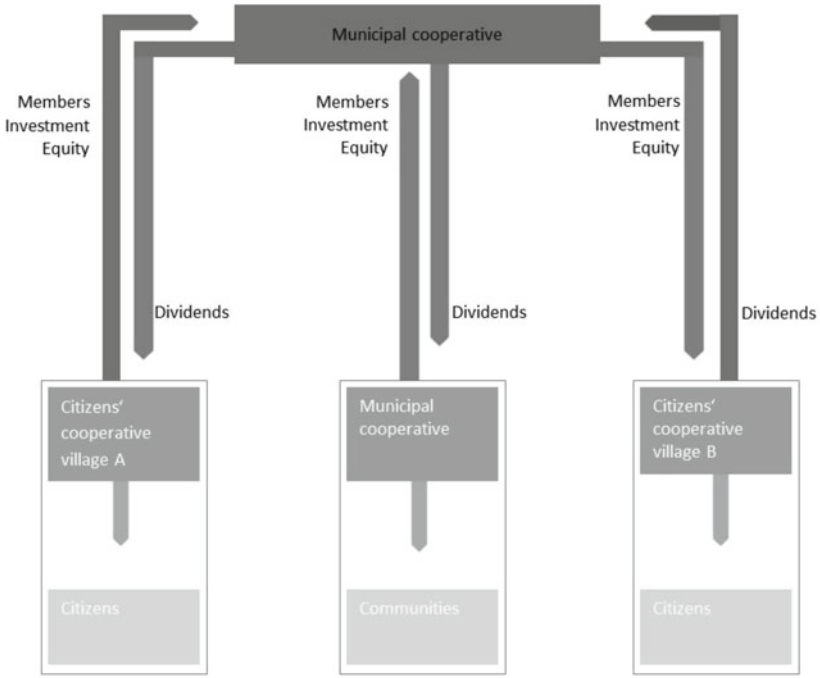

Fig. 19.2 Two-tier cooperative model with voting rights according to equity investment (*Source:* Genossenschaftsverband Bayern 2012: 26)

19.4 Conclusions

The total number of German cooperatives is growing. Whether this gives grounds to claim that there is a renaissance in the cooperative system in Germany is doubtful, at least if one compares the situation with that of cooperatives in other European countries such as Italy. What is clear, however, is that cooperatives in Germany are increasingly active in services conventionally delivered by municipalities; moreover, they make an important contribution to 'service delivery in the municipal interest'. This enables the cooperative to bring a wide variety of players together. It also turns out, in practice, to be sufficiently flexible to protect specific municipal interests. The cooperative is certainly not a panacea for current political and societal problems affecting the discharging of municipal

responsibilities. Whether or not a cooperative (rather than another form of organisation) is best placed to take on a specific function will depend on context- and case-specific factors. Analysis to determine the particular advantages of a cooperative organisation (based on the classic cooperative principles of solidarity, self-administration and self-responsibility) is crucial to decision-making about publicisation.

Note

1. Between 2006 and the first half of 2014, eight new water cooperatives (water and sewage services), 10 public swimming pool cooperatives (indoor and outdoor swimming pools) and 12 school cooperatives (schools and music) were registered. For details, see Stappel (2014b).

References

Bauer, H. (2012). Zukunftsthema "Rekommunalisierung". *Die Öffentliche Verwaltung, 65*(9), 329–338.

Bauer, H. (2014). Publizisierung Begriff—Befunde—Perspektiven. *Juristenzeitung, 69*(21), 1017–1068.

Bauer, H., & Markmann, F. (2014). Genossenschaften im Aufwind. In H. Bauer, C. Büchner, & F. Markmann (Eds.), *Kommunen, Bürger und Wirtschaft im solidarischen Miteinander von Genossenschaften* (pp. 11–22). Potsdam: Universitätsverlag Potsdam.

Bauer, H., Büchner, C., & Hajasch, L. (Eds.). (2012). *Rekommunalisierung öffentlicher Daseinsvorsorge*. Potsdam: Universitätsverlag Potsdam.

Bayerisches Staatsministerium für Arbeit und Soziales, Familie und Integration. (2013). Sozialgenossenschaften in Bayern—Der Ratgeber zur erfolgreichen Gründung. Available from http://www.stmas.bayern.de/imperia/md/content/stmas/stmas_internet/sozialpolitik/sozialgenossenschaften.pdf. Accessed 20 July 2015.

Böhme-Nestler, V. (2013). Privatisierungsbremsen in den Landesverfassungen? *Landes- und Kommunalverwaltung, 23*(11), 481–486.

Brüning, C. (2009). (Re-)Kommunalisierung von Aufgaben aus privater Hand—Maßstäbe und Grenzen. *Verwaltungsarchiv, 100*(4), 453–474.

Budäus, D., & Hilgers, D. (2013). Mutatis Mutandis: Rekommunalisierung zwischen Euphorie und Staatsversagen. *Die Öffentliche Verwaltung, 66*(18), 701–708.

Burgi, M. (2012a). Privatisierung und Rekommunalisierung aus rechtswissenschaftlicher Sicht. *Niedersächsische Verwaltungsblätter, 19*(9), 225–232.

Burgi, M. (2012b). *Kommunalrecht* (4th ed.). München: C. H. Beck-Verlag.

Candeias, M., Rilling, R., & Weise, K. (Eds.). (2009). *Krise der Privatisierung—Rückkehr des Öffentlichen*. Berlin: Karl Dietz-Verlag.

Deutscher Genossenschafts und Raiffeisenverband. (2014). *Regionale Entwicklung mit Genossenschaften—Bürger, Wirtschaft und Kommunen Hand in Hand* (2nd ed.). Available from www.genossenschaften.de/sites/default/files/Gr%C3%BCnderfibel_Regionale%20Entwicklung_2.%20Auflage.pdf. Accessed 20 July 2015.

Deutscher Genossenschafts- und Raiffeisenverband. (2015). Genossenschaften weltweit. Available from www.genossenschaften.de/genossenschaften-weltweit. Accessed 20 Mar 2015.

Eisen, A. (2010). Kooperation und Genossenschaften als Modell der kommunalen (Selbst)Steuerung. In W. George & M. Bonow (Eds.), *Regionales Zukunftsmanagement Band 4: Kommunale Kooperation* (pp. 135–144). Lengerich: Pabst-Verlag.

European Citizen's Initiative. (2013). Commissioner Barnier's proposal to exclude water services success for Europe's citizens. Available from www.right2water.eu/news/commissioner-barnier's-proposal-exclude-water-services-success-europe's-citize. Accessed 2 Apr 2015.

Genossenschaftsverband Bayern. (2012). Erfolgsmodell Genossenschaft: Die Energiewende gemeinsam gestalten—Ein Leitfaden für Kommunen. Available from http://www.genossenschaften.de/sites/default/files/GVB%20Energiewende%20mit%20Kommunen.pdf. Accessed 20 July 2015.

Guckelberger, A. (2013). Die Rekommunalisierung privatisierter Leistungen in Deutschland. *Verwaltungsarchiv, 104*(2), 161–187.

Hachfeld, D. (2009). Rekommunalisierung—Lehren aus Potsdam und Grenoble. In M. Candeias, R. Rilling, & K. Weise (Eds.), *Krise der Privatisierung—Rückkehr des Öffentlichen* (pp. 87–98). Berlin: Karl Dietz-Verlag.

House of Commons. (2012). Mutual and cooperative approaches to delivering local services, Fifth Report of Session 2012–13. Available from http://www.publications.parliament.uk/pa/cm201213/cmselect/cmcomloc/112/112.pdf. Accessed 20 July 2015.

Karner, A., Rößl, D., & Weismeier-Sammer, D. (2010). Genossenschaftliche Erfüllung kommunaler Aufgaben in PCP-Modellen: Typen und Determinanten einer erfolgreichen Entwicklung. In H.-H. Münkner & G. Ringle (Eds.), *Neue Genossenschaften und innovative Aktionsfelder: Grundlagen und Fallstudien* (pp. 85–106). Baden-Baden: Nomos-Verlag.

Kästner, K.-H. (2011). Privatisierung kommunaler Einrichtungen—eine rechtliche Bestandsaufnahme. In P. Baumeister, W. Roth, & J. Ruthig (Eds.), *Festschrift für Wolf-Rüdiger Schenke* (pp. 863–899). Berlin: Duncker & Humblot-Verlag.

Kishimoto, S., Lobina, E., & Petitjean, O. (Eds.). (2015). *Our public water future—The global experience with remunicipalization*. Amsterdam/London/

Paris/Cape Town/Brussels: TNI, PSIRU, Multinationals Observatory, MSP and EPSU.
Klemisch, H., & Vogt, W. (2012). *Genossenschaften und ihre Potentiale für eine sozial gerechte und nachhaltige Wirtschaftsweise*. Bonn: Friedrich Ebert Stiftung.
Kuhlmann, S., & Wollmann, H. (2014). *Introduction to comparative public administration. Administrative systems and reforms in Europe*. Cheltenham: Edward Elgar.
Leisner-Egensperger, A. (2013). Rekommunalisierung und Grundgesetz. *Neue Zeitschrift für Verwaltungsrecht, 32*(17), 1110–1116.
Libbe, J., & Hanke, S. (2011). Rekommunalisierung—neue Wege der öffentlichen Daseinsvorsorge. *Der Gemeindehaushalt, 112*(5), 108–113.
Münkner, H.-H. (2012). Der genossenschaftliche Beitrag zum Erhalt regionaler Daseinsvorsorge. In W. George & T. Berg (Eds.), *Regionales Zukunftsmanagement Band 6: Regionalökonomie* (pp. 330–346). Lengerich: Pabst-Verlag.
Raiffeisenverband Südtirol. (2015). Die Sozialgenossenschaften in Italien. Available from www.raiffeisenverband.it/genossenschaftswesen/die-sozialgenossenschaften-in-italien.html. Accessed 1 Apr 2015.
Reiner, E., Rößl, D., & Weismeier-Sammer, D. (2010). Public citizen partnerships. *Cooperative—Die Gewerbliche Genossenschaft, 3*, 58–61.
Röber, M. (2009). Privatisierung adé? *Verwaltung & Management, 15*(5), 227–240.
Schmidt, T. I. (2014). Rechtliche Rahmenbedingungen und Perspektiven der Rekommunalisierung. *Die Öffentliche Verwaltung, 67*(9), 357–365.
Scholle, M. (2010). Der Trend zur Rekommunalisierung—Chance oder Risiko? In W. Gernert, N. Konegen, & R. Meyers (Eds.), *Festschrift für Rüdiger Robert* (pp. 95–108). Münster: Waxmann-Verlag.
Schopf C., & Paier, M. (2007). Erfüllung kommunaler Aufgaben durch Genossenschaften: Public-Citizen-Partnerships. Available from http://www.wu.ac.at/fileadmin/wu/d/ri/ricc/Forschung/Laufende_Projekte/researchreport2007_1.pdf. Accessed 20 July 2015.
Schröder, B. (2014). Musterprojekte für Nahwärme in Benz, Ostholsteiner Anzeiger 13 October 2014. Available from http://www.shz.de/lokales/ostholsteiner-anzeiger/musterprojekt-fuer-nahwaerme-in-benz-id7983776.html. Accessed 20 July 2015.
Stappel, M. (2011). Genossenschaften in Deutschland: Eine Studie aus Anlass des Internationalen Jahres der Genossenschaften. In DZ Bank AG (Ed.), *Konjunktur und Kapitalmarkt Special* (pp. 1–56). Frankfurt am Main: DZ-Bank AG.
Stappel, M. (2012). *Die Deutschen Genossenschaften 2012—Entwicklungen, Meinungen, Zahlen*. Wiesbaden: Deutscher Genossenschafts-Verlag eG.
Stappel, M. (2014a). *Die Deutschen Genossenschaften 2014—Entwicklungen, Meinungen, Zahlen*. Wiesbaden: Deutscher Genossenschafts-Verlag eG.

Stappel, M. (2014b). Neugründungen von Genossenschaften in Deutschland: Auswertung des Genossenschaftsregisters (unpublished).

UK Government. (2013). *Government response to the communities and local government select committee's report: Mutual and co-operative approaches to delivering local services, February 2013* (The Stationary Office).

UN Resolution. (2009). Die Rolle der Genossenschaften in der sozialen Entwicklung (64/136).

Wandersleb, M. (2014). IT-Genossenschaften im digitalen Rathaus: Ein Praxisbericht. In H. Bauer, C. Büchner, & F. Markmann (Eds.), *Kommunen, Bürger und Wirtschaft im solidarischen Miteinander von Genossenschaften* (pp. 81–92). Potsdam: Universitätsverlag Potsdam.

Water Remunicipalization Tracker. (2014). Potsdam. Available from http://remunicipalization.org/#case_Potsdam. Accessed 2 Apr 2015.

Wollmann, H. (2014). Public services in European countries: Between public/municipal and private sector provision—And reverse? In C. S. Nunes & J. Bucek (Eds.), *Fiscal austerity and innovation in local governance in Europe* (pp. 49–76). Farnham: Ashgate.

CHAPTER 20

Variance in the Institutions of Local Utility Services: Evidence from Several European Countries

Giuseppe Grossi and Christoph Reichard

20.1 Introduction

Throughout Europe, there have been significant changes in how local government (LGs) manage and deliver public services. Aside from models such as inter-municipal cooperation, three models of delivering public services at local level have gained traction in recent times: corporatisation, public-private partnerships (PPPs) and contracting out. In this chapter, we review the dominant modes of local service delivery in several European countries: Estonia, Finland, Italy and Sweden, and the three German-speaking countries, Austria, Germany and Switzerland. These countries represent a broad range of local government services from southern European Italy as Napoleonic state via the central European German-speaking area, to the two Nordic countries of Finland and Sweden, and the post-socialist state of Estonia. This chapter concentrates on typical 'utility services'—water, sewage, waste, energy and transport—at local level.

G. Grossi (✉)
Kristianstad University, Kristianstad, Sweden
Kozminski University, Warszawa, Poland

C. Reichard
University of Potsdam, Potsdam, Germany

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_20

The chapter focuses on the organisation of service delivery and the exercising of *institutional choice* with respect to models of service provision in the selected countries. We also explore changes over time and the causal factors underlying them. Finally, we analyse the empirical results and draw some theoretical conclusions.

20.2 Alternative Methods of Service Delivery

In principle, a municipality can opt for any of the following institutional models of service delivery (Grossi and Reichard 2008):

- Directly by a municipal department (in-house delivery). This is probably the most traditional solution, and to some extent, a bureaucratic one, but it allows the municipality to exert considerable influence over exactly how the service is delivered on the ground.
- By an autonomous entity—often a corporation—which is fully or majority-owned by the municipality but enjoys some managerial autonomy.
- By a group of municipalities which collaborate to produce and distribute the service.
- By a consortium of public and private bodies which collaborate in a contract-based PPP. In such cases, the municipality reaches an agreement with one or more private investors on the financing of an infrastructure project; in many cases, the private partners will also build and operate the infrastructure.
- By an organisational PPP, for example, a mixed ownership corporation (public and private shareholders).
- By 'contracting out' service delivery to a private commercial enterprise or a private non-profit organisation. The operator has a contract with the municipality, which still has responsibility for ensuring that the service is delivered to an appropriate standard.
- By 'the market', for example, by private enterprises competing with one another to provide the service. The municipality transfers all functions and all responsibility for the quality and availability of the service to the private enterprises (privatisation).

In the following sections we discuss only three delivery models: municipally owned enterprises (MOEs), contractual PPPs and contracting out to private commercial enterprises. We concentrate on these models as they are the ones most commonly used in the utility sector.

20.3 Organisation of Local Service Delivery in the Countries Under Review

In this section, we present an overview of how municipalities in the selected countries have organised the delivery of utility services. A comparative summary of the models of delivery used in the selected countries is presented in Table 20.1.

Italy

Since the beginning of the 1990s, Italian local public services have engaged in a series of externalisation initiatives, including corporatisation, collaborative arrangements, PPPs and contracting out (Bobbio 2005; Grossi 2007; Argento et al. 2010), although recently, there has been a strong trend towards reforms which favour private providers. Corporatisation has taken place via myriad legal forms in which local government (LG) has total or partial ownership: institutions, special undertakings, consortia, foundations and associations, cooperatives, limited companies and joint-stock companies (Grossi and Reichard 2008).

LG owns nearly 6,000 decentralised entities, 65 % of which are private legal entities (limited companies or joint-stock companies) and 35 % are other types of legal entity (Corte dei Conti 2012). Almost all municipalities (7,723 out of 8,100) own shares in decentralised entities (IFEL 2012). More than 35 % of the decentralised entities are active in the utility sector and less than 65 % are active in other service sectors such as culture, recreation, education, housing. The Italian utility sector has an annual turnover of over 36 billion euros and a workforce of about 186,000 employees, just in local transport, waste, water and energy (Nomisma 2011). Municipalities own an average of 10 entities, with large cities typically having about 22 MOEs. About 30 % of MOEs are in mixed public-private ownership (IRPA 2012). In Italy, joint stock companies that provide local utility are entitled to register with the Stock Exchange and thus, gain access to the financial market. Another Italian peculiarity is the growing number of MOE mergers in the utility sector.

Contractual PPPs

There is also a trend towards use of contractual PPPs at the local level. From 2000 to 2010, the proportion of bids for national public works, which involved a PPP increased from 5 % to 25 % (Carbonara et al. 2013).

Table 20.1 Comparison of models of local utility service delivery

Type of institution	*Specific aspect*	*Italy*	*Germany*	*Austria*	*Switzerland*	*Sweden*	*Finland*	*Estonia*
General picture		Moderately strong LG, various utility services, modest inter-municipal collaboration	Quite strong LG, various utility services at local level, modest inter-municipal collaboration	Quite strong LG, various utility services at local level, modest inter-municipal collaboration	Strong LG, many small municipalities, extensive inter-municipal collaboration (consortia)	Very strong LG, variety of local utility services, modest inter-municipal collaboration	Strong LG, various small municipalities; various local utility services; fair amount of inter-municipal collaboration	Moderately strong LG, large number of small municipalities, most utility services provided by LGs
MOE	Scope of externalisation	About 6,000 entities, 35% in utility sector; 186,000 employees and €36bn turnover in core utility sectors	About 13,000 entities, 45% in utility sector (estimated); 500,000 employees and €82bn turnover across all MOEs	About 1,200 entities; 77% of utility services are provided by MOEs; 44,000 employees	Large (several thousands)	About 1,700 entities with 55,000 employees, many MOEs owned by several municipalities	1,853 enterprises; several MOEs owned by more than one municipality; about 22,000 employees in MOEs	211 enterprises with about 1,000 employees
	Relevance of MOEs in LG sector	16% of total LG expenditure and 32% of municipal workforce	50% of total value creation and of municipal workforce	About 5% of total LG workforce	20-80% of total LG workforce, depending on size	About 5% of total municipal workforce	About 5% of total municipal workforce	About 16% of total municipal workforce
	Average number of MOEs per municipality	10 (large cities: about 22)	20 (larger cities: about 100)	3 (based on a sample of 45 municipalities)		5-6 (larger cities about 20)	6; but note great variation (e.g. >100 in Metropolitan Helsinki)	1; but note great variation (e.g. Tallinn with 10 companies)
	Legal form (majority)	Joint-stock company (58%)	Limited company (57%), public law-based utility and consortium (36%)	Limited company (43%), public law entity (38%)	Public law entities and joint-stock companies are dominant	Limited company (93%)	Joint-stock company dominant; also public corporations based on public law (172, most (48) in water supply).	Limited company and joint-stock company
	Sectors with greatest MOE involvement	Waste, water, transport, energy	Water, sewage, energy	Water, sewage, housing	Water, sewage, energy	Energy, water, waste, transport	Real estate activities, e.g. housing; electricity, gas, steam and air conditioning supply; water, sewage, waste management and remediation activities; arts, entertainment and recreation; sport and leisure	Water, sewage; waste management and remediation activities; electricity, gas, steam; real estate activities like housing; health and social work activities

Mixed enterprises	Scope	30% of all MOEs are in public-private ownership	40% of all MOEs are in public-private ownership	30% of all MOEs are in public-private ownership		Public-private ownership quite modest	Some cases of private co-ownership (e.g. In local economic development); joint public-public ownership by several municipalities quite common.	Few cases of public-private ownership, e.g. water services (Tallinn water), landfill of waste, heating; some cases of public-public ownership
	Role of municipalities as owners	Public ownership majority is more frequent	Public ownership majority is more frequent	Public ownership majority is more frequent		Owner directives and political appointment of the board of directors	Major or minor shareholder of the MOEs	Major or minor shareholder of the MOEs
(Contractual) PPP	Scope	Significant increase	5% of all municipal investments	Very modest	Very modest	Modest with some increase	Modest to negligible	Modest to negligible
	Relevant sectors	Sport facilities, transportation, urban development	School buildings, sport facilities	Waste, sewage, school buildings	Sport facilities	Tourism, industrial development, sport facilities	Municipal buildings (schools, health centres, municipal offices)	School buildings (Tallinn), sport facilities
Contracting out	General trend	10-30% of total LG expenditure, significant increase (e.g. waste)	Modest scope (more important in waste and energy)	18% of utility services are contracted-out (public transport: 59%)	40% of municipalities contract out some services	Modest scope (more important in waste collection and transport)	Very modest scope (some examples in healthcare and in technical services such as waste collection or street cleaning)	Most municipalities contract out some services (e.g. waste collection, street cleaning, public transport)
Remunicipalisation	General trend	Not much evidence so far	Lively trend (particularly in energy)	Not much evidence so far	No evidence	No evidence	Very modest	Very modest

Sources: Various national statistics bureaux; CEEP (2010); Dexia Crediop (2004)

Most PPPs apply to sport facilities, gas, water, telecommunication, transportation, hospitals or urban development (Rossi and Civitillo 2014).

Contracting Out

Contracting out of local public services to private corporations and non-profit organisations has increased remarkably in recent years and occurs in the utility sector, for example, in waste disposal (Cepiku 2006; Grossi et al. 2010). According to a recent analysis, the proportion of LG services, which were contracted out is between 10% and 30% (Nomisma 2009).

Germany

MOEs are widely used for utility services and they employ about 50% of the municipal workforce (Richter et al. 2006). Altogether there are 13,000 separate local entities at local level, about 50% of them in the utility sector (Schmidt 2011). About 40% of MOEs are co-owned by private shareholders, although the municipality usually owns the majority of shares. MOEs are most common in the following sectors (Schmidt 2011): water (14% of all MOEs), sewage (11%) and energy (10%). The number of MOEs has increased dramatically over the last 30 years. Various LG units have been transformed into corporations. As a result, municipalities have direct and indirect shareholdings in an interconnected network of organisations, which results in an often complex municipal 'empire' (Grossi and Reichard 2008).

PPPs

At local level, contractual PPPs represent a relatively modest 5% of fixed asset investments (Winkelmann 2013). PPPs are most popular for infrastructure projects relating to schools, hospitals and sport facilities. Contractual PPPs are little used in utility services.

Contracting Out

Waste collection and treatment, and more recently, public transport, are sometimes contracted out. In the waste sector, about 54% of municipalities have outsourced waste collection to private providers (Opphard et al. 2010). German citizens are, however, becoming quite sceptical about privately provided utility services. Almost 60% of Germans prefer public services to be delivered by a public enterprise (Dimap Consult 2008), and in several referenda, citizens have voted against privatisation of utility

services. As in other parts of Europe, there is a lively debate in Germany about remunicipalisation of privatised services (Wollmann and Marcou 2010; see also Bönker et al., *in this volume*, Bauer and Markmann, *in this volume*). An important stimulus for the current debate is that a number of concessions in the local energy market are now expiring; this gives municipalities the opportunity to buy back their local energy production and/or distribution. In fact, in the energy sector, remunicipalisations account for only 2% of all expiring concessions, the majority of concessions have been renewed or awarded to other companies.

Austria

The 2,359 municipalities (most of which are rather small) have responsibility for a broad portfolio of local public services, including typical utility services. Seventy-seven per cent of utility services are provided by MOEs, 18% by private suppliers and the remainder are provided directly by LG (KDZ 2008). In Austria, there are about 1,200 MOEs active in the various utility services and several other areas, for example, in housing, culture, etc. (CEEP 2010). Additionally, Austrian municipalities (especially the smaller ones) have established 1,413 inter-municipal associations to manage or provide water, sewage, waste or education services (CEEP 2010). Thirty-eight per cent of utility services are provided by semi-autonomous entities and the rest by private commercial corporations, usually limited companies (43%). About 30% of Austrian MOEs are mixed corporations. On average MOEs employ about 5% of the local municipal workforce, making them a relatively small player (KDZ 2008). The corporatisation wave started around 2000; almost half of the municipal corporations were established after that date. MOEs are particularly prominent in the water and sewage sector but are also involved in social housing (CEEP 2010).

Contractual PPPs

Contractual PPPs do not play an important role in Austrian LG. Occasional examples are found in utility services (for example, waste or sewage), school rehabilitation and cultural institutions (Hammerschmid and Ysa 2010).

Contracting Out

Contracting out remains a minority choice in most sectors. Eighteen per cent of utility services are provided by private suppliers; only in public transport is this proportion significantly higher, at 59% (KDZ 2008).

Switzerland

LG in Switzerland is quite powerful. About 42% of all public employees work in LG, and municipalities account for about 35% of public expenditure in Switzerland (Knechtenhofer 2003). Because most municipalities are small, there is much more inter-municipal collaboration in Switzerland than in neighbouring countries (Steiner 2001; Steiner and Kaiser 2013). Fifty-five per cent of municipalities use collaborative structures to deliver or manage sewage and waste services, 45% use them for water and 32% for transportation and energy services (Steiner and Kaiser 2013: 164). Swiss municipalities own a considerable number of MOEs; many of them are involved in utility services. About two thirds of all Swiss municipalities own private law-based corporations (Knechtenhofer 2003). Strong areas with many MOEs are the energy and the water sectors.

Contractual PPPs

Contractual PPPs are not much used in Switzerland, including at local level (for example, Lienhard 2006; Ladner et al. 2010). There are some PPPs for investment and operation of sports stadia and other construction projects. Other options, such as contracting out and inter-municipal cooperation, are considered preferable to PPPs (Ehrensperger 2008).

Contracting Out

Private suppliers play only a modest role in the delivery of local utility services in Switzerland (Proeller 2002). Citizens seem to be satisfied with their local utilities and often resist attempts to privatise them.

Sweden

Since the beginning of the 1990s, municipalities and county councils have been free to decide how local services are delivered, directly by the municipality, by municipal companies or by external providers such as cooperatives, private corporations and associations under the arrangements set out in the Public Procurement Act (CEEP 2010). There have been extensive, diverse initiatives to externalise local public service delivery (Argento et al. 2010).

There are about 1,700 MOEs in Sweden involved in various sectors; their involvement is most significant in electricity, gas, water, waste disposal, public transport and housing (SCB 2012). Fifty-two per cent of MOEs (accounting for 37% of the MOE workforce) are active in commercial

services and in real estate whilst 25% of all MOEs (accounting for 36% of the MOE workforce) are involved in the energy and water sectors (SCB 2012). MOEs can exist in various legal forms (joint-stock companies; limited partnership companies; limited companies; economic associations; non-profit associations); the limited company is by far the most common form, at 93% of all MOEs (SCB 2012). In some cases, MOEs are jointly owned by more than one LG (Grossi and Thomasson 2011). The joint publicly owned enterprise has become a common choice, particularly for small and medium-sized LGs, as it offers economies of scale, especially in the water sector (Argento et al. 2010).

Contractual PPPs

Use of contractual PPPs is increasing at local level. They tend to be used for activities related to industrial policy, tourism and the building and or renovation of sports centres (Argento et al. 2010).

Contracting Out

Contracting out is still quite limited, with waste collection and public transportation being the main services involved (Argento et al. 2010).

Finland

Like the other Nordic countries, Finland places considerable emphasis on local self-government. Local authorities are responsible for providing various welfare services to their residents. Municipalities have considerable autonomy when it comes to organising the provision of local services and inter-municipal collaboration is common.

Finnish municipalities own some 1,800 MOEs; the utility sector is with 5% of the municipal workforce, quite small compared with other service areas like education or health. The main areas of operation for MOEs are housing, electricity and gas, water supply and sewerage. The joint-stock company has become a common legal form for municipal enterprises. In some areas such as water, port operations and energy, a significant number of MOEs are 'public enterprises' governed by public law. MOEs are part of the consolidated accounts of a municipality, and in the past, they were locally important as their profits could be used to cross-subsidise other municipal services. Since 2015, European Union (EU) competition law has required public corporations operating in competitive markets to be constituted as joint-stock companies.

PPPs
Local authorities use PPPs mainly for municipal building projects and other local infrastructure projects such as school buildings, municipal offices and health centres, and so far, the number has been small. The utility services have not been directly involved.

Contracting Out
Contracting out is used mainly by smaller municipalities which lack the capacity for direct delivery. Many of the technical services related to infrastructure, maintenance of roads, transportation or waste collection are provided by private operators.

Estonia

Estonia also has a strong ethos of local self-government. LG is, for example, exclusively responsible for the provision of social services, housing and utility services and it is free to choose the form of service provision. Externalisation of public services is quite common as a result of a wave of privatisation and corporatisation during the 1990s after Estonia regained independence. At the time of writing, no clear trend to replace current models of service provision could be identified in Estonia.

MOEs
MOEs play a particularly prominent role in utility services such as water and heating, but are also involved in healthcare and social services. Despite the country's small size (1.3 million inhabitants), the number of municipalities is relatively large (226 in 2011) and there are almost as many MOEs (Dexia Crediop 2004). In Estonia, both publicly and privately owned companies are for-profit legal entities subject to private law and operate as limited companies or joint-stock companies. Some MOEs have a mixed public-public ownership because LGs try to benefit from scale effects or higher financial leverage (for example, for water infrastructure modernisation with the EU support funds). Mixed public-private co-ownership of MOEs is, however, exceptional.

PPPs
PPPs are most often used for construction or renovation of school buildings, sport facilities or other real estate developments (for example, housing, offices, public space) in order to make use of private funding. Tallinn

has more PPPs than any other municipality. Recently, there has been a decline in the use of PPPs as municipalities have to recognise future PPP payments as part of their debts (Mäeltsemees 2010).

Contracting Out

Contracting out is most common in sectors as waste collection, street cleaning, public transport and city parking, but in general terms, is not much used in Estonia at present.

20.4 Comparative Analysis

There are some commonalities in the institutional landscapes of the seven countries under review (for details, see Table 20.1). All countries have externalised a large proportion of their utility services to autonomous MOEs. The size of MOEs as a proportion of all LG activities varies between countries; in terms of employees, it is quite low in Austria, Estonia, Finland and Sweden but fairly high in Germany and Italy. Corporatisation, considered in terms of proportion of the workforce and average numbers of MOEs per municipality, has been most extensive in Germany. Everywhere, MOEs are responsible for the traditional utility services such as water and sewage, waste, energy and public transport, and are usually fairly autonomous with respect to the parent municipality. This is also mirrored in the legal status: In all countries, the majority of MOEs are private legal entities, typically limited companies. This is a consequence of the common new public management (NPM) doctrine favouring private sector organisations on the grounds that they are more flexible and efficient than their public counterparts.

Corporatisation was driven by a desire for more flexibility and greater efficiency, to 'depoliticise' certain service areas or to escape the regulations binding local governments' handling of human resources and financial matters. Some of these goals were achieved, at least in part; but overall, the results have been rather mixed (Grossi and Reichard 2008). MOEs are becoming quite commercialised and profit-driven; sometimes they are even losing their focus at the public interest. Furthermore, the complex holding structures used by municipal groups develop centrifugal tendencies, and municipalities, more strictly, their politico-administrative leadership, have proven to have a rather modest capacity for steering and managing such structures. In most of the countries, the local utility sector is noticeably fragmented. The downside of the

increased autonomy of MOEs is a reduction in LG power to steer and manage their activities.

The private business sector participates in local service delivery in different ways. First, private companies are shareholders in a considerable proportion of MOEs (30-40% in Italy, Austria and Germany). These various stakeholders of these hybrid organisations have divergent interests and approaches, which sometimes cause serious conflict. In Estonia, Finland and Sweden, the proportion of mixed enterprises is much lower, but multiple-partner public-public ownership of MOEs is more common as the comparatively low density of population makes inter-municipal collaboration more effective.

Second, private involvement via contractual PPPs has become increasingly important, although the economic impact of PPPs remains modest in all the countries we considered. Interestingly, most LGs use PPPs primarily for infrastructure projects, particularly for renovation of school buildings, but they are very rarely used in the utility sector. Our evidence suggests that the trend for PPPs has so far not reached municipalities in mainland Europe. More recently, there has been a decline in the attractiveness of PPPs, coinciding with the fiscal crisis, because private investors are having difficulty refinancing PPP investments.

Third, in most of the countries we examined, some utility services have been contracted out to private providers. Waste collection, energy and transport are sectors with a particularly high proportion of outsourcing. Finally, we found only limited evidence of a trend towards remunicipalisation in the countries we reviewed. Even in Germany, this trend is more talk than substance.

The general picture is one in which local service delivery is dominated by autonomous, but wholly or partly publicly owned corporations, alongside a small number of PPPs and with a modest proportion of outsourcing (for similar results: Torres and Pina 2002). The selected countries showed quite similar trends over the last two decades; everywhere, there was a clear trend towards marketisation. Municipalities introduced a purchaser-provider split and outsourced some services or functions to the private sector. Nevertheless, LG has been quite cautious in following the recent fashion for PPP. In general, the boundary between the public sector and private sector became more blurred as a result of institutional changes.

Three important drivers of institutional changes in the selected countries can be identified. First, continuing EU pressure to liberalise, open up

services to competition and reduce 'unfair' government subsidies to utilities forced LGs to contract out services and encourage MOEs to become more efficient. Second, the adoption of the neoliberal doctrine of NPM intensified the pressure on LGs and their MOEs and reinforced the trend towards corporatisation and outsourcing. In the post-NPM era, there has been some consolidation of municipal groups and a more balanced assessment of PPP and contracting out. Municipalities have attempted to improve how they direct and manage their MOE conglomerates, but not always with great success.

The third important driver of institutional change has been the long-term fiscal pressure on LG. Because municipalities have been dealing with severe financial cuts and heavy debt burdens, they have been forced to turn to their own enterprises for revenue and are increasingly using MOEs to generate additional revenue by transferring surpluses to the central municipal budget and to hide debts in their holdings.

The effects of the institutional change on the countries we reviewed have been mixed. Several studies have shown that corporatisation resulted in some efficiency gains and also increased the flexibility of LG (Torres and Pina 2002). MOEs have demonstrated that they can survive in the face of competition, at least in adequately regulated markets. However, MOEs have also become more 'commercial' enterprises; in some cases, the managers of MOEs have adopted conventional business values and strategies focused on profit-making, thus neglecting the public interest. Exercising effective control over MOEs has, furthermore, become a serious challenge for municipalities. In most of the selected countries, the form of corporate governance adopted for municipal holdings turned out to be inappropriate, mainly because board members lack the appropriate qualifications and because logics and tools of holding management are weak (Grossi and Reichard 2008). LGs also seem to have little accountability for their corporations (for more effects of autonomisation of government entities, see Verhoest et al. 2012). There is a lot of evidence available about the effects of PPPs and contracting out (for example, Grossi and Mussari 2008; Hammerschmid and Ysa 2010; Reichard 2012). Although some efficiency gains are not unlikely, the adverse impact on accountability and democratic control is substantial. Transaction costs are often high, which is another factor to be considered. The expected results from market-based and commercial solutions are not borne out by practical experiences; such models have not proven to be a universal remedy for the problems affecting local public services.

Given the continuing fiscal pressure on LG on the one hand, and the mixed experiences of externalisation and preference of large groups of citizens for 'public solutions' on the other, it seems likely that the use of external providers will decline, but remain an important part of the picture. Municipalities face a challenge to increase their capacity to plan, manage and regulate the delivery of local services for which they are responsible.

Acknowledgements We are grateful to Jan-Erik Johanson (University of Tampere) and Peeter Peda (University of Turku) for contributing to this paper by providing data from Finland and Estonia, respectively.

References

Argento, D., Grossi, G., Tagesson, T., & Collin, S. O. (2010). The externalisation of local public service delivery: Experience in Italy and Sweden. *International Journal of Public Policy, 5*, 41–56.

Bobbio, L. (2005). Italy after the storm. In B. Denters & L. E. Rose (Eds.), *Comparing local governance: Trends and developments* (pp. 29–46). Basingstoke/New York: Palgrave Macmillan.

Carbonara, N., Costantino, N., & Pellegrino, R. (2013). A three-layer theoretical framework for analyzing Public Private Partnership: The Italian case. *Organization, Technology, and Management in Construction. An International Journal, 6*(2), 799–810.

CEEP. (2010). *Public services in the European Union and in the 27 member states.* Brussels: CEEP.

Cepiku, D. (2006). *L'esternalizzazione nelle Amministrazioni Pubbliche. Teorie, politiche ed esperienze a livello internazionale.* Roma: Aracne.

Corte dei Conti. (2012). Rapporto 2012 sul coordinamento della Finanza Pubblica. Available from http://www.corteconti.it. Accessed 10 Jan 2015.

Dexia Crediop. (2004). *Local public companies in the 25 countries of the European Union.* Paris: Dexia.

Dimap Consult. (2008). *Ergebnisse der repräsentativen dimap-Haushaltsbefragung vom September 2008.* Berlin: VKU.

Ehrensperger, M. (2008). *Erfolgsvoraussetzungen von PPP im öffentlichen Hochbau.* Bern: Haupt.

Grossi, G. (2007). Governance of public-private corporations in the provision of local utilities in the Italian case. *International Public Management Review, 8*, 130–151.

Grossi, G., & Mussari, R. (2008). Effects of outsourcing on performance measurement and reporting: The experience of Italian local governments. *Public Budgeting and Finance, 28*(1), 22–38.

Grossi, G., & Reichard, C. (2008). Municipal corporatization in Germany and Italy. *Public Management Review, 10*, 597–617.

Grossi, G., & Thomasson, A. (2011). Jointly owned companies as instruments of local government: Comparative evidence from the Swedish and Italian water sectors. *Policy Studies, 32*, 277–289.

Grossi, G., Marcou, G., & Reichard, C. (2010). Comparative aspects of institutional variants for local public service provision. In H. Wollmann & G. Marcou (Eds.), *The Provision of public services in Europe. Between state, local government and market* (pp. 217–239). Cheltenham/Northampton: Edward Elgar.

Hammerschmid, G., & Ysa, T. (2010). Empirical PPP experiences in Europe: National variations of a global concept. In G. Hodge, C. Greve, & A. Boardman (Eds.), *International handbook of PPPs* (pp. 333–353). Cheltenham/Northampton: Edward Elgar.

IFEL. (2012). *Le partecipazioni dei comuni nelle public utilities locali*. Roma: IFEL Fondazione ANCI.

IRPA. (2012). *Il capitalismo municipale* (Rapporto 1/2012). Available from http://www.astrid-online.it. Accessed 10 Jan 2015.

KDZ. (2008). *Steuerung und Organisation kommunaler Daseinsvorsorge*. Wien: Zentrum für Verwaltungsforschung.

Knechtenhofer, B. (2003). *Der Einbezug von Beteiligungen in den jährlichen Abschluss der Gemeinde*. Bern: Haupt.

Ladner, A., Steiner, R., Horber-Papazian, K., Fiechter, J., Jacot-Descombes, C., & Kaiser, C. (Eds.). (2010). *Gemeindemonitoring 2009/2010. KPM-Schriftenreihe 48*. Bern: KPM.

Lienhard, A. (2006). Public Private Partnerships (PPPs) in Switzerland: Experiences—Risks—Potentials. *International Review of Administrative Sciences, 74*, 547–563.

Mäeltsemees, S. (2010). PPP-Projekte bei der regionalen Sozial-Wirtschaftlichen Entwicklung. PPP projektid regionaalses sotsiaalmajanduslikus arengus. *Discussions on Estonian economic policy: Theory and practice of economic policy*. Available from http://ojs.utlib.ee/index.php/TPEP/article/view/884. Accessed 10 Jan 2015.

Nomisma. (2009). *La gestione dei servizi pubblici locali* (Osservatorio economico-finanziario sui servizi pubblici locali, Rapporto Nomisma). Bologna: Author.

Nomisma. (2011). *Il ruolo dei servizi pubblici locali nelle economie territoriali* (Osservatorio economico-finanziario sui servizi pubblici locali, Rapporto Nomisma). Bologna: Author.

Opphard, K., Pohl, W., Utz, J., & Hölzl, C. (2010). *In- und Outsourcing in der kommunalen Abfallwirtschaft. Studie über Make-or-Buy-Entscheidungen, VKS-Information 75*. Berlin: VKU.

Proeller, I. (2002). *Auslagerung in der hoheitlichen Verwaltung*. Bern: Haupt.

Reichard, C. (2012). Neue institutionelle Varianten öffentlicher Leistungserbringung. In E. Schröter, P. von Maravic, & J. Röber (Eds.),

Zukunftsfähige Verwaltung? Herausforderungen und Lösungsstrategien in Deutschland, Österreich und der Schweiz (pp. 207–234). Leverkusen: Barbara Budrich.

Richter, P., Edeling, T., & Reichard, C. (2006). Kommunale Betriebe in größeren Städten. In W. Killian, P. Richter, & J. H. Trapp (Eds.), *Ausgliederung und Privatisierung in Kommunen. Empirische Befunde zur Struktur kommunaler Aufgabenwahrnehmung* (pp. 55–84). Berlin: Sigma.

Rossi, M., & Civitillo, R. (2014). Public and private partnerships: A general overview in Italy. *Procedia—Social and Behavioral Sciences, 109*, 140–149.

SCB. (2012). *Offentligt Ägda Företag 2006* (Serie Offentlig ekonomi—OE27SM01201). Stockholm: Statistiska Centralbyrån.

Schmidt, N. (2011). Ausgliederungen aus den Kernhaushalten: öffentliche Fonds, Einrichtungen und Unternehmen. *Wirtschaft und Statistik, 2*, 154–163.

Steiner, R. (2001). *Inter-municipal cooperation and municipal mergers in Switzerland. Working Paper 48*. Bern: Universität Bern (KPM).

Steiner, R., & Kaiser, C. (2013). Die Gemeindeverwaltungen. In A. Ladner, R. Steiner, K. Horber-Papazian, J. Fiechter, C. Jacot-Descombes, & C. Kaiser (Eds.), *Handbuch der öffentlichen Verwaltung in der Schweiz* (pp. 149–166). Zürich: NZZ.

Torres, L., & Pina, V. (2002). Changes in public service delivery in the EU countries. *Public Money & Management, 22*(4), 41–48.

Verhoest, K., van Thiel, S., Bouckaert, G., & Laegreid, P. (Eds.). (2012). *Government agencies. Practices and lessons from 30 countries*. Basingstoke/New York: Palgrave Macmillan.

Winkelmann, T. (2013). Erfolgsfaktoren von vertraglichen PPP-Projekten auf kommunaler Ebene. *Der moderne Staat, 6*(2), 371–392.

Wollmann, H., & Marcou, G. (2010). From public-sector-based to privatized service provision. Is the pendulum swinging back again? In H. Wollmann & G. Marcou (Eds.), *The Provision of public services in Europe. Between state, local government and market* (pp. 240–260). Cheltenham/Northampton: Edward Elgar.

CHAPTER 21

Public and Social Services in Europe: From Public and Municipal to Private Provision—And Reverse?

Hellmut Wollmann

21.1 Introduction

This chapter attempts to summarise some of the most important findings from other chapters in this volume and draw some general conclusions. It goes without saying that, given the range of countries, service sectors and periods dealt with, this summary cannot be anything other than selective and broad-brush in its approach.

For a guide to the terminology, methods and conceptual framework underpinning this volume, the reader is referred to the introductory chapter (Wollmann, *in this volume*).

In line with the essentially institutional and developmental or chronological approach pursued in this volume, this discussion is organised in terms of four stages, and focuses on the most recent phase, the period since the mid- to late 1990s (see Sect. 21.4 below).

21.2 Late Nineteenth-Century Development

In the nineteenth century, during a period of rampant industrialisation and urbanisation in which the UK, and then Germany, were European

H. Wollmann (✉)
Humboldt University Berlin, Berlin, Germany

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2_21

frontrunners, the provision of public utilities (water, sewage, waste, public transport, energy) in their early, basic forms was seen mainly as a responsibility of local authorities (the 'political community'[1]) and was labelled (sometimes for polemical purposes) as *municipal socialism* (see Kühl 2001).

By contrast, the provision of elementary personal social services was largely left to the 'social community',[2] in other words, to the 'informal sector' (are Munday 2010, Buser 2013, Wollmann and Marcou 2010) consisting of charitable, not-for-profit organisations, philanthropists, workers' organisations, societal self-help groups and so on.

21.3 Services in the Advancing and Advanced Western European State

Public Services and Utilities

After the rise of the advanced welfare state, which reached its peak in the 1970s, public utilities in western European (WE) countries were predominantly provided by the public sector (state as well as municipal) either directly (*in-house*, *en régie*) or through *corporatised* (*hived off*) public/municipal companies (municipally owned enterprises, MOEs; see Grossi and Reichard, Wollmann, *in this volume*) and organisations. The quasi-monopoly of the public sector over service provision was meant to ensure that services were provided under the direct or indirect control of elected public authorities ('government'), which would advocate and safeguard the *general interest*.

The energy sector was *nationalised*, that is to say, taken from predominantly municipal ownership into state ownership. In the UK, this happened in 1946 under the incoming Labour (socialist) government. In France, nationalisation occurred in 1948 as part of the Gaullist drive to modernise post-war France (two state-owned monopolist energy corporations, *Electricité de France*, EDF, and *Gaz de France*, GDF were established). Nationalisation did not take place until later in Italy; the state-owned energy giant ENEL was created in 1962. In post-war Germany, however, under a conservative-liberal federal government, the energy sector continued to be dominated by mostly privately owned regional energy companies. For historical reasons, the municipal companies (*Stadtwerke*) had a significant, albeit minor role in the market, particularly in the transmission, distribution and (to a lesser degree) generation of electricity (see

Wollmann et al. 2010; Bönker et al., *in this volume*). In Germany, Italy and Sweden, the water sector was owned and operated by the municipalities and their companies, whereas in the UK, it was nationalised by the post-war Labour government, which transformed small municipal companies into state structures. In contrast, in France, there was a tradition of *outsourcing* (*gestion déléguée*) dating back to the nineteenth century, and so many municipalities outsourced water provision to external (private sector) companies (see Citroni 2010; Lieberherr et al., *in this volume*; Marcou, *in this volume*).

Personal Social Services

In effect, it became a principle of the welfare state that personal social services (such as care for the elderly) were provided primarily by the public sector itself since (state or municipal) employees were deemed best motivated and qualified to deliver such services. The history of the UK illustrates this well. In 1945, local authorities were put in charge of social service provision, and it was one of the core functions of local government (see Bönker et al. 2010). The reform brought about an expansion of local administration in terms of both organisations and manpower and this led to some criticism of so-called 'municipal empires' (Norton 1994). Similarly, in Sweden, personal social services were provided almost entirely by local government personnel. This was regarded as a crucial element of Sweden's welfare state model; the involvement of non-public (not-for-profit, etc.) bodies was explicitly ruled out under the 1936 compromise ('hidden social contract', Wijkström 2000: 163) between the social democratic national government and the country's Protestant Church (see Wollmann 2008).

In Germany, in contrast, the privileged position that non-public, not-for profit ('welfare') organisations traditionally have with respect to the provision of personal social services derives from a compromise between the Prussian State and the Catholic Church, which was reached in the 1870s. It was this compromise which, drawing on the latter's *Social Doctrine* (*Soziallehre*), introduced the principle of subsidiarity into social services (and more widely) (Bönker et al. 2010; Bönker et al., *in this volume*). Similarly, in Italy, against the background of the Catholic Church's traditional involvement in charitable activities, services were largely delivered by not-for-profit (often church-affiliated) organisations (see Bönker et al. 2010: 105; Citroni et al., *in this volume*).

From a comparative perspective, the history of the UK after 1945 can be seen to epitomise the public sector-centred model for provision of public and social services.

21.4 Post-1945 Development in Central Eastern European (CEE) Countries

After 1945, following the imposition of the Communist rule, public and social services in CEE countries were provided largely by the central state or by centrally controlled (municipal) units under the centralist, monolithic *socialist state* model (for accounts of developments in Poland, Czechoslovakia, Hungary and Croatia, see Mikula and Walaszek; Nemec and Soukopova; Horvath, *all in this volume*, respectively). A conspicuous exception was Yugoslavia, where a decentralised *self-management system* with comprehensive local public and social services was put in place (see Kopric et al., *in this volume*).

21.5 Developments Since the Late 1970s in WE Countries: Restructuring Through NPM and Market Liberalisation

The neoliberal policy shift got its initial, powerful political and discursive thrust in the UK after 1979 under Margaret Thatcher's Conservative government and from there, it spread to other European countries. Moreover, following the adoption of the Single European Act of 1986, the European Union (EU) embarked on a market liberalisation drive with the aim of creating a single European market by 1992.

Neoliberal criticism of the advanced welfare state and its public sector-centred model of service provision were centred on three issues.

First, the advanced welfare state was seen as overblown and in need of being trimmed back to a 'lean state' by way of asset or material privatisation. This approach was exemplified by the wholesale material privatisation of the energy and water sectors in the UK.

Second, insofar as services continued to be provided by the public sector, neoliberal doctrine advocated the *hiving off* (*corporatisation*) of operational units to form, whilst still publicly/municipally owned, organisationally (and often financially) quasi-autonomous companies and organisations in order to achieve greater operational flexibility and economic efficiency and escape the employment and financial regulations

typical of quasi-monolithic (*Weberian*) 'core' administration (see Grossi and Reichard, *in this volume*).

Third, neoliberalism also advocated the *outsourcing* (*contracting out*) of services, preferably by competitive tender, to external providers (primarily private, commercial providers; but also public, *mixed* (public-private) and non-public, not-for-profit providers) in order to attract and combine the different financial, motivational and know-how potentials of all partners involved.

Public Utilities

Since the 1980s, the UK has gone the farthest in implementing neoliberal doctrines; it dismantled the allegedly excessive welfare state through material privatisation of the nationalised energy and water sectors. In response to EU directives on market liberalisation of the energy sector, both France and Italy proceeded to transform their state-owned energy companies (EDF and ENEL, respectively) into private law-based, quoted stock companies as a step towards selling shares to private investors, but 20% of ENEL stock remains in Italian state ownership and 80% of EDF stock continues to be held by the French state (for details, see Wollmann et al. 2010; Allemand et al., *in this volume*).

In Germany, by contrast, the energy sector had for a long time been dominated by regional quoted (largely privately owned) energy companies, with the municipal energy companies, *Stadtwerke*, playing a noticeable, albeit minor role in the local energy markets through tradition. The federal legislation of 1998 that was meant to incorporate the relevant EU Directive into national law had the paradoxical effect of strengthening the oligopolistic and competition-adverse market dominance of the 'big four' (E.on, RWE, EnBW and Sweden's state-owned Vattenfall) whilst hastening the 'demise of the *Stadtwerke*' (*Stadtwerkesterben*) (see Wollmann et al. 2010: 177 ff.). In Sweden, the energy sector continued to be dominated by state-owned Vattenfall (see Montin, *in this volume*).

The UK water sector was entirely privatised, that is, the assets as well as the right to operate the service were sold off. In France, the private sector water companies benefited from the centuries-old practice of municipal outsourcing (*gestion déléguée*) of water provision and were able to extend their market share. The 'big three' (Veolia, SUEZ and SAUR) became nationally and internationally dominant players (see Citroni 2010; Lieberherr et al., *in this volume*). In Germany, water provision remained largely in municipal hands although private providers made significant

advances, especially the French service giants Veolia and Suez and their German counterparts RWE and E.on (see Citroni 2010; Lieberherr et al. and Bönker et al., *in this volume*). In Sweden, public utilities, including water provision, continued to be owned and operated by municipalities (see Montin, *in this volume*).

Personal Social Services

Since the 1980s, market liberalisation, to which the notions of competitive tendering and the purchaser-provider split are central, has run rampant through all European countries, resulting in shifts and ruptures in personal service provision. In the UK, market liberalisation driven by 1980s legislation on *competitive tendering* put an end to local authorities' quasi-monopoly on social service provision and led gradually to the dominance of private sector providers (see Munday 2010; Bönker et al. 2010).

In Germany, the federal legislation of 1994, which opened up the market in long-term care, brought an abrupt end to the traditional quasi-monopoly of the non-public, not-for-profit so-called 'welfare organisations' (*Wohlfahrtsverbände*) which was rooted in the principle of subsidiarity. Subsequently, there was a sharp increase in the market share of private sector providers (see Bönker et al. 2010: 111; Bönker et al., *in this volume*). As a result, provision of personal social services, something in which local authorities used to be closely involved, has become 'delocalised' (Evers and Sachße 2003; see also Bönker et al., *in this volume*).

In Sweden, by contrast, the municipal sector and its personnel continue to deliver the majority of services, notwithstanding national and international pressure for market liberalisation, and private (commercial and not-for-profit) providers deliver no more than 20% of personal social services (see Montin, *in this volume*; Wollmann 2008).

21.6 Developments from 1990 Onwards in CEE Countries: Post-socialist Transformation and Restructuring

After 1990, following the collapse of the Communist regimes, the entire politico-administrative structure in CEE countries underwent a dramatic institutional transformation driven by the adoption of the traditional European politico-administrative model. This included decentralisation of local government, and the reception of neoliberal, NPM-based ideas

about modernisation that were then rampant in WE countries. In addition, EU policies, including the drive for market liberalisation have increasingly influenced institutional changes in CEE countries.

Public Utilities

The reorganisation of public utilities (water, waste, etc.) followed a similar path of institutional change in CEE countries as in the WE countries. Following a massive transfer from state to municipal ownership (*municipalisation*) local authorities have often, as a first step, established *corporatised* (i.e., organisationally semi-autonomous but municipally owned) organisations (called *budgetary institutions* in CEE countries). Subsequently, private law companies (such as limited companies or stock companies) are created, providing private investors with institutional access; in other cases, mixed (public/municipal-private) companies are created (for details of developments in Hungary, Poland, Czech Republic, Slovakia and Croatia, see Horvath; Mikula and Walaszek; Nemec and Soukopova; Kopric, *all in this volume*, respectively). At the same time, the municipalities began outsourcing or contracting out more and more public services to private providers through concessions and contracts, as well as asset privatisation of related facilities.

In Hungary, state companies active in the energy sector were transformed into private law companies, and in line with the EU's *unbundling* principle, the generation, transmission and distribution functions were separated at organisational level. In 1995, a large-scale privatisation programme resulted in most of the transmission and distribution companies being taken over by private investors (see EPSU 2010), In contrast, in Poland, the largest energy company is still 85% owned by the state (see EPSU 2010; see also Mikula and Walaszek, *in this volume*).

In most CEE countries, the water sector, after being transferred from state to municipal ownership, has remained mostly in municipal hands. In Hungary, the 377 municipally owned water companies, a highly fragmented network, have largely outsourced water provision to private and more particularly, foreign companies; Veolia, SUEZ, RWE, and E.on are prominent players (see Kuhlmann and Wollmann 2014: 198; Horvath, *in this volume*).

Social Services

In the course of the transformation of 1990, most CEE countries pursued a policy of comprehensive decentralisation of public functions, and thus,

local authorities were handed the responsibility for the provision of social services. In Hungary, about 40% of services are provided directly by local authorities, 15% by public benefit companies, 5% by churches and 15% by non-governmental organisations (NGOs) (see EPSU 2010; Horvath, *in this volume*).

21.7 Developments Since the Mid-Late 1990s in WE and CEE Countries

Since the mid-late 1990s, the institutional development of public and social services has been shaped by an array of somewhat conflicting and contradictory factors of which the following are the most notable:

- The EU drive towards market liberalisation of *services of general economic interest* (SGEI) in all member states has continued (see Marcou, *in this volume*; Bauby and Similie, *in this volume*); however, a December 2009 protocol modifying the Treaty of Lisbon gave local authorities 'wide discretion' 'in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users'.[3]
- There are still influential political and institutional advocates of the neoliberal belief in markets and the superiority of the private sector over the public sector when it comes to provision of public and social services, not the least at local government level. However, disenchantment with neoliberal maxims and premises has been reflected in and amplified by an ever more noticeable change in politico-cultural values in favour of public or municipal service provision. This disenchantment has surfaced in surveys and local referenda (for instance in Germany, see Kuhlmann and Wollmann 2014) as well as in national referenda, such as that held in June 2011 in Italy when asset privatisation in the water sector was overwhelmingly rejected (see Citroni et al., *in this volume*).
- In some Nordic European countries, such as Germany and Sweden, institutional developments in service provision have taken place in a largely financially and economically stable context; however since 2008, southern European countries, especially Greece and Spain, and the CEE countries have been beset by a deepening budgetary ('*sovereign debt*') crisis which has seriously affected service provision, thus intensifying the *north–south* and *west–east* divides within Europe.

Since the mid-late1990s, the trajectories of institutional developments in service provision have diverged, according to various factors, including country- and sector-specific factors.

Public Utilities

Between 'In House' and 'Corporatised' ('Hived Off') Provision

Since the mid-late 1990s, the trend towards corporatising (hiving off) service provision, particularly in the form of MOEs has gained further momentum in the NPM-inspired search for greater operational flexibility and economic efficiency. In countries with a fragmented network of usually small municipalities, the formation of *inter-municipal companies* has progressed. At the same time, the number of mixed (public-private or municipal-private) companies (with an increasing share of the private sector, including international companies) and the number of organisational and contractual public-private partnerships (PPPs) have multiplied (see Grossi and Reichard, *in this volume*).

Since external players in the public services sector tend to act in accordance with their specific (mono-functional, essentially economic) rationality, horizontally *pluralised* (*governance*-type) actor networks have emerged. These have triggered and promoted some centrifugal dynamics as they operate largely outside the direct influence of elected political authorities (*government*) and tend to defy if not run counter to claim of *government* to advocate and bring to bear the *general good* and 'political rationality' (for the *government/governance* debate, see pace-setting Rhodes 1997; for the distinction between *economic* and *political rationalities*, see Wollmann 2014 and Wollmann, *in this volume*).

Within this general trend towards *corporatisation*, however, some significant variance due to country- and service-specific factors can be observed.

In Sweden, where public services 'such as municipal housing, water and sewage services, energy distribution, public transport have to large extent been transformed into municipal companies…with a new push for corporatisation since 2007' (Montin, *in this volume*), the MOEs tend to have a *hybrid* perspective. Because they are exposed to competition from private sector companies, they tend to be guided by an entrepreneurial, profit-seeking economic rationality; however, because they are embedded in the political context of local government, they are also influenced by a political rationality insofar as they also have non-economic goals, and take account of social and ecological concerns and so on (see Montin, *in this volume*; Wollmann 2014).

In Germany, too, the trend towards corporatised municipal companies (MOEs) has extended to almost all sectors (see Bönker et al., *in this volume*; Grossi and Reichard, *in this volume*). The centrifugal dynamics of MOEs have posed a serious challenge to the high-level steering capabilities of local authorities, which they have tried to meet by establishing specific administrative *steering units.*

In Italy, NPM-inspired national legislation in the early 1990s was designed to reduce the number of MOEs (*municipalizzate*) engaged in the water and waste services, at that time about 5,000, by establishing a nationwide network of districts of 'optimal territorial size' (*ambito territorio ottimale*, ATO) each comprising several municipalities and stipulating that only one provider should be commissioned (through an open tender process) to provide a given service in each ATO district. The aim of the legislation was to open the service market up to private competition, including international competition. However, in 2011, the legislation on ATOs was repealed, leaving it to the regions to define their own systems with the result that, as has been noted pointedly, the 'situation is now more chaotic and uncontrolled than ever' (Citroni et al., *in this volume*).

Greece embarked on a different strategy for regulating the corporatisation of service provision. Beginning in the early 1980s, under the socialist Pasok government, there has been a mushrooming in the number of MOEs. They were created as a political instrument for expanding local responsibility for service provision via a process labelled 'corporatised municipal socialism' or even 'clientelist corporatisation' (see Tsekos and Triantafyllopoulou, *in this volume*). National legislation passed in 2002, stipulating that thenceforth only *companies of public benefit* could be established, was intended to retard the rampant growth in MOEs.

After 1990, in CEE countries, public and social services which had been in the hands of the social state were largely transferred to the local authorities (municipalised) and subsequently often hived off or corporatised as what the CEE countries refer to as *budgetary institutions.* As in WE countries, this paved the way for the involvement of private, including international companies.

'Outsourcing'

Outsourcing of services continued to be widely, even increasingly, employed well into the late 1990s and beyond. This is particularly true in the case of CEE countries where the transfer of public functions to

outside providers can, in part, be regarded as deferred stage of the still 'unfinished' transformation of the previous 'Socialist' State (for details of developments in Poland, see Mikula and Walaszek, *in this volume*).

However, in some countries and service sectors, the *outsourcing* of public functions and services has been reversed through *re-insourcing* and *remunicipalisation*, as local authorities decided to take them back into local public ownership or at least bring operations under direct local control (see below).

Asset (Material) Privatisation

In WE countries, asset privatisation of services has recently been extended, both through private investors taking stakes (usually minority stakes) in MOEs and through organisational PPPs. For instance, in Germany and Austria, private investors hold shares in some 40% of MOEs (see Grossi and Reichard, *in this volume*).

In CEE countries, wholesale and partial asset privatisation of service facilities continues to gain momentum as the post-1990 process of institutional transformation progresses. The budgetary crises afflicting these countries provide a further stimulus for privatisation (see specific country reports *in this volume*).

The recent budgetary ('sovereign debt') crises have also prompted further asset privatisation in South European countries (for details on the responses of Greece and Spain, see Tsekos and Triantafyllopoulou, *in this volume*; Magre Ferran and Pano Puey, *in this volume*, respectively).

The Comeback of the Public or Municipal Sector?

In some countries, moves towards remunicipalisation of public services have gained momentum. This shift in policy has been driven by a combination of factors: disenchantment with the neoliberal belief in the superiority of the private sector; local authorities' growing motivation and resolve to regain control over public utilities and benefit financially from providing public utilities; a change in politico-cultural values to favour public sector service provision; mounting political pressure *from below*, for example, local referenda (see Kuhlmann and Wollmann 2014: 200); expiry of concession contracts and so on. Sometimes, remunicipalisation takes the form of *re-insourcing* services; alternatively, it may involve purchasing back asset privatised facilities (see Hall 2012; Wollmann 2014; Kuhlmann and Wollmann 2014).

From an international perspective, the most conspicuous example of a 'comeback' of the municipal sector in the context of provision of public utilities is the case of the energy sector in Germany. Here, the municipal companies (*Stadtwerke*), which had lost ground to the 'big four' have regained operational strength and won back market share (see Wollmann et al. 2010; Bönker et al., *in this volume*). Even in France, where the largely state-owned energy giant EDF still has a near monopoly, the municipalities have recently made moderate advances, particularly in the renewable energy field (see Allemand et al., *in this volume*).

A similar trend towards remunicipalisation can be observed in the water sector (see Wollmann 2014; Bönker et al., *in this volume*; Lieberherr et al., *in this volume*).

Hungary represents a case of conspicuous remunicipalisation or even renationalisation. Since the ultra-conservatives came to power under Viktor Orbán in 2010, larger cities such as Budapest, and then the national government, started to re-purchase assets and shares of companies that had been privatised after 1990. The Orbán government has defended this public sector-friendly approach (somewhat counterintuitive as a conservative policy) on the ground that the private companies abused their dominance by overcharging for services (see Horvath, *in this volume*).

Although there is empirical evidence of a 'comeback' of the municipalities and their companies in some countries and some service sectors, at present, and in the absence of additional evidence, the trend appears limited. Interestingly in the majority of cases in the majority of cases in France and Germany, a concession contract is renewed or extended when it expires; only in a minority of cases does the municipality make use of the opportunity for remunicipalisation (in Germany, this happens in just 2% of cases; see Grossi and Reichard, Bönker et al., *in this volume*). When thinking about the future, one should bear in mind that changes in EU and national policies (for instance in the 'renewable energy turnaround') and the potential for a more widespread politico-cultural preference for public or municipal service provision might lead to more extensive remunicipalisation (for a cautious assessment of this prospect, see Bönker et al. and Bauer and Markmann, *in this volume*).

Personal Social Services: Alternatives to Public or Municipal Provision and Marketisation

Local governments and companies owned or controlled by local governments continue to be providers of personal social services.

Amongst WE countries, this is particularly true of Sweden, where mirroring the historically strong role of local government, a large majority (up to 80%) of personal social services are still delivered by municipalities or their MOEs. However, reflecting the NPM-inspired drive towards market liberalisation which has been in progress since the early 1990s, 'market oriented reforms in care for the elderly have transformed local government from being a sole provider to being both purchaser and provider' (Montin, *in this volume*).

In Germany, where the traditional quasi-monopoly of the non-public, not-for-profit (NGO-type) welfare organisations was abolished in 1994 by market liberalisation-inspired legislation, the distribution of service providers has changed dramatically. These changes have been especially marked in the provision of residential care for the elderly where private, commercial providers' share of the market had risen to 40% by 2011 whilst that of the municipalities proper dropped almost to zero, with NGOs (traditionally, the dominant players) still having some 55% of the market (see Bönker et al., i*n this volume*).

In most CEE countries, the public-municipal sector still dominates the provision of personal social services, which probably reflects the historically determined persistence of the socialist state-based model of service provision whose 'dismantling…is still in the very early phases' (Nemec and Soukopova, *in this volume*). Residential homes for care of the elderly are almost entirely run by public or municipal staff in the Czech Republic, and in Croatia, 70% are publicly run (see Nemec and Soukopova, Kopric et al., *in this volume*). Perhaps because of continuing state dominance in most CEE countries, non-for-profit providers run only a very small proportion of services, probably a consequence of their almost total elimination under the Communist regime. The exception is Poland, where 25% of the homes for elderly and disabled people are run by NGOs, primarily church-affiliated organisations 'which have a tradition of providing such services which goes back many decades and was unbroken even during the Communist period' (Mikula and Walaszek, *in this volume*).

More recently, the provision of personal social services and aid for those in need has been affected in several ways by budgetary crises and the ensuing fiscal austerity policies.

Social Enterprises

In 2011, an EU policy initiative and funding programme based on the concept and goal of 'combining a social purpose with entrepreneurial activity'

in a kind of *hybrid* orientation and profile (see EU 2014 with a reference to related country reports on all EU countries) provided another stimulus for institutional change. This was a remarkable move by the EU, which was intended to complement and to some extent rectify the fixation on economic efficiency, which has been the hallmark of the EU's persistent drive towards market liberalisation. In Greece, for instance, *social enterprises* have recently been founded 'in a wide spectrum of services mostly in the social sector (child-care and care for the elderly)' (Tsekos and Triantafyllopoulou, *in this volume*).

Top-Down Political Initiatives to Engage or Re-Engage Societal Players

There have been some national policies aimed at shifting the provision of personal social services and help for those in need back onto the affected individuals, their families and their peers or, more broadly, shifting such services into the societal or civil sphere. These might be considered to represent, in essence, a return to a pre-welfare state era.

In Italy, the municipalities have traditionally had a very minor role in the delivery of personal social services, which has largely been left, consistent with what might be seen as a version of the subsidiarity principle, to the families and to not-for-profit, mainly church-affiliated organisations. 'Recent Italian government policies have had the direct effect of further reducing public provision of social services and forcing people to rely ever more heavily on private provision…including informal, and sometimes cheaper, solutions such as 'grey' care by migrants' (Citroni et al., *in this volume*; see also Bönker et al. 2010).

Similarly in the UK, under the umbrella concept of the 'big society' which was promoted by David Cameron's coalition government which took office in 2010 (see McEldowney, *in this volume*; see also Buser 2013), there have been policies which have an unmistakably neoliberal flavour, even if they are not explicitly directed at returning to a pre-welfare state. The general aim appears to have been to shift the operational and financial burden of providing personal social services and care for those in need back onto the affected individuals, their families and the societal sphere.

'Bottom-Up' Initiatives to Re-Engage Societal Players

Mention should be made of the comeback of cooperatives and citizens' associations which are organised for self-help or to help other citizens

(for more on the *Genossenschaften* in Germany, see Bönker et al., *in this volume*; for discussion of the 'renaissance' of cooperatives, see Bauer and Markmann, *in this volume*).

Against the backdrop of the financial and socioeconomic crises and the ensuing fiscal austerity measures, societal groups and organisations and social movements have sprung up outside 'formal' structures. They are grassroots, counter-establishment movements (Warner and Clifton 2013) whose aim is to create bottom-up social networks to provide help for themselves and for others.

In Greece, a number of local voluntary groups have sprung up, first in big cities, for example the '*Atenistas*' in Athens, and then 'all over the country' (Tsekos and Triantafyllopoulou, *in this volume*).

In Poland, 'the dynamic activity of NGOs is often seen as a form of 'social capital' and is regarded as a remarkable symbol of the positive shift which has taken place since the end of the socialist period' and reforms have 'encouraged citizens to organise many new social associations whose aim was to complement (or even replace) the role of state institutions in addressing social problems' (Mikula and Walaszek, *in this volume*).

In Turkey, a powerful bottom-up, self-help movement has evolved in response to the failure of national housing policies. Squatter groups (*gecekondu*, literally 'built overnight') have emerged in the mushrooming big cities and have 'become the main self-help mechanism of urban settlement', with 27% of the urban population or 1.1 million people living in such *gecekondu* quarters in 2002 (Bayraktar and Tansug, *in this volume*).

Comeback of the 'Social Community'?

As alluded to earlier (see Sect. 21.2 above), during the nineteenth century, provision of basic personal social services and aid for those in need was largely left, in what was effectively a pre-welfare state era, to church-affiliated charities, bourgeois philanthropists, workers' self-help cooperatives and so on, in other words, to the *social community* (for the historical distinction between the *political* and the *social community*, see Wollmann 2006). One might point to the recent ascent and re-engagement of societal and civil players, and new insistence that individuals and their families should take primary responsibility for coping with socio-economic needs as a re-emergence of the nineteenth century, pre-welfare state social community.

21.8 Convergence or Divergence?

Finally, to summarise, the question of whether there have been convergent or divergent institutional developments during different stages amongst European countries in the provision of public and personal social services shall be addressed.

Nineteenth-Century Background

During the (late) nineteenth century, in the wake of industrialisation and urbanisation, the provision of public utilities (water, sewage, waste, energy and public transport) was seen in their early basic forms mainly as a responsibility of the local authorities (i.e., of the 'political community') which was sometimes labelled as 'municipal socialism'.

At the same time, personal social services, such as care for the elderly and frail, were left largely to the 'social community' made up of philanthropists, charitable non-for-profit organisations, workers' cooperatives, societal self-help groups and the like (for the distinction between 'political' and 'social community', see Wollmann 2006).

Hence, in the pre-welfare state stage the provision of public and social services was, one way or the other, strongly anchored in the local arena.

Rise of the Advanced Welfare State in WE Countries

In (west) European (WE) countries, following the rise of the advanced (national) welfare state which reached its peak in the early 1970s, public utilities and personal social services came to be predominantly provided by the public (state or municipal) sector, resulting from 'nationalisation' (particularly of the energy sector in the UK, France and Italy) and from the further expansion of local-level public and social services. It was assumed that the public sector's quasi-monopoly over service provision ensured that services would be directly or indirectly controlled by a democratically elected local government as the advocate of the 'general interest' and of a 'political rationality'. During this period, the non-public sector, especially the private sector, was sidelined in the provision of services. After 1945, the UK epitomised the public sector-centred model of provision of public and social services.

'Socialist' State in CEE Countries

In the Central Eastern European (CEE) countries, during the post-war period under Communist rule, public and social services were rendered essentially by the public sector of the centralised 'socialist' state.

Public Sector Reorganisation in WE and CEE Countries Following the 1980s and 1990s

Since the early 1980s in WE countries, the previous public sector dominance in public and social services provision was significantly dismantled under the impact of New Public Management (NPM) maxims and (neo-liberal) market liberalisation, essentially promoted by the EU. Consequently, a dramatic horizontal de-concentration, disaggregation and pluralisation of the organisational structure of service provision has occurred by way of 'corporatisation' (i.e., the transfer to organisationally and financially autonomous, but still municipally owned companies), through outsourcing ('contracting out') of functions to outside providers, preferably private sector commercial ones, as well as by full-fledged material (asset) privatisation of ownership and operation. Hence, a multitude of service providers has emerged and expanded in the local arena that are typically guided by their specific interests and their own (often economic) 'rationality'. As these service providers act largely outside the ('hierarchical') influence of elected local *government*, they are setting off some (centrifugal) dynamics which challenge and run counter to the political mandate and claim of (local) government to represent and bring to bear the 'general interest' and its 'political rationality'. This structural tension can be mitigated and possibly resolved if (as in the case of Sweden, see Montin, *in this volume*) ('corporatised') municipal companies show a 'hybrid' (Montin) orientation in service delivery as they, on the one side, are guided, being exposed to a competitive environment, by a profit-seeking entrepreneurial (economic) logic and 'rationality', whilst on the other, being embedded in the local political context, they regard themselves as also committed to a 'political rationality' (see also Wollmann 2014: 68).

In CEE countries, in the course of the secular transformation since the early 1990s, the previous quasi monopoly of the ('Socialist') State sector in the provision of public and social services has been dissolved as well, for one, through *municipalisation*, that is the transfer of State into municipal ownership and operation, and second (and sequentially) by way of *corporatisation*, *outsourcing* and asset privatisation. Hence, the dominance of the 'monolithic' and monopolist State sector has given way to an organisational vertical deconcentration and pluralisation which has been strongly propelled by the imperatives of European Integration and the ensuing processes of 'isomorphism-type (DiMaggio and Powell 1991) adaptation.

21.9 From 'Government' to 'Governance'?

In conceptually and terminologically drawing on the 'governance' debate (see pace-setting Rhodes 1997), the institutional development in the service provision during the aforementioned two phases can be ('broad-brush') summarised and interpreted as follows. In the period of the advancing and advanced welfare state which climaxed in the early 1970s, the public and social services were essentially delivered by the public (state or municipal) sector under the influence and control of (State or local) *government* that is politically mandated to advocate and bring to bear the 'general good' and the 'political rationality'. By contrast, the subsequent stage of reorganisation of service delivery driven by NPM maxims and EU market liberalisation has been marked by the emergence and expansion of networks of actors that are guided by their own specific, often economic, 'rationality' and essentially operate outside the immediate reach of 'government'. Such actor networks have been identified and defined, in the pertinent social science debate (see Rhodes 1997), as '*governance*' structures. Within such 'governance' setting and arena, traditional 'government', in principle, is just one actor and player amongst others without having a 'hierarchical' influence on them. Thus, in its attempt to assert itself and to make its 'general good' commitment and political 'rationality' prevail, *government* is bound to resort to 'non-hierarchical', 'soft power' and, as it were, to 'governance'-typical strategies and instruments such as persuasion, negotiation, financial incentives and the like (see Kaufmann et al. 1986; Wollmann 2003).

Institutional Development Since the Mid-1990s

Since the mid-late 1990s, the institutional development in the provision of public and personal social services has shown both convergent and divergent traces between countries and sectors.

For one, in its mainstream, the institutional development of public and social services provision points at further horizontal deconcentration and pluralisation of service providers by way of *corporatisation*, *outsourcing* and *asset privatisation*. In CEE countries where the secular post-1990 transformation is in part still 'unfinished', the organisational reorganisation keeps being propelled also by an institutional 'catching up' and 'isomorphist' adaptation process. Furthermore, material privatisation of the assets and operation of public utilities has been prompted by the

budgetary ('sovereign debt') crisis, notably in South European, but also in CEE countries. Resulting from this, mainstream development of the centrifugal dynamics of governance-type actor networks has increased whilst correspondingly, the direct influence of 'government' is further slipping.

Second, another current has recently gained momentum that is marked by a growing involvement of 'societal' ('third sector' or 'informal sector'-type) actors in the service provision. The impulses for such increased 'societal' engagement have come from two directions. On the one hand, neo-liberal policies, exemplified in the UK by Cameron's 2010 'Big Society' initiative, have aimed 'top-down' at shifting financial and operational responsibilities from the public sector back to 'the society', that is, essentially to the individuals, their families and 'societal' actors. On the other hand, local-level initiatives, organisations and groups have sprung 'bottom up' in reaction to fiscal austerity measures and cutbacks in public spending on service provision, ranging from cooperatives and 'social enterprises' to 'grass-root' self-help initiatives.

Such 'societal' organisations, groups and individuals still add another institutional and actor dimension to the 'pluralisation' of the already existing 'governance-type' actor networks and still increase the centrifugal dynamics unfolding outside 'government'. Insofar as they serve, be it by political intention or by self-chosen function, to make up for gaps and deficiencies in existing structure of service provision, they are, in a way, reminiscent of the 'social community' (of the nineteenth century) resuming responsibilities in a pre-welfare state stance.

Third, in some countries (for instance in Germany) and sectors (noticeably in the energy sector), the provision of public services (public utilities) has seen some 're-municipalisation' as local authorities and their companies have turned to repurchase previously sold municipal assets or to '*re-insource*' previously outsourced service provision. Thus, local governments have experienced a 'comeback' as relevant actors in the field of local-level service provision.

Pendulum Swinging Back?

Finally, against this backdrop, the question maybe asked whether, in a developmental perspective, a 'back swing of the pendulum' can be observed.

The *pendulum* image goes back to Polanyi's seminal work on the *Great Transformation* (see Polanyi 1944) in which long-term swings from state

regulation to the markets and reverse were hypothesized (see Stewart 2010). Resumed by Millward (see Millward 2005), the pendulum image has recently been taken up in the international comparative debate on the development of service provision (see Röber 2009; Wollmann and Marcou 2010; Hall 2012; Wollmann 2014).

Whilst the pendulum metaphor, besides being intellectually appealing, provides a useful heuristic lens to possibly identify developmental stages and waves, two inherent limits and traps should be borne in mind. For one, the differences that exist between the respective historical setting and contextuality should not be ignored, that is, between the current situation and the historical point of reference. Second, the image should not mislead to assume a kind of determinism or cyclism in the movement of the pendulum swinging back and forth (see Bönker et al., Bauer and Markmann, in their chapters *in this volume*).

Notes

1. For the distinction between 'political' and 'social community', see Wollmann (2006).
2. See Note 1.
3. See http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/protocols-annexed-to-the-treaties/679-protocol-on-services-of-general-interest.html.

References

Bauby, P., & Similie, M. (2014). Europe. In *UCLG, Basic services for all in an Urbanizing World (GOLD III)* (pp. 94–130). London/New York: Routledge.

Bönker, F., Hill, M., & Marzanati, A. (2010). Towards marketization and centralization? The changing role of local government in long-term care in England, France, Germany and Italy. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 97–118). Cheltenham/Northampton: Elgar.

Buser, M. (2013). Tracing the democratic narrative. Big society, localism and civil engagement. *Local Government Studies, 39*(1), 3–21.

Citroni, G. (2010). Neither state nor market: Municipalities, corporations and municipal corporatization in water services: Germany, France and Italy compared. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 191–216). Cheltenham/Northampton: Elgar.

DiMaggio, P. J., & Powell, W. W. (1991). *The new institutionalism in organizational analysis.* Chicago: University of Chicago Press.

EPSU (European Federation of Public Service Unions). (Ed.). (2010). Public services in the European union & in the 27 member states. Available from www.epsu.org/IMG/pdf/MappinReportDefEN.pdf. Accessed 17 July 2015.

European Commission. (2014). A map of social enterprises and their eco systems in Europe. Available from http://ec.europa.eu/social/main.jsp?langId=en&catId=89&newsId=2149. Accessed 17 July 2015.

Evers, A., & Sachße, C. (2003). Social care services for children and older people in Germany: Distinct and separate histories. In A. Anttonen, J. Baldock, & J. Sipilä (Eds.), *The young, the old and the state: Social care systems in five industrial countries* (pp. 55–79). Cheltenham/Northampton: Elgar.

Hall, D. (2012). *Re-municipalising municipal services in Europe*. A Report commissioned by EPSU for Public Services International Research Unit (PSIRU). Available from www.epsu.org/IMG/pdf/Redraft_DH_remunicipalization.pdf. Accessed 17 July 2015.

Kaufmann, F. X., Majone, G., & Ostrom, V. (1986). *Guidance, control and evaluation in public sector*. Berlin: DeGruyter.

Kühl, U. (Ed.). (2001). *Munizipalsozialismus in Europa*. München: Oldenbourg.

Kuhlmann, S. & Wollmann, H. (2014), Introduction to Comparative Public Administration. Administrative Systems and Reforms in Europe, Edward Elgar: Cheltenham.

Millward, R. (2005). *Public and private enterprise in Europe: Energy, telecommunication and transport 1830–1990*. Cambridge: Cambridge University Press.

Munday, B. (2010). Privatization of social services in the United Kingdom. In H. Wollmann & E. Schröter (Eds.), *Comparing public sector reform in Britain and Germany* (pp. 264–284). Aldershot: Ashgate.

Norton, A. (1994). *International handbook of local and regional government*. Aldershot: Edward Elgar.

Polanyi, K. (1944). *The great transformation*. Boston: Beacon Press.

Rhodes, R. A. W. (1997). *Understanding governance*. Buckingham/Philadelphia: Open University Press.

Röber, M. (2009). Privatisierung ade? Rekommunalisierung öffentlicher Dienstleistungen im Lichte des Public Managements. *Verwaltung und Management, 15*(5), 227–240.

Stewart, F. (2010). Power and progress. The swing of the pendulum. *Journal of Human Development and Capacities, 11*(3), 371–395.

Warner, E., & Clifton, J. (2013). Marketisation, public services and the city: The potential for Polanyan counter movements. *Cambridge Journal of Regions, Economy and Society, 7*(1), 2–17.

Wijkström, F. (2000). Changing focus or changing roles? The Swedish not-for-profit sector in the 1990s. *German Studies, 1*(2), 161–188.

Wollmann, H. (2003). Intergovernmental coordination. In B. G. Peters & J. Pierre (Eds.), *Handbook of public administration* (pp. 594–605). London etc.: Sage.

Wollmann, H. (2006). The fall and rise of the local community: A comparative and historical perspective. *Urban Studies, 43*(8), 1414–1438.

Wollmann, H. (2008). *Reformen in Kommunalpolitik und -verwaltung England, Schweden, Frankreich und Deutschland im Vergleich.* Wiesbaden: Springer VS.

Wollmann, H. (2014). Public services in European countries. Between public/municipal and private sector provision—And reverse? In C. Nunes & J. Bucek (Eds.), *Fiscal austerity and innovation in local governance in Europe* (pp. 49–76). Farnham: Ashgate.

Wollmann, H., & Marcou, G. (2010). From public sector—Based to privatized service provision. Is the pendulum swinging back again? Comparative summary. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 240–260). Cheltenham/Northampton: Elgar.

Wollmann, H., Baldersheim, H., Citroni, G., Marcou, G., & McEldowney, J. (2010). From public service to commodity: The demunicipalization (or remunicipalization?) of energy provision in Germany, Italy, France, the UK and Norway. In H. Wollmann & G. Marcou (Eds.), *The provision of public services in Europe. Between state, local government and market* (pp. 168–190). Cheltenham/Northampton: Elgar.

Index

H. Wollmann et al. (eds.), *Public and Social Services in Europe*,
DOI 10.1057/978-1-137-57499-2