

Legal Framework and Present State of External Control and Supervision of Local Self-Government Units in Estonia

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Abstract

The author of this paper considers the issue of legal regulation and the present state of external control and supervision of local self-government units in Estonia, giving an overview of the legislative framework underpinning the key control and supervisory bodies of LGUs, highlighting the present situation of external control and supervision of LGUs and giving some suggestions on developing this field in Estonia. The author argues that the external control and supervision system of LGUs in Estonia is 1) definitely based on a solid and adequate constitutional and legal framework; 2) in full accordance with the European Charter of Local Self-Government in this particular respect; 3) not understood, treated, designed and maintained like an integral, coherent holistic system or organisation; 4) a comprehensive, complex, mixed system, which has sub-systems and elements acting in an uncoordinated manner resulting in a low capacity; 5) and somewhat biased in favour of the state in respect of *ex ante* control. One can also come to one more conclusion (the 6th) – the control and supervision of LGUs executed by the state (administrative, constitutional, governmental, judicial, political) in Estonia is generally public, transparent and democratic enough, but should be more developed and better administered in the future. LGUs need external control and supervision with a capacity high enough to protect the interests of the inhabitants of a particular LGU. The author is of the opinion that reaching this target in Estonia needs an optimum balance between the fundamental constitutional rights of local self-government and protection of the inhabitants' interests in municipalities by state institutions. There is no common model of external control and supervision of the local self-government sector in the world, but it is very common that central governments are trying to take tighter control of local self-government units. The increasing power of state control and supervision of LGUs does not depend on the political order, degree of democracy, liberalism, welfare and socio-cultural environment of a country. Consequently, the case of Estonia is not only country-specific, but has a more generic meaning in contemporary good governance.

Keywords: Control, Estonia, Governance, Inspection, Local Government, Monitoring, Supervision.

Brief Introduction to the Topic of Control and Supervision

The concepts of 'control' and 'supervision' are not new and seem to be as old as human civilization.¹ One can find clear evidence of the preliminary characteristics of control, inspection, monitoring, and supervision activities from ancient Greek times (Xenophon), as well as from the times of Jean Baptiste Colbert (1619–1683), one of the greatest ministers of Louis XIV. However, according to Davis, Downe and Martin (2001, 2), the preoccupations of nineteenth-century inspection were very different to those of today.

The typology and taxonomy of control² and supervision³ can be constructed in many different equal ways. Typology depends primarily on the basic viewpoint and particular interest of the observer. Different authors use different terms like inspection, monitoring,⁴ overlook and scrutiny to express the meaning of control and supervision processes and activities. Terms such as 'external scrutiny' and 'external inspection' often have the same meaning as term 'external control' or 'external supervision', if one compares the meaning of these three definitions by their main inherent components. One can easily discover that in the academic world, supervision is defined by scholars of different branches of science using the terms control, inspection, scrutiny, surveillance⁵ and monitor. One can also very easily ascertain that control activity is defined via supervision, inspection, audit, monitoring and scrutiny as well. Thus, there is no single common definition of control and supervision in the academic world.

The picture is even more complicated in the sphere of politics, management and administration. One can conclude based on an overview of the literature and policy document research that there is the situation that different politicians and practitioners of public management do not have any major differences between control, inspection, monitoring, scrutiny and supervision activities. Only the definitions and terms in day-to-day usage are different because of a number of subjective reasons. It is very common that supervi-

sion as a process consists of audit and control as the tools of supervision and *visa versa*. Supervision and control are complex and complicated matters of research because the line between these terms is not clear and sharp, while their methods and tools are often the same. A typical situation in real political and administrative life is that one can not easily understand whether one or another process or activity is control or supervision because at present there is always a mix of different methods and tools similar to both such as audit, investigation, inspection, surveillance, evaluation, etc. In this very particular aspect of treatment and understanding, the difference between control and supervision in Estonia is a complete match with the generic situation in the world at large.

Different countries have different approaches to the external control and supervision⁶ (hereinafter called ECS) of local self-government units (hereinafter called LGUs),⁷ but some characteristics are common to a number of countries. First, external control and supervision systems (hereinafter called ECSS) are sophisticated combinations of different types of control and supervision subsystems.⁸ Secondly, the relative importance and relations between the different subsystems and elements of ECSS is varied.⁹ Thirdly, the philosophical basis for the theoretical treatment and concept of the practical application of the ECSS of LGUs are very different even in the same organization (a confederation of states, federal state, union of states, the European Union, etc.).¹⁰ Fourthly, due to the legal framework, political reality, historical and cultural context, and economic situation of the different institutions responsible for executing ECS activities over LGUs, they perform their tasks and duties with different authority, devotion, scope, regularity, thoroughness and focus. Fifthly, in many countries the state authorities executing control and supervision¹¹ over LGUs are entitled with a large frame of powers and there exists a trend to increase this power.^{12,13} Sixthly, in small states,¹⁴ the state-level controllers and supervisors responsible for executing ECS activities over LGUs may be under the control of a few specific interest

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groups and as a result the autonomy and sovereignty of LGUs is crucial for the sake of a democratic society. Seventhly, complete centralized control is impossible in any complex system (Mathews, 1996, 41). Eighthly, state-level administration systems and local government-level administration systems form a holistic, integral and complex public administration system in society.¹⁵ On the one hand, LGUs are more prone than national governments to be influenced by special interest groups and they are less able to stand up to rich, powerful individuals (IDB, 6). On the other hand, rural municipalities and cities influence the day-to-day life of inhabitants even more than the activities of the central government. Consequently, LGUs need external control and supervision which has the relevant capacity to ascertain and assure everyone that the constitutional rights and freedoms as well as any other interests of the residents of any LGU in the state are available. Nevertheless, the constitutional rights of local self-government should be granted and the external control and supervision of LGUs shall be exercised in such a way as to ensure that the intervention of the controlling or supervising authority is kept in proportion to the importance of the interests that it is intended to protect.

The author would like to emphasize that the brief introduction above is not nor should not be understood as a complete overview or as a sufficient topology of the topic. Getting a complete, systemic and coherent overview and entire topology of the matter of control and supervision is outside of the scope of this article. The author would also like to emphasize that in the context of this article it is not of the utmost importance to determine and define prompt monosemantic meaning of the terms 'control' and 'supervision' and label these items with a 'final' title. However, a more homogeneous determination, definition and treatment of subjects such as control, supervision and review (inspection, monitoring, overlooking, overseeing, scrutiny and surveillance) in the nearest future would be of great help to scholars, politicians and public servants in the context of better understanding each other across the entire European Union.

The author has consciously simplified the subject at hand in order to avoid diluting the main focus of this particular article, and is going to treat the subject of control and supervision together as an intermittent (regular or irregular) or continuous process started or task carried out by an organization, or politically and legally authorized controller/supervisor, to assure that the organization in question is liable and expected to carry out its obliged and expected tasks (controllee/supervisee) and fulfils them in accordance with the predetermined standards and expected norms of performance and operation.¹⁶ ECS means that the institution executing control or supervision activities over another institution is an external, not internal actor (member or structural part of the organization) in relation to it.¹⁷ Even though this chapter is not directly linked to the case of Estonia, the brief introduction above is intended to give the reader a short, quick overview of the wider context of the matter under treatment for the sake of a better understanding of the rest of the paper.

Legal Framework of External Control and Supervision of LGUs in Estonia

The previous chapter highlighted the complex landscape of the subject of control and supervision in the world. This chapter considers the legislative framework underpinning the key bodies of control and supervision as well as the implications of these on the conduct of the ECS of LGUs in Estonia.

Pursuant to Clause 8 (1) of the European Charter of Local Self-Government (hereinafter called Charter; EC 1985), any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the Constitution or by statute. Pursuant to Clause 8 (2) of the Charter, any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency

by higher-level authorities in respect of tasks the execution of which is delegated to local authorities. Furthermore, pursuant to Clause 8 (3) of the Charter, administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect. Pursuant to §154 of the Constitution of the Republic of Estonia (hereinafter called CRE) "*all local issues shall be resolved and managed by local governments, which shall operate independently pursuant to law. Duties may be imposed on a local government only pursuant to law or by agreement with the local government. Expenditure related to duties of the state imposed by law on a local government shall be funded from the state budget.*" Therefore, all fundamental rights and freedoms in respect of the autonomy of local self-government are granted on the level of the Constitution in full accordance with the principles of local self-government of the Charter in Estonia.¹⁸

In the case of Estonia, pursuant to the Preamble of the CRE, the state exists for the Estonian nation, language and culture 'through the ages'. Thus, most important (to avoid saying that the only) reason for the CRE to exist is for the establishment and existence of the Estonian state. It is very clearly stated in §14 of the CRE that "*the guarantee of rights and freedoms is the duty of the legislative, executive and judicial powers, and of local governments.*" Furthermore, pursuant to Article 4 of the CRE, "*the activities of the Riigikogu, the President of the Republic, the Government of the Republic, and the courts shall be organised on the principle of separation and balance of powers.*" One can see that nothing concerning the separation of duties and the balance of powers between the central government and local self-government is stipulated in this very fundamental article of the CRE. Pursuant to Clause 6 (4) of the LGOA, local governments fulfil the state functions which are assigned to them by law or which arise from a contract between an authorised state body and a specific council. Thus, according to the spirit of the CRE, the

central and local governments form a holistic integral organization in Estonia and the local self-government sector is one particular level of the holistic public administration organization in a state.¹⁹ Hence, the absolute abstract autonomy of LGS as an end in itself, without the context of the most important purpose of a nation-state and without the main purpose²⁰ of LGS within the state, would not be a relevant object of treatment in actual socio-political life, may be misleading and does not match the paradigm of the Charter as well.²¹ Consequently, the autonomy of the local self-government sector should be treated first of all in light of the main purpose of the nation-state; then afterwards in light of the interests of the local inhabitants and finally in light of the autonomy of local self-government as an end in itself. This particular aspect is very important to remember especially in the case of a politically unitary nation-state.

An essential subject of **political control** (mainly *ex ante* control) in Estonia is parliament *Riigikogu*,²² but the expedient subjects of political control are the President of the Republic,²³ Government of the Republic²⁴ and ministries²⁵ as well. An Estonian particularity is that on the state level, political leaders belonging to the government coalition channel the execution of power into a coalition council (*ex ante* political control) which is not provided for by the constitution²⁶ (Linnas 2007, 284). The Government of the Republic has a strong tool of political control (*ex ante* control) of LGUs in the form of the allocation of funds from the state budget to local government-sector budgets. For example, according to Clause 8 (9) of the RMCBA, the Government of the Republic has the right, on the proposal of the Minister of Finance, to suspend making payments from the budget equalisation fund to a local government if it is taking a loan, unless a copy of the loan agreement is submitted to the Ministry of Finance, or the issue of debt instruments, unless it is registered with the Financial Supervision Authority, becomes known to the Ministry of Finance. The issuance of payments shall be suspended until the submission of a copy of the loan agreement or registration of the issu-

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ance of debt instruments. The right to suspend such payments from the budget equalisation fund to a local government is a rather big issue under question in the context of the autonomy of LGS. The author is of the opinion that all decisions concerning the allocation of funds from the state budget to the total budget of an LGS or a budget of a particular LGU and the suspension of financing of an LGS' total budget or the budget of a particular LGU from the state budget shall be done by parliament in a democratic parliamentary state. This is largely supported by Ezugbaia and Melkadze (2002, 117), who argue that "... *In many European states supervision is maintained under the expediency motivation, especially in the financial field. This directly contradicts the requirement of paragraph 2 of Article 8 of the European Charter, under which any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with the constitutional principles.*" Other subjects executing ECS over LGUs are the Chancellor of Justice;²⁷ courts, including the Supreme Court of Estonia; National Electoral Committee; Prosecutor's Office;²⁸ State Audit Office²⁹ and County Governors.³⁰

Pursuant to §139 of the CRE, the Chancellor of Justice (hereinafter called CJ) shall be, in his or her activities, an independent official who shall review the legislation of the legislative and executive powers and of local governments for conformity with the CRE and the laws (constitutional review, **constitutional control**; *ex post* control). The CJ shall analyze proposals made to him or her concerning the amendment of laws, the passage of new laws, and the activities of state agencies, and, if necessary, shall present a report to *Riigikogu*. Pursuant to §142 of the CRE, if the CJ finds that legislation passed by the legislative or executive powers or by a local government is in conflict with the CRE or a law, he or she shall demand the body which passed it bring the legislation into conformity with the CRE or the law within twenty days. If the legislation is not brought into conformity with the CRE or the law within twenty days, the CJ

shall request the Supreme Court to declare the legislation invalid.

The legal framework for **judicial control** and **supervision** (*ex post* control and supervision) has been enacted on both the constitutional and legal levels. Pursuant to §146 of the CRE, justice shall be administered solely by the courts. The courts shall be independent in their activities and shall administer justice in accordance with the Constitution and the laws. There are a number of laws covering the issues of judicial *ex post* control and supervision over LGUs in Estonia. In this article, judicial supervision is of marginal importance and is not a focus of treatment, because no court has the right to act on its own initiative in protecting the rights, freedoms and interests of anyone in Estonia.³¹ However, according to Jean-Marie Woehrling (2005, 2), "*a state based on the rule of law implies the capacity of citizens to submit administrative actions to judicial control. Moreover, judicial control appears to be an indispensable instrument to enhance the quality of administrative action and ensure good governance.*"

Another supervisory subject executing **legal supervision** (*ex post* supervision) of local government is the National Electoral Committee (hereinafter called NEC), which serves as the second level of appeal in electoral complaints. Pursuant to Clause 17 (1) of the Local Government Council Election Act (hereinafter called LGCEA), the function of the National Electoral Committee is to ensure the uniformity of the conduct of council elections, instruct other electoral committees, exercise supervision of their activities and perform other functions arising from law. Pursuant to Clause 17 (2) of the LGCEA, the NEC has the right, among other rights, to issue precepts for the elimination of deficiencies of an act or resolution of an LGU's electoral committee; suspend an act or the validity of a resolution of an LGU's electoral committee; declare a resolution of an LGU's electoral committee invalid and, if necessary, issue a precept for a new resolution to be adopted. In general, the NEC has two types of actions. During LGU council elections, the NEC serves as the second level of appeal for electoral complaints. During the

time between elections, the NEC processes complaints about the premature termination of a council member's authority, suspension of a council member's authority and the replacement of a council member by an alternate council member.

Economic control (*ex post* control) in Estonia is the responsibility of the State Audit Office (hereinafter called SAO, CRE §132), which is an independent state body in its activities. Pursuant to §133 of the CRE, the SAO shall audit, among other issues, the use and disposal of state assets which have been transferred to the control of local governments. Pursuant to Clause 7 (1) 3) of the SAOA, the SAO shall exercise economic control over LGUs. The SAO exercises control of LGUs with respect to the following persons and areas: local governments in their possession, use, and disposal of municipal assets; foundations and not-for-profit associations in which a local government participates as a founder or member; companies controlled by local governments and the subsidiaries of such companies (SAOA Clause 7 (2)). The SAO shall exercise economic control over local governments in so far as they use movable and immovable property of the state transferred to their possession, allocations for specific purposes, subsidies granted from the state budget, and funds allocated for the performance of state functions (SAOA Clause 7 (2')). Pursuant to Clause 7 (4) of the SAOA, the SAO shall audit the use of European Union funds allocated through local governments and the performance of obligations to the European Union assumed in connection with such funds. With regard to the end users of the European Union funds and persons who have obligations to the European Union, the National Audit Office has the right to perform procedural acts in order to ascertain the validity of the circumstances which were the basis for the receipt of such funds and the legality of their use as well as the performance of the obligations.

Different ministries and government agencies have to exercise different type of ECS in very different fields (mostly administrative, financial and legal control, and supervision).

For example, projects funded by the European Union are audited by an authorized auditor appointed by an authorized body of the European Union (RT I, 2006, 7, 42), but also by the SAO (RT I, 2005, 32, 235; RT I, 2006, 25, 190), the Ministry of Finance (RT I, 2006, 7, 42; RT I, 2006, 25, 190) and the Ministry of the Interior (RT I, 2006, 25, 190).³² According to Clause 8 (7) of the RMCBA, LGUs are required to register both public and closed issues of debt instruments with the Financial Supervision Authority. The closed issues of debt instruments by rural municipalities or cities shall be registered under the conditions and in compliance with the rules of procedure for the registration of public issues provided for in the Securities Market Act (*ex ante* control). Pursuant to Clause 8 (8) of the RMCBA, the Financial Supervision Authority shall inform the Ministry of Finance of an issue of debt instruments by a rural municipality or city within five days of the registration of the issue. According to Clause 77 (1) 6) of the GRA, the State Chancellery shall manage issues relating to state and local government insignia pursuant to the laws and legislation of the Government of the Republic and pursuant to Clause 77 (1) 10) of the GRA, co-ordinate the training and evaluation of state and local government officials.³³ The State Archivist executes the archival supervision (RT I, 2004, 28, 188) of LGUs. The Environmental Investment Centre is responsible for controlling the expedient use of the funds allocated to LGUs via environmental investment projects that are financed by the income gained from environment usage (RT I, 2005, 67, 512). According to Clause 1 (1) of the POA, the Prosecutor's Office (hereinafter called PO) is a government agency within the Ministry of Justice which participates in the planning of the surveillance necessary to detect and combat criminal offences, directs pre-trial criminal procedure and ensures the legality and efficiency thereof, represents public prosecution in court and performs other duties assigned to it by law. The Government of the Republic shall appoint the Chief Public Prosecutor to office on the proposal of the Minister of Justice after considering the opinion of

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the Legal Affairs Committee of *Riigikogu* (Clause 16 (1) of the POA) and the Government of the Republic shall appoint the leading public prosecutor to office on the proposal of the Chief Public Prosecutor (Clause 16 (2) of the POA). Prosecutors have a legal assurance of independence because the Chief Public Prosecutor and the leading prosecutor shall be appointed to office for a term of five years (Clause 17 (1) of the POA). This list is not exhaustive, but illustrative enough.

A very particular and in some extent central subject of state control (administrative control, legal control) and supervision (administrative and legal) over LGUs at the regional level used to be county governor (Hereinafter called CG) and his/her office. Pursuant to Clause 85 (1) of the GRA, a county governor has the right to exercise supervision over the legality of the legislation of a specific application of local governments and local government councils of the county in question and, in cases and to the extent provided by law, also over the legality and purposefulness of the use of state assets in the use or control of local governments (*ex post* control and supervision). Pursuant to Clause 85 (4) of the GRA, if a county governor finds that the legislation of a specific application of a local government council or government is, in full or in part, in conflict with the Constitution, a law or other legislation issued pursuant to law, he or she may submit a proposal in writing to bring the legislation of the specific application or a provision thereof into conformity with the Constitution, the law or other legislation within fifteen days. If the council or government of LGU does not or refuses to bring the legislation of a specific application or a provision thereof into conformity with the Constitution, a law or other legislation within fifteen days after receipt of the written proposal, the county governor shall file a protest with an administrative court pursuant to the procedure prescribed in the Code of Administrative Court Procedure. Pursuant to Clause 85 (5) of the GRA, if a county governor files a petition with the Chancellor of Justice pursuant to §14 and §160 of the CRE and §12 of the Chancellor of Justice Activities Organisa-

tion Act to control the conformity of legislation of a general application or a provision thereof of a local government body with the Constitution or other law, the county governor shall, on the same day, also send a copy of the petition to the local government body which passed the legal instrument. Pursuant to Clause 85 (6) of the GRA, if the county governor discovers that the local government has possessed, used or disposed of state assets unlawfully or non-purposefully, he or she shall file a report with the SAO, or with an investigative or other competent agency, and forward, together with the report, documents and other materials at his or her disposal which prove this accusation. Pursuant to Clause 85 (7) of the GRA, a county governor or an official authorised by a county governor's order has the right to control the performance of state functions assigned to local governments by law or assumed by local governments by an administrative contract. According to Clause 8 (5) of the RMCBA, an LGU government is required to forward a copy of any LGU council resolution it makes on the taking of a loan or other proprietary obligation to the county governor within three days of its entry into force.

How the legal framework described in this chapter is implemented in actual life in the public sector, particularly in the local government sector in Estonia, will be presented in the next chapter. However, taking a look into the abovementioned legal framework, one can come to five clear conclusions. The external control and supervision system of LGUs in Estonia is 1) definitely based on a solid and adequate constitutional and legal framework; 2) in full accordance with the European Charter of Local Self-Government in this particular respect; 3) not understood, treated, designed and maintained like an integral, coherent holistic system or organisation; 4) a comprehensive, complex, varied system, with sub-systems and elements acting in an uncoordinated manner and as a result it actually has a low capacity; 5) somewhat biased in favour of the state in respect of *ex ante* control. However, one can come to one more conclusion (the 6th) – the control and supervision

of LGUs executed by the state (administrative, constitutional, governmental, judicial, political) in Estonia is in general and by large sufficiently public, transparent and democratic enough. According to Shann Turnbull (2007a, 5), Principal of the International Institute for Self-governance, "... *law makers and Regulators do not have the intellectual tools to design efficient and effective regulation.*" A strong ethical environment is a key component of good governance, which is widely perceived as being essential in ensuring sustainable and effective performance in local authorities (SBE 2007, 9). Consequently, one cannot rely too much only on the idea of a never-ending improvement of the legal framework and strengthening of ECS activities, but more attention and effort have to be put on promoting ethical values in the public sector and all of society. However, the present situation of ECSS evidently confirms that when the constitutional and legal framework is solid and adequate, the concept of ECSS of LGUs should be more developed; ECSS should be treated as holistic complex system and the existing ECSS of LGUs should be better administered, particularly in respect to coordination.

State of External Control and Supervision of Local Self-Government Units in Estonia

The previous chapter highlighted the legislative framework underpinning the key ECS bodies and the implications of these for the conduct of control and supervision of LGUs in Estonia.³⁴ This chapter considers the present state of ECS of LGUs in Estonia through the subjects of control and supervision.

Political control, like other types of control and supervision, has positive and negative sides. Political control can be maintained through tight political controls imposed through regulations (Rodan 1998, 17) and other institutions,³⁵ political censorship (Rodan 1998, 18), counterinsurgency (Hippler 2006, 47), appointments of high-ranking civil servants, appointment and removal power

(Stephenson 2007, 42), supervisory and directive authority (Stephenson 2007, 42), agency organization (Stephenson 2007, 42), judicial deference to agency decisions (Stephenson 2007, 42), judicial review (Pulido 2006), legal doctrine (Jacobi and Tiller 2005, 1), decisions regarding resource allocation,³⁶ influencing LGU politicians or public servants, highlighting values publicly, etc. However, in Estonia, according to Ülle Madise (2007), "*when political parties in the parliament have — without a doubt — tried to increase their advantages in maintaining and regaining power, politically independent constitutional institutions have worked against this.*" Another possibility of decreasing the power of political control executed on the state level by state-level politicians in other levels is to limit their scope of activity. In Estonia, a member of the Riigikogu cannot serve as a member of a local government council and several laws prohibit hiring the members of a management board or management body of a political party to work in certain positions (Madise 2007).

One considerable phenomenon (to avoid saying impropriety) concerning ECS in Estonia is a very high level and growing trend of a sense of corporatism in political and social life. Most dangerous for democracy are non-constitutional bodies such as a council of coalition, which hijacks the government and parliament's constitutional rights of decision making. Likewise, "*innovations in political control technology are powerful new tools at the disposal of states in need of technical fixes for their most pressing and intractable social and political problems*" (EPDGR 1998, 3). However, Gary Rodan (1998, 1), professor of politics at Murdoch University in West Australia, argues "*the advent of information technology (IT) has generally been heralded as a force for the breakdown of authoritarian political control.*" According to Stephenson (2007, 2), "*except in special cases, majoritarian values are best served by a degree of bureaucratic insulation from political control.*" How to reach this situation is a very tricky question, particularly in the context where state-level control and supervision is a growing trend not only in Estonia, but all over the

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world. One can get a hint from Rait Maruste, a judge of the European Court of Human Rights, (2007), who argues that *"a true and functioning constitutional democracy is based first of all on thinking, values, good will and practice, faith and experience. These are categories that take much longer and greater effort to evolve than economic wealth or formal lawfulness."*

The supervision done by the CJ is often based on a single complaint,³⁷ although the CJ also performs independent systemic risk-based supervision (Linnas 2007, 286). According to Indrek Teder (2008), the Chancellor of Justice of Estonia, many LGUs in Estonia do not have the capacity to carry out public functions in the expected amount and at level of quality expected, but there are too many small LGUs in Estonia for the Office of the CJ to be able to supervise all of them. According to Allar Jõks, former Chancellor of Justice of Estonia (2007), *"addressing the Chancellor of Justice is not a judicial remedy but, rather, a last resort after all judicial remedies have been exhausted."* Furthermore, Allar Jõks (2007) argues that *"the language of the Chancellor of Justice and the Supreme Court is limited to interpretation of the Constitution and has to proceed from this interpretation as its set task. The language of politics is almost unlimited."* Yet, Kaarlo Tuori (2007) warns *"judiciary ultimately monitors the observance of constitutional basic-rights provisions, but is not subject to democratic control, because it lacks democratic legitimacy."* Furthermore, Tuori (2007) argues that constitutional rights may accelerate development toward a judiciary state.

There has not been very much research done on the autonomy of administrative and judicial control and supervision of LGUs in Estonia, but the most important subjects of constitutional and judicial control and supervision (the Supreme Court and the CJ) are highly respected in society and execute their tasks and obligations with dignity. According to Vallo Olle (2007), *"the judicial practice of the Supreme Court in the area of suffrage – and, naturally, not in that area alone – has definitely strengthened a democratic state-*

hood of Estonia based on the rule of law. The positions expressed by the highest national court in defence of the principles of local government autonomy and the representativeness of its representative body are of lasting value for the guarantee of this constitutional institution that is closest to its citizens." However, Maruste (2007) states that *"especially disturbing is the grounding of judicial protection of rights and freedoms only, or largely, in the paradigm of formal lawfulness. Basing the protection of rights and freedoms on formal lawfulness means having regard for the arguments of one side only, state authority, as law is nothing other than an instrument of power."* According to Wolfgang Drechsler, professor of Tallinn University of Technology (2007), *"municipal autonomy and the central state are suspended in a necessary institutional tension, and thus the demand for the Supreme Court³⁸ to protect the municipalities, which are the weaker side, is and will always be there."* Katrin Saaremäel-Stoilov (2007) points out that *"the Supreme Court of Estonia has dealt with social-state-related cases extremely carefully, mindful of all the dangers that could emanate from such claims, and it has used most of the judicial tools at its disposal to protect itself from the double-edged sword. This has led to a moderate level of judicial protection of social rights and leaves most of the questions for the legislator to solve."³⁹* Thus, the Supreme Court as an institution made up of human beings can be under its own control to some extent even has all the legal guarantees for independence. Pursuant to §146 of the CRE, justice shall be administered solely by the courts. The courts shall be independent in their activities and shall administer justice in accordance with the Constitution and the laws. However, there are still relevant possibilities to influence their work with other political measures. According to Taavi Annus (2007), factors restricting the freedom of a constitutional court are the political convictions and ideologies of the judges, politics inside the court, the influence of other political institutions on the courts and the influence exerted on the courts by interest groups and the public. In Estonia, the eco-

conomic and administrative affairs of courts are under the responsibility of the Ministry of Justice. Thus, there cannot be a one hundred percent assurance that the judicial control and supervision of LGUs is without any degree of political bias. However, in this article judicial supervision is a marginal, not a focal subject of treatment.⁴⁰ In addition, Estonians are generally very conservative plaintiffs and do not like settle arguments in court. However, only an administrative court can give a legal opinion on a decision or omission of council of an LGU. Thus, one cannot downgrade the role of administrative courts in Estonia. There is another aspect of the performance of judicial control over the activities of the central and local governments as well. Mollah (2006, 16) argues *"in all the law of judicial control perhaps the central topic is the question how far the courts will go in investigating the motives and merits of government action."*

Riigikontroll (SAO of Estonia), the economic controller of the public sector, plays a major role in supplying *Riigikogu* and the public with independent and objective feedback on the effectiveness of the choices made and on any shortcomings identified (Oviir 2007). According to Mihkel Oviir, the Auditor General of the Republic of Estonia (2007), *"it should be stressed that the chief purpose of economic control is to provide an overview of the actual situation. In addition, the assessments and conclusions of an independent external auditing body should provide the audited entity with a good basis for quality decisions and enhance the reliability of the audited entity in the eyes of third parties."* The activity of the SAO is not aimed just at representing the interests of the public administration before municipal administrations (Oviir, 2007). The control powers of the SAO do not extend to assessing the effectiveness of local government management, organization and activities (Oviir 2007). Here it is worthy to remember that *Riigikontroll* acts only as an external auditor providing independent and objective information first of all to *Riigikogu* and society at large. Municipal councils and governments are very free to decide whether to follow the recommendations of SAO or not.

Consequently, *Riigikogu* cannot be understood to be a controller over the LGS in the principal meaning of control.⁴¹ A special audit department (with 12 auditors as of 30.01.2009) to audit LGUs was set up on January 1st, 2006, but due to the large number of entities within the scope of SAO auditing, very limited resources for the performance of LGU audits is available and subsequently a risk-based approach is used; the auditing of an LGU or an activity or issue of an LGU takes place once every 3 to 5 years (Linnas 2007, 286).⁴² In essence, the audits performed by the SAO are rather superficial. They do not go very deep into problems and reasons behind them (Linnas 2007, 286).

The National Electoral Committee plays an important role in safeguarding democracy in society. In the case of Estonia, the NEC has no regional offices, but rural municipality or city electoral committees are formatted by LGU councils. The chairman of a rural municipality or city electoral committee shall be the corresponding rural municipality or city secretary and the members of the rural municipality or city electoral committee shall be appointed by the council on the proposal of the rural municipality or city secretary. Thus, the most important role in the electoral process is played by local politicians. The NEC has no power to invalidate a resolution of an LGU council that might be against the law and this particular decision is in effect up to the resolution of a court (Rask 2007). County governors play the role of "middleman", but sometimes a county governor exercising supervision of a particular LGU is a party-mate of the majority party on the council of the LGU in question and may not act as objectively as expected by the law. According to the data provided by the Elections Department of *Riigikogu*, the NEC in its supervisory process over LGUs has conducted the following actions: in 2000, 1 supervision; in 2001, 1 supervision and 1 complaint; in 2002, 4 supervisions and 18 complaints; in 2003, 11 complaints; in 2004, 2 supervisions and 14 complaints; in 2005, 1 supervision and 30 complaints; in 2006, 1 supervision and 8 complaints; in 2007, 1 supervision and 4 com-

plaints; and complaint. The ECS activities are numerous regarding supervisory case activities of other over LGUs. The NEC in the E estimated. E (117) argue the *mentation of Rights, serious in the field of transformation of supervision of l*

Even the other prosecu antees for ind performance Office is unde trol of the Gov Ministry of J have a situati mence or con out the prelimin of Justice or v ings under pr tice.⁴⁴ The pro PO is of cruc significant re ment sector h ruption, confi public resourc nia. Second, p ciers are very nancial interes protect the cor ants of LGUs ing different p measures. The liamentary de Prosecutor and be out of dire ministrative e of Justice and

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plaints; and in 2008, 1 supervision and 1
 complaint. Thus, the role of the NEC in the
 ECS activities of LGUs remains less numer-
 ous regarding the number of control and su-
 pervisory cases in comparison with the ac-
 tivities of other subjects responsible for ECS
 over LGUs. However, the significance of the
 NEC in the ECSS of LGUs cannot be under-
 estimated. Ezugbaia and Melkadze (2002,
 117) argue that *"during the process of imple-
 mentation of the European Charter of Human
 Rights, serious problems could be encountered
 in the field of the mechanisms for democratic
 transformation and the purpose of state su-
 pervision of local authorities."*

Even the Chief Public Prosecutor and
 other prosecutors in Estonia have legal guar-
 antees for independence and objectivity in the
 performance of their duties, the Prosecutor's
 Office is under the political and financial con-
 trol of the Government of the Republic via the
 Ministry of Justice.⁴³ It is not uncommon to
 have a situation where the PO will not com-
 mence or conduct a criminal procedure with-
 out the preliminary approval of the Minister
 of Justice or will terminate criminal proceed-
 ings under pressure of the Minister of Jus-
 tice.⁴⁴ The proper and prudent function of the
 PO is of crucial importance because of two
 significant reasons. First, the local govern-
 ment sector has a higher level of risk of cor-
 ruption, conflict of interests and misuse of
 public resources than the state sector in Est-
 onia. Second, political parties and their finan-
 ciers are very keen to realise their selfish fi-
 nancial interests via LGUs and therefore they
 protect the corrupt politicians and public serv-
 ants of LGUs who are very loyal to them us-
 ing different political, administrative and legal
 measures. The author suggests that in a par-
 liamentary democratic state the Chief Public
 Prosecutor and the Prosecutor's Office should
 be out of direct political, economic and ad-
 ministrative *ex ante* control of the Ministry
 of Justice and the Government.⁴⁵

The Ministry of Finance exercises super-
 vision and audit, controls and reviews foreign
 aid-related funds and those allocated for spe-
 cific purposes as well as the purposeful and
 lawful usage of the assistance granted, but its

capability in performing those tasks is re-
 stricted due to limited resources (Metsalu
 2006, 3). However, the Government of the
 Republic has no solutions to prevent local
 governments from encountering solvency
 problems, to deal with local governments that
 have already encountered such financial dif-
 ficulties, and to organize financial supervision
 of the financial situation of local governments
 (Metsalu 2006, 3). Here it is very hard to find
 an easy, legally correct and fair solution be-
 tween the interests of the state and LGS. The
 author is of the opinion that local self-govern-
 ment units have to have autonomy in taking
 loans, but at same time the state has to have
 instruments to protect the financial interests
 of the state as a holistic organisation in gen-
 eral. According to Sellers and Lidström (2007,
 17–18), *"lower local capacities and in some
 instances more supervision make local gov-
 ernment in these systems more state-depend-
 ent."* Consequently, it is important to keep an
 optimal balance between the two different
 poles of society: the state and LGS. Solutions
 for strengthening the administrative capacity
 of LGUs in Estonia are evidently needed.

The supervision of LGUs exercised by a
 county governor is only supervision over the
 legitimacy of individual acts adopted by the
 councils and governments of the local govern-
 ment units of the given county, and, in the
 cases and to the extent provided by law, also
 over the legitimacy, purposefulness and expedi-
 ency of state assets put in use by local gov-
 ernment units, but not over the expediency,
 efficiency and effectiveness of activities and
 financing (Linnas 2007, 286). County govern-
 ors have a conflict of interest because they
 serve as a representative and supervisory body
 of government and represent the interests of
 LGUs against the state government as well.
 County governors have to be released from
 this conflict of interest situation. This means
 that the tasks of entire, coherent and systemic
 regional development should be transferred
 from county governors to the associations of
 LGUs acting on the territory of the counties
 in question. The actual administrative capac-
 ity of a county governor in supervising the
 lawfulness of local government activities is

Table 1.

Field of supervision executed by County Governors over the LGUs in Estonia⁴⁶	No of proceedings in 2003	No of proceedings in 2006
Legality of legislation of specific application of local governments and local government councils.	313	1317
Legality and purposefulness of the use of state assets in the use or control of local governments.	32	0
Land readjustment.	6	1533
Land restitution.	9711	4048
Legality of privatisation of dwellings owned by local governments.	22	24
Legality of privatisation of non-living space owned by local governments.	6	3
Return, distribution and use of funds earned from privatization of municipal assets.	3	24
Performance of agricultural reform.	0	14
Determining value of property and compensation.	919	430
Return of unlawfully expropriated property.	368	148
Performance of family doctors.	373 ⁴⁷	311
Quality of social services and other aid. Purposeful use of funds allocated for social aid from the state budget.	305 ⁴⁸	200
Educational and development activities in children's facilities.	See footnote 1. ^{49 50}	182
Educational and development activities in vocational education facilities.	See footnote 1.	9
Educational and development activities in secondary schools and gymnasiums.	See footnote 1.	222
Purposeful use of funds allocated to youth work from the state budget.	353 ⁵¹	179
Performance of duties and tasks by public libraries.	14	5
General and detailed planning.	449	1003
Fulfilment of requirements of passenger carrier licences and line licences of public and light transport, fulfilment of public service agreements and contracts of public and light transport, fulfilment of administrative agreements and contracts of public and light transport.	289 ⁵²	171
Fulfilment of requirements of Compulsory State Defence Tributes Law.	0	0
Other supervision.	132 ⁵³	3499
In total	13295	13322

often unsystematic (Linna table 2)

A county and politically affiliated governors are of competence is nas 2007, 286 nors are in a pressure and using discussion responsibilities seen as respect central government they are of the Ministry professor of E organization of p handled "as a and balance levels, and wh functions, org parts of the sy tem as a whol gets more spec trol and super cohesive who views and the of a county g can conclude a key role in t seen as a cent ordination of I ernor's role as clearly stated ideas express maa. Almann sion has to be of a balanced tivities of bod to be co-ordin in the course current county ture become performs stat the opinion th stitution in th should be pr process of les

No of proceedings in 2006
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182
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222
179
5
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171
0
3499
13322

often unsystematic, inconsistent and insufficient (Linnas 2007, 286). (See table 1 and table 2)

A county governor may be unobjective and politically biased, as the posts of county governors are allocated according to political affiliation or other political reasons and one's competence is of secondary importance (Linnas 2007, 286). Furthermore, county governors are in a permanent situation of political pressure and uncertainty because of long-lasting discussions over their role and scope of responsibilities. County governors used to be seen as respectable representatives of the central government in the regions, but at the moment they are somewhat heads of department of the Ministry of the Interior. Arno Almann, professor of EBS (2007), argues that the organization of public administration should be handled *"as a complete system with relations and balance among various administrative levels, and where the changes planned in the functions, organisation, and legal status of the parts of the system cause changes in the system as a whole as well."* Linnas (2007, 290) gets more specific arguing that the audit, control and supervision of LGUs form a uniform cohesive whole. Taking together these two views and the actual (and possible future) role of a county governor and his/her office, one can conclude that a county governor can play a key role in that. A county governor may be seen as a central body responsible for the co-ordination of ECS of LGUs if the county governor's role as a state supervisor will be very clearly stated.⁵⁴ This concept supports the ideas expressed earlier by Almann and Reimaa. Almann (2007) argues that state supervision has to be developed as a state guarantee of a balanced, complete system and the activities of bodies engaged in supervision have to be co-ordinated. Reimaa (2007) argues that in the course of regional administration, the current county governments should in the future become above all an institution which performs state supervision. The author is of the opinion that a county governor as an institution in the ACSS of LGUs in the regions should be preserved as central actor; the process of lessening the role and status of the

Table 2.

Inducements for exercising general supervision by county governments over LGUs in 2003	No of cases in 2003
Application of an individual.	238
Article in a newspaper.	4
Application of the Land Board.	30
Application of the Chancellor of Justice.	5
Initiative of a County Government.	17
Application of the Ministry of Defence.	2
Application of the Ministry of Finance.	2
Application of the Ministry of the Environment.	1
Application of a Member of the Council of an LGU.	3
Application of an LGU.	8
Application of the National Electoral Committee of Estonia.	2
Any other entity.	1

county governors' institution should be stopped and the authority, responsibilities and tasks of county governors in executing ACS of LGUs should be strengthened in level with the law.

Brodies LLP Management Consultancy (2007, 6) argue that *"there is a lack of coordination and cohesiveness across external scrutiny bodies, there is duplication in the information required to be submitted for different scrutiny exercises, there is a lack of coordination around the timing of scrutiny exercises and there are inconsistencies in external scrutiny approaches in Scotland."* This picture is not country specific for Scotland, but is similar to Estonia as well. According to Raivo Linnas (2007, 287), *"it can be concluded that legal framework gives an authority and responsibility for guard, control, assess and audit the operations of LOG (Local*

Government – the Author) *for number of institutions, but audit, control and supervision activities of the legitimacy, efficiency, and effectiveness of the operation of LOG units are unsystematic, insufficient, politically biased, often in an objective situation of conflict of interests and do not form an integral and coherent system.*” Thus, in this particular respect, it does not make a difference whether a state is from Western or Eastern Europe, or a new or old member of the EU. To conclude this chapter the author will highlight two main conclusions: 1) In the case of axis *ex ante* control – *ex post* supervision executed by different state-level institutions over the LGS, *ex ante* political, legal and financial control are rather dominating over *ex post* supervision in Estonia. 2) Political parties, politicians, lawyers and managers of LGUs complain against the unlawful and disproportional execution of *ex post* administrative, constitutional, economic and legal control and supervision over LGS. Thus, there is an evident and clear conflict between the constitutional normative situation and cognitive behaviour of officials and academicians in day-to-day life. This is rather surprising that long-lasting passionate debates are focused on matters of little consequence and not on actually important issues for society and a truly significant aspect in the sense of ECS of LGS.⁵⁵ The origins of this phenomenon are to be objects of further research.

The author suggests that *Riigikogu*, the President, the CJ and the Supreme Court of Estonia have to focus their activities on defending both the constitutional rights and freedoms of the residents of LGUs and the LGUs themselves with *ex ante* political, legal and financial control activities, tools and mechanisms. There is a common assumption all over the world that the regulation and inspection regime is a mechanism for improvement, but the inspection and regulation bodies in Wales have diverse views about their impact on the improvement of public services (LGPSC, 2005, 25). Thus, there is at present a real risk threatening the discovery of a quick, optimal and reliable solution to that. However, ECS should serve the inhabitants of

LGUs in a manner that LGUs are to operate in the best possible way for their inhabitants and in the context of modern local governance⁵⁶. This is especially so in situations where the administrative capacity of an LGU is low, the political and other risks are high, and the associations of LGUs in the country are not sufficiently well-developed. Yet, Sellers and Lidström (2007; 6–7) state “*supervision from above without local capacities would produce a monopoly of policy and implementation for supralocal governments. Even weak local capacities along with strong supervision would leave local government dependent on initiatives from higher level units.*” Only under conditions of full local political and fiscal autonomy will local government possess strong capabilities without hierarchical supervision (Sellers and Lidström, 2007; 6–7). Thus, to avoid increasing domination of state over LGUs, capacity of self-governance of LGUs in Estonia should be strengthened via material reforms of local self-government functions, finance and administrative-territorial division.

Conclusions and some ideas on possible development

The aim of this paper is to 1) give an overview of the legislative framework underpinning the key control and supervision bodies of LGUs in Estonia; 2) discuss the issue of legal regulation and the present state of external control and supervision over local self-government units in Estonia; and 3) give some theoretical and practical suggestions to develop this field in Estonia and the rest of world as well. The analysis of the different dimensions and relations between external and internal control and supervision as well as discussions on holistic ACSS are out of this paper’s focus.

The author argues that the external control and supervision system of LGUs in Estonia is based on a solid and adequate constitutional and legal framework and is in general sufficiently public, transparent and democratic enough. However, it is somewhat biased in

favour of the political and financial more development present situation that even though framework is of ECSS of L and existing L administered, domination.

A review of academic literature and researchers are used to treat control and supervision in a separate manner. The better governance that the external system of local self-government understood and treated audit, control and supervision is holistic.

A worldwide comparison of local self-government units shows that the power of state over LGUs does not depend on the degree of development of socio-cultural conditions. Estonia is not a generic case of public administration.

The author suggests that without the cooperation of national government in actual implementation of the Charter of Local Self-Government that the optimal development of local self-government and public services for inhabitants in Estonia should be in the direction will be achieved with optimal development of

favour of the state in respect of *ex ante* political and financial control and should be more developed and better administered. The present situation of ECSS evidently confirms that even though the constitutional and legal framework is solid and adequate, the concept of ECSS of LGUs should be more developed and existing ECSS of LGUs should be better administered, particularly considering coordination.

A review of the academic and non-academic literature confirms that scientists, researchers and practitioners across the world are used to treating the matter of external control and supervision of local self-governments in a separate, non-holistic and unsystematic manner. The author suggests for the sake of better governance and local self-governance that the external control and supervision system of local self-government shall be understood and treated as an integral part of the audit, control and supervision system, which is holistic.

A worldwide trend is that central governments are trying to take tighter control over local self-government units. The increasing power of state control and supervision of LGUs does not depend on the political order, degree of democracy, liberalism, welfare and socio-cultural environment of a country. Thus, Estonia is not a unique example, but rather a generic case in the context of contemporary public administration.

The author argues that an absolutely abstract autonomy of LGS as an end in itself, without the context of the most important purpose of a nation state and without the main purpose of the local self-government in the state, would not be a relevant object of treatment in actual socio-political life, may be misleading and does not match with paradigm of the Charter as well. The author suggests that the optimum balance between the fundamental constitutional rights of local self-government and protection of the interests of the inhabitants in municipalities by state institutions should be reached. A great help in that direction will be a better assurance of LGUs with optimal financial resources via an enlargement of their financial base and other

resources. The lessons learnt in light of the case of Estonia evidently show that one cannot rely too much on the idea of an accomplished legal framework and everlasting strengthening of control and supervisory activities, but more attention and effort have to be put on the strengthening of the administrative capacity of the local self-government sector and promoting ethical values in society.

Not very much research has been done on the autonomy of administrative and judicial control and supervision over LGUs in Estonia. Consequently, there is no possibility of comparing more deeply the case of Estonia with the cases of neighbouring countries. More research has to be done in this field. However, one can conclude that the situation in Estonia is very similar to other states, particularly in the point of view that though there is a somewhat biased *ex ante* political and financial control over the activities of LGS, even the autonomy of the local self-government sector is guaranteed in the constitution and laws.

Endnotes

¹ This argument is supported by the socio-psychological and biological (human) stem of the control subject. Self-control and external control are socio-psychological factors of human beings' behaviour. In the very context of this particular article, human beings are the most important imperative factors of the subject of control and supervision in society. Human beings here should be understood as the imperative subject of control and supervision (both in the role of controller/supervisor and controlled/supervised) functions and system as well as the beneficiary (inhabitant/taxpayer/customer) of public management, including control and supervision functions, outcomes and impacts. According to Ayelet Fishbach and Yaacov Trope (2005, 257), externally imposed controls may operate as actual demands to act in a certain manner; they operate as primed mental representations of social demands. However, the author will not treat the subject of control in the context of psychology in this article, but rather in the context of state sciences, general management theory and general organizational theory.

² Control has different definitions, appears in several models, can be used in varying contexts and can be specified using different characteristics such as administrative control (USMG), bureaucratic control (Stephenson, 2007, 18; Weber), congressional control (Stephenson, 2007, 42), constitutional control (Pennings, 2003, 541; Pulido, 2006), democratic control, government control (Hippler, 2006, 41; Benjamin, 2003, 2012), judicial control (Bebr, 1962, 33 and 1981, 5), judicial-political control (Jacobi and Tiller, 2005), legal control (Wesley-Smith, 1999, 145; Vandall, 2006), national control (CDG, 2000, 65),

organizational control (Johansen, 2003, 2), political control (Bebr, 1962, 33; Hippler, 2006, 10; Stephenson, 2007, 1), presidential control (Stephenson, 2007, 6), private control (Benjamin, 2003, 2009; Viani, 2004, 217), public control (Benjamin, 2003, 2009), regulatory control, social control (Hippler, 2006, 17), state control (IMO; Viani, 2004, 217), statutory control (Jacobi and Tiller, 2005, 6; Huber, Shipan and Pfahler, 2001, 339), supervision control (FESA, 2005, 2), etc.

³ Supervision is usually understood as a continuous control of the observation of legal requirements (FESA, 2005, 1). By its nature, supervision is a privilege of an independent authority and as such, is limited by the constraints of the force of its legal regulation (FESA, 2005, 1). Supervision, like control, has different definitions, appears in several models, can be used in different contexts and can be specified by subjects such as administrative supervision (CE, 2002, 13), constitutional supervision, democratic supervision (Pflimlin, 1996), expert supervision, financial supervision (CE, 2002, 13), functional-risk-focused supervision (FRS, 2007, Section 2124.01, page 6), inter-institutional supervision (Reed, 1995), judicial supervision (CE, 2002, 13), legal supervision (CE, 2002, 12), management supervision (Pflimlin, 1996), monitoring supervision (AMA-ASSN, 1999, 3), mutual supervision (Reed, 1995), political supervision (CE, 2002, 9, 13; Dertthick, 1979, 63; Reed, 1995; Pflimlin, 1996), public supervision, state supervision, statutory supervision (Mollah, 2006, 21), strategic supervision (Pflimlin, 1996), technical supervision (Pflimlin, 1996, TSA), etc.

⁴ EEA: "Monitoring – The provision of the necessary information about progress of implementation of a project, plan, etc. in order to ensure that project management and cooperation partners are able to follow the implementation of the projects and if necessary adjust activities, inputs and budgets, in order to obtain the objectives laid down for the project".

⁵ EEA: "Surveillance – System that permits the continuous observation, measurement and evaluation of the progress of a process or phenomenon with the view to taking corrective measures."

⁶ The purpose of state supervision is clearly and simply defined in Article 108 of the Bavarian Local Government Law as follows: "The supervisory authorities ought to advise, encourage and protect with understanding the municipalities in the performance of their tasks and they ought to reinforce the decision-making force and the responsibility for their own action of the municipality bodies." (Haschke, 1997)

⁷ For example, according to Teresa Ter-Minassian and Jon Craig (1997, 29), "Country approaches to the control of subnational borrowing can be grouped into four broad categories, although most countries utilize a mix of them. ... The four "stylized" categories are (1) sole or primary reliance on market discipline; (2) cooperation by different levels of government in the design and implementation of debt controls; (3) rules-based controls; and (4) administrative controls."

⁸ According to Sellers and Lidström (2007, 16), "Countries generally rely on various combinations of instruments to exercise control over localities. Belgium, Greece, Austria and Spain, rank high for both politico-administrative and fiscal supervision. Canada, Australia and the U.S., range relatively low in both. Countries between these two clusters, including all of the Scandinavian countries, have looked more to one than to the other type."

⁹ Ezugbaia and Melkadze (2002, 109) argue that in a number of states control is associated with a full supervision both from the legal and the reasonability point of view, including the prior authorisation to act and the power to annul a local authority's decision.

¹⁰ Direct central government controls are more common in unitary states than in federations (Ter-Minassian and Craig, 1997, 13).

¹¹ According to Dieter Haschke (1997), "State supervision is the term used to designate the state executive that supervises the local authorities' right to local autonomy and, where appropriate, limits it on the basis of the law. State supervision is thus the correlate of the local authorities' right to local autonomy. For state supervision the division of local authority activities into performing the tasks of the own and the transferred sphere of activity is important in that it results in the subdivision into legal supervision and expert supervision."

¹² In this aspect, the situation is very similar in Armenia (Arabyan, 2007, 15), Australia (Davis, Downe and Martin, 2001, 2), Latvia (IMF, 2001, 4), Norway (Sellers and Lidström, 2007), South Korea (Chong-Min, 2006, 14), the USA (CDG, 200, 37; Coleman and Colantuono, 2003, 20), and Uzbekistan (Bektemirov and Rahimov, 2001, 507). One can see that the increasing power of state control and supervision over LGUs does not depend on the political order, degree of democracy, liberalism, welfare and socio-cultural environment of a country.

¹³ This may lead to a violation of the sovereignty of local self-government (Arabyan, 2007, 15).

¹⁴ This is not very unique particularly for small states, but may be present in huge countries as well. For example, see the recent history of the Russian Federation. Nevertheless, such a risk is more likely in small societies.

¹⁵ According to Sepp, Noorkõiv and Haljaste (2006, 3), LGUs are to be understood in four dimensions: as a part of the state administrative system, as a supplier of local public services, as a territorial corporation, and as a satisfier of the interests, needs and expectations of domestic inhabitants. The author would like to emphasize that in the very context of this article an LGU should be understood first of all as a part of the public sector, which is a coherent administrative system in a state, and as a territorial corporation. Thus, solutions to be offered have to stand in that light. This does not mean that the other two dimensions are irrelevant to any extent.

¹⁶ Thus, a supervisor shall exercise the supervision (*ex ante* and *ex post*) of the supervisee to ensure that the supervisee fulfils its statutory tasks, does not violate laws and regulations when carrying out its tasks, and does not overstep its scope of duties.

¹⁷ Thus, the subjects that exercise ECS of local government units are authorized international organizations, authorized European Union organizations, constitutional entities of state, central government of state and its authorities, political parties, media, civil society organizations and inhabitants/voters living on the administrative territory of particular LGU, but not a council of a particular LGU and its bodies, municipal or town government, mayor of a town or rural municipality, administration of an LGU and internal auditor of an LGU.

¹⁸ Pursuant to §157 of the CRE a local government shall have an independent budget for which the basis and procedure for drafting it shall be provided by law. A local government has the right, on the basis of law, to levy and collect taxes, and to impose duties. Pursuant to §160 of

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²⁴ According to... in the Governmen... Government of t... and foreign polic... mentation of law... tion of the Pres... prepare the draft... *igikogu*, administ... et and present a r... budget to *Riigiko...* basis of and for... other duties whic... the Government... plete.)

²⁵ Pursuant to C... the Interior (SMI... the development... tence analyses, p... government poli... income and expen... and in the establ... support system f... assists in establ...

the CRE, the administration of local governments and the supervision of their activities shall be provided by law. One particular aspect is worth to highlight. Pursuant to §104 of the CRE, the Local Government Election Act may be passed and amended only by a majority of the membership of *Riigikogu*, but to pass and amend the Local Government Organisation Act (hereinafter called LGOA) there are no particular restrictions. Thus, political attempts on the state level to change the organization of local government are easier to perform in comparison with attempts to change local government elections, order and principles.

¹⁹ Here it is important to highlight that in some cases local government is one constituent subject on a lower level on the vertical hierarchy of an organization called the state, and in some cases as a horizontal partner of other constituents as well.

²⁰ According to Vallo Olle (2007), in Estonia, the Supreme Court has "clearly and unambiguously stated that, according to the Constitution, a local government is based on the idea of a community, the duty of which is to resolve the problems of the community and manage the life thereof," and Supreme Court "does not consider local government autonomy to be an end in itself; rather, it defines as the goal of local government autonomy the decentralisation of public authority and the serving of the interests of restricting the state's authority and the counterbalancing thereof."

²¹ This does not mean in whatever respect that the autonomy of local self-government as a juridical matter of research for academicians in different fields of juridical research shall not still be under focus.

²² Pursuant to the Article 59 of the CRE, legislative power is vested in *Riigikogu*. Pursuant to Article 65 of the CRE, *Riigikogu* shall pass the state budget and approve the report on its implementation.

²³ Pursuant to the §78 of CRE, the President of the Republic shall: proclaim laws, pursuant to §105 and §107 of the Constitution, make proposals to *Riigikogu* for appointments to the offices of Chief Justice of the Supreme Court, Chairman of the Board of the Bank of Estonia, Auditor General, Chancellor of Justice, and Commander or Commander-in-Chief of the Armed Forces, and on the proposal of the Supreme Court, appoint judges.

²⁴ According to §86 of CRE, executive power is vested in the Government of the Republic. According to § 7, the Government of the Republic shall execute the domestic and foreign policies of the state; administer the implementation of laws, resolutions of *Riigikogu*, and legislation of the President of the Republic; introduce bills; prepare the draft of the state budget and submit it to *Riigikogu*, administer the implementation of the state budget and present a report on the implementation of the state budget to *Riigikogu*; issue regulations and orders on the basis of and for the implementation of law and perform other duties which the Constitution and the laws vest in the Government of the Republic. (This list is not complete.)

²⁵ Pursuant to Clause 14 of Statutes of the Ministry of the Interior (SMI), the Ministry shall plan and co-ordinate the development of local governments; within its competence analyses, plans and co-ordinates the state's local government policy; participates in the formation of the income and expense basis of local government budgets and in the establishment of a development of a national support system for local budgets within its competence, assists in establishing links between local authorities,

their associations and civic associations, and the Government of the Republic.

²⁶ According to Linnas (2007, 284–285), "the coalition council issues political guidelines to both the legislative power the *Riigikogu* and the executive power the Government of the Republic. This means the leadership of the state is in the hands of few people who provide guidelines to the legislative power and the executive power as well and the legislative body does not have possibility to perform political control over the executive body. This means the role of the majority of members of the *Riigikogu* is mostly to follow orders."

²⁷ Pursuant to Chapter XII of the CRE, the Chancellor of Justice serves as the reviewer of compliance with the Constitution and laws, as the Ombudsman, and as a higher criminal prosecutor. The constitutional review activities of the Chancellor of Justice may be conditionally divided into *ex ante* and *ex post* control.

²⁸ Pursuant to Clause 1 (1) of the POA, the Prosecutor's Office is a government agency within the Ministry of Justice which participates in the planning of surveillance necessary to detect and combat criminal offences, directs pre-trial criminal procedure while ensuring the legality and efficiency thereof, represents public prosecution in court and performs other duties assigned to the Prosecutor's Office by law.

²⁹ According to Clause 6 (1) of the SAOA, the main function of the SAO is to exercise economic control (audit). According to Clause 6 (2) of the SAOA, in the course of an audit, the NAO may assess the following: 1) internal control, financial management, financial accounting and the financial statements of the audited entity; 2) the legality of economic activities, including the economic transactions of the audited entity; 3) the performance of the audited entity with regard to its management, organization and activities; 4) the reliability of the information technology systems of the audited entity.

³⁰ Pursuant to §84 of the GRA, county governors shall, among other tasks and obligations, co-ordinate the co-operation of the regional offices of ministries and other agencies of executive power and local governments in the county; inform the Government of the Republic, the Minister of Regional Affairs and local governments on regional policy and other issues concerning relations between executive power and the local governments; conclude, by authorization of the Government of the Republic, administrative contracts with local governments for the performance of their state obligations; monitor the activities of local governments on the basis of and pursuant to the procedure provided for in §85 of the GRA, and perform the functions of supervisory control pursuant to §98 of the GRA; and declare supplementary elections of local government councils and elections due to the merger of local governments.

³¹ This is a rather positive situation in some respect. According to Md. Awal Hossain Mollah (2006, 9), Rajshahi University, "the role of judiciary in protecting the citizens against the excess of officials has become all the more important with the increase in the powers and discretion of the public officials in the modern welfare states. But the courts cannot interfere in the administrative activities of their own accord. They can intervene only when they are invited to do so by any person who feels that his right have been abrogated or are likely to be abrogated as a result of some action of the public official. Secondly, the courts cannot interfere in each and every administrative act, as too much of Judicial action may make the official

too much conscious and very little of it may make them negligent of the rights of citizens."

³² For example, according to Clause 8 (1²) of RMCBA, when taking a loan with the purpose of bridge financing, an LGU government is required to apply for permission from the Minister of Finance to do so, unless the loan is taken from the state. According to Clause 8 (6) of RMCBA, an LGU government is required to present a copy of a loan agreement entered into to the Ministry of Finance within five working days as of the date on which the contract is entered into. In the case of the assumption of other obligations specified in Subsection (1) of this section (except the issue of debt instruments), the Minister of Finance has the right to request that the LGU government submit a copy of the agreement entered into within five working days as of the submission of the corresponding request.

³³ According to The State Chancellery of the Republic of Estonia, there were 5449 civil servants in 227 LGUs in Estonia as of 31.12.2007.

³⁴ LGUs in Estonia are not in a very good situation politically, financially and administratively. They are over-politicized (Strandberg, 2007). Their financial basis has increased (MI 2007, 9) and they merge relatively actively, but the number of LGUs with less than 1000 inhabitants is growing (MI 2007, 10) in Estonia. The county associations of local governments, on the other hand, are not sufficiently well-developed (Reimaa, 2007).

³⁵ What the author means by an institution's rule systems and rule structures is to enable actors to conceive, pursue, and express their interests and desires, as well as to also coordinate those desires with other individuals as defined by Sandholtz and Stone Sweet (2004, 235–236).

³⁶ In the case of Estonia, political control via budgeting is significantly effective, because according to the data provided by the Ministry of Finance of the Republic of Estonia in the report "Local Government Budget 2003–2007", the share of sustenance costs (staff, administrative and other costs) in the total expenditure of the local self-government sector was 70% in 2003, 75% in 2004, 72% in 2005, 68% in 2006 and 71% in 2007. Thus, the financial capacity (spare funds) remaining to provide public services to LGUs inhabitants is very weak in Estonia and any change in the allocation of supplementary funds from the state budget to the LGS total budget has a significant impact.

³⁷ County governments submitted 18 cases to the Chancellor of Justice of the Republic of Estonia in 2003.

³⁸ Wolfgang Drechsler (2007) treats the Supreme Court as a part of the central government.

³⁹ According to Katrin Saaremäel-Stoilov (2007), "The level of protection of the principle of the social state by the Supreme Court of Estonia is comparable to that offered by the German and South African constitutional courts, as both use a relaxed standard of review in social-rights-related cases."

⁴⁰ For example, county governments submitted 29 lawsuits against LGUs to the administrative court in Estonia in 2006. County governments submitted only 396 lawsuits against 61 LGUs in administrative courts in Estonia in 2007. However, there are more subjects having the right to submit lawsuits to the administrative courts against LGUs in Estonia. After all, the role of administrative courts in the ECS activities of LGUs remains less numerous in respect to control and supervisory cases in comparison with the activities of other subjects responsible for ECS over LGUs.

⁴¹ According to Oviir (2007), "as regards supervision by the National Audit Office, it should be kept in mind that this does not constitute supervision in the traditional sense. The procedure conducted in the course of economic control by the National Audit Office does not result in a mandatory prescription or other immediate sanction or punishing act. The procedure merely results in an audit report containing observations, assessments, and recommendations for the elimination of shortcomings. Public disclosure of misconduct is the main 'sanction'."

⁴² The SAO has performed at least 1 audit on the legality and compliance of annual accounts of each LGU of Estonia in 2007 or 2008, but this rather an exceptional, not a common situation in Estonia.

⁴³ The Ministry of Justice shall exercise supervisory control over the PO, but this control does not extend to the activities of the Prosecutor's Office in pre-trial criminal proceedings (Clause 9 (1) of POA).

⁴⁴ One illustrative case concerns the privatization of 66% of the shares of AS Eesti Raudtee (Estonian Railways Ltd) in 2001, when the PO and SAO had a heated discussion over the commencement of criminal procedures, because politicians exerted significant pressure on both of these institutions not to. This case is a very remarkable, though not the only example of such activities.

⁴⁵ This is particularly important in a very small society where party affiliation takes on terrifying dimensions (Jöks, 2008), where the preference of private interests over public interests is rather the rule than the exception (Jöks, 2008) and clan economy is symptomatic.

⁴⁶ The numbers presented in this table should be treated with a certain reservation and cannot be taken as use-proven solid academic facts. The methodology of data collection was not guaranteed to be understood and followed by each county government with equal accuracy and the data presented by county governments to the Ministry of the Interior was of inconsistent quality. Collecting and processing the data presented in this particular table was not a regular standardized activity of County Governments, but an *ad hoc* task initiated by the Ministry of the Interior. However, the data presented is useful and expressive information describing the actual state of the supervision activities done by the county governments of LGUs in Estonia.

⁴⁷ There were 742 family doctors under the supervision of county governors in 2003 in Estonia.

⁴⁸ There were 255 social care facilities under the supervision of county governors in 2003 in Estonia.

⁴⁹ The total number of proceedings (409) of supervision of educational and development activities includes proceedings performed over children's facilities, vocational education facilities and in secondary schools and gymnasiums.

⁵⁰ There were 1133 educational facilities under the supervision of county governors in 2003 in Estonia.

⁵¹ There were 278 contracts for the use of funds allocated to youth work from the state budget under the supervision of county governors in 2003 in Estonia.

⁵² There were 94 carrier licences, 28 line licences, 722 public transport lines, 108 public service contracts and 13 administrative contracts under the supervision of county governors in 2003 in Estonia.

⁵³ Supervision over sports issues.

⁵⁴ Doubtlessly, county governors cannot coordinate the work of the Supreme Court, courts, Chancellor of Justice and prosecutors, but county governors should coordinate the activities of control and supervision of LGUs to be

executed by governmental administrative territories.

⁵⁵ One reason for the situation in Estonia is the shortage of funds. At the level of politicians in consensus that to allocate for LGUs to be said to the politicians in turn try to handle a difficult situation only the author's hand to a problem.

⁵⁶ According to the author, "governance is autonomous and exercised with authority in a democratic manner. The parent, and involved society in the decision-making process, governance looks at the situation and service that enable people to take care of themselves. It emphasizes a fair political community, government responsible to the law."

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executed by government bodies within the county's administrative territory.

⁵⁵ One reason for that may be the long lasting economic situation in Estonia. In circumstances of a permanent shortage of funds, state-level and local self-government-level politicians often used to be party mates recognize in consensus that there are not enough sufficient funds to allocate for LGS from the state budget, but something has to be said to the residents of LGUs and the public. Politicians in turn try to find a way out of the unpleasant and difficult situation, switched focus from the real topic at hand to a problem of lesser importance. However, this is only the author's opinion, not a scientific fact.

⁵⁶ According to CDG (1997, 3), "*Democratic local governance is autonomous levels of local government, vested with authority and resources, that function in a democratic manner. That is, they are accountable and transparent, and involve citizens and the institutions of civil society in the decision-making process. Democratic local governance looks beyond local government administration and service delivery to institutions and structures that enable people to decide things and do things for themselves. It emphasizes the presence of mechanisms for fair political competition, transparency, and accountability, government processes that are open to the public, responsible to the public, and governed by the rule of law.*"

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Eettise ulottuv tilantei ja eetti

Olli-Pekka V

Abstract

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