

Summary

The governing body charged with reviewing the municipal activity is the Municipal Audit. This is a governing body that has been criticized, questioned and investigated during the last fifteen years. The primary cause of the criticism is the way in which the Audit is constructed. In every municipality there should be at least five auditors. These are appointed by the Municipal Assembly. The Audit is the Assembly's instrument to review the administration, the municipal committees. The auditors are appointed on a party political basis, just like the committees' members. In order to assist them, the auditors either have internally employed or externally hired assistance, and sometimes both. It is, however, the appointed auditors who decide the direction and scope of the audit, and finally how possible critique shall be formulated. The appointed (on the basis of party politics) auditors have the power over, as well as the responsibility for, the review of the municipal activity. That the audit involves scrutinizing members of one's own party is obvious grounds for criticism of the system's construction. Independence is a key component in the auditing process, a component needed to inspire confidence in the process.

In this report, the Municipal Audit and questions of why the system looks the way it does, the historical evolution of it, are discussed. The Audit and the entire Swedish municipal law have their roots in the municipal regulations of 1862. The Swedish society and the municipal sector have since undergone significant changes. There have been several mergers of municipalities and they have been reduced from several thousand down to the present 290. However, the regulation has not changed accordingly. There are historical legal residues that possibly ought to be cleared away or at the least reviewed. This is true for the municipal law in general, but also for the Municipal Audit. One example is the appeals-function (*laglighetsprövning, kommunalbesvär*) rendering all

municipal members a right to appeal all decisions and resolutions made in the committees and assembly. At the time when there were few resolutions made and the number of municipal members was low, then this legal remedy could be useful. Today it is practically impossible for a member of a municipality to keep informed about the resolutions passed and thus the function of Kommunalbesväret becomes rather capricious. In addition, there are limitations in the process, which demands a nearly impossible burden of proof onto the complainant to show that the resolution is illegal.

Regarding the Audit, the question of the *freedom from liability*, which is central to the auditors, has been made redundant by both legal and societal development. The freedom from liability presumes that the municipalities are able to sue individual officials to safeguard the municipalities' financial rights. This was highly relevant when the municipal committee's activity was fairly parochial and its finances could be handled by a single person and its money could fit into a cigar box. Today it would be highly remarkable, and likely legally impossible, to sue for example the chairman of the social services committee because the committee has exceeded its budget. The thought of the public officials' liability in such situations is passé.

An overview of control and supervision over municipal activity shows that there are lots of different institutions, legal remedies, and governing bodies. Several of these, however, are of extraordinary nature and thus the Municipal Audit becomes crucial. The occurrence of breaches of municipal law and court decisions, a phenomenon that does not seem to diminish in frequency, indicate a need to review the questions of liability for certain types of municipal decisions and acts. That the legislator has accepted the municipal breach and failed to take any measures despite many proposals show that the municipality is a difficult arena for the auditors to review and raise questions about liability. If the legislator is not willing to resolve these questions there is a risk that questions about responsibility and liability are perceived as low or even nonexistent priorities by the elected officials.

A few examples show how the audit becomes troublesome, intentionally or unintentionally. Because the auditors have a central role in the question of assigning liability, the auditors are required to comment on the matter of freedom from liability, there is an obvious risk that the auditors are pulled in to the political game

that exists in the Municipal Assembly when a possible liability matter is handled. It is thus not prudent for the auditors to comment on the matter. Furthermore, the order creates confusion for the municipal members and other interests. If the auditors oppose freedom from liability but the assembly grants it anyway, which has occurred on a number of occasions, the system becomes difficult to understand. Additionally, there is a complete lack of rules or guidelines for when freedom from liability should be granted or denied. Thus the system appears arbitrary.

The report brings forth a number of proposals and conclusions. The first proposal is that the Audit should only create knowledge. The Audit should create a foundation for the Assembly, which in turn can handle the matter of liability. This way, the Audit can avoid being drawn in to the political discussion that inevitably follows when a possible liability matter is handled. The auditors should not comment on the matter of liability, and the question of freedom from liability should be removed entirely from municipal law. The Assembly does, however, need an instrument to claim liability. Therefore, it is suggested that the Assembly should be armed with a possibility to motion a vote of no confidence regarding a committee or individual elected officials.

One burning question is if the elected officials still should have influence over the Audit. In theory, this influence should of course be abolished immediately. The party political connection threatens the independence of the Audit. The question of the political influence on the Audit is a complex problem but not further discussed in this report.

The report is concluded with a reflection that the municipality, the way it looks today, is a problematic construction. These problems have affected the Municipal Audit in a sometimes undeserved manner. There is a personal connection between the Assembly and the committees. A large majority of the members of the Assembly also have assignments on the administrative level, the committee level. In practice, this means that the Assembly rule about liability matters involving themselves, i.e. how they have performed their assignments in another capacity, holding another public office. Thereof stems problems and situations where the Assembly comes to different conclusions than the auditors. The Assembly does not seldom have a more lenient disposition on the matter of liability than the auditors. Roughly stated, the system can be described as the members of the Assembly giving the auditors

the assignment of reviewing how said members perform their duties in the committees. Regardless of the auditors' autonomy, the problem will persist. Here perhaps, the legislator should consider creating a clearer distinction between the Assembly and the committees on a personal level. A de facto separation of power is virtually nonexistent in the municipal sector. This, however, has nothing to do with the Municipal Audit.