

**Workshop on consultation mechanisms  
(Yerevan, 12 September 2018)**

**Session I: Legal requirements for consultations**

**Presentation by Secretary General Andreas Kiefer  
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Ladies and Gentlemen,

As I said in my opening remarks, the right of local authorities to be consulted by other levels of government is a key principle of the European Charter of Local Self-Government. I see it as a good omen that this conference is taking place now, almost exactly thirty years after the entry into force of the Charter (on 1 September 1988).

Indeed, it is the one cross-cutting principle that is relevant to all key provisions of the Charter and underpins all the other principles. The transversal nature of the principle of consultation is reflected in the fact that the Charter refers to consultation no less than three of its articles:

Article 4.6 on the Scope of local self-government, provides that, I quote, "local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly".

Article 5 of the Charter, on the protection of local authority boundaries, then stipulates that, I quote, "changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute".

Finally, Article 9 on the financial resources of local authorities provides that "local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them". Here again, there is an emphasis on "the appropriate manner" of consultations.

I suggest that for us the core provision is the first of those three, Article 4.6, which includes these two all-important phrases, stipulating that consultations should be held “in due time” and “in an appropriate way”.

In “due time” means that local authorities should be given as much time as they need to examine government proposals and hold internal consultations before formulating an opinion; the form and timing of consultations must enable them to play a meaningful role in the decision-making process. We have to avoid situations where the right to be consulted is overridden on such pretexts as urgency and cost-saving.

“In an appropriate way” means that consultations should be formal and held in a format agreed beforehand by both sides, in order to be productive and to have any legal value; there should be an agreed institutional setting for such consultations.

To ensure the application of these principles, it is best that they are grounded both in law **and** in practice. Both are important: some countries have long established traditions of consultation, but they are not grounded in law; it would be better if these countries could put in place the appropriate legal framework — so local authorities could be reassured, especially in the case of a change of political regime in the country concerned. On the other hand, some countries have the necessary legal framework but rarely carry out meaningful and timely consultations in practice, which is not acceptable.

This is why the Congress, in its monitoring recommendations, has asked national authorities to develop more institutionalised and legally guaranteed consultation mechanisms. While acknowledging that the practice of informal consultations also exists in some member states, in the absence of institutionalised forms, the Congress stresses that a formalised consultation process, defined in the national law, provides for greater transparency and is more in keeping with the spirit of the Charter.

Such consultations mechanisms pre-suppose the existence of a representative organisation that can negotiate with the government on behalf of local authorities – such as a national association. The Congress has always underlined the vital contribution that a unified national association of local authorities can make in discussions with the government, representing local interests, the principles of the Charter, and not reproducing government or opposition positions.

I might add that the principle of consultation has also been taken on board by the European Union: consultations are required for the EU Regulatory Impact Assessment, and pre-legislative consultations are part of the EU subsidiarity and

proportionality mechanism. The European Committee of the Regions, the counterpart of the Council of Europe Congress within the EU, represents the voice of local and regional authorities in EU consultation mechanism, and the EU Eastern Partnership, with its six Eastern European countries – including Armenia – also provides for such consultations, in the form of the Conference of Regional and Local Authorities of the Eastern Partnership, or CORLEAP. In this respect, I should like to congratulate Armenia, represented by the Communities Association of Armenia and its chair Emin Yeritsyan, on taking over the chairmanship of CORLEAP, in a few days' time.

Within the Council of Europe, the Parliamentary Assembly is now focusing on the importance of consultations between parliaments and local authorities, in its report and recommendation on the role of national parliaments in successful decentralisation processes, which will be debated at its next session, at the beginning of October. The draft recommendation, presented by the General Rapporteur on local democracy Luis Leite Ramos, calls for the rules of procedure of the relevant parliamentary committees to include specific provisions on the organisation of consultation with local authorities, including a possibility to present written opinions on draft legislation.

Ladies and Gentlemen,

This legal framework of the binding provisions of both the European Charter of Local Self-Government and the EU regulations, as well as the "soft law" of recommendations on this issue underlines the central place of consultation in any system of democratic governance with a distribution of powers and checks and balances to prevent monopolies of power. Yet the lack of such consultation or shortcomings in the way that they are conducted remains one of the most frequent recurring problems identified by the Congress as part of its monitoring.

The Congress has prepared two reports on recurring issues, based on assessments resulting from its monitoring and election observation activities, covering the periods 2010-2013 and 2014-2016. Both of these reports highlight the absence of consultation mechanisms and formal consultation procedures, or procedures that are recognized in law. We also found that many consultations are ineffectual due to impossibly short deadlines, inadequate or insufficient use of existing mechanisms, and a lack of transparency of the process itself and the results.

Faced with this situation, in 2012 the Congress adopted a recommendation on the right of local authorities to be consulted, and in 2014 a Strategy on the right of local authorities to be consulted by other levels of government. This led to the

preparation of a new reference text, 'Guidelines on the consultation of local authorities', which we expect to be adopted at the next Congress session in November, and the draft version of which you already have in Armenian.

The key points of these texts can be summarized as follows:

- first, the need for legal recognition of the right to be consulted – there should be a well-formulated legal framework at the national level, with the consultation process being defined in law;

- second, the need for a formal and adequate institutional setting, with local authorities having an institution / structure to represent them and national authorities having institutions to coordinate their actions with local authorities.

The two important conditions here are laws and institutions. Consultation processes need to be defined and initiated, by legislative and governmental bodies, in a clear and transparent manner, preferably enshrined in the constitution, otherwise in laws or rules of procedures of governments and parliaments. These should specify the format of such consultations, who is consulting who and for what purpose, the level of participation of the representatives of local authorities, the time-frame for consultations and should cover all matters of interest for local authorities.

Both national and local authorities should have their own structures and analytical capacities in order to communicate efficiently with each other. Given that most Council of Europe member states have a large number of local authorities, it is obvious that effective consultations cannot be carried out if local governments have no structures to represent their common interests in their dealings with the central authorities. The existence of strong national associations of local authorities across political party line is therefore a precondition for successful consultations.

Local authorities should speak to national and regional governments, as far as possible, with a united voice. National legislation should recognise the role of national associations to be involved in consultations and to represent the interests of their members. In addition to the national legal framework, associations are encouraged to draw up memoranda of understanding with national parliaments and with line ministries, to function as a guideline that defines the details of consultation processes and the operational modalities of the application of the right to be consulted.

In countries where local authorities are represented by several associations, national governments should facilitate the establishment of a national system for consultation with local authorities and guarantee the representation of all associations in the consultative process. All levels of elected government should be represented in this national system of consultation. National associations should cooperate in order to

define common positions on issues that affect them and to improve their ability to contribute to the development of national legislation and policies. It should be the duty of the associations to advocate the interests of local and regional authorities and to hold internal consultations with their members on subjects relevant to local and regional democracy.

The experience of the Congress monitoring activities show that ineffectual and uncoordinated local government associations can only weaken local democracy.

Of course, individual local authorities should not be deprived of the possibility to interact directly with the national government if their particular interests are at stake. The existence of national associations does not exclude the possibility for individual local governments to be consulted.

National governments also need to define and make clear which of their institution have the task of organizing consultations. Ideally, this should be a line ministry responsible for local government and territorial administration, or, at the very least, the ministry of finance. Consultations can also be conducted at higher levels, such as with the president of the state or/and prime minister, but while consultations at this level are to be welcomed, consultative meetings with the relevant line ministries are also needed to ensure practical results. Regulations at the level of the relevant line ministries should clearly stipulate the forms and procedures for the consultation of local authorities.

Another key actor in consultation is the national (and where appropriate the regional) legislative body. In national parliaments, issues related to local self-governance and regional policy are usually discussed in the relevant committees before they go to the session of parliament for adoption. The level of parliamentary committees is therefore the most appropriate for organizing consultations on legal initiatives that have a direct impact on local government. Parliamentary committee rules of procedure should therefore include specific provisions on the organization of consultations with local authorities – that can be complemented by public hearings – identifying the subject of consultation, the procedures and time-frame, and the participants in this process.

These rules of procedure should not only allow local authorities and associations of local authorities to attend sessions of the committees, but also to have full access to all relevant documents, and to present written opinions on draft legislation. The rules should also include the possibility of involving experts from associations of local authorities in the preparation of draft laws that have an impact on their legal status, tasks and functions, and economic or financial situation.

Ladies and Gentlemen,

In conclusion, I would like to refer to the 2014 Congress recommendation on local democracy in Armenia, which asks the Armenian authorities to, I quote:

“set up a formal consultation mechanism in domestic law, to ensure that local authorities and national associations of local authorities are duly consulted on matters which concern them directly “in due time and in an appropriate way”, and that central government decisions are accessible to local elected representatives and their associations, which should be considered in practice as privileged and active partners” – end of quote.

This recommendation was also included in the 2016 Roadmap that was signed with the Ministry of Territorial Administration and Development.

When ratifying the European Charter of Local Self-Government in 2001 Armenia committed voluntarily to achieve real local democracy and decentralisation. The Congress stands ready to support the government in achieving this objective: with its monitoring reports, with a political dialogue, with co-operation activities and with practical activities like this conference today.

I very much hope that this workshop will contribute to the establishment of a consultation mechanism in Armenia in order to enable local authorities to deliver the tasks conferred on them and to enable Armenia to fully comply with the Charter.

Thank you.