

Statutory Forum, 7 December 2020

Speech by Jos WIENEN, (Netherlands, EPP/CCE) Rapporteur

Report “ A contemporary commentary by the Congress of the explanatory report to the European Charter on Local Self-government”

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Dear colleagues,

It is my pleasure to present today the Contemporary commentary of the explanatory report to the European Charter on Local self-Government and the draft resolution.

This text is **not a new** explanatory report.

It is a “contemporary commentary”, it aims at commenting the existing explanatory report to the Charter in the light of adopted recommendations and resolutions by the Committee of Ministers, the Congress, the Parliamentary Assembly, and the Venice Commission Opinions. This Contemporary commentary is also based on the case-

law of some domestic courts which have had to make an interpretation of some provisions of the Charter.

All these relevant sources contributed to shed light on the explanatory report which is sometimes- let's be honest- a bit laconic as regard some provisions.

This document covers each line of the Charter starting with its Preamble to Article 18.

It starts of course with the Preamble. The Commentary here clearly reminds its binding nature, and it is particularly important because it gathers a sum of principles that conditions the rest of the text. If you disagree with the Preamble, you disagree with the rest of the Charter. The Commentary explains the general wording of the Preamble which serves three purposes: symbolic, explanatory and legal. It also stresses the fact that the Charter is not a policy nor a political document but - indeed- a genuine binding multilateral international Treaty.

The binding effect of the Charter proclaimed in Article 1 of this Treaty is therefore the cornerstone of its legal relevance and effectiveness.

I should also like to highlight, as an example, the provision on consultation.

Consultation of local authorities by central governments is one of the recurring issues that is regularly subject to recommendations after monitoring visits in Congress recommendations.

Since the drafting of Charter, the Congress adopted recommendations and resolutions on this specific issue which provided more details on how far this provision should be understood.

The Commentary reminds the fact that “consultation” does not entail that national authorities have to accept all comments and proposals possibly made by local authorities.

However, at the same time, it provides clear criteria on how a consultation should be carried out in order to be in compliance with the Charter:

- It should take place “**for all matters which concerns local authorities directly**”;
- It should take place “**in due time**” which means that consultations should be held at the preparatory stage of drafting decisions and policies and, of course not after their adoption;
- Lastly, it should take place “**in an appropriate way**”: The consultation process should put local authorities in a capacity to influence the decision-making process. It means that local authorities should be able to obtain an accurate information on decisions or policies that concern them directly, they should also be able to express their opinion and they should have the time and ability to prepare proposals.

Dear colleagues,

Since 2008, I participated in many monitoring visits as a rapporteur and I worked on many reports. I do think that there was a need for

further clarification of the explanatory report to the Charter after all these years of application.

Local democracy is lively. It develops every day, it follows some positive and sometimes negative trends in some of our countries.

That is why our understanding of the Charter should be unified if we want to apply it in a universal and impartial way. It should remain a kind of “watchdog” of local democracy and to this end, it supposes that we all understand it the same way.

The opinions of the Venice Commission, reports, resolutions and recommendations adopted by the Congress and Parliamentary Assembly or the Committee of Ministers constituted a trustworthy source to feed a common understanding of the Charter in the light of 30 years of application.

We have now at our disposal a substantial tool which serves the purpose of providing the Congress with a common, modern and

detailed understanding of what local self-government means according to the provisions of the Charter and its explanatory report in the light of Council of Europe works in this field.

That is why, the draft resolution invites the Congress to promote and disseminate this text among us, and also to the relevant stakeholders who have a special interest to local democracy.

I hope you will thus adopt this draft resolution.

Thank you for your attention.