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Recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions (reference period 2017-2020)

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

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Summary

This is the second periodical report that analyses positive developments and challenges that arise in the implementation of the Charter and observation of European standards during local and regional elections in Council of Europe member States. It is based on the findings of the Congress monitoring and election-observation reports covering the period from 2017 to 2020.

The report concludes that the recurring issues identified in the first Congress report covering the period from 2010 to 2016 remain valid during the period under review in terms of application of both the Charter and European standards in electoral matters.

In addition to that, as for the Charter, the report also points to growing difficulties in member States to respect Article 7 of the Charter on the conditions of office of local elected representatives as another emerging issue. In electoral matters, compliance with the principle of equal level playing field for all candidates including independents has also become increasingly problematic.

Based on those conclusions, the Congress resolves to continue issuing – every three years – a thematic report on recurring issues to serve as an advance warning system regarding the challenges in local and regional democracy in Council of Europe member States.

The Congress reiterates that the 47 Council of Europe member States that ratified the Charter must fully implement all ratified provisions of this international treaty, in particular with regard to the identified recurring issues, also in the situation of crisis such as the COVID-19 pandemic. It also calls on the member States to fulfil Congress recommendations relating to cross-cutting electoral issues at local and regional level and respect relevant European standards in electoral matters.

1 L: Chamber of Local Authorities / R: Chamber of Regions.
EPP/CCE: European People's Party Group in the Congress.
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.
ILDG: Independent Liberal and Democratic Group.
ECR: European Conservatives and Reformists Group.
NR: Members not belonging to a political group of the Congress.

RESOLUTION 467²

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:
 - a. the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the right to participate in the affairs of a local authority (ETS No. 207);
 - b. Chapter XVIII, XIX and XX of the Rules and Procedures of the Congress³, respectively on the organisation of monitoring procedures, election observation missions, post-electoral political dialogue and on the implementation of the post-monitoring;
 - c. the Congress monitoring reports and recommendations on the implementation of the European Charter of Local Self-Government in the Council of Europe member States;
 - d. the reports, resolutions and recommendations adopted by the Congress further to the observation of local and regional elections as well as reports, resolutions and recommendations on cross-cutting issues in electoral matters;
 - e. Congress Resolution 413 (2017) on the comparative analysis of the implementation of the European Charter of Local Self-Government in 47 member States;
 - f. Resolution 412 (2017) “Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016)”.
2. The Congress notes that the recurring issues of compliance with the Charter identified in the previous report - the inadequacy of financial resources available to local and regional authorities, the restricted definition, allocation and exercise of local competences, the lack of consultation and of direct applicability of the Charter – remain relevant for the period under review.
3. In addition, the member States have become increasingly confronted with systematic shortcomings in meeting the requirements of Article 7 of the Charter on the conditions of office of local elected representatives. This can be regarded as an emerging issue of the Charter’s application.
4. Similarly, in electoral matters, the Congress also highlights the relevance of the previously identified recurring issues regarding the accuracy of voters’ lists, the misuse of administrative resources, the politicisation of the electoral administration and low public confidence in electoral processes.
5. Over the past several years, the Congress has also observed that compliance with the principle of equal level playing field for all candidates including independents has increasingly become an issue.
6. Therefore, the Congress of Local and Regional Authorities of the Council of Europe:
 - a. invites the Monitoring Committee to continue preparing – every three years – an updated analysis of the recurring issues based on assessments resulting from Congress monitoring and election observation missions carried out during the reported period;
 - b. encourages the rapporteurs of the Monitoring Committee to continue referring to the recurring issues when monitoring the implementation of the European Charter of Local Self-Government and conducting election observation in the Council of Europe member States;
 - c. asks the Monitoring Committee and/or other Congress Committees to continue preparing transversal reports on topics related to recurring issues detected during monitoring and election observation activities;

² Debated and adopted by the Congress on 17 June 2021, 3rd sitting (see Document [CG\(2021\)40-10](#), explanatory memorandum), co-rapporteurs: Stewart DICKSON, United Kingdom (R, ILDG) and Leendert VERBEEK, Netherlands (R, SOC/G/PD).

³ [CG-FORUM(2020)01] – Revised Rules and Procedures of the Congress
<https://rm.coe.int/rules-and-procedures-of-the-congress-of-local-and-regional-authorities/16809f0b0e>

d. encourages all relevant Congress bodies to consider the recurring issues in their activities, design appropriate tools and policies to assist member States in responding to them and promote relevant good practices.

RECOMMENDATION 455⁴

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:
 - a. the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the right to participate in the affairs of a local authority (ETS No. 207);
 - b. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;
 - c. Chapter XVIII, XIX and XX of the Rules and Procedures of the Congress,⁵ respectively on the organisation of monitoring procedures, election observation missions, post-electoral political dialogue and on the implementation of the post-monitoring;
 - d. the Congress monitoring reports, resolutions and recommendations on the implementation of the European Charter of Local Self-Government in the Council of Europe member States;
 - e. the reports, resolutions and recommendations adopted by the Congress further to the observation of local and regional elections as well as reports, resolutions and recommendations on cross-cutting issues in electoral matters;
 - f. Congress Resolution 413 (2017) on the comparative analysis on the implementation of the European Charter of Local Self-Government in 47 member States.
 - g. Congress Recommendation 395 (2017) “Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016)”.
2. The Congress strongly regrets that the recurring issues identified in the previous report – such as the inadequacy of financial resources available to local and regional authorities, the restricted definition, allocation and exercise of local competences, the shortcoming in consultation and the lack of direct applicability of the Charter – remain relevant for the period under review. Furthermore, the Congress has observed an increasing difficulty in the member States in meeting the requirements of Article 7 of the Charter on the conditions of office of local elected representatives.
3. The Congress reiterates that the Charter, ratified by 47 member States of the Council of Europe, as an international treaty should be applied in member States also in the situation of crisis such as the COVID-19 pandemic.
4. It highlights that recurring issues in electoral matters continue to include the accuracy of voters lists, the misuse of administrative resources during electoral campaigns, the politicisation of the electoral administration at all levels and the voters confidence in electoral processes. Furthermore, over the past several years, the Congress has observed that compliance with the principle of equal level playing field for all candidates including independents has become increasingly problematic.
5. It reiterates the relevance of soft law instruments applicable in this respect, including the Congress recommendations on electoral observation and the Code of Good Practice in Electoral Matters issued by the European Commission for Democracy through Law (Venice Commission).
6. The Congress pursues post-monitoring and post-electoral dialogue with national authorities of the Council of Europe member States to assist them in fulfilling the Congress monitoring and election-related recommendations and resolutions, with a particular emphasis on tackling the recurring issues.

⁴ See footnote on page 2.

⁵ [CG-FORUM(2020)01] – Revised Rules and Procedures of the Congress
<https://rm.coe.int/rules-and-procedures-of-the-congress-of-local-and-regional-authorities/16809f0b0e>

7. In the light of the above, the Congress invites the Committee of Ministers to call on the authorities of the members States to:

a. pursue their efforts to fully implement the ratified provisions of the Charter in particular as regards the identified recurring issues;

b. implement Congress recommendations related to cross-cutting electoral issues at local and regional level as well as soft law instruments issued by other Council of Europe bodies, notably the European Commission for Democracy through Law, in order to ensure that local and regional elections are in compliance with European standards in electoral matters;

c. strengthen their political dialogue with the Congress, including in the framework of post-monitoring and post-electoral procedures, with a view to setting up roadmaps to comply with their commitments under the Charter.

EXPLANATORY MEMORANDUM

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1. MONITORING OF THE IMPLEMENTATION OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

A. Introduction

1. In 2017, based on the assessments resulting from the Congress monitoring and election observation missions carried out from 2010 to 2016, the Congress adopted a report which identified those areas of the European Charter of Local Self-Government (hereinafter “the Charter”) which member States find most challenging to comply with.

2. The report identified the following recurring issues:

- inadequacy of financial resources available for local and regional authorities (Article 9);
- restricted definition, allocation and exercise of local competences (Article 4);
- lack of consultation by central government (Articles 4.6, 9.6).
- absence of direct applicability of the Charter in domestic legal systems (singled out as a root cause of the recurring problems).

3. The report concluded on a worrying broader tendency towards (re)centralisation in member States which may take many different forms, ranging from the refusal of some courts to apply the Charter directly, to limiting local authorities’ financial autonomy.

4. The objective of the present report is to review the state of implementation of the commitments and obligations of the Council of Europe member States in respect of the Charter for the period that spans from 2017 to 2020. It also provides a global assessment of the situation of local and regional democracy in Europe based on positive developments identified in the monitoring reports and recurring issues highlighted in the Congress recommendations. It stems from the Congress resolution adopted in March 2017 which instructed the Monitoring Committee to provide regular tri annual update and analysis of recurring issues it encountered during monitoring and post-monitoring activities.

5. Since 2017, the Congress has monitored 24 member States and carried out election observation visits in 10 Council of Europe members and one Neighbourhood Partnership country of the Council of Europe. The present report builds on the findings of those visits and takes into account the recurring issues identified in the previous report.

6. To ensure a complete and comprehensive analysis of the respect by the member States of their obligations and commitments under the Charter, the present report highlights both the challenges in the Charter’s application and positive developments to encourage the implementation efforts of the Council of Europe member States.

7. During the period under the review, the Congress has particularly welcomed the active role played by associations of sub-national authorities to promote and defend local self-government interests in several member states (BiH, Hungary, Portugal, Switzerland, Iceland, Georgia, Lithuania and Poland), both an existing great variety of legally available instruments of citizens’ participation in local public affairs and the establishment of such new mechanisms (Russia, Switzerland, Iceland, Georgia, Slovenia, Lithuania, Liechtenstein), the ratification of those articles of the Charter which were not ratified before (Armenia), the ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (Switzerland, Serbia, Estonia, Finland, Georgia), and the introduction of direct election of mayors (Georgia).

B. Reports adopted in 2017-2020

8. Monitoring, post-monitoring and fact-finding reports:

- 2020:
 - Fact-finding report on territorial reform in Latvia, Fact-finding mission, [Recommendation 447\(2020\)](#)
 - Local and regional democracy in Hungary, Recommendation (pending adoption)
 - Local and regional democracy in Armenia, Recommendation (pending adoption)
 - Local and regional democracy in Turkey, Recommendation (pending adoption)
 - Local and regional democracy in Portugal, [Recommendation 445\(2020\)](#)
 - Local and regional democracy in Austria, [Recommendation 446\(2020\)](#)
- 2019:
 - Local and regional democracy in the Russian Federation, [Recommendation 440\(2019\)](#)
 - Local and regional democracy in Bosnia and Herzegovina, [Recommendation 442\(2019\)](#)
 - Local and regional democracy in Poland, [Recommendation 431\(2019\)](#)
 - Local and regional democracy in the Republic of Moldova, [Recommendation 436\(2019\)](#)
- 2018:
 - Local democracy in Andorra, [Recommendation 415\(2018\)](#)
 - Local and regional democracy in Georgia, [Recommendation 426 \(2018\)](#)
 - Local democracy in Liechtenstein, [Recommendation 416\(2018\)](#)
 - Local democracy in Lithuania, [Recommendation 420\(2018\)](#)
 - Local democracy in Monaco, [Recommendation 417\(2018\)](#)
 - Local democracy in the Republic of San Marino, [Recommendation 418\(2018\)](#)
 - Local democracy in Slovenia, [Recommendation 421\(2018\)](#)
 - Fact-finding mission on the situation of local elected representatives in the Republic of Moldova, [Recommendation 411\(2018\)](#)
- 2017:
 - Fact-finding mission on the situation of local elected representatives in Turkey, [Recommendation 397\(2017\)](#)
 - Local and regional democracy in Finland, [Recommendation 396\(2017\)](#)
 - Local and regional democracy in Italy, [Recommendation 404\(2017\)](#)
 - Local and regional democracy in Serbia, [Recommendation 403\(2017\)](#)
 - Local and regional democracy in Switzerland, [Recommendation 407\(2017\)](#)
 - Local democracy in Estonia, [Recommendation 401\(2017\)](#)
 - Local democracy in Iceland, [Recommendation 402\(2017\)](#)
 - Local democracy in the Republic of Malta, [Recommendation 400\(2017\)](#)

C. Recurring issues and positive developments

Article 9. Financial resources of local authorities

Article 9 – Financial resources of local authorities

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
- 5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
- 6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
- 7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
- 8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

9. The right of local authorities to adequate financial resources enshrined in Article 9 is a key principle of the Charter. To have the effective capacity to manage a substantial share of public services as laid down in Article 3 of the Charter, local authorities need adequate financial resources which should be commensurate with tasks and responsibilities they must fulfil in accordance with the law. They should enjoy genuine financial autonomy, that is both be free to determine expenditure priorities and have adequate own resources, including the capacity to levy revenues from taxes (fiscal autonomy). At the same time, sources of local incomes should be sufficiently diverse in nature to ensure resilience of local authorities to external economic factors. The State should also provide municipalities with the financial means they need, including by setting up an effective and transparent financial equalisation system that would take into account fiscal capacities and financial needs of communities.

10. Article 9 also directly foresees consultation obligation of higher-level government on the way in which redistributed resources are to be allocated to local authorities. Such consultation should be timely and effective.

11. As stems from the monitoring reports adopted during the reporting period, Article 9 on local financial autonomy continues to be one of the most frequently violated provisions of the Charter.

12. Many local authorities continue to face increasing difficulties to finance their mandatory tasks and responsibilities. Some of them lack powers to raise their own revenues, through charges and local taxes, or to determine their expenditure priorities. The failure to ensure an adequate match between delegated competences and funding to carry them out (concomitant financing) has been observed in many countries.

13. Although most member States do not restrict directly, in the legislation, the way local authorities spend their financial resources, in practice most of local budget revenues are found to cover only own and delegated “mandatory tasks” and functions leaving little left for local authorities’ own-decision spending priorities.

14. As a result, the following concerns linked to limited local financial autonomy remain valid, this list being not exhaustive:

- inadequate and undiversified financial resources available to local authorities;
- limited own income and low proportion of own revenues in local budgets,
- mismatch between delegated tasks and attributed (concomitant) funding;
- overwhelming financial dependency of local government on state transfers, grants and subsidies;
- inefficiency of the equalisation system and lack of clarity in the distribution of state grants;
- lack of appropriate consultation on allocation of financial resources;
- over-regulation in certain areas which increases the cost of provision of services for local authorities that they must finance from their own resources;
- limited access to capital markets.

Positive developments

15. The Congress observed only a few, rather exceptional examples of full compliance of some member States with the requirements set out in Article 9. It welcomed those rare situations where local authorities benefited from adequate financial resources, enjoyed a healthy financial position owing to high percentage of local tax revenue with a relatively low debt ratio or have had their budgets recover after the crisis and experience a significant growth.

16. The Congress praised some countries' efforts to modernise the equalisation system, introduce new rules and procedures to help municipalities balance their finances and avoid excessive indebtedness, and review the legislation to strengthen the interaction between the state and local level on budgetary issues.

17. To assist all levels of government to better understand and more effectively apply the principle of adequate financial resources, the Congress has made a series of proposals and recommendations, among which, to:

- ensure the allocation of adequate resources to municipalities, respecting the connectivity principle that the resources should match the functions;
- accompany the delegation of the tasks from central to local level with concomitant financial resources;
- modernise the equalisation system and ensure its fairness and transparency, so that it can respond to current needs of local authorities (through revision of the formula of calculation of equalisation transfers and distribution criteria, an increase in the equalisation fund to smooth out regional and inter-municipal disparities);
- strengthen local fiscal autonomy and enhance the local authorities' capacity to generate their own resources (through further enlarging the tax base or capacity to determine surcharges or enabling local authorities to establish local taxes and to determine their rate);
- rationalise and simplify legal regulations of certain tasks and responsibilities at local level to allow more discretion to local authorities in adapting their exercise to local conditions;
- establish clear and transparent criteria for the distribution of state grants;
- allow for municipalities' access to capital markets to finance investment expenditures;
- ensure proper implementation of consultation procedures and mechanisms in practice to permit effective consultations with local authorities, in due time and in an appropriate way on all financial matters that directly concern them.

Consultation of local authorities by higher levels of government

Article 4 of the Charter – Scope of local self-government

- 6 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 – Protection of local authority boundaries

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.

Article 9 of the Charter – Financial resources of local authorities

- 6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

18. The right of local authorities to be consulted by higher levels of government, on all matters that concern them directly is a core principle of local democracy, enshrined in several Articles of the Charter.

19. Effective consultation contributes to strengthening democracy and good governance since it ensures the “local ownership” of policies and legislation impacting local self-government and enables their sound implementation at grassroots’ level. For consultation to be effective, it must be conducted in due time and in an appropriate way to allow local authorities and their associations to formulate their needs and proposals in good time and thus exercise real influence on decision-making process at central level.

Positive developments

20. During the reporting period, some positive examples of consultation have been identified in a number of countries. For instance, some states have successfully applied strong consultation traditions and built on the culture of consultation and close dialogue, had municipalities represented in the composition of the national legislature, adopted legislation providing mechanisms for consulting sub-national authorities, ensured regular consultation with local authorities and their associations, officially recognised associations of municipalities as interlocutors and partners that play an active role and exert influence on decision - making at central level.

21. However, despite some positive developments, on a larger European scale consultation between the central government and sub-national authorities still lags behind the requirements of Article 9 of the Charter. General improvement is still needed to ensure that the right to consultation is guaranteed to local authorities both in law and in practice and to develop and root the system of genuine political negotiation in all Council of Europe member states.

22. The main issues in terms of consultation identified in the period of reporting remain as follows:

- absence of a formal recognition in law of mechanisms of consultation with local authorities;
- ineffective and insufficient implementation of legally established consultation mechanisms and procedures;
- unsystematic practice of consultation and short consultation deadlines which limit the capacity of local authorities to make meaningful and reasoned comments.

23. Consequently, the Congress has asked the national authorities of several member states, among other things, to:

- put in place or reinstate, where applicable, an institutionalised and systematic consultation mechanism of local authorities by higher levels of government;
- recognise the importance and strengthen the role and impact of associations on decision-making process;
- formalise the consultation process where it is not defined or clearly defined in law to make this process predictable and result-oriented and to allow

- respect legal deadlines and request the extending of the existing deadlines, where necessary, to permit meaningful consultation;
- increase the regularity of consultations;
- ensure proper implementation of consultation procedures and mechanisms in practice to permit effective consultations with local authorities, in due time and in an appropriate way on all matters that directly concern them.

Local and regional competences

Article 3 of the Charter – Concept of local self-government

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

Article 4 – Scope of local self-government

- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
- 4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
- 5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

Article 8 – Administrative supervision of local authorities' activities

- 2 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.
- 3 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.

24. The scope of local government responsibility is of central importance for local democracy. The Charter requires that a “substantial share of public affairs” be regulated and managed by local authorities who should be able to elaborate local strategies and local policies under their own responsibility. In fact, the bigger the share of “public affairs” local governments are responsible for, the bigger is the scope of local democracy.

25. The share of public affairs managed by local authorities should be substantial and not residual. In other words, local authorities should not be limited to secondary tasks and routine duties, they should have a range of responsibilities that would enable them to elaborate and implement local public policies for the benefit of the local population.

26. To fulfil powers “under their own responsibility” and “in the interests of the local population”, local authorities should not be limited to merely acting as agents of higher-level authorities.

27. The Charter (Article 4.2) concerns the legal right of local authorities to take initiative on matters not excluded from their competence. In fact, many countries have adopted the so-called clause of general competence for local authorities which can also be combined with the subsidiarity principle described in paragraph 4.3 of the Charter.

28. Re-centralisation tendencies in some states continue to pose real threat to local discretion and initiatives. In some other states, local authorities must deal with an increasing amount of extremely detailed

state regulations of local-level activities which can also unduly limit their autonomy. Moreover, state practices of overregulation which undermine local autonomy have been reported even in those countries where local authorities enjoy a strong status.

29. Article 4 paragraph 3 of the Charter introduces the subsidiarity principle whereby public responsibilities should be exercised “in preference” closest to the citizens and decision-making should be brought as close as possible to them. This underlines the unavoidably political character of decentralisation, which can only be understood as endowing elected authorities with their own powers rather than delegated powers (Article 4.5).

30. The existence of overlapping responsibilities, in violation of Article 4.4, does not only prevent the powers given to local authorities from being full and exclusive. It can become a threat to local democracy since without clarity about which level is responsible for which function, neither higher level authorities nor citizens will know which actor to hold accountable.

31. Here are just some of outstanding issues of implementation of Article 4 of the Charter identified recently through Congress monitoring and post-monitoring activities:

- lack of clarity in delimitation of competences among government levels — which causes overlapping of responsibilities (Article 4 paragraph 4);
- the concentration of most public responsibilities at the state level contrary to the principle of subsidiarity (Article 4.3)
- excessive limitation of competences and decision-making powers conferred to municipalities (Article 3.1 and 4.3);
- the absence of autonomy of local authorities to exercise their own competences (Article 4.2) which are moreover not full and exclusive (Article 4.4.)
- the lack of discretion in the exercise of delegated functions, as a consequence of the detailed State regulation of delegated tasks (Article 4.5);
- excessive involvement of the central government in local affairs in practice (Article 4.4)
- disproportional supervision powers of the central authorities (Article 8.3) which considerably limits local authorities’ discretion to manage their own affairs.

32. Generally, many violations have been identified during the period under review regarding the distribution of competences in many countries despite the launching of decentralisation reforms in some of them and some progress achieved in few countries in this respect. In some states re-centralisation trends clearly continue and even accelerate.

33. The Congress has addressed various recommendations to the monitored states to tackle the problems linked to the distribution of competences to bring the situation in compliance with Article 4 of the Charter.

34. In many recommendations which have been adopted in the reference period, the Congress has called upon national authorities to:

- clarify the allocation of competences between the central government and the municipalities to ensure that the latter have full and exclusive powers within the meaning of Article 4.4,
- avoid situations of overlap between local and central competences and to ensure that the subsidiarity principle is applied in practice,
- reduce the level of interference by State authorities with municipal independent functions,
- make sure that the supervision is proportional to the importance of the interests that it is intended to protect and limit the state supervision of their own tasks to the control of legality;
- avoid overregulation of delegated tasks and allow local authorities to have more discretion in adapting their exercise to local conditions;
- recognise to local authorities a substantial share of public affairs under their own responsibility through decentralisation of competences, in line with the principle of subsidiarity
- and ensure that local authorities dispose of the necessary legal and administrative means, property and finances to regulate and manage their affairs.

35. The Congress has explicitly requested some countries to reverse the centralisation trend and stop the allocation of local competences to the State administration thus ensuring that the subsidiarity principle is applied in practice.

Direct applicability of the Charter

36. The report on the reception of the Charter in the case-law of the national courts of last resort, prepared within the Congress Group of Independent Experts on the Charter in June 2019, assesses positively the situation around the judicial application of the Charter in Council of Europe member States. It points out that the Charter is frequently invoked in lawsuits dealing with local government issues, and most courts apply it in their judgements' reasoning.

37. As highlighted in the report, the formal recognition of the potential direct application of some of Charter's provisions has become the rule, although with few exceptions, and the Charter is regarded as a benchmark for the interpretation of national constitutional or legislative provisions on local self-government.

38. However, the report also notes that the Charter's direct application is still denied in some countries because their courts consider the Charter's wording too vague or general. Some notable exceptions concern some specific Charter provisions (i.e. articles 5 and 6), that the courts, by contrast, find precise, clear and concrete enough to be applied in an adjudication.

39. It is concluded in the report that the Charter has not yet reached the stage at which it would systematically take precedence over any previous or subsequent legislation which is inconsistent with it. However, the Charter cannot deploy striking legal effects not because it is a weak treaty, but because the constitutional tradition of the State or the procedural design of the internal legal remedies prevent any treaty to obtain such results (apart from those dealing with human rights). From this perspective, the situation of the Charter is not different from that of many other international treaties.

40. The monitoring visits carried out in the period of review have also confirmed some progress with regard to ensuring the direct applicability of the Charter in some countries. However, while in a number of countries the Constitutional Courts extensively apply the Charter in their case-law and consider it as a binding and operational set of rules, in some other states the lack of direct applicability of the Charter is still a factor that weakens the Charter's legal status in the domestic legal system.

41. Therefore, the Congress has recommended ensuring the direct applicability of the Charter within the domestic legal systems, giving due consideration to the Charter in court proceedings and, where necessary, passing the legislation that would give it legal force as a directly applicable source of law.

Positive developments

42. Among positive developments in few states should be mentioned the introduction of legislative changes empowering every local authority to litigate in the Constitutional Court to defend local autonomy and the recognition of the right of local authorities' associations to seize the Constitutional Court.

Article 7.1 Conditions of office

Article 7 – Conditions under which responsibilities at local level are exercised

- 1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
- 2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
- 3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles
Besides the four above-mentioned areas where the implementations issues remain recurrent and relevant, the Congress has identified the difficulties in meeting the requirements of Article 7 of the Charter on the conditions of office of local elected representatives.

43. The principle of local democracy enshrined in Article 3 of the Charter is especially linked to Article 7, which refers to the conditions under which local elected representatives exercise their functions. Among those conditions, beside the principle of financial compensation (Article 7, Paragraph 2, requiring that some categories of persons may not be prevented by purely material considerations from standing for office) and the requirement of legally established rules on incompatibility Article 7, Paragraph 3), is of paramount importance the reference, in Article 7, Paragraph 1, to the free exercise of the functions of local elected representatives.

44. According to Article 7 of the Charter, local elected representatives may not be prevented by the action of a third party from carrying out their functions.

45. The contemporary commentary by the Congress on the Explanatory Report to the Charter⁶ warned against the situation in which the laws favour the “judicialisation” of local politics, or where local elected representatives are de facto threatened with the prospect of being prosecuted even on trivial charges. In this connection, the fight against corruption should be balanced against the need to ensure that local politicians are not unduly threatened by the prospect of arbitrary prosecutions.

46. The Congress also stressed in its Recommendation 383 (2015)⁷ that democratic systems require elected political representatives to govern on behalf of their constituents. Governments have a duty to provide and/or facilitate conditions of office for elected representatives at all levels of government and ensure they do not become subject to inappropriate attempts to influence their decision-making such as bribery, blackmail, bullying (which can be increasingly through electronic means) or threats of physical violence, etc.

47. Many elected representatives, unfortunately, have experienced at least some degrees of harassment and threats of violence. Threats and attacks against local government representatives are becoming an ever more frequent occurrence recently and are regularly raised during the Congress series of debates “Mayors under pressure”.

48. The failure of national authorities to ensure the conditions for a free exercise of local elected mandate has been a frequent complaint addressed by local authorities of some member States to the Congress and appears to be an emerging recurrent issue of the application of the Charter.

49. The monitoring activities of the Congress revealed various central level actions that may curtail the freedom of exercise of local mandate, starting from capping the number of elected representatives and reducing the scale of their salaries to creating a generally hostile political environment of distrust towards local authorities and fuelling the tensions between the representatives of the ruling party and the opposition.

50. In a couple of countries, the opposition leaders have been publicly accused of “treason” as soon as they voiced criticisms against the ruling party and over the political pressure they have been brought to bear. The

6 [CG-FORUM(2020)02-05] – A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government

<https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>

7 Recommendation 383 (2015) – Conditions of office of elected representatives

<https://rm.coe.int/conditions-of-office-of-elected-representatives-co-rapporteurs-frida-j/168071928e>

legislation of one state enables governors to substitute mayoral direct elections with the system of appointment of heads of municipality.

51. However, the most common challenges in the implementation of Article 7 in Europe to date relate to the conditions of suspension of the electoral mandate and the inappropriate financial compensation of local elected representatives for the proper exercise of their duties.

52. More concretely, the political context for the exercise of mayoral functions may be adversely affected by the intensive practice of bringing criminal prosecutions against mayors and other local elected representatives, some of them being brought for unreasonable or insignificant reasons, relating sometimes to the lack of resources of local authorities to discharge their competences. The lack of precision of the grounds to activate the mechanism of recall referendums at local level that leads to their abusive use or misuse significantly deteriorates the conditions of office of local elected representatives and entails a serious dysfunction of local democracy as mayors work under the permanent threat of revocation.

53. In several countries, the remuneration of mayors is far from being decent or adequate and thus deters different categories of people, including youth, from engaging in local politics for purely material reasons. A symbolic case is when despite the economic growth in one member State its government reduced the scale of remuneration of local elected representatives by 20%. The systematic arrest and suspension of mayors when a criminal investigation is opened against them, on the grounds of an overly broad definition of "terrorism" in the anti-terror legislation, and their replacement by non-elected officials in another Council of Europe member State seriously undermines the democratic choice of its citizens and impedes the proper functioning of local democracy.

54. One county's criminal legislation regarding the mayors' liability places such a disproportionate responsibility on local elected representatives that they become too vulnerable to be able to freely exercise their mandate. This situation even leads to the lack of candidates to local elected posts.

55. Therefore, the Congress has made numerous suggestions on how to improve the condition of office of local elected representatives during the monitoring reviews. Those included recommendations on establishing a system of fair and appropriate remuneration of the representatives of local elected representatives for the discharge of their duties; revising the legislation on the procedure of suspension of local elected representatives and adopting the necessary legal and regulatory arrangements to avoid the possible distorting consequences of its misuse; revising the legal provisions regulating the grounds for calling a local recall referendum to provide for more legal certainty and to reduce the scope of discretionary decisions in triggering such popular consultations. Some states have received the recommendations to:

- find a more appropriate balance between the fight against corruption and the requirements of local democracy, so that the bringing of criminal charges against local elected representatives does not disrupt local political life, and refrain from exercising any type of pressure against local elected representatives;
- ensure that the arrest of a local elected representative is a decision duly substantiated in domestic law, taken in conformity with the standards of the Council of Europe;
- develop capacity building programmes for local council members, in particular in remote municipalities, with regard to the use of all available legal instruments for the protection of their rights and adopt various measures aimed at restoring mutual trust between the representatives of the ruling party and the opposition which is necessary for the proper functioning of local democracy.

D. Conclusions

56. This is the second periodical report prepared by the Monitoring Committee which has been tasked with providing regular tri-annual analysis on performance of the Council of Europe member States in implementation of the Charter.

57. General compliance with the provisions of the Charter has been observed in some member States. They have applied constant and sustainable efforts aimed at strengthening local self-government and bringing the national legislation and practice in line with the Charter, through the decentralisation reforms.

58. A few states have achieved noticeable progress in the field of local and regional democracy since the previous Congress monitoring and/or post-monitoring visits by either fostering reform efforts, enhancing intermunicipal co-operation or strengthening mechanisms of citizens' participation in public decision-making. Six more states have ratified the Additional protocol to the Charter on the right to participate in the affairs of a local authority.

59. Nonetheless, substantial challenges remain on the member States' agenda in terms of fulfilling their commitments in respect of the Charter as regards the recurrent issues identified in the previous Congress report.

60. Gaps remain obvious in the implementation of the Charter's provisions in relation both to competences and financial resources available to local authorities.

61. During the reference period, a tendency to re-centralise competences and the related financial resources has been reconfirmed in some countries. Some governments tried to justify removing decisions from the level closest to the citizens and limiting local financial resources in violation of Articles 4 and 9 respectively by the need to implement austerity and rationalisation programmes to tackle the consequences of the financial crisis.

62. In addition, in some member States serious problems in ensuring the adequacy of financial resources appeared not limited to measures of financial discipline aimed at countering the effects of the financial crisis. The situation there presented the signs of the attempts to use difficulties in financial situation as an excuse to gain more control and influence over local authorities.

63. Some efforts have been deployed in some member States to address various shortcomings found in the conduct of consultation. However, the biggest challenges regarding this issue are still to be met in terms of formalising the consultation procedure in law and respecting the requirements of timely and due consultation on all matters directly related to local authorities as set out in Articles 4.6., 5 and 9.6.

64. The main concerns that the Congress has previously voiced about the absence of direct application of the Charter in the national legislative systems of some member States are still to be addressed notwithstanding a generally positive situation around the judicial application of the Charter in Council of Europe member States.

65. In addition to the four recurring issues that remain relevant during the period under review, the Congress has identified one more emerging issue of the application of the Charter – systematic shortcomings in meeting the requirements of Article 7 on the conditions of office of local elected representatives. These range from reducing the scale of salaries of local elected officials despite the economic recovery to failure to ensure the safe political and legal environment for exercise of local elected mandates. Public distrust in institutions at all levels continues to persist in some countries and adversely affects the level of participation of citizens in local decision-making.

66. At the time of the elaboration of this report, the Council of Europe and other states around the world faced the unique and complex challenges presented by the global pandemic. The coronavirus outbreak has also seen a number of countries disproportionately and in violation of the Charter recentralise finances and competences given to the local level of government, justifying these actions by the need to stop the spread of the COVID-19.

67. Whether this trend towards recentralisation is likely to be confirmed as a result of the pandemic is yet to be seen. This is understandably a sensitive issue. But it is to be reminded that the non-respect of the principles guaranteed by the Charter is a worrying development since democratic and open societies should

respond to and combat the pandemic while continuing to uphold democratic principles. We will see if the future Congress recommendations will confirm these preliminary remarks.

68. What is obvious is that against this complex backdrop, constant efforts in the honouring of their commitments must be pursued by all member States to achieve substantial progress in ensuring compliance with the Charter and sustain local democracy. Local self-government contribution has undoubtedly benefited the global response to the pandemic and should remain an important part of the concerted effort to address the pandemic impacts in the long-term and ensure the collective recovery.

69. Through its monitoring and post-monitoring activities, the Congress should continue to closely follow current and emerging issues of the Charter's implementation as an advance warning system for the Committee of Ministers, with regard to trends in local democracy in member States. It should also promote good practices of responding to identified issues as a means of facilitating and streamlining the implementation efforts of States parties to the Charter.

2. OBSERVATION OF LOCAL AND REGIONAL ELECTIONS IN COUNCIL OF EUROPE MEMBER STATES

Reports adopted in 2017-2020

A. Country-specific reports:

2017:

Bosnia and Herzegovina ([CG32\(2017\)16final](#), [Recommendation 399](#));

Finland ([CPL33\(2017\)05final](#), [Recommendation 408](#));

Bosnia and Herzegovina (Information Report in the framework of the Congress' post-electoral dialogue – [CPL33\(2017\)03](#));

Republic of Moldova (Gagauzia), Information Report – [CPR32\(2017\)02](#);

2018:

North Macedonia ([CPL34\(2018\)02final](#), [Recommendation 413](#));

Georgia (Information Report – [CPL34\(2018\)03](#));

Netherlands (Information Report – [CPL35\(2018\)04](#));

Tunisia (Information Report – [CG35\(2018\)10](#));

Republic of Moldova (Information Report - [CG35\(2018\)22](#));

2019:

Bosnia and Herzegovina ([CPR36\(2019\)02final](#), [Recommendation 432](#));

Turkey ([CG37\(2019\)14](#), [Recommendation 439](#));

Slovenia (Information Report – [CPL36\(2019\)02](#));

Poland (Information Report – [CG36\(2019\)18](#));

2020:

Republic of Moldova ([CG-FORUM\(2020\)01-04](#), [Recommendation 443\(2020\)](#));

Ukraine (Information Report/remote procedure – [CG-BUR\(2020\)35-37](#)).

B. Transversal reports:

2017:

Checklist for compliance with international standards and good practices preventing misuse of administrative resources during electoral processes at local and regional level [[CG32\(2017\)12](#)];

2018:

Voting rights at local level as an element of successful long-term integration of migrants and IDPs in Europe's municipalities and regions – [CG35\(2018\)17](#) – [Recommendation 419 \(2018\)](#);

2020:

Local and regional elections in major crisis situations – [CG-FORUM\(2020\)01-05](#) – [Resolution 455 \(2020\)](#) – [Recommendation 444 \(2020\)](#).

Recurring issues

1. Accuracy of voters' lists

70. The accuracy of electoral lists remained an issue during Congress missions to observe local and regional elections over the last four years. Despite the fact that residency requirements for voting rights at local and regional level as well as other criteria enshrined in the electoral legislation may vary from country to country, the Congress, further to some of its observations, has made reference to the particular problem of voters who live *de facto* abroad but remain registered as residents, stay on the electoral lists in their country of origin and thus may exercise their right to vote at grassroots' level if they are in the country on Election Day. The presence of voters residing *de facto* abroad on electoral lists causes challenges with regard to effective electoral management, the integrity and transparency of electoral processes and the prevention of

fraud or manipulation. In this respect, the Congress highlights the importance of a “genuine link” that should exist between the voters and the municipality where he/she cast his/her ballot as stated in [Resolution 378\(2015\)](#)⁸.

71. More generally speaking, more efforts are often needed in systematically verifying the actual permanent residence of voters, consistent updating of electoral lists and removing deceased voters from the lists. Finally, manipulations with the voters' lists have been noticed, such as assigning voters to different polling stations than usual or registering security forces to vote in certain constituencies in order to change traditional composition of the local electorate and thus achieve advantage for certain competitors.

72. Due to the importance of this issue for local and regional self-government bodies and rooted in the conviction that local questions should be decided by the electorate actually living in a specific community, the Congress will continue bringing this to the attention of the authorities in conjunction with the according recommendations.

[Congress Resolution 378 \(2015\)](#): Electoral lists and voters residing de facto abroad

Code of Good Practice in Electoral Matters (Venice Commission) - the principle of universal suffrage
This principle includes certain conditions with regard to the right to vote and to stand for elections such as age, nationality and residence requirements. Residence in this case means habitual residence. A length of residence requirement may be imposed on nationals solely for local and regional elections. The requisite period of residence should not exceed six months, a longer period may be required only to protect national minorities. The right to vote and to be elected may be accorded to citizens residing abroad.

2. Misuse of administrative resources

73. Misuse of administrative resources during the electoral process, most notably with regards to the campaign activities and the access to the media, has been highlighted by the Congress as an issue further to a number of election observation missions carried out from 2017 to 2020. Unlike other types of electoral malpractice and despite the fact that it is wide-spread, misuse of administrative resources has made its way into the established European political culture. It can be found in emerging democracies as well as in countries with a long-standing democratic tradition.

74. Due to the specific and close link that exists in the field between incumbents, candidates, public officials and voters, misuse of administrative resources is of particular concern at local and regional level. It hinders the creation of a level playing field and thus undermines the right of all candidates to stand for election on an equal basis and the right of voters to make choices without being unduly influenced.

75. Further to [Resolution 402 \(2016\)](#)⁹, a Checklist for compliance with international standards and best practices preventing misuse of administrative resources during electoral processes at local and regional level has been prepared in order to facilitate the implementation of such standards and best practices locally.

[Congress Resolution 402 \(2016\)](#): The misuse of administrative resources during electoral processes and the role of local and regional elected representatives and public officials

Code of Good Practice in Electoral Matters (Venice Commission) – funding
Transparency operates at two levels. The first concerns campaign funds, the details of which must be set out in a special set of carefully maintained accounts. In the event of significant deviations from the norm or if the statutory expenditure ceilings are exceeded, the election must be annulled. The second level involves monitoring the financial status of elected representatives before and after their term in office. A commission in charge of financial transparency takes formal note of the elected representatives' statements as to their finances. The latter are confidential, but the records can, if necessary, be forwarded to the public prosecutor's office.

⁸ Resolution 378(2015) – Electoral lists and voters residing de facto abroad

<https://rm.coe.int/electoral-lists-and-voters-residing-de-facto-abroad-rapporteur-jos-wie/168071a76e>

⁹ Resolution 402 (2016) – The misuse of administrative resources during electoral processes: the role of local and regional elected representatives and public officials

<https://rm.coe.int/the-misuse-of-administrative-resources-during-electoral-processes-the-/1680719382>

3. Politicisation of election administration

76. Professionalism, independence and transparency at all levels of electoral management bodies is a fundamental condition of public trust and confidence in electoral processes and results of elections and the Congress has made reference to this issue during observation missions in recent years.

77. The election administration has regulatory authority with regard to sensitive parts of the electoral process including voters' and candidates' registration. Moreover, it is in charge of the whole practical management of voting and counting has thus direct influence on the quality of the process.

78. In order to improve the situation, the Congress, further to observation missions organised over the last four years, recommended, in particular, revising the modalities of appointment, withdrawal and dismissal of members of election commissions at all levels. In addition, it underlined that consistent and substantial training provided to members of election administration is instrumental to the strengthening of the professionalism of electoral bodies and therefore to their independence and impartiality. Transparent and consistent decision-making of election management bodies enhances overall public trust in the process.

Code of Good Practice in Electoral Matters (Venice Commission) – organisation of elections by an impartial body
Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the processing of results. This is why independent, impartial electoral commissions must be set up from the national level to polling station level to ensure that elections are properly conducted, or at least remove serious suspicions of irregularity.

4. Public confidence in electoral processes

79. Irregular and undue practices such as vote-buying, pressure from the employer or other forms of intimidation infringe on the freedom of voters to cast their votes according to their convictions and opinions have been mentioned by Congress reports further to the observation of local and regional elections also in the last years. Despite the fact that certain types of infringements on voters' freedom are difficult to monitor by international observers, the State is obliged to effectively prevent and punish violations of the law. Voters must be able to vote free from intimidation and fear of retribution.

80. Voters must be protected from threats or constraints liable to prevent them from casting their vote or from casting them as they wish, whether such threats come from the authorities or from individuals. Adequate voter education needs to be carried out so that voters are aware of their rights and are familiar with voting procedures. The position of domestic observers should be strengthened to contribute to broader efforts to limit electoral irregularities and fraud.

81. Congress' recommendations prepared in recent years include measures to increase public confidence in elections, in particular through legal provisions with regard to the penalisation of all forms of pressure unduly exerted on voters. Where already existing, such provisions need to be effectively implemented by the authorities.

Code of Good Practice in Electoral Matters (Venice Commission) – the principle of free suffrage
This principle comprises two different aspects – free formation of the elector's opinion and free expression of this opinion (the freedom of the voting procedure and the accurate assessment of the result). State authorities must observe neutrality (e.g. concerning media, billposting, demonstration rights, funding of parties and candidates) and have a number of positive obligations concerning candidatures, lists of candidates, national minorities etc.

5. Equal level playing field for all candidates including independents

82. All candidates should be able to stand in elections on equal footing without pressure and discrimination, and regardless of their party affiliation or if they run as independents. In particular, all candidates should be subjected to the same regulations before, during and after the elections. Regrettably, over the past several years, the Congress has noticed that compliance with this particular principle has increasingly become an issue.

83. Independent or opposition candidates should not face additional burdens in registering to run and they should be able to run in all constituencies on par with political/government party candidates. The fair access to the media and freedom to carry out campaign activities must be ensured equally to all candidates and campaign finance regulations must be monitored and enforced without prejudice. Independent or opposition candidates must not face any additional requirements to be installed in the office once they were duly registered to stand in an election and gathered a sufficient number of votes to win their mandate.

84. On the grassroots' level, independent candidates often represent an important alternative to established political parties as they have a particular link and knowledge of local issues. This makes them an invaluable element of local election races. Therefore, the Congress intends to focus on this topic and prepare a thematic report listing states' practice and recommendations on this matter.

Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority – Article 1 – Right to participate in the affairs of a local authority:

1. The States Parties shall secure to everyone within their jurisdiction the right to participate in the affairs of a local authority.

(...)

4.1. Each Party shall recognise by law the right of nationals of the party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside.

(...)

5.1. Any formalities, conditions or restrictions to the exercise of the right to participate in the affairs of a local authority shall be prescribed by law and be compatible with the party's international legal obligations.

(...)

5.3. Any other formalities, conditions or restrictions must be necessary for the operation of an effective political democracy, for the maintenance of public safety in a democratic society or for the party to comply with the requirements of its international legal obligations.

[Congress Recommendation 375 \(2015\)](#) – *Criteria for standing in local and regional elections:*

The Congress recommends that the Committee of Ministers invite the governments of member States to:

a. review their domestic legislation with regard to local and regional elections, in order to ensure that:

(...)

iv. requirements of financial deposits and supporting signatures, where applied, specify amounts that are reasonable and proportionate to the size of the electoral district;

v. independent candidates be allowed to stand in all local and regional elections, without unduly restrictive requirements of financial deposits and supporting signatures;

(...)

vii. citizens be permitted to run for election regardless of whether they hold a function that is deemed incompatible with elected office, with the condition that anybody who holds such a function resign from the said function on being successfully elected;

Code of Good Practice in Electoral Matters (Venice Commission) – the principle of universal suffrage

Universal suffrage means in principle that all human beings have the right to vote and to stand for election.

This principle includes certain conditions with regard to the right to vote and to stand for elections such as age, nationality and residence requirements. Provision may be made for depriving individuals of their right to vote and to be elected, but only subject to the following cumulative conditions: it must be provided for by law; the proportionality principle must be observed; conditions for depriving individuals of the right to stand for election may be less strict than for disenfranchising them; the deprivation must be based on mental incapacity or a criminal conviction for a serious offence; the withdrawal of political rights or finding of mental incapacity may only be imposed by express decision of a court of law.

Conclusions and positive developments

85. The second periodical report prepared by the Monitoring Committee - which has been tasked with providing analysis on recurring issues in Council of Europe member States also with respect to election observation along with previously adopted Congress recommendations - covers the reference period 2017 – 2020.

86. In general, over the past years, there have been improvements in certain areas and in particular regarding the regulation of financing of political parties and election campaigns as well as the introduction of provisions on increased political participation of women. The strengthening of the regulatory framework governing such aspects of elections is evident throughout all four years of this reference period during which the Congress observed local and regional elections and it concerns different countries. However, simultaneously evident is a lack of proper implementation and enforcement of rules that are in place.

87. The implementation of voting rights for internally displaced persons (IDPs) in Ukraine and the reinstatement of local elections in the city of Mostar in Bosnia and Herzegovina where elections were held in 2020 after 12 years of political impasse are particularly noteworthy when talking about positive developments over the past four years.

88. However, areas where no or little improvements have been noticed during Congress election observation missions in comparison to the last reference period 2014 – 2016 include: the accuracy of voter's lists, the misuse of administrative resources, politicisation of election administration and weak public confidence in electoral processes. Therefore, these issues have been retained in this report. A new development that has become a more prevalent concern for the Congress over the last four years is the lack of a level playing field for all candidates, particularly for opposition and independent candidates. As a consequence, this has been added to the list of recurring issues.

89. In addition, the Congress has seen rise of polarisation during election campaigns in member States, with a political discourse often characterised by nationalistic attitudes, dividing country populations along ethnic and political party lines. Confrontational and sometimes even aggressive and inflammatory rhetoric overshadows real policy issues and has negative impacts, among other areas, on the media environment and safety of journalists. Looking more consistently into the increasing significance of such issues, manifested also at the local and regional level in the form of online hate campaigns during elections, will be in the focus of future observation missions.

90. The COVID-19 pandemic significantly hindered the Congress' work regarding election observation in 2020. Due in large part to the lockdown in most European states as from spring 2020, the Congress was forced to cancel missions as travel restrictions increased. While [Resolution 455\(2020\)](#)¹⁰ contained in the report on local and regional elections in major crisis situations allowed the Congress to continue the observation of grassroots' elections during the pandemic in a remote manner, it did not replace fully-fledged missions.

91. Moving forward, the Congress intends to resume routine election observation missions as soon as possible in order to provide analysis, based on observations made on-site, for the next reference period 2021 - 2024.

¹⁰ Resolution 455(2020) – Local and regional elections in major crisis situations
<https://rm.coe.int/local-and-regional-elections-in-major-crisis-situations-monitoring-com/16809fbe7c>