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Monitoring of the application of the European Charter of Local Self-Government in Denmark

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 third report assessing the implementation of the Charter in Denmark since the country ratified the Charter in 1988.

The rapporteurs conclude that the system of local self-government in the country is well-functioning and the obligations undertaken under the Charter are generally fulfilled.

They note with satisfaction that the Danish political and legal framework is marked by an efficient culture of consultation and trust between the central government and local authorities where unwritten rules and norms play an important role in the regulation of political agreements.

The report highlights that the challenges to the Danish system of local self-government mainly stem from the demographic context marked by an ageing population and expenditure pressure, and points to the difficulties in the coordination between municipalities and regions as regards the delivery of health services. The rapporteurs suggest redefining the framework of collaboration and the distribution of tasks between municipalities and regions on the delivery of health services, in consultation with associations of local and regional authorities.

The rapporteurs also note that, although Denmark has shown good practices regarding citizen participation in public affairs at the local level, it has not yet signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207). Denmark is therefore invited to sign and ratify the Additional Protocol to the Charter.

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.

RECOMMENDATION 479 (2022)²

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, 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”;

b. Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government”;

c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the contemporary commentary on the explanatory report to the European Charter of Local Self-Government [[CG-FORUM\(2020\)02-05](#)] adopted by the Congress Statutory Forum on 7 December 2020;

e. the Congress priorities set up for 2021-2026, in particular priority 6b that concerns the quality of representative democracy and citizen participation;

f. the Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goals 11 on sustainable cities and communities and 16 on peace, justice and strong institutions;

g. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

h. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

i. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities, adopted on 4 April 2019;

j. previous Congress Recommendation 350 (2013) on the monitoring of the European Charter of Local Self-Government in Denmark. [[Recommendation 350\(2013\)](#)]

k. the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Denmark. [CG(2022)43-18].

2. The Congress points out that:

a. Denmark joined the Council of Europe on 5 May 1949, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 15 October 1985 and ratified it on 3 February 1988. Denmark has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS N° 207).

b. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local democracy in Denmark in the light of the Charter. It instructed Xavier CADORET, France (L, SOC/G/PD) and Carla DEJONGHE, Belgium (R, ILDG), with the task of preparing and submitting to the Congress a report on the implementation of the Charter in Denmark. The delegation was assisted by Prof. Tania GROPPi, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat.

² Debated and adopted by the Congress on 25 October 2022, 1st Sitting (see Document [CG\(2022\)43-18](#), explanatory memorandum), co-rapporteurs: Xavier CADORET, France (L, SOC/G/PD) and Carla DEJONGHE, Belgium (R, ILDG).

c. The monitoring visit took place from 3-5 May 2022. The Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the monitoring visit is appended to the explanatory memorandum [CG(2022)43-18].

d. The co-rapporteurs wish to thank the Permanent Representation of Denmark to the Council of Europe and all those who they had exchanges with during these meetings.

3. The Congress notes with satisfaction:

- a. the positive, and in some ways exemplary, implementation of the principles enshrined in the Charter;
- b. the wide range of responsibilities of the municipalities and the role they play in the Danish welfare system;
- c. the culture of consultation and loyal collaboration between central government and local authorities;

4. The Congress notes that the following points call for particular attention:

- a. the division of competences between regions and municipalities as regards the delivery of health services has become increasingly challenging in recent years and requires specific consideration by all levels of government;
- b. even though Denmark has good practices of citizen participation in local public affairs, it has not signed nor ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the authorities of Denmark to:

- a. revisit the framework of collaboration and the distribution of tasks between municipalities and regions on the delivery of health services, in consultation with associations of local and regional authorities, with the aim of improving cooperation and increasing the robustness of the healthcare system;
- b. sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in the Denmark and the accompanying explanatory memorandum in their activities relating to this member State.

EXPLANATORY MEMORANDUM

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1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. Pursuant to Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities (hereinafter referred to as “the Congress”) appended to Statutory Resolution CM/Res (2020)1, the Congress of Local and Regional Authorities regularly prepares reports on the State of local and regional democracy in all Council of Europe member States.

2. The Kingdom of Denmark became a member of the Council of Europe on 5 May 1949. It is one of the Organisation’s founding States. It signed the European Charter of Local Self-Government (ETS No. 122, hereafter “the Charter”) on 15 October 1985 and ratified it on 3 February 1988. At the time of ratification Denmark made a declaration to the effect that the Kingdom of Denmark considered itself bound by the European Charter of Local Self-Government in its entirety, but that the provisions of the Charter would apply to the Danish municipalities (*kommuner*) and counties (*amtskommuner*), apart from the Metropolitan Council (*Hovedstadsrådet*), which was abolished in 1989, and that the Charter would apply neither to Greenland nor to the Faroe Islands. On 11 October 2007, Denmark made a declaration according to which “the Kingdom of Denmark considers that the provisions of the Charter shall apply to its municipalities (“*kommuner*”)”³.

3. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in Denmark in the light of the Charter. It instructed Xavier CADORET, France (L, SOC/G/PD) and Carla DEJONGHE, Belgium (R, ILDG), with the task of preparing and submitting to the Congress a report on the implementation of the Charter in Denmark. The delegation was assisted by Prof. Tania GROPPPI, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat. The rapporteurs wish to express their thanks to the expert for her assistance in the preparation of this report. This group of persons will be hereinafter referred to as “the delegation”.

4. The monitoring visit took place from 3-5 May 2022. The Congress delegation, as a regular practice, met the representatives of various institutions at all levels of government, except for the mayor of the capital city of Copenhagen who was not able to meet the delegation. The detailed programme of the monitoring visit is appended to the explanatory memorandum.

5. The co-rapporteurs wish to thank the Permanent Representation of Denmark to the Council of Europe and all those who they had exchanges with during these meetings.

6. According to Rule 88.3 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent on 8 July 2022 to all interlocutors met during the visit for their comments and possible adjustments or corrections (hereinafter referred to as “consultation procedure”). The present report is based on the comments received, which have been considered by the co-rapporteurs before submission for approval to the Monitoring Committee.

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

2.1 Local government system (constitutional and legislative framework, reforms)

2.1.1 Constitutional and legislative bases of local government in Denmark

7. Denmark is a country that covers an area of 43,094 km² with a population of 5,883,562⁴, and with a long history of local self-government. Since the Middle Ages there has been some form of local authority with shifting levels of self-government. In 1849 local self-government was given constitutional protection, in Article 96 of the first Danish Constitution, which changed the form of State from an absolute monarchy to a constitutional monarchy.

8. Article 82 of the present 1953 Constitution, included in Chapter 8, on “Human rights”, exactly reproduces the previous provision: «Municipalities’ right to manage their own affairs independently, under State

³ The Declaration is contained in a letter from the Minister of Interior and Health of Denmark, dated 29 May 2006, confirmed by a letter from the Permanent Representative of Denmark, dated 11 October 2007, registered at the Secretariat General on 12 October 2007 - Or. Engl.: “The Danish Government has decided with effect as from 1 January 2007 to withdraw the declaration made at the time of deposit of its instrument of acceptance of the Charter and make the following new declaration on the scope of the Charter in Denmark: In accordance with Articles 13 and 16 of the Charter, the Kingdom of Denmark considers that the provisions of the Charter shall apply to its municipalities”.

⁴ <https://www.dst.dk/da/Statistik/emner/borgere/befolkning/befolkningstal>.

supervision, shall be laid down by a statute»⁵. Like the other Nordic countries, Denmark gradually transferred responsibility for the provision of welfare services from central government to the municipalities. Therefore, Denmark is a unitary State with a strong local government, clearly corresponding to the Nordic administrative tradition.

9. The existing administrative territorial structure of Denmark is the result of a vast reform entered into force in 2007, which abolished the 14 counties and introduced a completely new level of responsibility, namely the five regions (“*Regioner*”), each of which is led by a regional council elected by direct suffrage. The five regions are new-style authorities with various tasks of which managing the health system is the most important. While they have directly elected councils, the regions do not (unlike the counties that existed before) have tax-raising powers. When the reform passed, Denmark made a declaration to exclude the regions from the application of the Charter, as said above.

10. The reform also determined the voluntary merger of the previously existing 271 municipalities. There are now 98 municipalities (“*Kommuner*”) directed by councils elected by direct suffrage. The regions and municipalities are not placed in a hierarchy but are independent of each other⁶.

11. The 2007 reform, as the Congress pointed out in its 2013 report on local and regional democracy in Denmark⁷, even though it reduced the number of municipalities, was widely accepted, due to several reasons. The first was that the new municipalities have been assigned new competences (especially the whole social sector, including employment policy) which had formerly been exercised by the counties, replaced by the five regions. In addition, the reform was accompanied by transfers of the corresponding resources, so that the municipalities took over 15 % of the former counties’ resources. The Association of municipalities, namely the (*KL*) *Kommunernes Landsforening* (or *Local Government Denmark*, hereafter LGDK) as well as the former Association of County Councils (now Danish Regions) were deeply involved in the reform⁸. However, as appears from the comments received during the consultation process for drafting this report, the final amalgamation reform proposal was prepared by a small group that consisted of top ministers, top civil servants, a top representative from the Danish People’s Party (the minority government’s parliamentary partner), and the CEO of LGDK.

12. The Kingdom of Denmark also has two autonomous regions, namely Greenland and the Faroe Islands, each of which has its own legislative assembly. According to a declaration made at the moment of ratification, “The Charter shall not apply to Greenland and the Faroe Islands”.

13. Greenland (which, with a total area of some 2.2 million km², over 80 % of which is covered by icecap, and only 56,562 inhabitants⁹, is the largest island in the world) enjoys a special status since 1979. The autonomy was further expanded in 2009, as a result of the Greenland Self-Government Act voted by the Danish Parliament. The Act affirms that the people of Greenland have the right for self-determination in accordance with international law, while stipulating a process for exercising this right when and if the people of Greenland should wish so. On 1 December 2009, Greenland conducted a merger of its municipalities, reducing their number from 18 to 4. In 2018 the municipality of Qaasuitsup partitioned to form 2 new municipalities. The largest municipality is Kommuneqarfik Sermersooq, with a population of 23,123¹⁰.

14. The Faroes archipelago, which used to be a Danish County, became an “autonomous community” within the Kingdom on 1 April 1948, with the entry into force of the Law on the internal autonomy of the Faroe Islands. The archipelago comprises 18 islands and is located some 400 km north of Scotland, halfway between Iceland and Norway. The Faroe Islands have a population of 53,491¹¹ and a total area of 1,399 km². They comprise 29 municipalities, the largest of which has some 22,900 inhabitants.

15. The Law on Local Government (*Lov om kommunernes styrelse*: hereafter LLG) is the most important legislation governing the municipalities. It contains the rules on how the municipalities are to be organised, meeting and voting procedures, the election and powers of mayors, financial administration, supervision. It has been amended several times and consolidated in a new text in 2019.¹² Municipal functions are set out

5 On the continuity between 1849 and 1953 Constitution see J. P. Christensen, *The Constitution*, in *The Oxford Handbook of Danish Politics*, Oxford University Press, 2020, p. 9 ss.

6 <https://fm.dk/arbejdsomraader/kommuner-og-regioner/opgaver-for-kommuner-og-regioner/>

7 CG(25)12FINAL 31 October 2013, para. 25.

8 S. I Vabo, A. L. Fimreite & K. Houlberg (2021) *Why such a different choice of tools? Analysing recent local government reforms in Denmark and Norway*, *Local Government Studies*, DOI: 10.1080/03003930.2021.2013210

9 https://bank.stat.gl/pxweb/en/Greenland/Greenland_BE_BE01/BEXSAT1.PX/table/tableViewLayout1/

10 <https://stat.gl/dialog/mainTheme.asp?lang=en&tname=BE&sc=GF>

11 <https://hagstova.fo/en/population/population/population>

12 LBK nr 47 af 15/01/2019 Bekendtgørelse af lov om kommunernes styrelse.

in a range of sectoral legislation. The Law on regions (*Lov om regioner*)¹³ contains the rules on the organisation of the regions, their financial administration, supervision. It does list regional responsibilities. The Law on Local and Regional Government Election (*Lov om kommunale og regionale valg*) contains rules on election procedures and deals with the questions of who has the right to vote and the right to be elected.¹⁴

16. In order to understand how the Danish local government works, and especially the relationships between the State and the municipalities, other aspects of the Danish legal system should be considered.

17. First of all, the very special nature of “Nordic Law” (or “Scandinavian Law”). The legal systems of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden) are generally described – in macro-comparative systemology – in terms of a separate, distinct, legal family.¹⁵ Although Nordic countries adopted civil law conceptions through the influence of law schools, and commercial and corporations’ law are similar to European laws, whereas modern social welfare and human rights legislation has strong connections with the international laws, they kept some important features of the previous systems, based on customary law. Nordic law is characterized by its specific legal method, its mixture of statutory and case law and its, in relation to most continental European countries, less theoretical and conceptualized approach to legal problems and relatively free of formal rules and exigencies. Great attention is paid to rules and principles that have evolved in practice. As for the sources of law, in Denmark, similar and even more than the other Nordic States, statutory law is supplemented by customary law and case law.¹⁶

18. Secondly, the fact that in Denmark the rule of law principle is very strong based on Constitution and legislation, and it is highly ranked in practice. According to the World Justice Project Rule of Law Index 2021¹⁷, Denmark is on the top, number 1 in the world¹⁸, when measuring absence of corruption, honouring fundamental rights, the systems of checks and balances, including constitutional, institutional and non-governmental constraints that have been formed to limit the scope of government power.

19. Finally, the fact that Denmark is a country of “consensus and trust”, not only between citizens and politicians, but also between political parties, institutions, levels of government. Political parties are still the main actors of the political life of the country, both at national and local level and in local elections the nationwide parties present in the *Folketinget* dominate.¹⁹ The parliamentary system works in a consensual way: the fully proportional electoral system determines frequent minority government, which works very well based on strongly respected and effective legislative agreements (*forlig*), an important tool that helps minority governments govern.²⁰ Much time is spent on negotiation and discussions in and between political parties in order to harmonise viewpoints and to reach agreements. Unwritten rules and norms dictate the framework for political agreements, which are politically, but not legally, binding. It is solely the political culture which obliges the parties.²¹

20. All those principles must be taken into account when approaching local democracy, helping in understanding the limited role played by written rules, the tendency towards negotiation in decision-making, the lack of judicial challenges and conflicts and, in general, the fair and smooth relationships between central and local government.

2.1.2 Administrative territorial structure

21. Following the 2007 reforms, there are in Denmark 98 municipalities and 5 regions. As a consequence of the mergers, the average population size of municipalities changed dramatically from approximately 20,000 inhabitants to more than 55,000 inhabitants, and Danish municipalities are now relatively large in comparative terms. At regional level, the size of the local units simultaneously increased from 340,000

13 LBK nr 744 af 08/04/2022 Bekendtgørelse af lov om regioner og om nedlæggelse af amtskommunerne, Hovedstadens Udviklingsråd og Hovedstadens Sygehusfællesskab (regionsloven).

14 LBK nr 295 af 07/03/2022 Bekendtgørelse af lov om kommunale og regionale valg.

15 U. Bernitz, *What is Scandinavian Law? Concepts, Characteristics, Future*, in 50 *Scandinavian Studies in Law* 28–29 (2007). See also J. Husa, *A New Introduction to Comparative Law*, Hart Publishing 2015.

16 M.M. Feeley, M. Langford (eds), *The Limits of the Legal Complex. Nordic Lawyers and Political Liberalism*, Oxford University Press, 2022, p. 13 ff.; J. Husa, K. Nuotio, H. Pihlajaniemi (eds), *Nordic Law-Between Tradition and Dynamism*, Intersentia 2007; P. Letto-Vanamo et al. (eds), *Nordic Law in European Context*, Springer Nature Switzerland, 2019; H. Krunke, B. Thorarensen (eds), *The Nordic Constitutions. A Comparative and Contextual Study*, Hart Publisher, 2020.

17 <https://worldjusticeproject.org/sites/default/files/documents/WJP-INDEX-21.pdf>

18 E. Mäkinen, *Controlling Nordic municipalities*, in *European Public Law*, 2017, pp.123–147.

19 U. Kjær, *Local Elections Localized Voting Within a Nationalized Party System*, in *The Oxford Handbook of Danish Politics*, Oxford University Press, 2020.

20 C. Green-Pedersen, A. Skjæveland, *Governments in Action Consensual Politics and Minority Governments*, in *The Oxford Handbook of Danish Politics*, Oxford University Press, 2020.

21 <https://www.ft.dk/da/folkestyret/regeringen/regeringen-forhandler>

to 1.1 million inhabitants²². Municipalities wishing to avoid a merger had to sign legally binding mutual co-operation agreements under the statute specially adopted for the purpose. This statute applies to five island municipalities and to only two municipalities located in mainland Denmark. The country currently has only eight municipalities with less than 20,000 inhabitants.²³

22. The 98 municipalities are members of “KL- Local Government Denmark” (LGDK). The regions are represented by the “Danish Regions” (*Danske Regioner*).

Organisation of the local authorities

23. A municipality is governed by a council (*kommunalbestyrelsen*), which is elected by the local citizens for 4 years. Municipalities with more than 20,000 inhabitants must have at least 19 councillors and no more than 31. In municipalities with less than 20,000 inhabitants, there must be at least 9 and no more than 31 (Art 5.1 LLG). The electoral system of the Danish local government is strictly proportional. The citizens can either vote for a candidate or a party and puts only one cross on the voting ballot. The last local elections were held on November 16, 2021.²⁴

24. The law establishes uniform principles to all the municipalities, with some special rules for the Municipalities of Frederiksberg, Copenhagen, Odense, Aalborg and Aarhus (Art. 64 and Art. 64a LLG; art 64 also applies to the municipality of Aarhus, the second largest municipality in Denmark) to be implemented by their bylaws. The council normally forms committees to manage the committees’ areas of responsibility. An important role is played by the Finance committee, which is chaired by the mayor.

25. In the first meeting after the election, normally held early in January after the municipal election in November the year before, the council elects by simple majority the mayor, who is also the chairperson of the council. Apart from being head of the city council, he/she also functions as head of the municipal administration, as well as the chair of the Finance committee. The mayor is the only full-time politician in the municipality. The mandatory Finance committee is responsible for and supervises the budget and other financial affairs of the municipality. The tasks of the Finance committee are determined by statute. There are fewer legal restrictions to the establishment of the standing committees; however, at least one in addition to the Financial Committee must be established. Most municipalities have between four and seven such committees. These are typically the Finance committee, a social committee, a school and culture committee, and a technical committee responsible for public utilities, roads, and environmental regulation. The members of the standing committees are also elected by and among the council members, on a proportional basis.²⁵

26. The Danish municipalities also generally have a city manager (CEO), who is appointed by the municipal council on a permanent basis, and the CEO is responsible to the mayor and the council for all administrative matters, incl. working conditions, the structure of the administration and the handling of cases.

27. At regional level, the regional council, which has 41 members directly elected for four-year periods, is the supreme body. In addition, there is a regional chairman holding a position comparable to the municipal mayor. The regional council elects an executive committee with 11-19 members. The regional council can decide to establish ad hoc committees to assist and advise the council in its work, and it is possible for the regions to establish a committee-based government system as in the municipalities.

Competences

28. As in the other Nordic countries, the Danish municipalities are responsible for providing local services and welfare services for their residents. The municipalities’ competences, set out in a range of sectoral legislation, include:²⁶

- Childcare
- Primary and lower secondary schooling
- Special education for adults
- Elderly care
- Health (prevention, all care and rehabilitation that is not provided by hospitals, treatment of substance abusers, dental care and social psychiatry)

22 K. Houlberg, N. Ejersbo, *Municipalities and Regions Approaching the Limit of Decentralization*, in *The Oxford Handbook of Danish Politics*, Oxford University Press, 2020.

23 <https://www.statistikbanken.dk/BEV107>

24 See CG(2022)42-17, 24 March 2022, Report on local and regional elections in Denmark.

25 K. Houlberg, N. Ejersbo, *Municipalities and Regions Approaching the Limit of Decentralization*, in *The Oxford Handbook of Danish Politics*, Oxford University Press, 2020.

26 <https://fm.dk/arbejdsomraader/kommuner-og-regioner/opgaver-for-kommuner-og-regioner/>

- Employment: active employment efforts
- Integration and language education
- Nature conservation, the environment and planning: including drawing up municipal plans, wastewater plans, waste disposal plans, and water supply plans
- The local road network
- Participation in regional traffic undertakings
- Utilities and emergency services
- The social sector: financing, provision and administration
- Serving citizens in the area of tax, and tax collection in cooperation with the State tax authorities
- Libraries, music schools, local sports facilities and other cultural activities
- Local business services and tourist promotion.

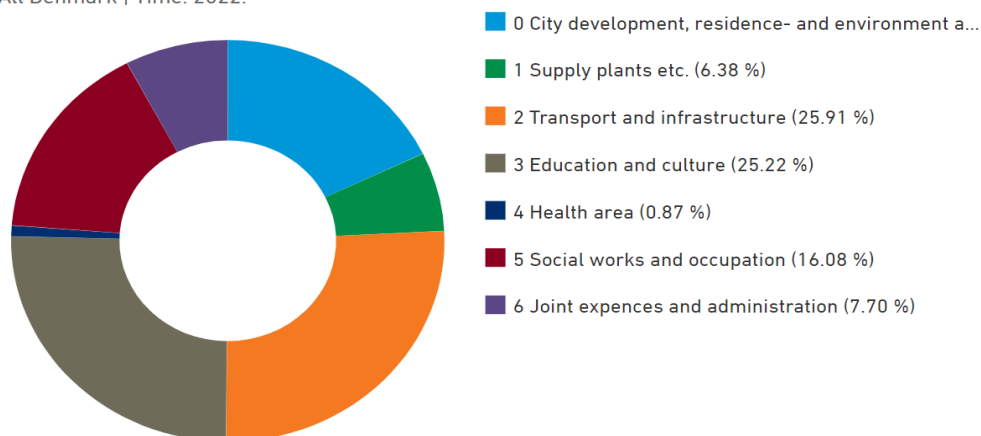
29. In addition, municipalities have a non-statutory authority to provide services and make financial arrangements. This non-statutory unwritten authority is called the «local authority mandate» (*Kommunalfuldmagten*).²⁷ This authority can never be used to make restrictions, for example on personal freedom, as such restrictions would require explicit authority by law. Those actions should benefit local citizens, should not concern matters transferred to other authorities, and should not benefit individuals unless otherwise allowed by law.

30. As for the regions, the competences are listed in the Law on regions. Regions are responsible for:

- The health care system and treatment by authorised healthcare professionals, including general practitioners and specialists.
- Regional development tasks, planning of secondary education, and general adult education, as well as regional development strategies
- Operation and developing of institutions for vulnerable groups and groups with special needs and in the field of special education.
- Regional public transport through establishing regional transport companies.
- Coordination and tasks relating to state and municipal administration of physical planning and water supply.
- Mapping, surveillance, prioritisation and remediation of contaminated land as well as related tasks.
- Mapping of raw material deposits, preparation of raw materials plans and certain other tasks related to raw material deposits and raw materials plans.
- Tasks relating to climate, i.e. regional contributions to sustainable development.

Municipal budgets, main accounts

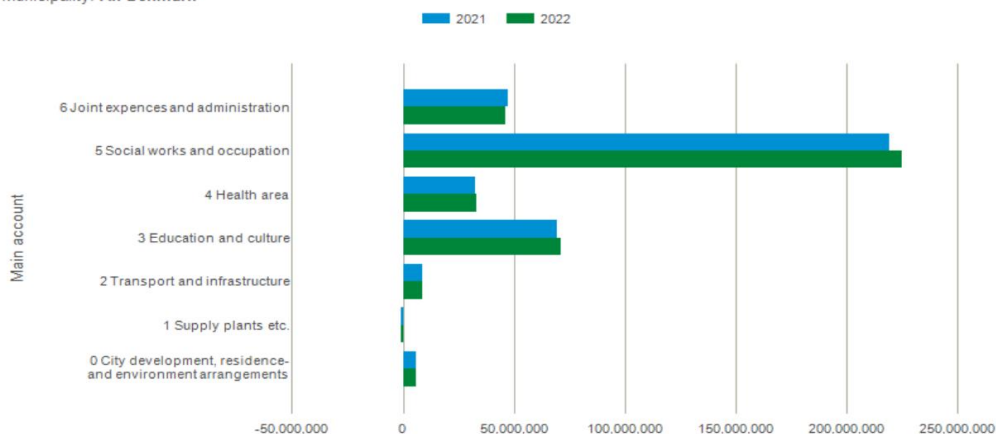
Price unit: Current prices (DKK 1,000) | Kind: Total | Dranst: 3 Capital expenditure | Municipality: All Denmark | Time: 2022:



²⁷ E. Greve, *Local government in Denmark*, in A. M. Moreno (ed), *Local Government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, 2012, p.140.

Municipal budgets, main accounts

Price unit: Current prices (DKK 1,000) | Kind: Total | Dranst: Current expenditure and reimbursement from central government | Municipality: All Denmark



Source: <https://www.dst.dk/en/Statistik/emner/oekonomi/offentlig-oekonomi/kommunernes-regnskaber-og-budgetter>

Cooperation

31. Denmark is a country of consensus. As pointed out by a document of the Association of municipalities (LGDK), “When conflicts emerge in the local government field, the first judgement is to find out if the conflict is politically based or of administrative nature. If it is of political nature, the political party representatives of LGDK’s management institutions will be brought into play, maybe in consultation with their national ‘mother party’ with a view to finding workable compromises”.²⁸

32. While there is no formal consultation procedure between the state and local authorities, the Parliament’s rules of procedure require it to consult all relevant partners on new laws. This includes LGDK and Danish Regions as well as individual local authorities.

33. In addition, the associations negotiate the overall financial framework for local authorities with the government each year, which set collective guidelines for the annual general expenditure and income for the municipalities and regions.²⁹ Every spring, budget cooperation involves negotiations between the government and LGDK and the Danish Regions, respectively. A key moment is the negotiation within the associations, especially LGDK, with its 98 members.

34. The negotiations result in framework agreements for the municipal and regional finances, respectively. In addition, political meetings are held as needed.

35. The agreements set the framework for the economy in municipalities and regions as a whole for the coming year, taking into account, among other things, the long-term macroeconomic challenges and the current economic situation. The agreements typically determine the level of total service costs and capital investment in municipalities and regions for the following year. The agreement with LGDK also sets the framework for municipal tax assessment. In addition, a number of other assumptions are established for the municipal and regional economy, including, for example, estimates of the municipalities’ expenditure on income transfers and the regions’ expenditure on health insurance medicine. On this basis, a block grant (balance grant) is calculated, which ensures that municipalities and regions together have financing for the agreed expenses.

36. The agreements have two crucial characteristics. First, they are general and thus apply to the municipalities and the regions as a whole, respectively. Secondly, the individual municipalities are not legally bound by the agreement, but the Government can sanction breaches of it by cutting of up to DKK 3 billion in general grants. In addition, the law stipulates that if the budgets are overrun, the sanctions will be directed by 60 per cent on the individual violating municipalities and 40 per cent collectively on all municipalities. So far, no actual sanctions have been practised; the threat of sanctions combined with an increased crisis consciousness seems to have been successful. In order to keep the collective budgets of the municipalities

²⁸ https://www.kl.dk/ImageVaultFiles/id_38221/cf_202/Background_Paper_-_Local_Government_in_Denmark.PDF/

²⁹ Local Government in the Nordic and Baltic Countries. An Overview (2020), SKL International 2016, revised version 2020; <https://rm.coe.int/local-government-in-the-nordic-and-baltic-countries-2759-2177-1782-1/1680a72b8a>

within the agreed level, the LGDK has an active role in coordinating the budget processes of the individual municipalities, especially since 2011 when a national sanction regime was implemented, and the coordination of the LGDK evolved into a phase-divided budget process involving an increasing frequency of meetings and consultations with all or parts of the municipal mayors, CEOs, and/or heads of finance.³⁰

37. The Budget Act introduces expenditure ceilings for the State, municipalities and regions, respectively. The municipal and regional expenditure ceilings set an upper limit for the net operating expenditure on services. Compliance with expenditure ceilings is supported by sanction mechanisms in relation to both budgets and accounts. The annual financial agreements can also set ceilings for the total construction costs, which are also linked to sanction mechanisms³¹. In practice, while municipalities enjoy great freedom to manage their financial affairs, budget negotiations between the local authority associations and the government have introduced legal restrictions on investment, borrowing, tax and staff. Access to the capital markets is subject to strict oversight to ensure that local budgets are consistent with national requirements. Borrowing is allowed only in limited areas, such as investments in public utilities, social housing or energy saving measures in buildings.

Finances

38. The municipalities are primarily financed through local taxation, which makes up three-quarters of their income. The rest comes from State block grants, reimbursements and user payments.

39. As for taxation, local income tax corresponds at an average of 24.95 per cent of inhabitants' taxable income in 2020³². Each municipal council determines the rate of the local tax in its municipality. Statutory authorisation is required for the imposition of taxes in Denmark, according to Article 43 of the Constitution. Such authority is given to municipal councils in the Municipal Income Tax Act, Art. 6.³³ This authority is *de facto* limited by the financial agreement between LGDK and the Ministry of Finance. In recent years, as part of the financial agreements reached between LDGK and the government, grants have been reduced automatically if overall municipal taxation exceeds an agreed level. The agreements also introduce incentives to lower taxes as municipalities can obtain a temporary grant to compensate for the lower tax revenue. According to figures from the government,³⁴ taxation accounts for 64 per cent of municipal revenues in 2020. Of this, 86 per cent is income tax; most of the remainder is land and property tax, followed by corporation tax. Block grants including equalisation amounted to 17 per cent of municipal revenues, and earmarked grants and reimbursements 6 per cent. Operating income (including payments for services such as elderly and disabled care and preschool education) was a little under 10 per cent of total revenue. Utilities such as water supply and waste disposal, which are entirely user-financed, are not included in this figure.

40. In May 2020 the government, the main opposition and three other parties agreed on a reform of the system for municipal grants and financial equalisation that applies from 2021. State grants increase by DKK 6.5 billion in 2021.

41. As a consequence of the reform, financial equalisation is no longer State-financed, but based on redistribution between municipalities. There are two main elements to this redistribution. On the income side, municipalities with a tax base below the national average will receive a contribution worth 75 per cent of the difference while those above the national average will contribute 75 per cent of the difference. There are additional contributions and receipts for those with the highest and lowest tax bases (over 125 per cent and under 90 per cent of the average). On the expenditure side, a raft of demographic and social criteria – including population decline, unemployment rates, persons lacking qualifications, housing stock and many more – determine expenditure needs. Municipalities with needs below the national average contribute 93 per cent of the difference, while those with above-average needs receive a contribution of 93 per cent (or 95 per cent for those with greatest needs). There are also special contributions for peripheral and island municipalities and for disadvantaged municipalities in the capital region.³⁵

30 K. Houlberg, N. Ejersbo, *Municipalities and Regions Approaching the Limit of Decentralization*, in *The Oxford Handbook of Danish Politics*, Oxford University Press, 2020.

31 <https://fm.dk/arbejdsomraader/kommuner-og-regioner/aftalesystemet/>

32 Local Government in the Nordic and Baltic Countries. An Overview (2020), SKL International 2016, revised version 2020; <https://rm.coe.int/local-government-in-the-nordic-and-baltic-countries-2759-2177-1782-1/1680a72b8a>

See also <https://fm.dk/arbejdsomraader/kommuner-og-regioner/noegletal/>

33 LBK nr 492 af 24/09/1984 Bekendtgørelse af Lov om kommunal indkomstskat.

34 Local Government in the Nordic and Baltic Countries. An Overview (2020), SKL International 2016, revised version 2020; <https://rm.coe.int/local-government-in-the-nordic-and-baltic-countries-2759-2177-1782-1/1680a72b8a>

35 Local Government in the Nordic and Baltic Countries. An Overview (2020), SKL International 2016, revised version 2020; <https://rm.coe.int/local-government-in-the-nordic-and-baltic-countries-2759-2177-1782-1/1680a72b8a>

42. Regional revenues consist almost exclusively of grants, approximately 83 per cent from the State and 17 per cent from municipalities (in 2019). These are earmarked for health care and regional development tasks. Municipal grants are mostly for health care, and are activity-based, thus giving municipalities an incentive to invest in coherent patient processes prevention, etc. As in the new system for municipalities, State grants are based on a range of structural criteria that determine expenditure needs.

Supervision

43. In Denmark, as in other Nordic countries, the fact that municipalities have the responsibility to implement the welfare system attracts the attention of central governments, focused on guaranteeing the quality of services and the rights of citizens.³⁶

44. Following the 2007 local government reform, devolved state administrations (*Statsforvaltningen*) in each of the five regions supervised local authorities. However, beginning from April 1st, 2017, following the Law amending the Act on the Municipal Boards and the Regional Act (*Lov om ændring af lov om kommunernes styrelse og regionsloven*) n. 176/2017, Art. 1, § 1, the supervision on the Danish local and regional governments shifted to the National Social Appeals Board (*Ankestyrelsen*), with offices in Copenhagen and Aalborg. The Board is the appeal authority - among other things in the social and employment areas, but also in a number of other areas. It falls under the Ministry of Social Affairs and the Elderly, although it is an independent authority and is not bound by instructions from the Minister.

45. Supervision entails monitoring local authorities' compliance with the law. The National Social Appeals Board decides for itself whether there is sufficient reason to raise a supervisory case, according to Art. 48.a of the LLG. Affected individuals may also complain to the Board and may thereafter bring the matter to court or to the Danish Parliamentary Ombudsman. In addition, the Board may receive inquiries from municipalities and regions requesting an advisory opinion, even a priori. Typical questions are whether a municipality's possible decision in the supervision's opinion will be illegal.

46. The Board has a range of sanctions at its disposal (Arts. 50a-50d LLG), including annulment of decisions, fines against council members and actions for damages. However, these are rarely used. The most common outcome in the event of a legal breach is an advisory statement, which local authorities generally follow.

47. In specific areas such as planning, environment and food, health or data protection, other State agencies are responsible for supervision. These also run separate appeals boards to which individuals may complain.

48. Cases concerning good administrative practice, fairness, municipal personnel may be heard by the Parliamentary Ombudsman. The Ombudsman cannot issue sanctions or amend decisions but may criticise the authority in question and recommend that a new decision be made.

49. As regards financial supervision, the Law on Local Government sets out general requirements on annual budgets and accounts. Accounts must be independently audited by an authorised auditor (often the Local Authority Auditing Service, an intermunicipal body under LGDK) and transmitted to the National Social Appeals Board.

2.2 Status of the capital city

50. The City of Copenhagen is the largest city in Denmark. As of 1 January 2022, the city had a population of 805,402 (644,431 in Copenhagen Municipality, 103,608 in Frederiksberg Municipality, 42,723 in Tårnby Municipality, and 14,640 in Dragør) and a total area of 88.25 km². Copenhagen has been the capital of Denmark since 1443 and is the country's political and financial centre. The urban area (*Hovedstadsområdet*), including the municipalities of Copenhagen, Frederiksberg, Albertslund, Brøndby, Gentofte, Gladsaxe, Glostrup, Herlev, Hvidovre, Lyngby-Taarbæk, Rødovre, Tårnby and Vallensbæk and parts of the municipalities of Ishøj, Greve, Ballerup, Rudersdal and Furesø, has a total of almost 1.35 million people.³⁷ This corresponds to 23 percent of the total population. Since 2012, the population in the urban area has grown significantly more than the population as a whole. During this 10-year period, the population growth of the metropolitan area was 11%, while the population growth as a whole was 5%.

36 E. Mäkinen, *Controlling Nordic Municipalities*, in *European Public Law*, 2017, pp.123 ff.; A. Ladner, N. Keuffer, H. Baldersheim, N. Hlépas; P. Swianiewicz, K. Steyvers, C. Navarro, *Patterns of local autonomy in Europe*, Palgrave MacMillan, 2018, p.188.

37 <https://www.dst.dk/da/Statistik/nyheder-analyser-publ/nyt/NytHtml?cid=37835>

51. Copenhagen has enjoyed a special status in Denmark since its citizens defended the city against the Swedish army in 1659. Today the municipal council of Copenhagen is called the City Council and its mayor is called the Lord Mayor.³⁸

52. The City of Copenhagen is governed by the City Council, which is the supreme political authority at municipal level and is made up of 55 members elected under a proportional system for a four-year term. The City Council is responsible for general decision-making. Where the administrative branch is concerned, the public administration system is split up into sectors. The Lord mayor is responsible for finances, with responsibility for the other public policy sectors shared by the six deputy mayors. The administrative structure consequently breaks down into seven committees (or departments) responsible for the different public policy sectors. Co-ordinated by the Finance Committee comprising the deputy mayors of each committee and directed by the Lord Mayor, the seven committees are responsible for implementing the functions concerning their respective fields of action, though they must observe the guidelines set out in the City master plan. Furthermore, each committee is responsible for managing the day-to-day and administrative activities in its particular sector. The seven committees set up by the City Council are: the Finance Committee; the Culture and Leisure Committee; the Children and Youth Committee; the Health and Care Committee; the Social Services Committee; the Technical and Environmental Committee; the Employment and Integration Committee.

53. The City of Copenhagen places great emphasis on regional co-operation and therefore also on international co-operation. In partnership with the Swedish city of Malmö the Greater Copenhagen, was established: a collaborative organisation for regional development and spatial planning in the largest Nordic metropolitan region, encompassing 4.4 million citizens in Southern Sweden and Eastern Denmark.

54. The co-rapporteurs regret that neither the mayor nor any other representative of the City of Copenhagen participated in a political exchange of views with the delegation.

2.3 Legal status of the European Charter of Local Self-Government

55. Traditionally, the Danish legal system is based on a “dualist” principle, according to which international law is not part of Danish law, unless it is explicitly incorporated or implemented in Danish law by the Danish legislator. Denmark is very reluctant in incorporating treaties: the only human rights treaty so far incorporated into Danish law is the ECHR, which was made part of the domestic legal order in 1992.³⁹

56. The obligation of Danish courts to consider international law is not explicitly dealt with in Constitution or in Danish legislation. It is, however, commonly understood that Danish courts – as an unwritten principle – are generally obliged to consider Denmark’s obligations under international law when interpreting and applying Danish law.⁴⁰

57. To a certain extent, the principle of duality is modified by two unwritten principles of constitutional law.⁴¹ Firstly, the so-called “rule of interpretation” states that Danish law – to the fullest extent possible – is to be interpreted in accordance with Denmark’s obligations under international law. Secondly, according to the so-called “rule of presumption”, it is generally to be assumed that Danish legislation is adopted in respect of Denmark’s obligations under international law, unless the Danish legislator has explicitly stated otherwise.⁴²

58. The Charter has not had much impact in Denmark, and it was never used in courts, as it was confirmed to the delegation during the meeting with the Supreme Court. The Charter has only been relied on in legal arguments once. In connection with the debate about the 2007 local government reform, the Association of County Councils pleaded that it was contrary to Article 9(3) of the Charter for the new regional councils to be financed only by a State transfer, without any taxing authority.⁴³ However, this aspect was not mentioned in the letter from the Danish Government to the Secretary General of the Council of Europe making the

38 E. Greve, *Local government in Denmark*, in A. M. Moreno (ed), *Local Government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, 2012, p.139.

39 J. Christoffersen, M. Rask Madsen, *The End of Virtue? Denmark and the Internationalisation of Human Rights*, in 80:3 *Nordic Journal of International Law* (2011) pp. 257–277; J. Christoffersen, *Implementation of International Human Rights Decisions in Denmark*, in S. Kadelbach et al. (eds), *Judging International Human Rights*, Springer, 2019.

40 C. Gulmann, *The Position of International Law Within the Danish Legal Order*, in *Nordic Journal of International Law*, 1983, 52(3-4), pp.45-52.

41 The two rules were formulated by the influential Danish scholar Alf Ross in 1942 : A. Ross, *Lærebog i Folkeret* 82, 77–79 (1st ed., Copenhagen: Ejnar Munksgaard 1942).

42 <https://www.aca-europe.eu/seminars/Paris2013bis/Danemark.pdf>

43 E. Greve, *Local government in Denmark*, in A. M. Moreno (ed), *Local Government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, 2012, pp.137-138.

declaration,⁴⁴ as pointed out by the Ministry of the Interior and Housing during the consultation process after the monitoring visit.

2.4 Previous Congress reports and recommendations

59. The previous monitoring visit to Denmark was carried out in 2012 and the Recommendation 350 (2013) was approved on 31 October 2013.⁴⁵

60. Recommendation 350 (2013) asked the Danish authorities to revise the system of division of competences, to clearly define, in the light of Article 4 para.1 of the Charter, the areas of responsibility of local authorities; to allocate appropriate and concomitant financial resources to all competences exercised by local authorities; to improve the procedures for financial equalisation among the municipalities in order to bring them into line with Article 9 para.5 of the Charter; to revise the State's supervisory procedures vis-à-vis local authorities in order to facilitate their access to the national capital markets; to reinforce the responsibilities of the Capital City in the light of Recommendation 219 (2007) of the Congress on the Status of Capital Cities; to sign and ratify in the near future the Additional Protocol to the European Charter of Local Self-Government on the right to participate in local government affairs (CETS No. 207).

3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)

3.1 Article 2 – Constitutional and legal foundation for local self-government

Article 2

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

61. Article 2 requires the principle of local self-government to be recognized at domestic level in an 'open' and 'express' manner, i.e. in written law. The practical and operational consequences of this recognition can be fully understood in the light of Article 11, according to which "the principles of local self-government as are enshrined in the constitution or domestic legislation" shall be protected by judicial remedies that local authorities can activate. Therefore, the written principles represent the standards for court's ruling on the recourses submitted by local authorities against acts infringing their local autonomy.⁴⁶

62. The principle of local self-government is guaranteed under the Danish Constitution. Article 82 establishes: "The right of the municipalities to manage their own affairs independently under the supervision of the State shall be laid down by statute". It is a rather synthetic provision, which has to be considered within Danish constitutional tradition. Danish Constitution falls within the evolutionary category, and it has not been amended very often, still presenting many features of the first 1849 Constitution.⁴⁷

63. This article is often interpreted as being primarily a legal safeguard against the abolition of the municipalities by statute. Abolishing the municipalities would therefore require an amendment of the Constitution in accordance with the complicated amending procedure set out in Article 88 thereof. Secondly, Article 82 grants the local authorities the right to manage their own affairs and their budget independently, in compliance with the legislation. There is no description of the relevant aspects of self-government, for example local taxes have no constitutional basis.⁴⁸ As it has been pointed out, "The length and detail of the constitutional provisions make it impossible to presume the extent of decentralization. Thus, the Constitution of the European country where local authorities have the broadest competences and powers, Denmark,

44 <https://resumetdatabase.im.dk/Media/637901989098149618/Indenrigs-%20og%20sundhedsministerens%20brev%20af%2029.%20maj%202006%20til%20generalsekret%C3%A6ren%20for%20Europar%C3%A5det,%20j.nr.%202004-2060-5.pdf>

45 CG(25)6FINAL 29-31 October 2013.

46 Congress of Local and Regional Authorities, A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government, CG-FORUM (2020)02-05prov, 12 February 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149> CG-FORUM(2020)02-05final, para19.

47 H. Krunke, T. Baumbach, The Role of the Danish Constitution in European and Transnational Governance, in A. Albi, S. Bardutzky (eds), *National Constitutions in European and Global Governance: Democracy, Rights, the Rule of Law*, Asser Press, 2019.

48 E. Mäkinen, *Controlling Nordic Municipalities*, in *European Public Law*, 2017, pp.123 ff.; 7.

devotes only one brief article to them”.⁴⁹ A long tradition of extensive decentralisation and strong local democracy, means that in reality it is quite difficult to restrict local self-government.⁵⁰

64. As for the legislation, the local government falls under the parameters of the National Parliament with the Government to implement new laws. Using the principle of delegation, the Government and ministers can issue binding guidelines and circulars, always within the limits set by the Parliament.⁵¹

65. For these reasons, the rapporteurs conclude that the requirements of Article 2 of the Charter are complied with in Denmark.

3.2 Article 3 – Concept of local self-government

Article 3

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.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

3.2.1 Article 3.1

66. The main question that must be addressed under this heading is whether, in the present situation, Danish municipalities regulate and manage a “substantial share of public affairs under their own responsibility and in the interests of the local population”. This provision requires an assessment which takes into account the rather “subjective” and relative nature of such concepts as “ability”, “a substantial share of public affairs”, “under their own responsibility” and “in the interests of the local population” since no official or universal method of measuring such substantial character has yet been developed. The question must be addressed considering the historical evolution, the culture and the constitutional traditions of the country under analysis. It is also closely linked to the assessment of the compliance with other parts of the Charter, such as Articles 4, 8 and 9.

67. In order to assess compliance with this provision, both legislative and factual aspects should be taken into consideration.

68. Denmark is among the most decentralised countries in Europe, both when it comes to fiscal decentralisation and local autonomy.⁵² It scores at the top as for administrative and fiscal decentralization within the EU.⁵³

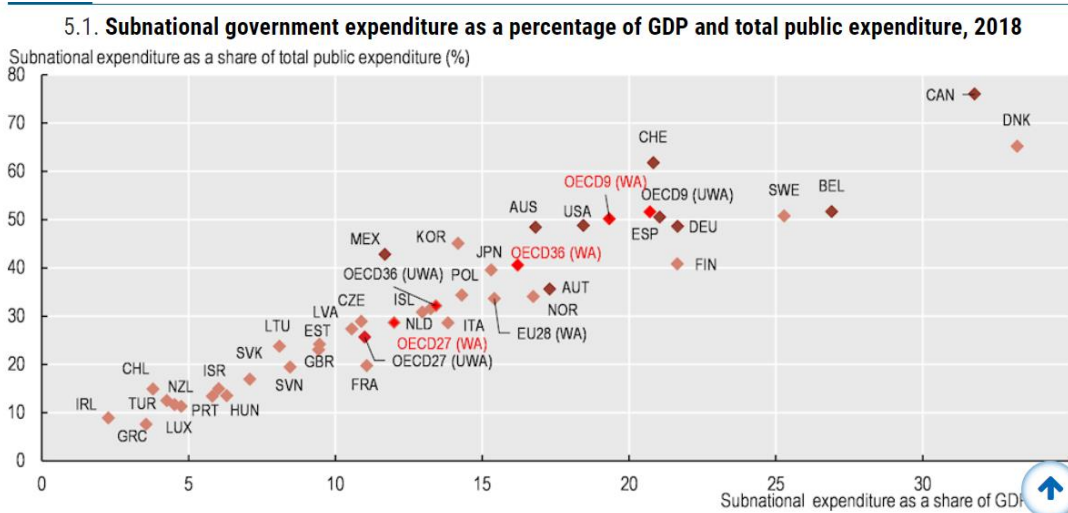
49 G. Marcou, *Les collectivités locales dans les constitutions des États unitaires en Europe*, in *Les Nouveaux Cahiers du Conseil constitutionnel*, 2014/1 (N° 42), p. 63-87. DOI : 10.3917/nccc1.042.0063. URL : <https://www.cairn.info/revue-les-nouveaux-cahiers-du-conseil-constitutionnel-2014-1-page-63.htm>

50 E. Greve, *Local government in Denmark*, in A. M. Moreno (ed), *Local Government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, 2012, p.154.

51 *The Danish Local Government System*, produced by Local Government Denmark (LGDK), February 2009 https://www.kl.dk/ImageVaultFiles/id_38221/cf_202/Background Paper - Local Government in Denmark.PDF/

52 K. Houlberg, N. Ejersbo, *Municipalities and Regions Approaching the Limit of Decentralization?* In *The Oxford Handbook of Danish Politics*.

53 <https://portal.cor.europa.eu/divisionpowers/Pages/Decentralization-Index.aspx?countryName=denmark#>



Source : OECD <https://www.oecd-ilibrary.org/sites/c6217390-en/index.html?itemId=/content/component/c6217390-en#component-d1e8915>

69. Local government expenditure, at 32.8 per cent of GDP or 66.1 per cent of total public expenditure, is the highest in the EU.⁵⁴

70. The local autonomy is recognized in the Constitution and in legislation and is a pillar of Danish democracy. Municipalities are responsible for providing local services and welfare services for their residents. This implies a certain degree of central regulation and supervision on local authorities by the central government. Many authors pointed to the increasing regulation of the administrative processes in the municipalities, referring, *inter alia*, to regulation on user involvement, requirements to produce plans of actions, visitation and requirements on applying specific methods, follow-up actions, free choice, and applying standards of quality. Within specific sector areas such as health and basic education, the national government has interfered more, and more emphasis is put on the results achieved within these areas. Municipalities and regions document their achievements through benchmarking and the publication of waiting lists or exam results. This process is supplemented by national legislation introducing free choice in various public service areas.⁵⁵

71. However, within the framework of national legislation and the yearly financial agreement between the government and the LGDK, the municipal councils have the autonomy to decide the allocation of resources across policy areas and have a large degree of discretion in setting the standard and quality of services. During the meetings, no issues were raised by the interlocutors on the impact on local self-government of those uniform standards. It was pointed out that they aren't imposed by the government, but they are part of a vast negotiation involving all the stakeholders, including, in a key-role, the LGDK, thus they are largely shared and accepted as part of the "consensus culture" rooted in Danish tradition.

72. Therefore, rapporteurs conclude that Denmark complies with Article 3, paragraph 1 of the Charter.

3.2.2 Article 3.2

73. Article 3.2 is the main statement of the democratic principle in the provisions of the Charter. The right of self-government must be exercised by democratically constituted authorities. The concept of local autonomy does not involve the mere transfer of powers and responsibilities from central to local authorities but also requires local government to express, directly or indirectly, the will of the local population.

74. In Denmark, municipalities are governed by a council which is elected by the local citizens every 4 years in fair and free elections. A municipal council has a dual function; it is primarily the leading body of the society of citizens within the municipality and secondarily it is a regular public authority. The powers of a council depend upon whether it is acting in its primary or secondary function. When acting in its primary function a

⁵⁴ Local Government in the Nordic and Baltic Countries. An Overview (2020), SKL International 2016, revised version 2020; <https://rm.coe.int/local-government-in-the-nordic-and-baltic-countries-2759-2177-1782-1/1680a72b8a>

⁵⁵ K. Houlberg, N. Ejersbo, *Municipalities and Regions Approaching the Limit of Decentralization?* In *The Oxford Handbook of Danish Politics*.

council has powers under the local authority mandate and the LLG. When acting in its secondary function its powers depend on what is authorised by the specific law. The most important powers of a council are those under the local authority mandate and its power to decide the local tax rate. The council normally forms committees to manage the committees' areas of responsibility. The chairman of the council is the mayor and he or she is the chairman of the Finance committee and the top manager of the municipal administration and as such is formally responsible for the administration to the council.⁵⁶

75. Therefore, rapporteurs consider that Article 3, paragraph 2 is respected in Denmark.

3.3 Article 4 – Scope of local self-government

Article 4

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
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 who 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.
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.

3.3.1 Article 4.1

76. Article 4, paragraph 1, of the Charter requires that the basic powers and responsibilities of local authorities are prescribed by the constitution or by statute, so as to ensure predictability, permanence and protection for the benefit of local self-government. Therefore, the tasks of local authorities should not be assigned on an *ad hoc* basis and should be properly enshrined in written parliamentary legislation. Establishing local powers and competences by means of administrative regulation should be avoided and goes against the spirit of the Charter.⁵⁷

77. In Denmark, the municipalities' competences are set out in a range of sectoral legislation. They include childcare; primary and lower secondary schooling; special education for adults; elderly care; health (prevention, all care and rehabilitation that is not provided by hospitals, treatment of substance abusers, dental care and social psychiatry); employment: active employment efforts; integration and language education; nature conservation, the environment and planning; including drawing up municipal plans, wastewater plans, waste disposal plans, and water supply plans; the local road network; participation in regional traffic undertakings; utilities and emergency services; the social sector: financing, provision and administration; serving citizens in the area of tax, and tax collection in cooperation with the State tax authorities; libraries, music schools, local sports facilities and other cultural activities; local business services and tourist promotion.

78. Therefore, it appears to the rapporteurs that overall Article 4, paragraph 1, is respected in Denmark.

3.3.2 Article 4.2

79. According to Article 4, paragraph 2, local authorities must have the right to exercise their initiative on matters not explicitly excluded from their competence by law. In addition, they must have "full discretion to exercise their initiative". Restrictions on local bodies' full discretion can also stem from management, fiscal and budgeting rules that require a sound legal basis for spending.⁵⁸

⁵⁶ E. Greve, *Local government in Denmark*, in A. M. Moreno (ed), *Local Government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, 2012, p. 144.

⁵⁷ The contemporary commentary on the explanatory report to the European Charter of Local Self-Government adopted by the Congress Statutory Forum on 7 December 2020 (Contemporary Commentary), at <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149> CG-FORUM(2020)02-05final, para 49.

⁵⁸ Contemporary Commentary, para 59.

80. In Denmark, municipalities can perform certain tasks based on the so-called municipal authority rules (*kommunalfuldmagtsreglerne*), which is a general term for the unwritten rules (principles) of the local non-statutory duties. In practice, the municipal authority rules imply that tasks the municipality wants to perform must be of some benefit to the community, must not be tasks delegated to other levels of government, and must not provide support for individuals or individual companies without specific legal cover. Municipalities are basically not allowed to engage in trade or industry. Classic examples of tasks that municipalities may carry out according to the municipal authority rules are public transportation and initiatives in leisure, culture, and sport.⁵⁹

81. Municipal acts require legal foundation in either written law or *kommunalfuldmagten*. If the sufficient legal foundation doesn't exist, the municipalities can request, and obtain, a change in the law, as happened in the face of the emergency caused by the war in Ukraine. The delegation was told that the law was amended, at request of municipalities, to allow the display of the Ukrainian flag on municipal buildings.

82. As for restrictions to the full discretion, they stem from the general ceiling for expenditure which is negotiated each year for all the municipalities between LGDK and the government. LGDK organises a meeting with all the mayors of the municipalities and discusses how to ensure that the total expenses for all municipalities at large comply with the ceiling. Municipalities must find an agreement, as the sanctions impact not only on the municipalities which, eventually did not respect the ceiling, but on all the municipalities. However, the delegation was told that since 2009 there were no cases where the total expenditures would rise above the ceiling.

83. Therefore, rapporteurs consider that Article 4 paragraph 2 of the Charter is respected in Denmark.

3.3.3 Article 4.3

84. Article 4, paragraph 3 of the Charter articulates the general principle of subsidiarity. It establishes that "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".

85. In Denmark, the 2007 reform was primarily based on the principle of subsidiarity, according to which the various tasks facing Danish local authorities must be assigned to the authority closest to the citizens, with due respect for the nature and budgetary and professional demands of the different tasks. Most social welfare functions were transferred to municipalities. They have become the citizens' main access point to the public sector. Responsibilities of the municipalities include preventative health care, social services, collective transport and roads, and employment. The five new regions are primarily responsible for health care, preparation of regional development plans and solutions to certain operational tasks for the municipalities. The State generally undertakes those tasks where attribution to municipalities and regions would be inappropriate, e.g. the police, the defence, the legal system, further education and research.

86. Therefore, rapporteurs consider that Article 4.3 of the Charter is fully respected in Denmark.

3.3.4 Article 4.4

87. Article 4, paragraph 4, provides that "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". The law may certainly introduce limitations on the powers given to local authorities, but such limitations should be exceptional, based on objective reasons and interpreted narrowly. In addition, overlapping responsibilities can become a threat to local autonomy.⁶⁰

88. In Denmark, municipalities are responsible for most of the social services. Several interlocutors pointed out that the many responsibilities transferred to municipalities in the specialised social area are raising new challenges, especially considering the demographic tendencies and the ageing population. The challenges do not stem from the interference of State legislation, but by the expenditure pressure in the health services and by the not always good coordination between municipalities and regions.

59 K. Houlberg, N. Ejersbo, *Municipalities and Regions Approaching the Limit of Decentralization*, in *The Oxford Handbook of Danish Politics*, Oxford University Press, 2020.

60 Contemporary Commentary, para 66-67.

89. Actually, the border between the regional health services and the municipal health services, such as the domiciliary cares, sometimes risks producing a grey zone. It has been pointed out that the exact functional and financial interface between regions and municipalities in some cases are challenging and disputed. One example is retraining and rehabilitation of patients after hospital admission. The regions are responsible for financing treatment, whereas the municipalities are responsible for financing rehabilitation. A successful shift towards increased use of outpatient/ambulant treatment at the hospitals and decreasing length of hospitalisation means that patients are staying in their homes in the period of rehabilitation. Consequently, municipalities and regions might discuss the financial interface between treatment and rehabilitation or municipal care, and thus who is responsible for financing a specific activity in the patient's home.⁶¹

90. Several interlocutors pointed out that regions have reduced the length of hospitalisation, especially among the oldest citizens and to an even greater degree among them who receive elder care at home. The LGDK pointed out that nursing homes are turning into small hospitals where the weakest elderly spends their last days.

91. The delegation was informed that in each region an agreement negotiated between the region and the municipalities regulates the division of competences on health and, accordingly, the financial aspects. There are 5 of those agreements, one for each region. There are also framework agreements on social services, tourism, development. In its written information to the rapporteurs, the LGDK pointed out that the cooperation is organised in each region in a setup called *Kommunekontaktråd* (KKR) where representatives from the municipalities within each region meet regularly. The purpose of KKR is to coordinate the contact between municipalities and regions. However, some interlocutors pointed out that this collaboration is not always working very well, and some disputes are arising.

92. Therefore, the rapporteurs consider that Article 4, paragraph 4, is partially respected in Denmark.

3.3.5 Article 4.5

93. Article 4, paragraph 5, refers to delegated responsibilities, establishing that local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions. The delegation of powers between different levels of government is a long-standing tradition in many European States. Central government benefits from the territorial network formed by local and regional authorities: they are closer to citizens and offer local knowledge, they reflect local conditions and provide economies of scale. Local bodies and services therefore discharge delegated functions on behalf of higher-level authorities, most commonly on behalf of the State.⁶²

94. Both during the visit and the consultation procedure, no issues have been raised by the interlocutors on the delegation of competences, which appears to satisfy the requirements of this article in practice.

95. Therefore, the rapporteurs consider Article 4, paragraph 5, respected in Denmark.

3.3.6 Article 4.6

96. Article 4 para. 6 of the Charter provides that "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".

97. Consultation is a key principle of the Charter. The Charter does not define or prescribe the forms of consultation or substantially regulate the consultation process. Since its basic function is to establish the general approach and framework for consultations, it may be concluded that the main process of consultation is dependent on three basic conditions: (a) local authorities should be able to obtain full information on decisions and policies that concern them directly, and this information should be available at the initial stage of the decision-making process; (b) local authorities should have the possibility of expressing their opinion on decisions and policies before these become legally binding documents; and (c) local authorities should have the time and ability to prepare recommendations or alternative drafts and submit them for consideration.⁶³

61 K. Houlberg, N. Ejersbo, *Municipalities and Regions Approaching the Limit of Decentralization*, in *The Oxford Handbook of Danish Politics*, Oxford University Press, 2020, p. 149.

62 Contemporary Commentary, para 71.

63 Contemporary Commentary, para 80.

98. In Denmark, consultation with LGDK and Danish Regions is the pillar of the local self-government system.

99. As pointed out by LGDK and Danish Regions in their written answers to the rapporteurs, institutionally, all new national legislation will be subjected to a public hearing process prior to adoption and often the opinions of LGDK and Danish Regions are taken into consideration. The two associations also participate in the hearing processes regarding new EU legislation as well as the implementation of EU directives. In addition, to the hearing processes, policies regarding employment are typically subject to tripartite agreements between the government, employers' unions, and trade unions where LGDK represents municipalities and Danish Regions the regions in their functions as employers.

100. Aside from national legislation, LGDK and Danish Regions also negotiate agreements with the government where there is no legislative regulation. The main example of this is annual agreements regarding local and regional finances (*Økonomiaftalen*) which are negotiated separately by each of the associations and the Minister of Finance. Although, the annual financial agreements are not ensured legislatively, these negotiations have been ongoing for many years.

101. The delegation was told that in the last year the cooperation was strengthened, during the Covid pandemic, especially between regions and municipalities. It was also a little more formalised, with the establishment of a "contact council" between the two representative associations of decentralised authorities.

102. The dialogue between the three level of government is continuous, in normal times and in times of emergency, for example during the Covid pandemic and the Ukrainian refugee's crisis (Denmark was ready to receive 100,000 refugees, although the actual figure was lower).

103. Therefore, the rapporteurs consider Article 4, paragraph 6, is complied with in Denmark.

3.4 Article 5 – Protection of local authority boundaries

Article 5

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.

104. This article requires that local communities should be consulted in case of changes of local authorities' boundaries.

105. In Denmark, protection of boundaries is guaranteed both by statute and in practice. Law n. 382 of 3 May 2006 on changes in local and regional boundaries and the dissolution and establishment of binding partnerships lays down the rules applicable to changes in local and regional boundaries. It stipulates that such changes must be approved by the councils of the municipalities concerned.

106. The amalgamation of the previously existing 271 municipalities, which led to the current 98 municipalities, was basically voluntary, although there were a number of constraints. As stated in the 2013 Congress report, municipalities which opposed mergers had the option to conclude co-operation contracts with other municipalities.⁶⁴

107. The rapporteurs consider that the requirements of Article 5 are satisfied in Denmark.

3.5 Article 6 – Appropriate administrative structures and resources

Article 6

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

64 CG(25)6FINAL 29-31 October 2013, para 71.

3.5.1 Article 6.1

108. Article 6, paragraph 1 of the Charter provides that local authorities shall be able to determine their own internal administrative structure: the power to organise their own affairs is accordingly a part of the autonomy enjoyed by local entities.

109. In Denmark, the municipalities are free to define their administrative structures, the status of their staff and the arrangements for their training and remuneration. The Law on Local Self-Government contains no rules on municipal administrative structures or staff training. Nor is there any rule limiting the possibility of a local council delegating its responsibilities to municipal staff.

110. The administration of the municipalities typically follows one of two models.⁶⁵ About one third of the municipalities use the sector-based departmental model, while the other two thirds use either an executive board model or some mixed forms.⁶⁶ The departmental model has been the traditional model for organising the administration in the municipalities but is subject to considerable local variation. In this model, the administration is divided into a number of departments/sections representing the major welfare services, each managed by a director with responsibility for the preparation of policy decisions as well as for subsequent execution. In the executive board model, a number of directors form a top management team that is collectively in charge of the administration. This team prepares policy decisions and services the committee. The model is supposed to increase coordination and collaboration across the departments and committees and strengthen the overall management of the municipality.⁶⁷

111. Therefore, rapporteurs consider that the requirements of Article 6, paragraph 1 are satisfied in Denmark.

3.5.2 Article 6.2

112. Article 6, paragraph 2, of the Charter refers to the conditions of service of local government employees: they shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence. The power to hire their own staff and set employee remuneration is a relevant factor highlighting the organisational and institutional autonomy of local governments.⁶⁸

113. In Denmark, municipalities have the power to select and manage their own human resources, within the limits of the general employment law and the municipality's finances. According to the LLG, Article 67, "Provisions on wages and salaries of and other employment conditions for municipal staff must be approved by the Remuneration Commission".

114. Policies regarding employment are typically subject to tripartite agreements between the government, employers' unions, and trade unions where LGDK represents municipalities in their functions as employers.

115. The 98 Danish municipalities have assigned LGDK the right to negotiate binding agreements on salaries as well as terms and conditions of employment for employees in the municipalities. LGDK cooperates closely with the municipalities so that their wishes and needs regarding wage and employment terms can be taken into account during negotiations. In addition, LGDK provides the municipalities with services such as information, guidance, courses, and consultancy regarding salary and personnel issues.

116. Municipal employees constitute 14,9% of all full-time employees in Denmark and 57,4% of all public employees. Often the municipality is the largest single employer in a local community. As employers, the municipalities have more than 100 different groups of staff – from sports centre managers to home-care helpers. Overall, the 98 municipalities have about 518,000 employees.

117. Regional employees constitute 4,6% of all full-time employees in Denmark and 17,6% of all public employees. In most regions, the region is the largest single employer. Overall, the 5 regions have about 135,000 employees.

65 M. Bækgaard, *Organizational change in local governments: The impact of the Danish local government reform*, in *World Political Science Review*, (2009), 5/1

66 M. Bækgaard, *The impact of formal organizational structure on politico-administrative interaction: Evidence from a natural experiment*, in *Public Administration*, (2011), 89/3, pp.1063–80.

67 K. Houlberg, N. Ejersbo, *Municipalities and Regions Approaching the Limit of Decentralization*, in *The Oxford Handbook of Danish Politics*, Oxford University Press, 2020, p. 146.

68 Contemporary Commentary, para 104.

118. During the meetings with local authorities, the delegation was often told that the lack of human resources due to the full employment, especially for the care of elderly people and the health professions, is becoming a real challenge for municipalities and regions, risking undermining the level of social services to citizens.

119. In conclusion, the rapporteurs consider that Article 6, paragraph 2 of the Charter is respected in Denmark.

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

Article 7

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.

3.6.1 Article 7.1

120. Article 7, paragraph 1, seeks to ensure that citizens are free to serve as elected representatives and are not prevented from holding political office owing to financial or material considerations. Nobody should be deterred from standing for election at local level; once elected, local councillors should not be prevented from discharging their duties effectively.⁶⁹

121. In Denmark, local representatives are elected for four years and cannot be recalled. The councils are expected to serve the entire period of four years. Should a need for replacement of a member occur, this would take place within the same electoral list by appointment of the personal substitute.

122. Danish legislation provides for the free exercise of the functions of local elected representatives.

123. The Danish mayor cannot be fired by a majority in the council against him. Only in case she/he commits and is sentenced for a criminal offense, intentionally or through gross negligence neglects a duty incumbent on him or her, or if in the opinion of 90 percent of the members of the Local Council has shown himself or herself unworthy of the esteem and trust required by the office, can she/he be fired (Arts. 66a, 66b, 66c LLG). The provisions mentioned have never been used. They ensure that a Council's decision on firing a mayor as mentioned can always be tried by the independent Electoral Commission Board (*Valgnævnet*). A councillor who grossly neglects the duties incumbent on him or her by virtue of his or her office is sentenced to a fine. Simple negligence of duties is not punished (Art. 61 LLG). The National Social Appeals Board (*Ankestyrelsen*) may commence an action for damages against a councillor who is liable for a loss suffered by the local authority (Art. 50c LLG).

124. During the monitoring visit, the delegation was informed of the growing tendency for hate speech and attacks on local elected representatives. LGDK has set up a hotline for local elected representatives, which they can contact if they experience unpleasant behaviour. The hotline will work to secure the safety of local elected representatives. If they contact the hotline, Local Government Denmark will advise them about their options.

125. The rapporteurs consider that Article 7, paragraph 1 of the Charter is respected in Denmark.

3.6.2 Article 7.2

126. Article 7, paragraph 2, refers to an appropriate financial compensation for elected representatives. The aim of the paragraph, in connection to paragraph 1, is to ensure that local elected representatives receive "appropriate financial compensation" and to avoid the conditions of office preventing, limiting, or even excluding potential local candidates from standing for office because of financial considerations.

127. In Denmark, in most municipalities, the only elected representatives considered as exercising their functions full-time are the mayors, while other municipal councillors generally devote about fifteen hours per week to their functions.

69 Contemporary Commentary, para 107.

128. According to Art. 16 LLG, “(1) Councillors are a paid a fixed allowance. The Minister of the Interior and Housing shall lay down detailed rules for the allowance. (2) The local council may decide to pay committee allowances to the councillors who are members of the finance committee and of standing committees. The Minister of the Interior and Housing shall lay down detailed rules for any committee allowance and may also lay down rules allowing a local council to pay allowances to members of other committees set up by the local council”. The law provides that “(4) A councillor having one or more children below the age of 10 living at home is paid a supplementary allowance”. In addition, a councillor has the right to receive compensation for loss of earnings. According to Art. 16c of the LLG, “An employer may not dismiss an employee because he or she is included on a list of candidates standing for local election or has been elected for a local council”.

129. As for the mayors, Art. 34 LLG establishes that “(1) The Minister of the Interior and Housing shall lay down rules for the payment of allowances, loss of office payments and pension contributions to the chair of a local council”.

130. According to the information provided by LGDK to the rapporteurs, the financial compensation for local elected representatives in Denmark, is determined by the Ministry of the Interior and Housing and is regulated annually⁷⁰. Members of a local council in municipalities with 80,000 inhabitants or less are paid a fixed fee annually of around 100,500 DKK (approximately 13,500 €). In municipalities with more than 80,000 inhabitants (14 municipalities in total), the annually fixed fee rises around 121,000 DKK (approximately 14,000 €). In the municipality of Copenhagen, around 141,000 DKK (approximately 19,000 €), is paid out annually to the local elected representatives. In addition, a supplement of around 15,500 DKK (approximately 2,100 €) is paid to members who have one or more children under the age of 10 living at home. Municipal councils can also choose to compensate local elected representatives further if they are members of standing committee. Mayors are paid an annual fee, which depends on the municipality’s population. Therefore, the size of the remuneration varies from around 793,000 DKK (approximately 106,500 €) this year to the Mayor of Ærø (Denmark’s smallest municipality) and to around 1.4 million DKK (approximately 187,000 €) to the Mayor of Copenhagen.

131. During the meetings with local representatives, the delegation was told that, despite the sufficient level of remuneration for elected representatives, it is not easy to involve young people, with children and families, in local politics and often the representative positions are covered by retirees or public employees.

132. The rapporteurs consider Article 7, paragraph 2 respected in Denmark.

3.6.3 Article 7.3

133. Article 7, paragraph 3, deals with compatibility between the holding of a representative position at local level and other activities, either public or private, establishing that the “functions” and “activities” that cannot be made compatible with holding a local position once the candidate has been elected shall be determined by statute or fundamental legal principles.

134. In Denmark, the incompatibilities are determined by several legal provisions, including Art. 4 of the Law on Municipal and Regional Elections. No issues have been raised during the monitoring visit.

135. Therefore, the rapporteurs consider Article 7, paragraph 3 is complied with in Denmark.

3.7 Article 8 – Administrative supervision of local authorities’ activities

Article 8

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
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.

⁷⁰ The latest amounts can be found here:

<https://im.dk/Media/637836437983838752/Oversigter%20over%20vederlag%20m.v.%20til%20kommunal-%20og%20regionalpolitikere.pdf>

3.7.1 Article 8.1

136. Article 8 of the Charter deals with supervision of local authorities. According to Article 8, paragraph 1, any administrative supervision of the activities of local authorities must be exercised according to such procedures and in such cases as are provided for by the constitution or by statute. The Charter establishes an important principle here in the area of inter-governmental supervision of local authorities: any form of such supervision must be provided for by the constitution or by statute, i.e., the Charter introduces the legality principle into the supervision of a local authority.⁷¹

137. In line with the requirements of the Charter, in Denmark the rules governing the supervision over local authorities and the powers of the central and regional authorities concerned are determined by the Constitution (Art. 82) and by the law (in Part VI of the LLG: see above).

138. Therefore, the rapporteurs believe that Article 8, paragraph 1 of the Charter is fully respected in Denmark.

3.7.2 Article 8.2

139. According to Article 8, paragraph 2, of the Charter, the supervision over local authorities can only aim at ensuring compliance with the law and constitutional principles. Expediency control can be used only in case of delegated tasks.

140. In Denmark, (see above) the supervision over the acts of local authorities is carried out by the State and it is limited to a control of legality. No issues have been raised during the monitoring visit.

141. Therefore, the rapporteurs believe that Article 8, paragraph 2, of the Charter is respected in Denmark.

3.7.3 Article 8.3

142. Article 8, paragraph 3, deals with the way in which the supervision is exercised in practice, and requires compliance with the principle of proportionality. Under the principle of proportionality, the regional or State body should intervene only to the extent necessary, taking into account the relevance of the public interest at stake, or the seriousness of the legal violation allegedly committed by the local authority.⁷²

143. In Denmark, no issues have been raised during the monitoring visit. Nor the financial supervision, which has been reinforced (see above), did raise any special concern by local authorities.

144. In addition, the delegation was told that there have been very few court cases regarding the municipalities' exercise of their powers, especially as far as the *kommunalfuldmagt* is concerned. This is a result of the extensive supervision and the wide availability of recourse to supervisory authorities in special areas. It is also a result of an administrative tradition whereby authorities generally comply with statements from supervision authorities and the Parliamentary Ombudsman.

145. Therefore, the rapporteurs consider that Article 8, paragraph 3 of the Charter is respected in Denmark.

3.8 Article 9 – Financial resources

Article 9

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.

⁷¹ Contemporary Commentary, para 128. See also Recommendation CM/Rec(2019) 3 of the Committee of Ministers to member States on supervision of local authorities' activities (adopted by the Committee of Ministers on 4 April 2019 at the 1343rd meeting of the Ministers' Deputies).

⁷² Contemporary Commentary, para 139.

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.

3.8.1 Article 9.1

146. Article 9, paragraph 1, of the Charter establishes two basic principles in the area of finance. First, local authorities should have their *own* financial resources; the right to “adequate” resources is not absolute but has to be exercised “within national economic policy”. Second, they should be free to decide how to spend those resources.⁷³ This freedom takes the form of various spending decisions, the most important being the adoption of an annual budget. Any limits and restrictions imposed by higher authorities on local authorities should be specified and justified and aim at ensuring macroeconomic stability and sound.

147. This paragraph is respected in Denmark. The financial resources are adequate, an important part comes from local taxes and the municipalities may decide their allocation. Expenditure limits are part of the annual agreement between government and LGDK and supported by a system of sanctions in order to control local expenditure and level of taxation. The limits apply to the municipalities at large, which means, that there are some flexibility, as one municipality can increase their expenses if another is holding back. The latest agreements have increased the total expenditures for municipalities at large. But in years of zero-growth, municipalities wishing to increase service expenditures cannot do so if other municipalities are not reducing their expenditures equally. In this collective action dilemma, municipalities are reluctant to lower taxes or reduce expenditures as they are not sure they will be able to increase it again at a later stage if needs are increasing and/or political preferences for higher service levels gain ground. Thus, the flexibility of the system to adjust taxes and service levels to local needs and preferences is at some point under pressure.

148. Notwithstanding the growing challenges, the rapporteurs consider that Article 9, paragraph 1 is respected in Denmark.

3.8.2 Article 9.2

149. Another basic principle, established in Article 9, paragraph 2, requires that local authorities should have sufficient financial resources in proportion to the responsibilities assigned to them by law. This paragraph enshrines the so-called “principle of commensurability” of local authorities’ financial resources. This means that the resources available to local authorities should be sufficient and commensurate with their functions and tasks. To this purpose, any transfer of powers and tasks should be based on careful calculation of the actual service delivery costs to be met by local authorities. The costs of mandatory and delegated tasks might include several factors (such as the socioeconomic structure of residents) in order to produce more precise calculations and avoid arbitrary political decisions.⁷⁴

150. In Denmark, a central principle for the transfer of competencies and funding is the “expanded total balance” principle (*Det udvidedede totalbalanceprincip* – DUT). The principle dictates that if the government transfers an additional competence to the local or regional level, the government is obliged to ensure sufficient additional funding.

151. At present all interlocutors agreed that the resources are sufficient, although questions arise on the sustainability of the current system of welfare, in the face of the aging of the population. During the meetings it was pointed out that in the specialised social area there are certain challenges. The same comment was submitted by LGDK and Danish Regions in their written answers to the rapporteurs during the consultation procedure. With the municipal reform, the municipalities took over full authority, supply, and financing responsibility in the social area. Most social services are municipal, but in addition there are a number of self-owned and regional services and institutions. Today, the regions are suppliers of the services that the

⁷³ Contemporary Commentary, para 141.

⁷⁴ Contemporary Commentary, para 150.

municipalities demand. The intention was to create coherence with the rest of the municipal welfare and a higher degree of proximity. Since the municipalities took over the area, expenses have risen quite sharply. The municipalities have had difficulties managing the area, which is related to the fact that the area is characterised by very expensive services / solutions – for which the citizens in many cases have legal claims. At the same time as the municipalities have prioritised more and more resources for the area, they have in recent years been subjected to fierce criticism from user organizations and national politicians. The criticism is that the municipalities downgrade the area, that the quality of the effort is not good enough and that the municipalities in the allocation of services focus too much on finances and too little on providing the service the citizen needs.

152. LGDK pointed out that, despite the fact that various governments very explicitly advocate that the quality of the area should be raised, the government have not, over the last 5-7 years, been willing to allocate significantly more funds to the area. The municipalities are thus placed in a cross-pressure, where on the one hand they are met with persistent demands for quality improvement in the area, but at the same time are left to find the funds in other municipal welfare areas if the demand is to be met. Municipalities have handled the increasing expenses regarding health services by shifting priorities from care at home (personal care and practical assistance) to nursing services. Annual financial budget pools (“*værdigheds milliard*” etc.), which have become part of the block grant, are used to cover the expenditure growth in the health sector rather than providing a service lift in the eldercare.

153. The rapporteurs consider that, notwithstanding the growing challenges, which have to be addressed in the next years, Article 9, paragraph 2 is respected in Denmark.

3.8.3 Article 9.3

154. Article 9, paragraph 3, requires that at least part of the financial resources of local authorities must derive from local taxes of which, within the limits of statute, they have the power to determine the rate. The Charter does not state that a local authority’s own resources must contain a uniform proportion of local taxes, but it does make it mandatory for “at least” part to derive from local taxes and charges. This part should be large enough to ensure the greatest possible financial independence of local authorities.

155. In Denmark, according to figures from the government,⁷⁵ taxation accounts for 64 per cent of municipal revenues in 2020. Of this, 86 per cent is income tax; most of the remainder is land and property tax, followed by corporation tax. Block grants including equalisation amounted to 17 per cent of municipal revenues, and earmarked grants and reimbursements 6 per cent.

156. However, tax stop has been a core element of national tax policies since 2001, and unchanged tax levels for municipalities and regions at large have correspondingly been an integral part of the yearly agreements. The municipalities are allowed to raise and lower their taxes. But if municipalities at large raise their taxes beyond an agreed level, sanctions will be applied. However, if other municipalities similarly lower the taxes, no sanctions will be carried out. The system thus loses flexibility, as municipalities that have the economic possibilities and the political ambitions to lower taxes may refrain from doing so as they fear they will not have the possibility to raise taxes again without sanctions. However, the government and LGDK have agreed upon different incentives to support flexibility in the local taxes. During the consultation process, the government pointed out that the recent budgets show some movement in the taxes and indicate some flexibility.

157. The rapporteurs consider that Article 9, paragraph 3, is respected in Denmark.

3.8.4 Article 9.4

158. Article 9, paragraph 4, refers to the need for the resources available to local authorities to be of a sufficiently diversified and buoyant nature to enable them to keep up as far as practically possible with the actual changes (increases) in the costs for carrying out their tasks.

159. In Denmark, the revenues of municipalities may come from different sources (own taxes and fees, transfers, other sources). Municipalities may adapt their own income to the different circumstances: for instance, if the local tax intake goes down for general economic reasons, the local authority may decide to increase local fees and charges paid by local service users (especially in urban areas) as a way to offset the decline. The fact that many aspects of the local incomes are negotiated on a yearly basis as part of the

⁷⁵ Local Government in the Nordic and Baltic Countries. An Overview (2020), SKL International 2016, revised version 2020; <https://rm.coe.int/local-government-in-the-nordic-and-baltic-countries-2759-2177-1782-1/1680a72b8a>

financial agreement between the government and LGDK makes the system even more flexible and apt to face emergencies and unexpected expenses, as it happened during the Covid pandemic, although the yearly definition of the income may generate an inconvenient, making the long-term planning difficult.

160. During the meetings, local authorities' representatives pointed out that the sanction regime allows no transfers of unused budgets from one year's ceiling to another year's ceiling. Consequently, unused budgets end up in the municipal purse.

161. The rapporteurs consider that Article 9, paragraph 4 is respected in Denmark.

3.8.5 Article 9.5

162. Article 9, paragraph 5 addresses the question of the financial situation of municipalities that are financially disadvantaged due to their being located in economically or geographically weak areas (transition, mountain or island regions), or simply because they are too small to obtain the amount of resources needed to perform their tasks.

163. Regarding the finances of local governments, the Danish Parliament adopted a new financial equalisation mechanism for the redistribution of finances among municipalities in 2020. The aim of the new system is to ensure greater financial equality across all municipalities.

164. The equalisation system is complex and includes a set of special subsidies and equalisation schemes. The main elements are a national equalisation scheme covering all municipalities and an additional capital equalization scheme for the municipalities in the capital area. Based on a number of indicators for demographic and economic expenditure needs, 61 per cent of the inter-municipal differences in expenditure needs relative to local tax bases are equalised in the national equalisation scheme, and an additional 27 per cent in the capital equalisation scheme. The level of equalisation in the national scheme was increased as part of the 2007 reform, and the new tasks were transferred to the municipalities. Combined with the subsequent redistribution of conditional grants and less flexibility in the economic agreements to adjust taxes, this has turned general grants and equalisation into an important and viable part of municipal revenues.

165. The rapporteurs consider that Article 9, paragraph 5, is respected in Denmark.

3.8.6 Article 9.6

166. Article 9, paragraph 6, of the Charter refers to a general principle of consultation, as enshrined at Article 4.6. In this case, consultation is required on the way in which redistributed resources are to be allocated to local authorities by other levels of government. Under Article 9.6, consultation is not merely a compulsory procedure that has to take place in a timely manner before a final decision is made. It must also cover the manner in which a decision is made and the criteria for doing so, not only the decision itself.⁷⁶

167. The consultation is a pillar of local government in Denmark, as said above. Aside from national legislation, LGDK and Danish Regions also negotiate agreements with the government where there is no legislative regulation. The main example of this are the annual agreements regarding local and regional finances (*Økonomiaftalen*) which are negotiated separately by each of the associations and the Minister of Finance. Although, the annual financial agreements are not ensured legislatively, these negotiations have been ongoing for many years and can be considered as part of the customary regulation.

168. The rapporteurs consider that Article 9, paragraph 6 is respected in Denmark.

3.8.7 Article 9.7

169. Article 9, paragraph 7, of the Charter establishes that "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".

170. Although most of the State or regional grants are unconditional (non-earmarked), grants for specific projects do exist in Denmark. However, local authorities are completely free to exercise policy discretion within the purpose of those grants. No issues have been raised on this topic during the monitoring visit.

⁷⁶ Contemporary Commentary, para 173.

171. For these reasons, the rapporteurs consider that Article 9, paragraph 7 is complied with in Denmark.

3.8.8 Article 9.8

172. Article 9, paragraph 8, refers to the access to the national capital market for the purpose of borrowing for capital investment. Access to national capital markets is important for local authorities to finance investment projects necessary for the further development of the local area because in many cases the amount of their own “ordinary” resources is not sufficient to cover all the projects and plans decided on by local authorities to satisfy local needs. However, like other rights enshrined in the Charter, this is not absolute and must be reconciled with the general policy on public sector spending and debt. This is why the Charter says that the access must take place “within the limits of the law”. Moreover, as a result of the recent economic crisis, many countries have introduced austerity measures to deal effectively with public deficits, so access to the national capital market should be analysed in the context of national fiscal policy and the governance of public debt.⁷⁷

173. According to Art. 41 of LLG, “(1) Any decision to raise loans and assume guarantees must be made by the local council, unless otherwise provided by the Minister of the Interior and Housing. (2) The Minister of the Interior and Housing may lay down detailed rules under which any decision to enter into rental or lease agreements by which the local authority assumes a particular obligation must be made by the local council”.

174. The delegation was informed that the municipalities and regions opportunities to borrow money are limited, because their capital investment primarily must be financed by their operating profit and municipal economy is designed in a way, where all municipalities have opportunities to ensure operating profit, which limits their need to take a loan. If municipalities after all need to take a loan, *KommuneKredit* is a much cheaper alternative to the capital market. *KommuneKredit* is an association, which consists of all municipalities and regions as members. The purpose of *KommuneKredit* is to provide loans to municipalities, regions, municipal partnerships and other companies and institutions that perform public tasks and thus can achieve 100 per cent guaranty from a municipality or a region. Loans for construction projects are given on equal terms, regardless of where in the country the borrowing comes from. The reason why all municipalities and regions can borrow on the same terms is that the municipalities and regions are collectively liable for the debt. *KommuneKredit* does not profit on lending money.

175. Therefore, the rapporteurs consider that Article 9, paragraph 8 is complied with in Denmark.

3.9 Article 10 – Local authorities’ right to associate

Article 10

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

3.9.1 Article 10.1

176. Article 10 of the Charter covers the possibility of co-operation between local authorities and their right to associate, at both national and international level.

177. Article 10, paragraph 1, refers to types of cooperation aimed at carrying out tasks of common interest. Under Article 10.1, local authorities firstly have a general right to co-operate with one another in order to deliver local services or discharge their responsibilities. Inter-municipal cooperation (or cooperation at other levels of local government) is a fundamental tool for local authorities in terms of delivering services, in view of the fact that many of them are too small or too weak (financially speaking) to deliver all the services they are supposed to or to carry out any meaningful local strategy or policy. This general entitlement to cooperate with other local entities is supplemented by a more specific right, namely the right to “form consortia”, i.e. to create separate organisations. Although the Charter only mentions “consortia”, the specific right to create joint institutional structures, separate from the participating local authorities, may take various forms.⁷⁸

⁷⁷ Contemporary Commentary, para 182-183.

⁷⁸ Contemporary Commentary, para. 187-194.

178. In Denmark, municipalities can cooperate with each other in ways that limit a council's authority, if the supervisory authority approves (Art. 60 LLG). This rule covers cases where authority is transferred, and a council's authority is thereby limited (inter-municipal cooperation). The rule does not cover the delegation of authority, because delegation of authority can always be revoked. Cooperation between municipalities based on delegation can be established without statutory authority. Inter-municipal cooperation (*Kommunale fællesskaber*) can take many structural forms, but it will often be organised in a private law form of organisation (not as a limited company). The deciding factor is not the form of organisation, but whether the inter-municipal cooperation is based on a transfer of authority or delegation. Once the inter-municipal cooperation is approved, an administrative body is established.

179. Therefore, the rapporteurs believe that Article 10, paragraph 1 of the Charter is fully respected in Denmark.

3.9.2 Article 10.2

180. In this paragraph the Charter clearly recognises and sets out another right of local authorities: that to belong to (a) a national association for the protection and promotion of their common interests; and (b) an international association of local authorities.

181. The "associations" referred to in paragraph 2 are different from those mentioned in paragraph 1. Those mentioned in Article 10.1 are set up for the delivery of local services, plans or projects and are instruments for discharging duties and responsibilities. Conversely, those referred to in Article 10.2 are instruments for the promotion of common interests. These associations play a fundamental role in representing and defending the rights, powers and interests of local authorities and they carry out many activities on behalf of them all (not only in favour of their members).⁷⁹

182. In Denmark, all 98 municipalities are members of Local Government Denmark (LGDK), which is an interest group and association of Danish municipalities, which plays a key role in the functioning of the "cooperative system of local self-government". LGDK describes its purpose as follows: «The mission of LGDK is to safeguard common interests of the municipalities, assist the individual municipality with consultancy services and in addition ensure that the local authorities are provided with up-to-date and relevant information».⁸⁰ LGDK is a very powerful organisation, exercising significant influence on the political decision-making process on questions concerning local government, at a point that it is sometimes referred to as the fourth power of State. It is also worth mentioning that at the regional level, the "Danish Regions" (*Danske Regioner*) is an association that has as a mission to "unite the interests of the Danish regions and set political agendas for a healthier and more sustainable Denmark"⁸¹.

183. Municipalities and regions may also belong to international associations, as part to their general right to associate.

184. The rapporteurs consider that Article 10, paragraph 2 of the Charter is fully respected in Denmark.

3.9.3 Article 10.3

185. Article 10, paragraph 3, addresses the cooperation of local authorities with their counterparts in other States. The right to engage in cross-border cooperation is also protected.

186. Denmark has a long tradition of cross-border cooperation. It has ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), which entered into force in Denmark on 22 of December 1981; the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159); Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169); Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euro-regional Co-operation Groupings (ETS No. 206).

187. Denmark signed bilateral or multilateral treaties on transfrontier cooperation with Germany, Sweden, Norway and other Nordic countries, which refer to the cooperation between transfrontier local entities. It should be pointed out that in partnership with the Swedish city of Malmö, the Greater Copenhagen, was

⁷⁹ Contemporary Commentary, para 198.

⁸⁰ <https://www.kl.dk/english/kl-local-government-denmark/>

⁸¹ <https://www.regioner.dk/services/om-danske-regioner>

established, as a collaborative organisation for regional development and spatial planning in the largest Nordic metropolitan region.

188. The rapporteurs consider that Article 10, paragraph 3 of the Charter is fully respected in Denmark.

3.10 Article 11 – Legal protection of local self-government

Article 11

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

189. Article 11 of the Charter refers to an effective judicial remedy to ensure respect for local self-government. It stresses the requirement that local authorities should have the right to invoke and to defend in the courts the principles of local self-government, especially in the context of lawsuits in which their rights and powers are challenged or curtailed, or when those rights are endangered by the higher (central or regional) levels of government. “Recourse to a judicial remedy” means access by a local authority to either a properly constituted court of law or an equivalent, independent, statutory body.⁸²

190. In Denmark, the municipalities have no special right of appeal to the Supreme Court or any other court, but they must fulfil the normal requirements for having a right of action. Denmark has no special constitutional or administrative court, and all cases regarding the Constitution and the public administration are tried in the regular court system.⁸³

191. The Constitution protects municipalities against the legislative power but, as we said under Article 2, the degree of local self-government required to meet the constitutional standards is not high. However, if the legislature were to adopt legislation repealing local self-government, parties with a legal interest would be able to bring proceedings against the legislature. In such a case the municipalities would have a right of action. The court would then have to decide whether the legislation is constitutional.

192. Although the Constitution does not contain an explicit provision about the courts’ power to adjudicate the constitutionality of acts, their competence in such matters refer back to Supreme Court practices from around 1920. As a consequence of a deferential judicial tradition, common to all the Nordic countries, Supreme Court’s judicial review of specific legislation has traditionally been quite cautious, since in order for a law to be overturned by the Supreme Court, its variance with the Constitution has to be of significant certainty. Only once in the history of the Constitution has the Supreme Court deemed a law unconstitutional (U 1999.841 H). In that particular case (known as the Tvind Case), the *Folketinget* had passed a bill that denied a number of schools the possibility of receiving government funding. The Supreme Court ruled that this was in violation of Article 3 of the Constitution about the separation of power.⁸⁴

193. During the meeting with the Supreme Court, the delegation was told that, although no cases on the infringement of local self-government have been raised, judicial protection is guaranteed not only in extreme cases, for example if the legislature were to abolish local self-government, but also as a consequence of the presumption of non-compliance with the Charter, which could be alleged by a municipality.

194. Considering the availability of judicial remedies and the fact that no issues were raised by the interlocutors during the monitoring visit, the rapporteurs consider that Article 11 is respected by Denmark.

4. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL SELF-GOVERNMENT. THE IMPACT OF THE COVID PANDEMIC AND THE RECEPTION OF UKRAINIAN REFUGEES ON DANISH LOCAL GOVERNMENT

195. In the last few years, Denmark, as other European countries, has had to face two important emergency situations: the Covid-19 pandemic since March 2020 and the mass arrival of Ukrainian refugees in 2022.

⁸² Contemporary Commentary, para 206.

⁸³ E. Greve, *Local government in Denmark*, in A. M. Moreno (ed), *Local Government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, 2012, p.154.

⁸⁴ J. P. Christensen, *The Constitution*, in *The Oxford Handbook of Danish Politics*, Oxford University Press, 2020, p.24.

196. The Covid-19 pandemic has had a significant impact on the work of the local and regional governments. The delegation was informed that the national, regional, and local authorities have had a very close cooperation during the pandemic and there was a special taskforce made up by representatives from three decision-making levels.

197. Throughout the pandemic, the government has adopted several initiatives to assist municipalities. For example, in December 2020 the government issued a financial package to help municipalities cover the additional expenses related to sanitary measures, such as the purchase of protective equipment. Furthermore, the Parliament agreed to remove the ceiling for municipal spending regarding construction and renovation (*Anlægsloftet*) in 2020, with the aim of boosting the economy locally as well as nationally.

198. As for the regions, it was pointed out that the Covid-19 crisis emphasised the role of the regions as the level of government responsible for managing the hospitals, vaccination, and test programs. The government gave a guarantee that all extra expenses resulting from the Covid crisis would be reimbursed by the State. Of course, such figures and calculations may be subject to discussion, and the level of reimbursement will come down to a negotiation with central government.

199. As for the influx of refugees, in mid-March 2022, the Danish Government announced expectations of up to 100,000 displaced persons from Ukraine. According to the information provided by LGDK to the rapporteurs, so far around 25,000 persons from Ukraine have applied to stay in Denmark. The Danish Parliament voted a special act in mid-March allowing displaced persons from Ukraine to immediately obtain all rights to work, receive social allowances, education etc. in Denmark.

200. The mass arrival of refugees caused by the war in Ukraine poses challenges for local governments who hold various competencies regarding refugees including housing, employment, education as well as social services. Since the beginning of the war in February the government and LGDK have been in continuous dialogue regarding the challenges posed by the reception of these refugees. This has resulted in several political agreements that aim to assist municipalities in hosting refugees from Ukraine by giving the municipalities more freedom and options. One example is the agreement from March of 2022 which allows municipalities to house refugees in temporary residences as well as introducing increased flexibility regarding the existing rules for integration of refugees. Additionally, in April of 2022 the Parliament agreed to allow municipalities to introduce special education services for refugees, which includes the option to arrange education in English and Ukrainian. The additional expenses at the regional and municipal level incurred by managing the reception of refugees will be included in the negotiations of the financial agreement for 2023.

5. ADDITIONAL PROTOCOL TO THE CHARTER ON THE RIGHT TO PARTICIPATE IN THE AFFAIRS OF THE LOCAL AUTHORITY

201. With regard to the right to participate in public affairs at local level in Denmark, the rapporteurs note, exactly as the previous rapporteurs did in 2013, that Denmark has good practices in this respect.

202. Denmark recognizes to certain non-national residents the right to participate in local elections. Foreigners can vote in Denmark municipal elections if they have been official residents of Denmark for a period of four years prior to the election. This requirement does not apply to the nationals of Denmark, another EU Member State, Iceland or Norway.

203. Other examples of direct participation the rapporteurs would like to highlight are the consultative processes and local referendums.

204. In Denmark, municipal councils can arrange advisory referendums in accordance with the LLG. Art. 9b provides that “(1) A local council may decide on a binding referendum on a decision made by the local council in a matter which may be considered by the local council but see subsection (2). If required by legislation that a resolution must be read and discussed more than once, only the final decision of the local council may be put to a binding referendum”.

205. In addition, local councils experiment with different models of advisory committees in connection with formulation of local development plans, discussions on user payment/taxation versus service delivery etc. It is a practise that is not prescribed by any law or regulation. Some of these committees are open for anybody who would like to participate; others are established through personal invitation based on selection by a

research institute. The latter is made to ensure that the advisory committee is truly representative, and recommendations from such committees are perceived to be more dedicated than in the open model.⁸⁵

206. Generally, there has been an evolving trend in Denmark, where municipalities increasingly have sought to include citizens into decision making and the discussions of different topics. This has happened and continues to happen through innovative ways of cooperation between citizens and political institutions. An example of this is the establishment of “citizen councils”, which functions as a consultative force in local political life.

207. It has also been argued that digitalisation has contributed to citizens opportunities to participate in local political life, because it has enabled local political institutions to reach a larger number of citizens, through for example questionnaires, when seeking the public opinion towards different policy.

208. The rapporteurs note that Denmark, despite those positive examples on participation in public affairs, has not yet signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207). Moreover, nothing in the present legal scheme would prevent that signature.

209. Therefore, the rapporteurs encourage national authorities to sign and ratify the Additional Protocol in the near future.

6. CONCLUSIONS AND RECOMMENDATIONS

210. The Danish’ government system is one of the most decentralised in Europe: decentralisation is a cornerstone of the Danish democracy since its early developments, as it was already recognised by the 1849 Constitution.

211. Municipalities and regions are at the core of Danish democracy and welfare State. They represent an important scenario for citizens’ participation. The right of the citizens to participate in local affairs is fully guaranteed and it benefits from multiple and innovative tools. Municipalities enjoy a high level of autonomy, and their financial resources are generally commensurate to their responsibilities. The supervision is proportional, and it is handled by independent institutions.

212. Denmark is generally fulfilling its obligations with regard to the Charter. However, in order to understand the application of the Charter in Denmark, it is important to consider Danish’ legal culture and tradition. Actually, many aspects of the system of local self-government are not regulated by written rules and the agreements between central government and the associations representing local authorities play a crucial role in defining the scope of local self-government.

213. At least three aspects must be considered. First of all, the very special nature of “Nordic Law”, which is relatively free of formal rules and requirements. Great attention is paid to rules and principles that have evolved in practice. As for the sources of law, in Denmark, similarly and even more extensively than in other Nordic States, statutory law is supplemented by customary law and case law.

214. Secondly, the fact that in Denmark the rule of law principle is very strong based on Constitution and legislation, and it is highly ranked in practice: Denmark scores extremely high, number 1 in the world, when measuring lack of corruption, honoring fundamental rights, the way systems of checks and balances are implemented, including constitutional, institutional and non-governmental constraints that have been formed to limit the scope of government power.

215. Third, the fact that Denmark is a country of “consensus and trust”, not only between citizens and politicians, but also between political parties, institutions, levels of government. Unwritten rules and norms regulate the framework for political agreements, which are politically, but not legally, binding. It is solely the political culture which obliges the parties.

216. The actual system of local government is the result of the extensive 2007 reform, whose purpose, as pointed out by the 2013 report of the Congress, was to create stronger and more efficient local authorities,

⁸⁵ See E. Sørensen, J. Torfing, *Towards Robust Hybrid Democracy in Scandinavian Municipalities?* in *Scandinavian Political Studies*, (2019) 42(1), pp. 25-49.

able to manage an increasing list of tasks, especially related to social services, at the level closest to the citizens, according to the principle of subsidiarity.

217. The reform shaped a new territorial structure; the fourteen counties were abolished, and five regions were established. At local level 273 municipalities were reduced to 98.

218. As a result, as in the other Nordic countries, the Danish municipalities are responsible for providing local services and welfare services for their residents. Local government expenditure⁸⁶, at 48.3 per cent of GDP, is the highest in the EU. Municipal employees constitute 14.9% of all full-time employees in Denmark and 57.4% of all public employees. Regions, which according to the above-mentioned decision by the Danish government in 2007, do not fall within the scope of the Charter, account for 24.7 per cent of total public expenditure. The regions employ 4.6 per cent of all full-time employees in Denmark and 17.6 of all public employees.

219. Fifteen years after the reform, the Danish' local government system faces some significant challenges.

220. The main challenge is represented by the ability of municipalities to handle the most complex decentralised tasks they were assigned in a constantly evolving and complex arena. These include maintaining the ability to attract investments, creating good conditions for local economic development, providing good educational opportunities and a thriving environment for business managers and the local population to live in, providing public services at a high level of quality.

221. The demographic challenge, with the aging of the population, translated into rising costs for social services, which, due to the already high level of taxation, can be difficult to cover by further tax increases and in combination with the system of sanctions. Consequently, municipalities must rely on State grant and efficiency initiatives.

222. Since the municipalities took over the social services, expenses have risen quite sharply. The municipalities have had difficulty managing the area, a problem that is related to the fact that the area is characterised by very expensive services, for which citizens in many cases have legal claims. At the same time, the visitation to the services in the area is based on a very extensive professional judgment. It is therefore a difficult area to manage politically and economically. An increase in the expenses of local and regional authorities is also expected due to inflation in prices (especially energy).

223. Against this framework, the relationship between regions and municipalities should be reconsidered. The boundary between the regional health services and the municipal health services, such as the domiciliary cares sometimes risks producing a grey zone. It has been pointed out that the exact functional and financial interface between regions and municipalities in some cases proves challenging and disputed.

224. One example is retraining and rehabilitation of patients after hospital admission. The regions are responsible for the hospitals and for financing patient-related rehabilitation, whereas the municipalities are responsible for financing citizen-related rehabilitation. Increased use of outpatient/ambulant treatment at the hospitals means that patients are increasingly discharged from hospitals right after treatment and staying in their homes in the period of rehabilitation. Consequently, municipalities and regions are continuously debating the financial interface between patient-related rehabilitation and citizen-related rehabilitation—and thus who is responsible for financing a specific rehabilitation activity.

225. In addition, the labour shortage implies lack of human resources due to the very strong economy in the private sector, which determined the full employment. The local authorities face the challenge of the lack of skilled employees. It is increasingly difficult to recruit employees to work in the schools, healthcare services, elderly homes, or day care centers. Moreover, it is also difficult to recruit at management level. At the regional level the situation is similar. Generally, lack of nurses, doctors and other qualified staff is the biggest challenge for regional authorities, at the moment.

226. Finally, local government faces the challenge to maintain a high level of democratic participation in an era dominated by social media and by a growing tendency for hate speech and attacks on local elected representatives.

227. In conclusion, the main elements of attention pointed out by the report are the following:

86 2020 figures. See <https://www.dst.dk/da/Statistik/nyheder-analyser-publ/bagtal/2021/2021-18-10-kom-og-reg-andel-off-forbrug>

228. Many responsibilities transferred to municipalities in the specialised social area are raising new challenges, especially considering the demographic trends and the ageing population. Many of these issues do not stem from the interference of State legislation, but actually from the expenditure pressure and the necessity of a better coordination between municipalities and regions. During the consultation process it was pointed out that, after the monitoring visit, the Parliament passed new legislation focusing on this question with the establishment of new forums for cooperation (*sundhedsklynger*) and revising existing forums (*sundhedssamarbejdsudvalg*) of cooperation between regions and municipalities.⁸⁷ Therefore, rapporteurs suggest that the government continue to support the goal of making the healthcare system more robust, by ensuring a clear framework for collaboration and the shift in tasks.

229. The rapporteurs are aware that Denmark is a strongly decentralised State, with a long tradition of local self-government and good governance. They encourage all the stakeholders to continue their ongoing dialogue with the aim to keep improving this system and adapting it to the new challenges.

230. With regard to the right to participate in public affairs at local level in Denmark, the rapporteurs note, exactly as the previous rapporteurs did in 2013, that Denmark has good practices in this respect. However, Denmark, has not yet signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) despite those positive examples of participation in public affairs and the absence of legal obstacles that would prevent its signature. Therefore, the rapporteurs encourage national authorities to sign and ratify the Additional Protocol in the near future.

87 LOV nr 910 af 21/06/2022 Lov om ændring af sundhedsloven.

APPENDIX – Programme of the Congress monitoring visit to Denmark (3-5 May 2022)**FINAL PROGRAMME****Congress delegation:****Rapporteurs:**

Mr Xavier CADORET
 Rapporteur on local democracy
 Vice-President of the Chamber of Local Authorities,
 SOC/G/PD⁸⁸
 Mayor of Saint Gérard Le Puy
 France

Ms Carla DEJONGHE
 Rapporteur on regional democracy
 Chamber of Regional Authorities, ILDG
 Member of the Regional Parliament (Brussels-Capital Region)
 Belgium

Congress Secretariat:

Ms Svitlana PEREVERTEN
 Co-secretary to the Monitoring Committee

Expert:

Ms Tania GROPPi
 Member of the Group of Independent Experts of the Congress
 on the European Charter of Local Self-Government (Italy)

Interpreters :

Ms Eugénie HUGO
 Ms Carina LUCAS-SENNENWALDT

The working language of the meetings will be Danish. Interpretation from and into French will be provided.

88 EPP/CCE: European People's Party Group in the Congress
 SOC/G/PD: Group of Socialists, Greens and Progressive Democrats
 ILDG: Independent and Liberal Democrat Group
 ECR: European Conservatives and Reformists Group
 NR: Members not belonging to a political group of the Congress

Tuesday, 3 May 2022
Copenhagen

- **JOINT MEETING WITH MEMBERS OF THE DANISH NATIONAL DELEGATION TO THE CONGRESS, MEMBERS OF THE ASSOCIATIONS OF LOCAL AND REGIONAL AUTHORITIES AND EXPERT:**
 - **Members of the Danish National delegation to the Congress:**
 - **Ms Randi Mondorf** (R, ILDG), Regional Councillor, Capital Region, Head of National delegation
 - **Ms Kirstine Bille** (L, SOC/G/PD), Municipal Councillor of Syddjurs
 - **NATIONAL ASSOCIATIONS:**
 - **Local Government Denmark (KL):**
 - **Mr Kristian Heunicke**, Director
 - **Mr Morten Mandøe**, Director
 - **Ms Annemette Frost**, Chief Adviser/EU-team leader
 - **Ms Birgit Øbakke**, Secretary of the Danish national delegation
 - **Danish Regions (Danske Regioner):**
 - **Mr Michael Koch-Larsen**, Executive Adviser
 - **Mr Asger Andreasen**, Executive Adviser, EU-Affairs
 - **EXPERT:**
 - **Mr Karsten Nandrup Olesen**, Full member, Group of Independent Experts of the Council of Europe (GIE)
- **THE PARLIAMENT:**
 - **Ms Jette Gottlieb**, Member of the Domestic Affairs and Housing Committee
 - **Mr Mikkel Bjerregaard**, Secretary to the Domestic Affairs and Housing Committee
 - **Ms Nanna Grothe-Werge**, Assistant to the Domestic Affairs and Housing Committee
- **THE PARLIAMENTARY OMBUDSMAN:**
 - **Mr Johan Busse**, Citizens Adviser for the City of Copenhagen
 - **Mr Lennart Hem Lindblom**, Deputy Director-General
 - **Mr Klavs Kinnerup**, Director of International Relations
 - **Ms Camilla Schroll**, Head and Legal Case Officer

**Wednesday, 4 May 2022
Copenhagen**

- **MINISTRY OF THE INTERIOR AND HOUSING:**
 - **Mr Christian Rabjerg Madsen**, Minister
 - **Mr Sophus Garfiel**, Permanent Secretary
 - **Mr Hans B Thomsen**, Head of Department
 - **Ms Mette Kryger Gram**, Head of Division
 - **Mr Nikolaj Stenfalk**, Head of Division
 - **Ms Dorte Lemmich Madsen**, Head of Division
 - **Mr Mads Holt**, Special Advisor
 - **M Anders Hüttel**, Private Secretary to the Minister

- **MINISTRY OF FINANCE:**
 - **Mr Jeppe Berg Jensen**, Head of Division
 - **Mr Søren Heldgaard Olesen**, Head of Division, Centre for Welfare Policy

- **REPRESENTATIVES FROM GREENLAND AND THE FAROE ISLANDS**
 - **Doctor Bjørn Kunoy**, Chief Legal Adviser from the Faroese Foreign Affairs and Culture
 - **Mr Ole Fjordgaard Kjær**, Chief Advisor, Department of Foreign Affairs, Business and Trade, Greenland Representation in Copenhagen
 - **Mr Kim Falck-Petersen**, Secretary/Course leader, Greenland Representation

- **SUPREME COURT OF DENMARK:**
 - **Mr Thomas Rørdam**, President
 - **Mr Jørgen Steen Sørensen**, Supreme Court Judge, member of the European Commission for Democracy through Law

**Thursday, 5 May 2022
Vejle, Nyborg**

- **REGION OF SOUTHERN DENMARK:**
 - **Mr Morten Weiss-Petersen**, second Vice-chair of the Regional Council
 - **Ms Hanne Molbo**, Head of Unit, Regional Council secretariat
 - **Ms Helle Knudsen**, Chief Consultant

- **VEJLE:**
 - **Mr Dan Arnløv Jørgensen**, Vice mayor
 - **Ms Marina V. Christensen**, Head of Section

- **NYBORG:**
 - **Mr Kenneth Muhs**, Mayor
 - **Mr Erland Porsmose**, Museum Director