

## 46th SESSION

Report  
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# Monitoring of the application of the European Charter of Local Self-Government in Norway

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 Norway since the country ratified the Charter in 1989.

The rapporteurs conclude that the country's system of local self-government works well and that the obligations of the Charter are generally fulfilled.

The rapporteurs note with satisfaction the incorporation of the principles of local democracy and self-government in the Constitution and specific legislation, together with the introduction of judicial remedies for local authorities against decisions taken by the State administration. Likewise, they note a more thorough regulation of the State supervision of local authorities, and a satisfactory level of local democracy thanks to the extensive powers and financial resources of counties and municipalities.

However, as the report points out, there are several issues that deserve specific attention. In particular, the process of consulting local communities on changes to local authorities' boundaries remains unclear. The rapporteurs also note that the degree of supervision by the government over local authorities remains pervasive, to a certain extent due to legislation that is too dense and specific, particularly in the field of welfare, not leaving sufficient discretion to the local authorities.

Therefore, the report provides a series of recommendations to the national authorities to further increase the already high level degree of compliance with the Charter. These include strengthening local self-government by avoiding legislation that is too dense and specific and clarifying the procedure of consultation of local communities in the changes of local authorities' boundaries. The rapporteurs also recommend clarifying the scope of the State supervision of local self-government so that it remains proportionate to the interests it seeks to protect.

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 504 (2024)<sup>2</sup>**

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, according to which "the Congress shall prepare regular reports - country by country - on the situation of local and regional democracy in all Member States and in states applying for membership of 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 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;

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

f. 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;

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

h. the previous Congress Recommendation on the monitoring of the European Charter of Local Self-Government in Norway [Recommendation 374 (2015)];

i. the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Norway;

j. the contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government adopted by the Statutory Forum on 7 December 2020.

2. The Congress points out that:

a. Norway joined the Council of Europe on 5 May 1949, signed the European Charter of Local Self-Government (ETS No. 122, "the Charter") on 26 May 1989 and ratified it without reservations. The Charter entered into force in respect of Norway on 1 September 1989;

b. the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government ("the Monitoring Committee") decided to examine the situation of local and regional democracy in Norway in the light of the Charter. It entrusted Thibaut Guignard, France (L, PPE/CCE) and Carla Dejonghe, Belgium (R, ILDG), with the task of preparing and submitting to the Congress a report on local and regional democracy in Norway. 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;

c. the monitoring visit took place from 22 to 25 of May 2023. During the visit, the Congress delegation met representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the explanatory memorandum;

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2. Debated and adopted by the Congress during the 46th Session on 26 March 2024 (see document [CG\(2024\)46-14](#), explanatory memorandum), co-rapporteurs: Thibaut GUIGNARD, France (L, EPP/CCE) and Carla DEJONGHE, Belgium (R, ILDG)

d. the co-rapporteurs wish to thank the Permanent Representation of Norway to the Council of Europe and all those whom they met during the visit.

3. The Congress notes with satisfaction:

a. the incorporation of the principles of local democracy and self-government in the Constitution and specific legislation;

b. the introduction of judicial remedies for local authorities against decisions taken by the State administration;

c. the more thorough regulation of State supervision over local authorities;

d. the satisfactory level of local democracy, as demonstrated by the extensive powers and financial resources of counties and municipalities, that enables them to exercise these powers in a satisfactory manner;

e. the culture of consultation and loyal collaboration between central government and local authorities.

4. The Congress expresses its concerns on the following issues:

a. The unclear procedure of consultation of local communities regarding changes to the boundaries of local authorities;

b. The still pervasive degree of supervision by the government over local authorities, also as a consequence of a too dense and specific legislation.

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

a. further reinforce local self-government by avoiding legislation too dense and specific;

b. clarify the procedure of consultation of local communities regarding changes to the boundaries of local authorities;

c. continue clarifying the scope of the State supervision over local authorities to keep it in proportion to the interests it is intended to protect.

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 Norway 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 2, of the Charter of the Congress of Local and Regional Authorities (“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. Norway joined the Council of Europe on 5 May 1949, signed the European Charter of Local Self-Government (ETS No. 122, “the Charter”) on 26 May 1989 and ratified it without reservations. The Charter entered into force in Norway on 1 September 1989. It applies to both municipalities and county councils (*kommuner og fylkeskommuner*).<sup>3</sup> On 16 December 2009, Norway ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207), with entry into force on 1 June 2012.<sup>4</sup>

3. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (Monitoring Committee) decided to examine the situation of local and regional democracy in Norway in the light of the Charter. It instructed Thibaut Guignard, France

(L, PPE/CCE) and Carla Dejonghe, Belgium (R, ILDG), with the task of preparing and submitting to the Congress a report on local and regional democracy in Norway. 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. The rapporteurs wish to express their thanks to the expert for her assistance in the preparation of this report. This group of persons is referred to as “the delegation”.

4. The monitoring visit took place from 22 to 25 May 2023. The Congress delegation, as a regular practice, met the representatives of various institutions at all levels of government. The detailed programme of the monitoring visit is appended to the explanatory memorandum.

5. The co-rapporteurs wish to thank the Permanent Representation of Norway to the Council of Europe and all those with whom they had exchanges 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 29 August 2023 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 Norway

7. Norway is a country that covers an area of 385,207 km<sup>2</sup>, with a population of 5,504,329,<sup>5</sup> and with a long history of local self-government. Norwegian democracy has found its modern form in an interaction between democratic participation at national and local level. The main features of present-day local government in Norway date back to 1837,<sup>6</sup> when legislation required each parish, rural as well as urban, to form municipality with elected representatives. With Norway still in union with Sweden, local authorities developed a high degree of autonomy that enabled them to build infrastructure and expand

3 It was stated, in the proposition to the *Storting* (St.prp.nr. 19, 1988-89), that it is “natural” for Norway that the convention covers both municipalities and county authorities (p. 10): “According to Article 12, the member States themselves can decide which ‘local authorities’ in the individual country are to be covered by the convention: As far as Norway is concerned, it is natural that the convention applies to both municipalities and county councils (*kommuner og fylkeskommuner*)”. This point of view has not been further discussed by the Standing Committee or the *Storting*, which normally means that the legislator agrees with the text in the proposition.

4 In ratifying the Additional Protocol, Norway declared that: “In accordance with Article 4, paragraph 1, of the Protocol, the Government of Norway declares that the Protocol shall not apply to the territory of Svalbard”.  
[https://lovdata.no/dokument/TRAKTATEN/traktat/2009-11-16-48/KAPITTEL\\_1#%C2%A7preamble](https://lovdata.no/dokument/TRAKTATEN/traktat/2009-11-16-48/KAPITTEL_1#%C2%A7preamble)

5 <https://www.ssb.no/befolkning/folketall/statistikk/befolkning>

6 L. A. Hafting Kvestad, E. Colombo, *Il sistema di governo nel Regno di Norvegia: istituzioni regionali e istituzioni locali* [in Italian], in *Le Regioni*, 5/2021, p. 1115 ff.

welfare. With a Constitution dating from 1814, the two-tier system of local government (including the municipalities, *kommuner*, and the county authorities, *fylkeskommuner*) has over the years become an inherent part of the Norwegian State tradition.<sup>7</sup>

8. The number of municipalities and counties has progressively reduced over time. Territorial reforms in the 1960s reduced the number of municipalities from over 700 to around 450, and gradual consolidation continued on a voluntary basis.<sup>8</sup> The local government reform, initiated in 2014 (see *infra*), reduced the number of municipalities from 428 to 356, from January 1, 2020. The number of counties was reduced from 18 to 10. The capital, Oslo, has no regional government. Municipal (*kommunestyre*) and county councils (*fylkesting*) are equally elected local bodies on the same administrative level, but with different tasks. There is no hierarchy between the two bodies.<sup>9</sup>

9. As in other Nordic countries, the expansion of social welfare policies, in which implementation and realization local government is assigned a central role, created a sort of “local welfare State”.<sup>10</sup> Scholars pointed out that the relationship between State and local authorities in a welfare State with strong centralist features, but at the same time with a tradition of local self-government, is tense. Two historical and ideological features in the Norwegian system affect the relationship between State and local authorities: 1) Norway is a welfare State. 2) The idea of local self-government has had a strong position both before the development of the Norwegian welfare State and within its framework. These features contribute to a relationship between State and local authorities which has been described as “an area characterized by ambiguity and strong internal value tensions”.<sup>11</sup>

### Recent legal developments

10. On 31 March 2016 the Norwegian Parliament (*Storting*) approved a proposal to amend the Constitution,<sup>12</sup> with the purpose to constitutionalize local democracy. A new paragraph 2 was added to Article 49 of the Constitution, stating that: “The citizens have the right to govern local affairs through local democratically elected bodies. Specific provisions regarding the local democratically elected level shall be laid down by law”.<sup>13</sup>

11. The proposal had received broad support in the *Storting* and was adopted with 158 to five votes. Representative democracy at local level is enshrined in the Constitution as a right for citizens. A question that has been important to the decision-makers is whether the provision provides constitutional protection for local democracy or municipal self-government. In the debate, enshrining local democracy in the Constitution appeared to be less restrictive of national governance than a constitutional provision on municipal self-government, and the *Storting* finally settled on a provision that does not mention the term “local self-government”.<sup>14</sup>

12. It has been pointed out that external elements have also had an impact on the decision to amend the Constitution. Firstly, it has long been clear that most Western European countries have had provisions for municipal self-government or local government at constitutional level. Another key external factor is the European Charter on Local Self-Government, which has been mentioned in the governmental proposal and in the parliamentary proceedings.<sup>15</sup>

13. A new Local Government Act was passed in 2018,<sup>16</sup> abrogating previous legislation, the Act of 25 September 1992 n. 107 on municipalities and county authorities. The 2018 Act addressed some

7 H. Baldersheim, L. E. Rose, *Norway*, in F. Merloni (ed), *Regionalisation Trends in European Countries 2007-2015. A study by members of the Group of Independent Experts of the European Charter of Local Self-Government*, Strasbourg, 2016, p.140.

8 Local Government in the Nordic and Baltic Countries. An Overview (2020), SKL International 2016, revised version 2020; [http://sklinternational.org.ua/wp-content/uploads/2021/04/ENG\\_finalver\\_bluebook\\_compressed.pdf](http://sklinternational.org.ua/wp-content/uploads/2021/04/ENG_finalver_bluebook_compressed.pdf)

8 <https://dfo.no/om-dfo/instruks-tildelingsbrev-og-arsrapport/dfos-arsrapport-2021>

9 For a general overview of Norwegian local government, cf. H. Baldersheim, L. E. Rose, *Norway: The decline of subnational democracy?* in J. Loughlin, F. Hendriks, A. Lidström (eds), *The Oxford Handbook of Local and Regional Democracy in Europe*, Oxford, Oxford University Press, 2011, p. 282 ff.

10 *Ibidem*, p. 298

11 I. Nguyễn-Duy, E. Smith, H. Baldersheim, *Twisteløsningsordninger mellom stat og kommune*, Oslo, 2009 <https://www.jus.uio.no/ior/forskning/prosjekter/tviststatkom/dokumenter/ks-sluttrapport.pdf>

12 <https://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=54677>

13 <https://lovdata.no/dokument/INNST/forarbeid/inns-182-s-201516>

14 S. Stokstad, *Article 49.2, Commentary* [in Norwegian], in O. Mestad, D. Michalsen (eds), *Grunnloven. Historisk kommentarutgave 1814–2020*, p. 487 ss. <https://www.idunn.no/doi/10.18261/9788215054179-2021-062>

15 S. Stokstad, *Article 49.2, Commentary*, cit., p. 491.

16 LOV-2018-06-22-83: Lov om kommuner og fylkeskommuner (kommuneloven) <https://www.regjeringen.no/no/dokumentarkiv/regjeringen-solberg/aktuelt-regjeringen-solberg/kmd/pressemeldinger/2018/en-ny-og-moderne-kommunelov/id2593962/>

aspects touched by the Recommendation 374 (2015), such as the entrenchment of the local self-government principle and a more thorough regulation of the State supervision.<sup>17</sup> It also sets out the three following principles for the relationship between national authorities and municipal self-government:

- The municipal and county authority self-government should not be limited more than is necessary to safeguard national objectives.
- Public duties should preferably be assigned to the administrative level closest to the inhabitants.
- Within the frameworks of national economic policy, municipalities and county authorities should have a free income that provides a financial scope of action.

14. Another reform, aimed at addressing the lack of a judicial remedy against the State (Article 11 of the Charter), was passed in 2018: on 1 January 2018, new provisions in the Disputes Act came into force,<sup>18</sup> which give the municipality and the county authority a right to take legal action against the State<sup>19</sup> in the situations that are specified in Articles 1-4 a. of this Act. In addition, the municipalities were given access to legal proceedings against State objections in Article 5-7 of the Planning and Building Act.

### 2.1.2 Administrative territorial structure

15. The Local Government Act (Article 2-1) states that “Norway is divided into municipalities and county authorities with their own popularly elected leadership. Each municipality and county authority is a separate legal entity and can make decisions on its own initiative and responsibility. The municipalities and the county authorities exercise their self-government within national frameworks. Limitations in the municipal and county authority self-government must be authorised by law”.

16. After Norway’s 2013 parliamentary elections, the government changed from a majority-centre-left government to a minority conservative government, dependent on two centrist minor parties. One of the major priorities for the new government was to implement an overhaul of the structures of the Norwegian public sector.<sup>20</sup>

17. In 2014, the Ministry of Local Government and Modernisation (today: Ministry of Local Government and Regional Development) appointed an expert commission to propose criteria for municipal and regional reforms and to provide recommendations. In 2017, a new subnational structure was proposed to parliament, for both municipalities and counties, as well as the transfer of certain tasks to the new municipalities and regions.<sup>21</sup>

18. Local governments were invited to enter into negotiations with the aim of submitting joint applications for merger, by two set deadlines. While applications submitted by February 2016 would be effectuated by January 2018, local governments applying by July 2016 would need to wait until January 2020 before the actual merger. The aim of the reform was to reduce the number of municipalities through voluntary mergers, and to allocate broader responsibilities to municipalities.<sup>22</sup>

19. The reforms were based on voluntarism, but the Norwegian Parliament, the *Storting*, adopted certain mergers of municipalities and counties that did not want this. As a result, since January 2020, there are 356 municipalities and 11 counties.

20. At municipal level, despite of the reform, the municipal population size varies considerably: the smallest municipal population is 198 inhabitants while the population in biggest in the capital city of Oslo is over 700,000. The average and median sizes amounted to around 15,077 inhabitants

17 H. Baldersheim, K. Houlberg, A. Lidström, E.-M. Hlynisdottir, P. Kettunen, *Local Autonomy in the Nordic Countries. A report for the Norwegian Association of Local and Regional Authorities*, Universitetet i Agder, April 11, 2019 <https://www.ks.no/fagomrader/demokrati-og-styring/lokaldemokrati/det-lokale-selvstyre-er-styrket/>

18 LOV-2017-06-16-63: Lov om endringer i forvaltningslova, tvistelova m.m. (overprøvningskompetanse m.m.) [Act on Mediation and Proceedings in Civil Disputes (Disputes Act), as amended by Added by law 16 June 2017 no. 63]. The amendments entered into force on 1 January 2018. [https://lovdata.no/dokument/NL/lov/2005-06-17-90/KAPITTEL\\_1-1#KAPITTEL\\_1-1](https://lovdata.no/dokument/NL/lov/2005-06-17-90/KAPITTEL_1-1#KAPITTEL_1-1)

19 <https://www.ks.no/ks-advokatene/nyheter/nye-regler-i-tvisteloven--1-4-a-gir-kommunen-vid-soksmalsadgang-mot-staten/>

20 I. V. Signy, A. L. Fimreite, K. Houlberg, *Why such a different choice of tools? Analysing recent local government reforms in Denmark and Norway*, in *Local Government Studies*, 2023, 49:2, pp. 355-374; see also J. Stein, T. Saghaug Broderstad, H. Bjørnå, *Territorial reforms, mobilisation, and political trust: a case study from Norway*, in *Local Government Studies*, 2023, 49:3, p. 1 ff.

21 <https://www.ks.no/om-ks/ks-in-english/local-government-reforms-in-norway/>

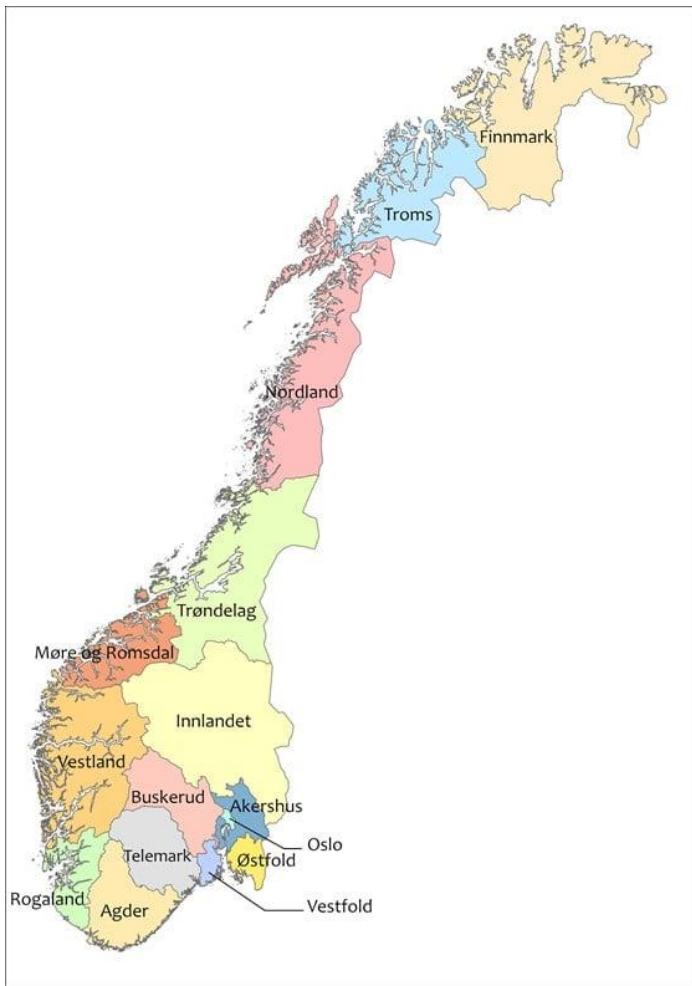
22 Ministry of Local Government and Modernisation. 2015. *Kommunereform: Meldingsdel i kommuneproposisjonen*. Prop 95 S, 2015. Available online at: <https://www.regjeringen.no/contentassets/b1ac>

(compared with 10,331 inhabitants in the OECD on average) and 5,163 inhabitants respectively. In 2021, 49% of municipalities had fewer than 5,000 inhabitants and 21% fewer than 2,000.<sup>23</sup>

21. As for regional level, in 2021 the smallest county population is 241,235 inhabitants while the population in the biggest county of Viken is above 1.2 million. The average county population size is 487,962 and median size is 419,396 inhabitants<sup>24</sup>.

22. After a change in government following the 2021 elections, the new center-left government took initiative to reverse some of the mergers. Municipalities and counties that were merged against their will has had the opportunity to become their own municipalities and counties again, if this is the wish of the new municipal council/county council.

23. In 2022, the Storting decided to divide 3 counties and 1 municipality. The new municipal councils and county councils will be elected in the local elections on 11 of September 2023.<sup>25</sup> The new counties and municipalities will come into force in 2024. There will then be 357 municipalities and 15 counties in Norway.<sup>26</sup> From 2024, following the reorganisation of counties, the smallest county population will be approximately 74 ,000 (Finnmark), while the population in the biggest county (Akershus) will be just above 700,000. The average county population size will be approximately 360.000 and median size approximately 305,000 inhabitants.<sup>27</sup>



Counties from January 1, 2024. Source: [Prop. 127 S \(2021–2022\) - regjeringen.no](https://www.regjeringen.no/prop/127-s-2021-2022)

## Organisation of the local authorities

<sup>23</sup> <https://www.sng-wofi.org/country-profiles/>

<sup>24</sup> <https://www.sng-wofi.org/country-profiles/>

<sup>25</sup> <https://www.regjeringen.no/no/aktuelt/valgdagen-blir-11.-september-2023/id2909636/>

<sup>26</sup> <https://www.regjeringen.no/no/tema/kommuner-og-regioner/kommunestruktur/fylkesinndelingen-fra-2024/id2922222>

<sup>27</sup> <https://www.sng-wofi.org/country-profiles/>



24. According to the Local Government Act, the municipal council (*kommunestyret*) and the county council (*fylkestinget*) are the highest bodies in each municipality and county authority. Elections for their members are held every four years.

25. After being elected, the members of the county and municipal council elect an executive committee (*formannskap, fylkesutvalg*). This consists of at least five councillors with party representation in proportion to the local election results, whose duties include preparing a four-year economic plan and budget. The council also elects its chairman (*ordfører*) and may create and grant decision-making powers to committees. The municipality or county authority is obliged to hire a chief municipal executive (*kommunedirektor*) to head the administration. These appointments are made on a meritocratic basis, and chief executives tend to be career officials who may move from one municipality to another during their careers. The chief executive is also charged with ensuring that all items of business placed before the council (or its subordinate bodies) are properly and thoroughly prepared, and that all decisions taken by the council are duly implemented. The local council or executive committee may also delegate authority to the chief executive to make decisions on issues which do not involve questions of principle.<sup>28</sup>

26. The Local Government Act also provides the possibility for the municipalities and county authorities to opt for a parliamentary form of government, according to a resolution passed by 2/3 of the members of the council. In this case, “the municipal executive board or the county executive board manages the municipal or county authority administration, respectively. The provisions relating to the chief municipal executive apply in a similar manner to the municipal executive board and the county executive board, unless otherwise provided by law” (Article 10-2, Local Government Act). This model gives the municipal and county executive board considerably more executive power than the executive committee in the traditional model. On the other hand, the municipal and county executive board may be required to resign by a vote of the full council. The council may also decide by simple majority to revert to the traditional system. The parliamentary system is used in two municipalities consisting of large cities, Norway's largest city and capital Oslo and Norway's second largest city Bergen, and in some county authorities.

27. While each county is governed by a publicly elected county council, there is a parallel government structure at the regional tier, as each county also has a county governor (*Statsforvalteren*) (except for one county governor who covers both Oslo and Viken). The county governor is the State's representative in the counties and is responsible for monitoring the implementation of the decisions, objectives and guidelines set out by parliament and the government. County governor is both the name of the authority as a whole and the person leading it. The county governor is the sectoral government authority for a range of important policy areas, and as such represents several ministries, as well as the directorates and central supervisory authorities on behalf of which it performs various administrative tasks. The county governor also supervises municipal activities and serves as the administrative appeals body regarding municipal decisions for individual citizens, businesses, and organisations.<sup>29</sup>

## Competences

28. The distribution of responsibilities between the different levels of government in Norway is currently based on a generalist local authority system. This means that all municipalities and county authorities are required to fulfil the same functions. They all have the same responsibilities in the production of public services, legal safeguards, planning and local development, regardless of size. All of them, according to the principle entrenched in Article 2-1 of the Local Government Act, are free to undertake any task as long as it is not prohibited by law or assigned to another level of government.

29. The county authority takes care of tasks that are given to them by law. The tasks may be too big for each municipality in a county to handle alone or matters that cross the municipalities and need a more holistic regional approach in order to be solved well.

30. There is not a single piece of legislation stipulating how various functions are to be divided among central government and the two tiers of subnational government. Rather, the division of tasks is largely a matter of special legislation, the content of which is subject to continuous revision.<sup>30</sup> There is however a principle in the Local Government Act section 2-2 that public duties “should preferably be assigned to the administrative level closest to the inhabitants”.

28 H. Baldersheim, L. E. Rose, *Norway: The decline of subnational democracy?*, cit., p. 297.

29 <https://www.arl-international.com/knowledge/country-profiles/norway>.

30 H. Baldersheim, L. E. Rose, *Norway*, cit., p. 142.

31. As indicative and non-exhaustive list of competences, the following could be presented, according to the special (sectorial) legislation.

Central government:

- higher education and universities
- hospitals and specialized health services
- specialized institutions for child welfare and care of drug and alcohol abusers
- the National Insurance Scheme (unemployment, disability and old age pensions)
- labour market training schemes
- national roads and railways
- police services, courts and prisons
- military defense
- foreign policy
- refugee and immigration policy
- national agricultural and environmental issues

Counties

- upper secondary schools
- dental services
- county roads and public transport
- county land use planning
- regional development

Municipalities

- preschool child day-care facilities and child welfare services
- primary and lower secondary schools
- primary health care
- care for the elderly and disabled
- financial support for welfare clients
- church maintenance and cultural affairs (public libraries, etc.)
- fire protection
- municipal roads and harbors
- water supply and sewage services
- garbage collection and disposal
- local land use planning and environmental issues.

**Co-operation**

32. In Norway, consultation between the government and the Norwegian Association of Local and Regional Authorities (KS), representing all the local authorities in the country, is an integral part of the local self-government system. These consultations provide a forum to discuss the overall framework for both financing and regulation as well as specific issues regarding the municipalities and regional authorities. The consultations also include routines for involving KS in the assessments of cost of reforms as well as the effect of legislation.<sup>31</sup>

33. As pointed out by KS in the written answers to the rapporteurs, the consultation scheme between the government and KS is a formalised arena for dialogue and collaboration on frameworks and goal achievement for the local government sector. The meetings involve stakeholders from top political levels from both parties.

34. The government and KS hold three consultation meetings a year. The main meetings include one in the spring before the Ministry of Local Government, the Finance Ministry and KS consult on next year's budgetary framework for municipalities; another with all relevant ministries before the revised national budget and annual local government bill; and another series of meetings in the autumn with relevant ministries.

35. Through the consultation scheme between the government and KS, a so-called "legislative participation system" has been established. The purpose of this is that KS, as representative of its

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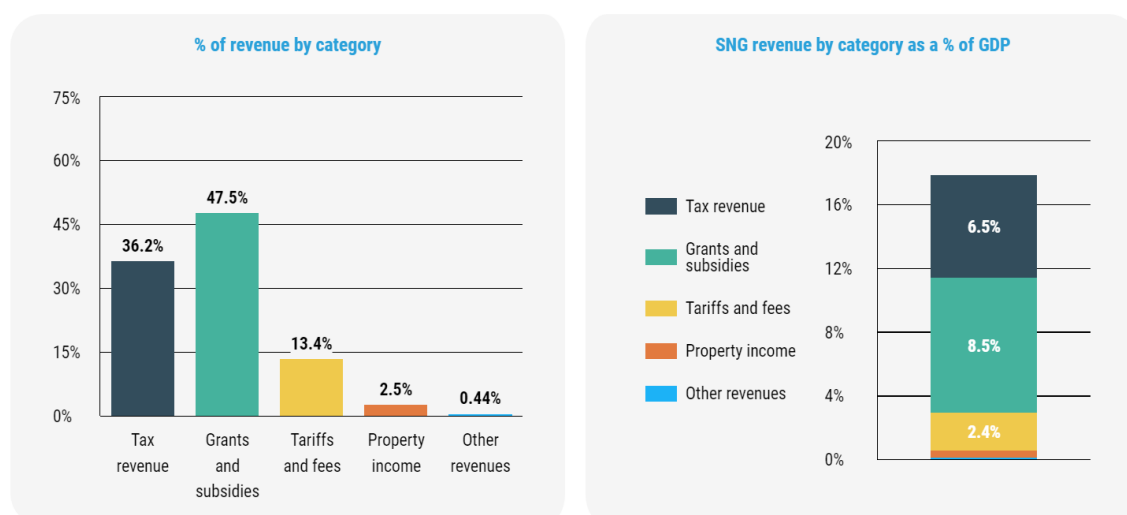
<sup>31</sup> <https://www.regjeringen.no/no/tema/kommuner-og-regioner/kommunalrett-og-kommunal-inndeling/forholdet-kommune-stat/id2340288/>

members, should be able to give suggestions to the decision-making basis for the development of legislation affecting the municipal sector.

36. As for financial aspects, the Statistical Reports Committee for county and municipal government finance (TBU) is a permanent committee composed of representatives from the relevant ministries, local government authorities, researchers and Statistics Norway (the Norwegian Central Bureau of Statistics) and headed by an independently affiliated chairperson. It is the task of the committee to submit bi-annual reports containing a compilation of statistics concerning the economic development of the local government sector. The committee's reports also contain findings from various specially targeted analyses. These reports are widely utilized and form the foundation for the consultations between the central and local government authorities.<sup>32</sup>

## Finances

37. In Norway, according to OECD data,<sup>33</sup> grants and subsidies are the main source of subnational government revenue, accounting for 47.5% for subnational government. The share of taxes is 36.2% of subnational government revenue. The revenue structure differs considerably between municipalities and counties in Norway. Counties are more dependent on central government grants, while tax revenue and user charges are more important for the municipalities.



Source: OECD, <https://www.sng-wofi.org/country-profiles>

38. The primary source of subnational government tax revenue is the shared personal income tax (PIT). In 2020, it represented 86.6% of subnational government tax revenue, 31.4% of subnational government revenue and 5.6% of GDP. The PIT revenue is collected by the municipalities for the central government, counties and themselves. Each year, the Parliament decides the maximum income tax rates of central, municipal and county levels. For 2019, the total maximum income tax level has been set to 22%. For municipalities, the maximum income tax rate is 11.55%, and for counties it is 2.6%. Therefore, the central government rate is 7.85%. Municipalities and counties are allowed by law to set rates lower than the maximum regulated rate, but in practice all municipalities and counties use the maximum rate.

39. Property tax is only levied at the municipal level and comprises both residential and business properties. In 2006, the Property Tax Law was changed and, since 2007, property tax can be levied on non-urban areas. In 2020, property tax revenue represented 12.6% of subnational government tax revenue and 0.8% of GDP, which is lower than the OECD average in 2020 (1.0% of GDP).

40. The central government system of transfers comprises both block and earmarked grants. All grants that are not included in the block grant system (General Grant Scheme) are conditional grants, since they must be spent on a specific program or a specific purpose. The most important ones are related to education, health and care for the elderly and the disabled, and for refugees and immigrants.

<sup>32</sup> <https://www.regjeringen.no/en/dep/kdd/organisation/styrer-rad-og-utvalg/The-Statistical-Reports-Committee-for-county-and-municipal-government-finance-/id449207/>

<sup>33</sup> <https://www.sng-wofi.org/country-profiles>

41. The General Grant Scheme is an important source of revenue for subnational governments (created in 1986, it replaced some 50 earmarked grants). The General Grant Scheme has both an equity dimension and a regional political dimension. This system has two main objectives; firstly, to equalize the economic opportunities across local governments given the large differences between municipalities and between counties, in both the level of income from local taxes and in the level of expenditure needed, and secondly, to promote regional policy goals, as well as the transfer of resources to the local public sector.

42. The system includes both grants and tax equalisation. General grants take into account both structural cost differences between municipalities (expenditure equalisation) and differences in tax bases (income equalisation). General grants are defined using indicators on demographic aspects, social characteristics, population size and population density. The rural and urban characteristics are also taken into account. The discretionary grant is part of the general grant. It compensates municipalities and counties for special local conditions that are not otherwise compensated for by the General Purpose Grant Scheme. The Ministry of Local Government and Regional Development distributes the discretionary grant directly to counties and determines the distribution of municipalities' discretionary grant by county. The county governors further distribute the discretionary grant to municipalities, based on guidelines provided by the Ministry of Local Government and Regional Development. The counties of Northern Norway receive a county Grant at the regional level. There are also discretionary grants distributed to the counties at the regional level.

43. Revenue from service fees and charges represented 13.4% of subnational government revenue in 2020. For the municipalities, the revenues from user charges come mainly from utilities such as water, sewerage and garbage collection, but also from day care and care for the elderly. User charges cannot be applied in primary and secondary education. Property income share, which includes interest and dividends, is higher than the OECD average in 2020 (2.0% of the subnational government revenue), reflecting how important holdings of financial assets in the electricity market are for local governments.

44. In order for the municipalities and county authorities to be able to provide equal services to their citizens, the income system contains two major equalization mechanisms: tax revenues are partially equalized (income equalization) and involuntary cost differences are equalized in full (expenditure equalization). There are differences in tax revenues between the municipalities, which means that the municipalities have a different starting point for offering an equal range of services to their residents.

45. Through *income equalization*, these differences between the municipalities are partially evened out, as the tax revenues are redistributed from municipalities with tax revenues per inhabitant above the national average to municipalities with tax revenues per inhabitant below the national average. The income equalization consists of a symmetry cut equalization of 60 percent, as well as an additional compensation for municipalities with tax revenues of less than 90 percent of the national average. Municipalities with tax revenues above the national average are subject to a deduction that corresponds to 60 per cent of the difference between their own tax revenues and the national average. Municipalities with tax revenues below the national average receive compensation through income equalization that corresponds to 60 per cent of the difference between their own tax revenues and the national average. Municipalities with tax revenues below 90 percent of the national average receive, in addition to this, additional compensation of 35 percent of the difference between their own tax revenues and 90 per cent of the national average.

46. There are differences in the municipalities' expenditure on welfare services due to differences in, for example, demography and municipality size. Through *expense equalization*, these differences are evened out. The expense equalization takes place using a cost key consisting of a number of objective criteria. Examples of such criteria include the number of children of compulsory school age, the number of elderly people, settlement patterns and travel distances in the municipality. The cost key ensures that this share of the block grant is redistributed from municipalities that are less expensive to operate than the national average to municipalities that are more expensive to operate than the national average.

## **Supervision**

47. The Local Government Act, Article 30, regulates the State supervision of municipalities and county authorities' fulfilment of duties stipulated in statutes. There may only be state supervision if stipulated in the specific sectorial law, and the sectorial law shall specify the tasks that can be subject to state supervision. It specifies procedural rules for the State supervision of municipalities. Supervision shall take place according to the provisions of Article 30 unless the legislation states otherwise.

48. The supervisory authorities may only supervise the legality of the local authorities' legal obligations (Article 30-2). Legal supervision is selective and only applies to normative acts. The supervisory authorities select which municipalities and what legal obligations will be subject to supervision. Such selection is based on an assessment of risk and vulnerability.

49. In the event of State supervision, the municipalities and the county authorities may appeal a decision and exercise party rights pursuant to the provisions of Chapter IV, V and VI and Articles 14, 41 and 42 of the Public Administration Act.<sup>34</sup>

50. The county governor must coordinate the planned State supervision activities towards the municipality and the county authority and assess the total extent of the State supervision with the individual municipality or county authority. All State supervisory authorities shall inform the county governor of plans for supervisions and notifications of order for rectification or other sanctions that have significant effects on the municipality or county authority. In their planning, prioritisation and implementation of supervisions, State supervisory authorities shall consider the total State supervision of each municipality or county authority and the relevant performance audit reports. The supervisory authorities shall consider postponing or not conducting supervisions if the municipality or the county authority has recently carried out a control on the same topic.

51. Governors can order local authorities to rectify any breaches, though they must take into account the impact on other local activities before doing so. Both parties must enter into a dialogue before such an order (or other measure with material consequences) is made. The 2018 Local Government Act allows local authorities to appeal against supervisory decisions according to the procedure of the Public Administration Act. The appellate instance is the administrative agency immediately superior to the one that made the decision.

52. Besides supervision, Article 27 of the Local Government Act also provides for the Ministry to verify the legality of final decisions made by a popularly elected body or the municipal or county authority administration at the request of three or more council members or (if there are particular reasons) on the Ministry's own initiative. This concerns only legal aspects (content, empowerment and process). But if the Ministry finds errors that invalidate the decision, it must annul the decision.

53. As regards finances, the Local Government Act requires all local authorities to elect a control committee for day-to-day monitoring of financial management and to ensure satisfactory auditing of the financial accounts. The committee consists of at least five members, including at least one councillor but excluding the council chair and others with decision-making powers. The leader may not be from the same party or group as the council chair.

54. Councils must also assure professional auditing of the financial accounts and aspects of performance (e.g. productivity, achievement of goals), whether by appointing an auditor or through intermunicipal cooperation or some other auditing agreement.

55. The Local Government Act sets out requirements for financial plans and annual budgets, annual accounts and reports, and financial management. Budgets must be balanced, and operational expenditures must be covered by current revenues. A deficit must normally be covered the year after it arises. Loans are allowed for capital investment and some other purposes but must be paid off annually.

56. The Local Government Act, Article 28, gives rules about government control of municipalities and county authorities with financial imbalance. According to Article 28-1, the Ministry of Local Government and Regional Development is required to establish a register of all municipalities and county authorities that are subject to approval. This is known as Register for Governmental Approval of Financial Obligations (ROBEK) which lists municipalities and county authorities that are in financial imbalance or that have not adopted a financial plan, annual budget or annual accounts within the applicable deadlines. The municipality or county authority is registered in ROBEK if the annual budget or financial plan is out of balance, if a deficit in the accounts is not covered or is not planned to be covered over two years, if the accumulated deficit exceeds 3 percent or adoption of the budget, finance plan or accounts have not met the deadlines in the Local Government Act.

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<sup>34</sup> LOV-1967-02-10 Lov om behandlingssmåten i forvaltningssaker (forvaltningsloven) [Public Administration Act]. <https://lovdata.no/dokument/NL/lov/1967-02-10#:~:text=Forvaltningsloven%20inneholder%20regler%20om%20hvordan,en%20forsvarlig%20og%20riktig%20m%C3%A5te>.

57. Consequences for registered municipalities and county municipalities are legality control of the annual budget, approval of borrowing, i.e., that municipalities and county authorities cannot take out loans without the approval of the State, and that the municipalities and county authorities must draw up an action plan to recover financial control. As of today, according to the information provided by the Ministry of Local Government and Regional Development, there are 12 municipalities in the ROBEK register, which is a historically low number, down from 49 municipalities in 2015. There are no county authorities in the register.

## 2.2 Status of the capital city

58. The city of Oslo, with 711,307 inhabitants,<sup>35</sup> is both a county and a municipality. According to the Local Government Act, Article 3.1, each municipality belongs to one county, and each county, except Oslo, forms a county authority. Oslo's status as a county is based on the Local Government Boundaries Act,<sup>36</sup> Article 29 (as amended by Act 22 June 2018 no. 84).

59. The tasks of the county authorities are regulated in special legislation, such as the Act relating to Dental Health Services of 3 June 1983 no. 54, Section 6-7, which says that provisions stipulated in the act for county municipalities shall also apply to the urban county of Oslo. Another example is the Act relating to Primary and Secondary Education and Training (the Education Act) of 17 July 1998 no. 61) Section 13-8, which says that the municipality of Oslo has the rights and obligations which are invested in county authorities in the act.

60. When and how Oslo became Norway's capital is somewhat uncertain, and it is not explicitly stated in legislation. Article 68 of the Constitution only mentions the fact that normally "The Storting shall as a rule assemble on the first weekday in October every year in the capital of the realm", without naming the capital city. Oslo being the capital was considered implicit according to the National Assembly parliamentary works back in 1814.<sup>37</sup>

61. The responsibility for governing the city has been based on the parliamentary model since 1986 and falls to the governing mayor and a certain number of vice mayors appointed as a cabinet by the city council. The council is made up of 59 members elected by local residents for a period of four years. It has five standing committees in charge of health and social affairs, education and cultural affairs, urban development, transport and environmental affairs and finance, respectively.

62. Since 2004, the city has been divided into 15 districts (*bydeler*), which enjoy a large measure of autonomy. Since 2007, all district councils have been elected directly by the people. Their responsibilities include social services, basic health care and kindergartens.

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

63. Traditionally, the Norwegian legal system is based on the "dualist" principle, according to which international law is not part of Norwegian law, unless it is explicitly incorporated or implemented by the Norwegian legislator.<sup>38</sup>

64. Article 26 of the Constitution, that contains the main provisions for the conduct of foreign affairs, establishes: "The King has the right to call up troops, to engage in war in defense of the Realm and to make peace, to conclude and denounce treaties, to send and to receive diplomatic envoys. Treaties on matters of special importance, and, in all cases, treaties whose implementation, according to the Constitution, necessitates a new law or a decision by the *Storting*, are not binding until the *Storting* has given its consent thereto".

65. The fact that a convention is incorporated does not in itself mean that it automatically supersedes or takes precedence over any other national legislation in the event of conflict. Any conflict between an

<sup>35</sup> <https://www.ssb.no/kommunefakta/oslo>

<sup>36</sup> LOV-2001-06-15-70 Lov om fastsetjing og endring av kommune- og fylkesgrenser (inndelingslova) [Local Government Boundaries Act ], <https://lovdata.no/dokument/NL/lov/2001-06-15-70#:~:text=Departementet%20kan%20fastsetje%20at%20endring,etter%20andre%20ledd%20bokstav%20b.>

<sup>37</sup> O. Mestad, D. Michalsen, N. Naguib Leerberg, *Article 68, Commentary* [in Norwegian], in O. Mestad, D. Michalsen (eds), *Grunnloven. Historisk kommentarutgave 1814–2020*, cit., p. 591 ff.

<sup>38</sup> T. Ojanen, *Human Rights in Nordic Constitutions and the Impact of International Obligations*, in H. Krunke, B. Thorarensen (eds), *The Nordic Constitutions: A Comparative and Contextual Study*, 2018, Oxford: Hart Publishing, p. 133 ff.

incorporated convention and another Norwegian law, must be resolved according to the Norwegian general principles of interpretation.

66. The legal status of the convention can also be determined directly in the law. The Human Rights Act of 1999 (*menneskerettsloven*) is an example of a law that *incorporates* human rights conventions. The Human Rights Act, Article 3 states that the incorporated conventions take precedence over other legislative provisions in the event of conflict.<sup>39</sup>

67. However, there is the "presumption principle", which means that domestic law - as far as possible within the doctrine of sources of law - shall be interpreted in accordance with Norway's obligations under international law. When Norway signed the Charter in 1989, the Norwegian authorities considered domestic law to be compatible with the Charter. Later, domestic law has been amended following recommendations and with reference to the Charter, as it is stated by the references to the Charter in the governmental proposal and in the parliamentary proceeding of the new Local Government Act. Therefore, we can consider that the Charter had a relevant impact on the evolution of legislation and even on the constitutional amendment.<sup>40</sup> All the proposals that were under consideration on 31 March 2016 indicated that Norway had ratified the Council of Europe's Charter on Local Self-Government, and therefore undertook to enshrine the principle of local self-government in the Constitution in accordance with Article 2 of the Charter.<sup>41</sup>

68. As for the case-law, the Charter has been rarely used in courts, as it was confirmed to the delegation during the meeting with the Supreme Court. Recently, the Charter has been invoked in a case involving the municipalities of Beiarn and Bardu.<sup>42</sup> In the case, concerning the application of the Mountain Law in Northern Norway, the municipalities and KS argued in favour of an interpretation of the Dispute Act in the light of the Charter.<sup>43</sup> The Supreme Court, even though recognized that the municipalities had a sufficient legal interest in the case, according to Article 1-3 of the Dispute Act, did not apply the Charter's based argument in its reasoning.<sup>44</sup>

## 2.4 Previous Congress reports and recommendations

69. The previous monitoring visit to Norway was carried out in 2014 and the Recommendation 374 (2015) was adopted by the Congress on 26 March 2015. Recommendation 374 (2015) asked the Norwegian authorities to: *a.* further reinforce local self-government, by incorporating those principles into specific legislation and, if practicable, into the constitution; *b.* bring their legislation and judicial practice into compliance with Article 11 of the European Charter of Local Self-Government by guaranteeing, in their domestic legal system, local authorities the full exercise of their right to judicial remedies against decisions taken by the State administration; *c.* re-assess the current situation of administrative supervision carried out by governors and other supervising bodies on the own competences of local authorities so that this control does not exceed the spirit of the law; *d.* implement the reform in a way to ensure that concomitant finances are provided for any new tasks delegated to local and regional authorities; *e.* limit the control over local authorities solely to one of legality so as to avoid a recentralisation of transferred powers.

## 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

<sup>39</sup> In 2014, the Constitution was amended and the new Article 92 states that the State authorities shall respect and ensure human rights as they are expressed in the Constitution and in the human rights treaties that are binding on Norway: A. Kierulf, *Norway: Human Rights and Judicial Review Constitutionalized*, *Blog of the International Journal of Constitutional Law*, 5 June 2015: [www.iconnectblog.com/2015/06/norway-humanrights-and-judicial-review-constitutionalized](http://www.iconnectblog.com/2015/06/norway-humanrights-and-judicial-review-constitutionalized)

<sup>40</sup> Reference is made here to Prop. 46 L (2017-2018) ch. 3 (Municipalities Act), Inst. 182 S (2015-2016).

<sup>41</sup> S. Stokstad, *Article 49.2, Commentary*, cit., p 491

<sup>42</sup> Supreme Court, ruling 6 June 2023, HR-2023-1044-A (case no. 22-053284SIV-HRET).

<sup>43</sup> Considering that "Article 1-4a of the Disputes Act cannot be understood as an exhaustive regulation of municipalities' access to legal action against the State in public law matters. In that case, it is clear that the rules of the Disputes Act are in conflict with the charter, as Article 11 is not limited to the cases listed in Article 1-4a".

<sup>44</sup> Supreme Court, HR-2023-1044-A, para. 54: "As regards the relationship to obligations under international law, the Dispute Act will prevail in the event of a conflict return for such obligations, cf. Disputes Act § 1-2. This does not come to the fore in this case. Although the European Charter on Local Self-Government in Article 11 presupposes access to judicial review to ensure such self-government, I cannot see that the Charter provides grounds for interpreting away the general requirements of legal interest, cf. Prp. 64 L (2016–2017)" page 22.

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

70. 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.

71. In Norway, the principle of local democracy is guaranteed under the Norwegian Constitution. In 2016, a new paragraph 2 was added to Article 49 of the Constitution, stating that: "The citizens have the right to govern local affairs through local democratically elected bodies. Specific provisions regarding the local democratically elected level shall be laid down by law".

72. As KS pointed out during the meeting with the delegation, the legal significance the constitutional provision will have in Norwegian law, and how the content of the provision should be understood in more detail, has not been clarified in case law. There is a very limited number of cases before the courts where this problem comes to the fore.

73. As for the legislation, in 2018, the self-government of the municipalities and counties received a clearer legal anchoring in the new Local Government Act. It became statutory law that municipalities and county authorities have their own elected leadership, are their own legal subjects that restrictions on self-government must be based on law and that self-government is negatively limited, i.e., that self-government has the right of initiative and can take on tasks that have not been given to others by law.

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

### 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

75. The main question that must be addressed under this heading is whether, in the present situation, Norwegian local authorities 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.

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

77. In Norway, according to the OECD data,<sup>45</sup> subnational governments accounted for a third of general government expenditure in 2020, and for 18.6% of GDP. Subnational governments are also a major

<sup>45</sup> <https://www.sng-wofi.org/country-profiles>

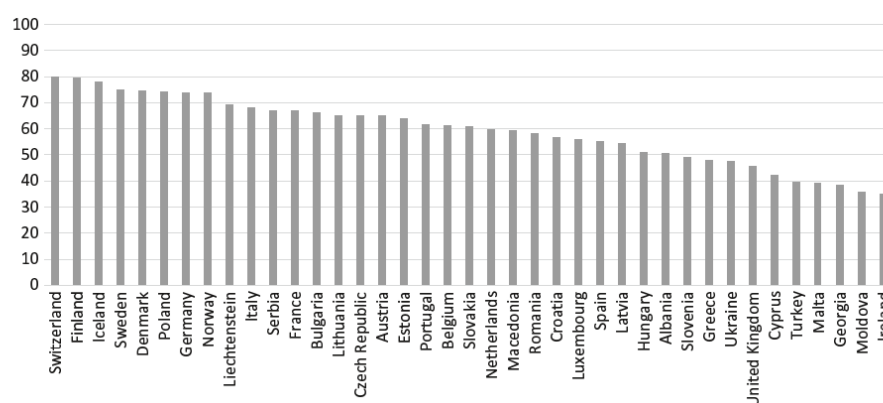


employer, since the municipalities and counties are responsible for more than half of public staff expenditure, and staff expenditure representing half of total subnational government expenditure, one of the highest shares among OECD.

78. Following the Nordic tradition, the local public sector in Norway is a major provider of welfare services,<sup>46</sup> which explains why education, health and social sectors account for the bulk of subnational government expenditure. The most important budget item is social protection, which accounted for 5.1% of GDP (a level well above the OECD average of 2.2% of GDP) and almost 29% of subnational government expenditure (also well above the OECD average of 14.1%). As far as education is concerned, Norway is in line with the OECD average both as a share of GDP (3.9% of GDP in the OECD in 2019) and as a share of subnational government spending (24.3%). Despite the fact that hospitals are under central government, health is an important subnational expenditure sector, accounting for 2.4% of GDP and 13.7% of subnational government expenditure. Subnational governments are responsible for more than 27% of the general government expenditure in this area. Finally, subnational governments are active in economic affairs and transport, especially since they hold the responsibility of local roads maintenance, however, it remains a smaller share in subnational government spending relative to the OECD average (13.6% in 2019) and as a share of the GDP (2.2%).

79. At factual level, we could mention the Local autonomy Index (LAI) countyranking 2014, considering Norway in the top group among European countries.

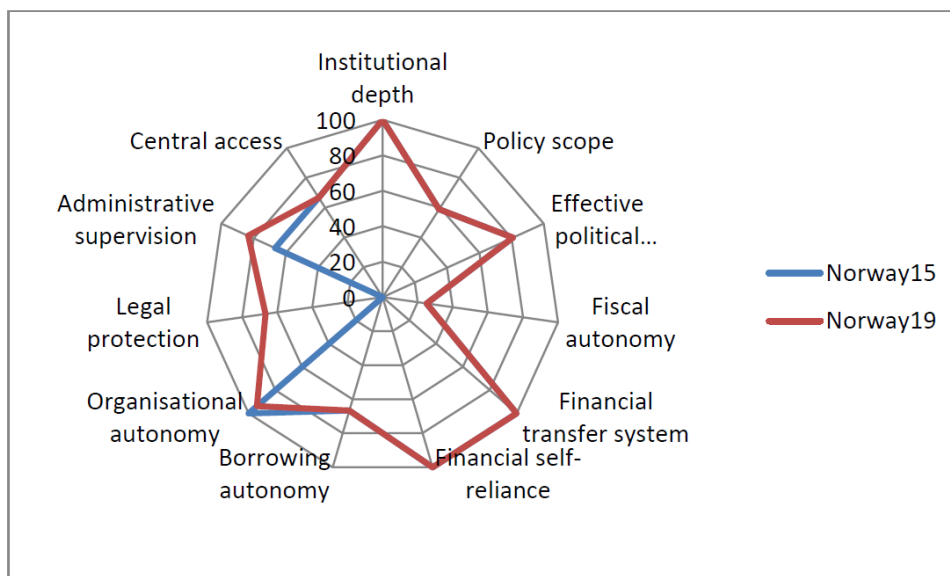
#### Local autonomy Index (LAI) countyranking 2014



Source: Ladner/Keuffer/Baldersheim/Hlepas/Swianiewicz/Navarro, *Patterns of Local Autonomy in Europe*, 2019, New York, Palgrave MacMillan, p. 236

80. This position has been strengthened by the constitutional and legislative reform.

46 H. Baldersheim, L. E. Rose, *Norway*, cit., p. 141.



Norway: Scores on indicators 2015 and 2019.

Source: *Local Autonomy in the Nordic Countries. A report for the Norwegian Association of Local and Regional Authorities*, Universitetet i Agder, 2019 <https://www.ks.no/fagomrader/demokrati-og-styring/lokaldemokrati/det-lokale-selvstyre-er-styrket/> p. 82

81. Within their competences, local authorities have regulatory power. According to Article 37 of the Public Administration Act, there is no general requirement that the municipalities must draw up and make available a justification for a regulatory decision, but the Public Administration Act requires the municipality to ensure that the matter is "as well informed as possible before a decision is made".

82. Therefore, the rapporteurs conclude that Norway complies with Article 3, paragraph 1 of the Charter.

### 3.2.2 Article 3.2

83. 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.

84. In Norway, municipalities are governed by a council which is elected by the local citizens every 4 years in fair and free elections. Executive bodies are elected by the council and are accountable to the council. Norway, as other Nordic countries, is at the very top of several democracy indices, thanks to high scores on electoral process and pluralism, political culture and political participation.<sup>47</sup> Voter turnout increased significantly in the 2019 local elections, with the largest increase among young people. Surveys show that citizens prefer elected representatives in their own municipal councils as a channel to promote their interests.<sup>48</sup>

85. Therefore, the rapporteurs consider that Article 3, paragraph 2 is respected in Norway.

## 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.

<sup>47</sup> Local Government in the Nordic and Baltic Countries. An Overview (2020), cit., p. 52 ff.

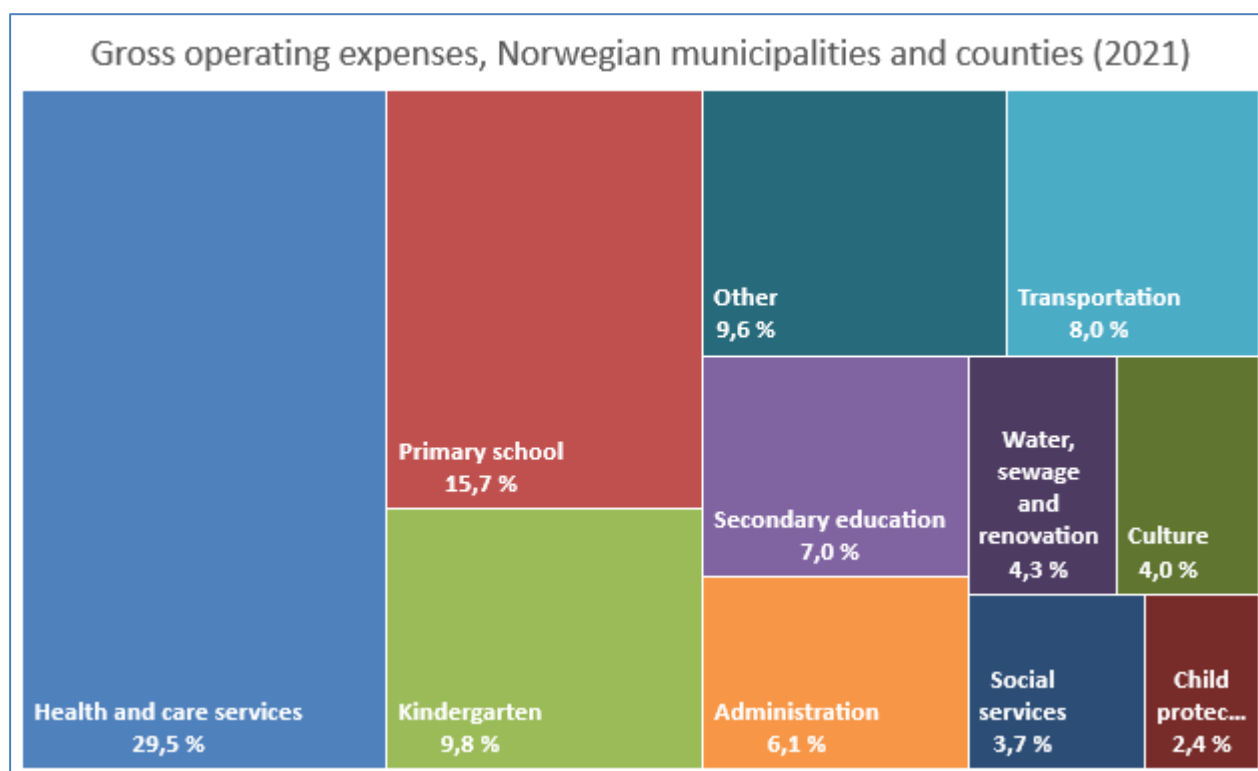
<sup>48</sup> <https://dfo.no/om-dfo/instruks-tidelingsbrev-og-arsrapport/dfos-arsrapport-2021>

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

86. 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.<sup>49</sup>

87. In Norway, the municipalities and counties' competences are set out in a range of sectoral legislation. They include, as said above, preschool child day-care facilities and child welfare services, primary and lower secondary schools, primary health care, care for the elderly and disabled, financial support for welfare clients, church maintenance and cultural affairs (public libraries, etc.), fire protection, municipal roads and harbors, water supply and sewage services, garbage collection and disposal, local land use planning and environmental issues, upper secondary schools, dental services, county roads and public transport, county land use planning, regional development.



Source: Technical Calculation Committee for Municipal and County Economics (Nov. 2022) at <https://www.regjeringen.no/no/dokumenter/rapport-fra-det-tekniske-beregningsutvalg-for-kommunal-og-fylkeskommunal-okonomi-november-2022/id2948377/>

88. Therefore, it appears to the rapporteurs that Article 4, paragraph 1, is respected in Norway.

<sup>49</sup> 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.

### 3.3.2 Article 4.2

89. 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.<sup>50</sup>

90. In Norway, the Local Government Act confirmed the traditional position of Norwegian local government: municipalities may take on any functions not undertaken by other public bodies (in practice State bodies or county councils); this is also a long-standing historical tradition. In addition, a series of special acts makes specific functions mandatory for local government, e.g., education, kindergartens, land use planning, etc.

91. However, in 2021, the Supreme Court dealt with the question of whether Trondheim municipality could limit the use of electric scooters, based on the municipality's property rights.<sup>51</sup> The municipality wished to achieve this by requiring that rental companies that wished to rent out electric scooters on the municipality's property must participate in a tender to be able to put out electric scooters on the municipality's property. The municipality was the owner of the majority of Trondheim city centre. In this way, the municipality wanted to regulate the scope and use of the rental of electric scooters. The Supreme Court came to the conclusion that such use of property rights according to Article 113 of the Constitution was an "intervention" that required legal authority. The Parliament adopted a law that gave such specific authority in June 2021.<sup>52</sup>

92. During the meetings, the question was raised as to whether, and also which, limitations apply to the municipality's right to use property rights to promote political or socially beneficial purposes; a question which could be answered only by future case-law.

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

### 3.3.3 Article 4.3

94. 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”.

95. In Norway, the principle of subsidiarity is entrenched in Article 2-2 of the Local Government Act, according to which “Public duties should preferably be assigned to the administrative level closest to the inhabitants”.

96. Therefore, the rapporteurs consider that Article 4 paragraph 3 of the Charter is respected in Norway.

### 3.3.4 Article 4.4

97. 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.<sup>53</sup>

98. In Norway, local authorities are responsible for most of the social services, in a system where central government (and Parliament) has the overall responsibility for an equal and sufficient distribution of services all over the territory. In combination with their important share of overall public spending and their general dependence of the transfer of State money, this inevitably creates a level of tension between the ideal of local self-government and the real freedom of choice enjoyed by the municipalities.

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50 Contemporary Commentary, para 59.

51 Supreme Court, ruling HR-2021-2510-A (case n. 21-093372SIV-HRET).

52 <https://lovdata.no/dokument/NL/lov/2021-06-18-139>

53 Contemporary Commentary, para 66-67.

99. The increase in statutory provisions of individual rights results, according to many researchers, in disproportionately large restrictions on the municipalities' scope of action. In addition, particularly in the areas of welfare, there are tendencies towards more detailed management through, among other things, requirements in law and regulations relating to procedures, documentation, competence and staffing standards. A 2015 report from the Norwegian Directorate of Public Administration (DIFI) illustrates the growing complexity of State regulation of local government. The report covers just three policy fields (education, health and caring, and environmental protection). In the three fields combined, local government operations were in 2015 regulated through 22 different acts of Parliament filled out by 102 government directives. On top of that, 29 handbooks were issued to guide local personnel in the performance of their daily duties.<sup>54</sup>

100. KS provided several examples in the Education Act, the Health and Care Services Act, the Child Protection Act etc. From 2017 there is a requirement for specialization in general medicine for newly appointed doctors in the municipal health and care service and from 2018 new competence requirements apply to emergency doctors. From 2014, new competence requirements have been introduced for teaching certain subjects (Norwegian, mathematics, English and Sami) in basic education. From 2018, the pedagogic norm has been tightened (by regulation) in kindergarten. From a maximum of 18 children over the age of three per educational leader, to a maximum of 14 children. For children under the age of three, there must be a maximum of seven children per educational leader, compared to the current nine children.

101. Rapporteurs consider that the protection of rights of the citizens is an important and unavoidable task of the public sector. However, this cannot automatically imply a detailed and dense regulation, that does not leave discretion to the local authorities, also translating into pervasive standard for supervision.

102. Therefore, the rapporteurs consider that Article 4, paragraph 4, is partially respected in Norway.

### 3.3.5 Article 4.5

103. 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.<sup>55</sup>

104. 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.

105. Therefore, the rapporteurs consider Article 4, paragraph 5 is respected in Norway.

### 3.3.6 Article 4.6

106. 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".

107. 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

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54 Local Autonomy in the Nordic Countries. A report for the Norwegian Association of Local and Regional Authorities, Universitetet i Agder, April 11, 2019 <https://www.ks.no/fagomrader/demokrati-og-styring/lokaldemokrati/det-lokale-selvstyre-er-styrket/>, quoting DIFI (2015) *Statlig styring av kommunene En kartlegging av virkemiddelbruk og utviklingstrekk på tre sektorer i perioden 1999–2015*, DIFI-rapport 2015-19.

55 Contemporary Commentary, para 71.

(c) local authorities should have the time and ability to prepare recommendations or alternative drafts and submit them for consideration.<sup>56</sup>

108. In Norway, consultation with KS is an integral part of the local self-government system.

109. As pointed out by KS in the written answers to the rapporteurs, the consultation scheme between the government and KS is a formalised arena for dialogue and collaboration on frameworks and goal achievement for the local government sector. The meetings involve stakeholders from top political levels from both parties.

110. As see above, KS and the government have a formalised consultation scheme for dialogue and cooperation. This includes high-level meetings, bilateral cooperation agreements and KS involvement in cost estimations. The main meetings include one in the spring before the Ministry of Local Government, the Ministry of Finance and KS consult on next year's budgetary framework for municipalities; another with all relevant ministries before the revised national budget and annual local government bill; and another series of meetings in the autumn with relevant ministries. A 30-page guide sets out procedures for these meetings and for involvement of KS in cost estimations, legislative enquiries, etc.<sup>57</sup>

111. The Parliament does not have such procedures. However, the delegation was informed that when the committees arrange public hearings, KS normally has the opportunity to be present.

112. Therefore, the rapporteurs consider Article 4, paragraph 6, is complied with in Norway.

### 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.

113. This article requires that local communities should be consulted in case of changes of local authorities' boundaries. It is therefore a mandatory procedural requirement that no change in local boundaries may be adopted without consultation, which must take place at a timely stage before a final decision on the matter is made. Consequently, a boundary change carried out without consulting the local community would be in breach of Article 5.<sup>58</sup>

114. In Norway, the Local Government Boundaries Act<sup>59</sup> establishes that the Parliament decides on the merger of the counties, while the government decides on the merger of municipalities, among other things. Article 9 establishes that, "Before a decision is made on boundary changes or boundary fixing, the municipalities or county municipalities concerned must be allowed to express themselves. In matters of amalgamation or division, the municipal council or the county council itself must give its opinion".

115. As for citizen consultations prior to any boundary change, Article 10 establishes: "The municipal council should seek the views of the inhabitants on proposals for any boundary change. Such consultation may take the form of a referendum, opinion poll, questionnaire, meeting or be conducted in another manner".

116. Thus, the municipal council or county council may itself decide to hold consultation and in which form. At first sight, the Act only explicitly refers to municipal councils, raising doubts about the consultation of the population by the county councils. During the consultation procedure, the Ministry of Local Government and Regional development however clarified that even though county councils are not mentioned explicitly in the Act, it is stated in the preparatory work that the county councils also may decide to hold consultations and in which form.

117. Finally, the referendum emerges as one tool among many others, on equal terms with opinion polls. The Local Government Act stipulates in Article 12-2 that the municipal council or the county council itself

56 Contemporary Commentary, para 80.

57 Local Government in the Nordic and Baltic Countries. An Overview (2020), cit., p. 55.

58 Contemporary Commentary, para. 90.

59 LOV-2001-06-15-70 Lov om fastsetjing og endring av kommune- og fylkesgrenser (inndelingslova) [Local Government Boundaries Act ], <https://lovdata.no/dokument/NL/lov/2001-06-15-70#:~:text=Departementet%20kan%20fastsetje%20at%20endring,etter%20andre%20ledd%20bokstav%20b.>

may decide to hold advisory referendums on proposals that concern the business of the municipality or the county authority, respectively. There are no legal procedures on the conduct of local referendums. In a comparative perspective, Norway was identified among the 'weak' states in regard to procedures of direct democracy.<sup>60</sup>

118. As examined above, the amalgamation process of municipalities and counties was an important aspect of the territorial reform undertaken by the government in Norway since 2013 elections. The process was mainly based on voluntariness and incentives. However, it happens that there has been a somewhat demanding situation with the compulsory amalgamation of some municipalities and counties.<sup>61</sup> Five counties were subjected to enforced mergers: Østfold, Akershus, and Buskerud into the new county 'Viken', and Troms and Finnmark into the new county 'Troms and Finnmark'. Although there was local opposition in Østfold, Akershus, and Buskerud to their absorption into Viken, the opposition was much stronger in Troms, and even more so in Finnmark. The county administration in Finnmark refused to participate in formal negotiation talks about the merger and passed multiple resolutions in the county parliament opposing the merger. The Finnmark administration also organised a 'referendum' on the merger in May 2018.<sup>62</sup>

119. The Ministry of Local Government and Modernization very clearly recommended that municipalities choose citizen surveys to fulfil this requirement.<sup>63</sup> Moreover, while the Ministry paid a commercial polling organization to develop a template questionnaire for local opinion polls, no template or guidance materials on referendums were offered. The Ministry contended that opinion polls yield a more detailed picture of public opinion and thereby a more nuanced basis for decision-making, as compared to local referendums. Even so, many municipalities chose referendums as an instrument for consultation, instead of, or in addition to, a citizen survey: 61 percent of the municipalities that held a referendum had carried out a citizen survey first. Scholars pointed out that, when examining 156 positive decisions to merge, 81 decisions (52 %) were carried out without holding a referendum.<sup>64</sup>

120. Local governments were allowed to formulate questions and design ballots at their own discretion. Consequently, the questions put to vote and the available answers were worded very differently across the 221 referendums.

121. Following the local referendums on municipal mergers in 2016, a larger survey of local referendums was carried out. Here it was found that the vast majority of referendums were carried out in a good manner, but there were challenges associated notably with matters related to the design of questions and alternatives on the ballot paper.<sup>65</sup> During the consultation procedure, the Ministry of Local Government and Regional development also pointed out that after the wave of local referendums in 2016, it had published guidance on local advisory referendums with recommendations on the municipalities' conduct of referendums and suggested using the Election Act as a basis for the conduct of local referendums as far as possible.

122. During the monitoring visit, the delegation was informed by the Ministry of Local Government and Regional Development that recently the government has been working on a proposal, aimed at amending the Boundaries Act, to give the Ministry special permission to carry out citizen consultations, including referendums, in cases where the Ministry has taken the initiative to boundary change.<sup>66</sup> Once the proposal approved by Parliament, the government will start the process to hold a referendum regarding the division of Kristiansand municipality (amalgamated by the previous government with Søgne and Songdalen).

123. The rapporteurs appreciate the initiative of the government; however, they encourage Norwegian authorities to reconsider the full issue of the consultation of local communities in the changes of local authorities' boundaries.

60 T. Schiller, Theo (ed), *Local Direct Democracy in Europe*, VS Verlag für Sozialwissenschaften, 2011, p. 19.

61 I. V. Signy, A. L. Fimreite, K. Houlberg, *Why such a different choice of tools? Analysing recent local government reforms in Denmark and Norway*, cit.

62 J. Stein, T. Saghaug Broderstad, H. Bjørnå, *Territorial reforms, mobilisation, and political trust: a case study from Norway*, cit., pp. 9-10.

63 <https://www.regjeringen.no/no/dokumentarkiv/regjeringen-solberg/aktuelt-regjeringen-solberg/kmd/pressemeldinger/2015/nytt-verktoy-for-horing-av-innbyggerne-i-kommunereformen/id2397356/>

64 B. Folkestad, J. Erling Klausen, J. Saglie, S. Bock Seggaard, *When do consultative referendums improve democracy? Evidence from local referendums in Norway*, in *International Political Science Review*, 2019, 2:42, pp. 149-163.

65 <https://www.regjeringen.no/no/dokumenter/veileder-om-lokale-radgivende-folkeavstemninger/id2704267/>

66 <https://www.regjeringen.no/no/aktuelt/foreslar-lovendring-for-a-hoyre-innbyggjarane/id2965249/>

124. Therefore, they consider that the requirements of Article 5 are not fully satisfied in Norway.

### 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.

#### 3.5.1 Article 6.1

125. 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.

126. In Norway, the municipalities are free to define their administrative structures, the status of their staff and the arrangements for their training and remuneration. The municipality or county may, furthermore, decide elements of the electoral system (e.g. whether to have elections over one or two days or the number of council seats within certain limits). Municipalities and county authorities may hire own staff, decide organisational structure, fix salaries, may establish legal entities/enterprises. Organisational autonomy was substantially augmented with the revision of local government legislation of 1992 and following years.<sup>67</sup>

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

#### 3.5.2 Article 6.2

128. 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.<sup>68</sup>

129. Basically, the municipalities and counties have a large degree of control over employees, but this is reduced through competence requirements and staffing standards, e.g., by not being able to move resources between businesses and sectors. During the meetings, KS noted that State rules of rights and obligations, including staffing standards and competence requirements, reduce self-government. Staffing norms at unit level (and not at municipality level) limit the municipalities' flexibility and scope for targeting resources between e.g., various schools within the municipality.

130. KS also pointed out that access to qualified personnel is increasingly a limiting factor. Lack of personnel and/or expertise is one of the major challenges facing the Norwegian municipal sector. This is already, and will become, an ever-increasing challenge in both the short and long term.

131. 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 counties, risking undermining the level of social services to citizens.

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

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

#### Article 7

<sup>67</sup> H. Baldersheim, K. Houlberg, A. Lidström, E.-M. Hlynisdottir, P. Kettunen, *Local Autonomy in the Nordic Countries. A report for the Norwegian Association of Local and Regional Authorities*, cit., p. 80.

<sup>68</sup> Contemporary Commentary, para 104.



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

133. 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.<sup>69</sup>

134. In Norway, 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 first alternate member from the same list in the numerical order they were elected as alternates.

135. Norwegian legislation provides for the free exercise of the functions of local elected representatives.

136. During the monitoring visit, the delegation was informed of the growing tendency for hate speech and attacks on local elected representatives. In the written answers to the rapporteurs, KS pointed out that a survey from 2021 (C-REX) shows that just over half of all local politicians have been exposed to at least one unpleasant inquiry during their time as elected politician; that is, threats, hate speech or harassing inquiries. Younger politicians experience this to a greater extent than older ones.

137. Among those who have been exposed to unpleasant inquiries, approximately one in four say that they have considered leaving politics, while 6% have decided to do so. The incidents have major consequences for many of those affected, be it in the form of self-restriction or self-censorship, or that they have failed to engage or speak out in a specific case or field. For many, one in four, it has also led to reduced social activities, the same proportion tells of reduced use of social media, and for some also reduced personal security.

138. A survey from 2020 shows that there are very few cases in the legal system that deal with hate speech or threats against local elected officials. They also have no special legal protection by virtue of being local elected officials.<sup>70</sup>

139. The Ministry has made guidance for politicians and candidates on how to prepare for and how to handle such experiences.<sup>71</sup>

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

### 3.6.2 Article 7.2

141. 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.

142. In Norway, all municipal councils and county councils must adopt regulations for remuneration. Anyone who holds a municipal or county position of trust is entitled to transport, board and accommodation allowance for travel in connection with the position. The municipal board or the county council itself issues regulations on such compensation.

143. The Local Government Act states that elected representative shall receive remunerations for their work. Several of these provisions are aimed at elected officials who have the position of trust as their

<sup>69</sup> Contemporary Commentary, para 107.

<sup>70</sup> Source: Ipsos 2020 commissioned by KS.

<sup>71</sup> The guide is available at [www.hatogtrusler.no](http://www.hatogtrusler.no) [in Norwegian].

main occupation, e.g., Mayor. The municipal council and county authority council itself passes regulations that determine the amount for the different representatives. The representatives shall also have their expenses for travelling, board and lodging reimbursed and receive compensation for any lost income covered. In addition, the municipalities and county authorities shall ensure that elected representatives receive social benefits.

144. The rapporteurs consider that Article 7, paragraph 2 is respected in Norway.

### 3.6.3 Article 7.3

145. 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.

146. In Norway, the incompatibilities are determined by several legal provisions, in Article 7 of Local Government Act. No issues have been raised during the monitoring visit.

147. Therefore, the rapporteurs consider that Article 7, paragraph 3 is complied with in Norway.

## 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.

### 3.7.1 Article 8.1

148. 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.<sup>72</sup>

149. In line with the requirements of the Charter, in Norway the rules governing the supervision over local authorities and the powers of the central authorities concerned are determined by the legislation, in Part VIII of the Local Government Act.

150. Therefore, the rapporteurs consider that Article 8, paragraph 1 of the Charter is respected in Norway.

### 3.7.2 Article 8.2

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

152. In Norway, formally, since 2001 supervision aims at controlling only the legality of municipal decisions and service provision. During the consultation procedure, the Ministry of Local Government and Regional development pointed out that municipalities and county authorities’ tasks are rarely

<sup>72</sup> 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).

delegated. Mostly, they are prescribed in special law and the state has no general authority to review and overturn individual decisions made by them. The Ministry also added that it had recently proposed amendments in several special laws to eliminate most of the remaining instances where the municipality and county authorities' tasks and responsibilities are based on delegation.

153. In addition, as seen above, the new Local Government Act, in 2018, strengthened municipalities and county councils' rights in State supervision, including the right to appeal against decisions and an order to turn over information.

154. It should be noted that, in accordance with Chapter VI of the Public Administration Act, Norwegian State bodies can act as appellate instances for individual decisions made by municipalities or county authorities. Second paragraph of Article 34, of this Act was also amended. When a State body is the appellate instance for a decision made by a municipality or county authority, the appellate instance shall now attach *great* weight to the interests of local self-government when trying discretionary issues. Previously they only attached "weight". It was also introduced an obligation for the appellate instance to describe how they have evaluated the interests of local self-government in their decision. KS considers this amendment positive, although overall it is not in favour of the existence of a provision in Norwegian law which entitles the state to review the municipalities' free discretion.

155. The obligation to justify the authority of objection was also strengthened in the Planning and Building Act, so that objections must be justified in adopted policy and whether national or significant regional interest is actually affected.

156. Notwithstanding those important legal changes, in practice supervision in Norway remains extremely detailed and extensive; researchers have argued that the concept of legality had been stretched through expressions in legal texts such as "municipal duty to provide adequate/appropriate/proper...etc. services", which leave the judgement of local services to the evolving norms of professionals.<sup>73</sup>

157. KS pointed out, in the meeting with the delegation and in its written answers, that there is a fairly widespread attitude and partly a culture, both at political and administrative level, that municipalities are only an implementation body for tasks desired by the State, and that there is thus no actual acceptance of a view that municipalities are own independent legal subjects with their own elected leadership and a separate mandate also from the residents of the municipality. This vision is at the origin of several cases where the county governor overrules the municipality's discretion. KS regrets that it is still the case under Norwegian law that the State can set aside municipal decisions based on an assessment of appropriateness.

158. During the consultation procedure, the Ministry argued that in those cases the governor acted in individual cases as an appellate body while the right to appeal over individual decisions represents a legal safeguard for individuals, as another fundamental value. In this respect, the rapporteurs are of the opinion that the possibility for the state to overturn individual municipal decisions, where municipalities have made a choice between two legal alternatives, appears problematic in terms of risks it may pose to local autonomy.

159. Although usually a fair and collaborative relationship between the county governor and local authorities does exist, as it was pointed out during the meeting with the governor of the county of Nordland, the very notion of "national interest" remains vague. Sometime this "grey zone" originates tensions, as in the case of local development projects impacting on reindeer husbandry, which is considered as national interest in Norway.

160. Therefore, the rapporteurs consider that Article 8, paragraph 2, of the Charter is partially respected in Norway.

### 3.7.3 Article 8.3

161. 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

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<sup>73</sup> H. Baldersheim, K. Houlberg, A. Lidström, E.-M. Hlynsdóttir, P. Kettunen, *Local Autonomy in the Nordic Countries. A report for the Norwegian Association of Local and Regional Authorities*, cit., 80.

of the public interest at stake, or the seriousness of the legal violation allegedly committed by the local authority.<sup>74</sup>

162. In Norway, as see above, the State can supervise that municipalities and county councils comply with imposed duties.

163. KS pointed out that there is basically an uneven balance of power, in some significant cases, when the county governor supervises individual municipalities. The county governor invests a considerable number of resources in these inspections, while the municipalities do not have similar resources with which to meet the supervisory authority. In addition, there is little culture in the municipality to ask critical questions to the supervisory authorities, who are thus left with the power of definition.

164. Despite the new provisions in the Local Government Act, on the promotion and protection of local self-government, KS considered that a lack of understanding of self-government and the rules on relationships between national and local authorities continues to have an impact on State management of municipalities and county councils. It still seems that when national interest is at stake, it automatically prevails over self-government, whereas according to the statutory principles, national interest should be weighed against self-government interest, specifically in the individual law and in the individual case.

165. Therefore, the rapporteurs consider that Article 8, paragraph 3, of the Charter is partially respected in Norway.

### 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.
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

166. 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.<sup>75</sup> 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.

<sup>74</sup> Contemporary Commentary, para 139.

<sup>75</sup> Contemporary Commentary, para 141.

167. This paragraph is respected in Norway. The financial resources are adequate, a relevant part comes from local taxes and the municipalities may decide their allocation. Public finances are strong, both at the central government and in the municipal sector.

168. According to the information provided by the Ministry of Finance to the rapporteurs, net operating results for the local sector (municipalities and county authorities) has been strong for many years, and above the recommendation set by the Statistical Reports Committee for county and municipal government finance (TBU).<sup>76</sup> For several years, the local sector has had stronger growth in free revenues (non-earmarked revenues) than predicted in the presented budgets. This is mainly due to higher than projected tax income, and lower growth in pension and demographic costs than expected. This has led to high net operating results in the local sector over a long period of time. As a result, the municipal local has been able to increase their savings in free operating equity (non-earmarked operating equity). The municipalities and county authorities can freely use the funds to finance operating or investment expenses. It is not a goal that the funds should increase over time.

169. In the meetings and in the written answers to the rapporteurs, KS considered that, although it is always possible to do better, looking at the big picture, the income level is at a reasonably acceptable level. The municipal sector has been annually compensated over the last 10–20-year period for increased costs as a result of changes in population, wage and price growth and growth in pension costs beyond wage growth.

170. Therefore, the rapporteurs consider that Article 9, paragraph 1 is respected in Norway.

### 3.8.2 Article 9.2

171. 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.<sup>77</sup>

172. 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, but by now the Norwegian financing scheme is well functioning, giving the municipalities and county authorities the possibility to provide an equal range of services to their citizens.

173. The rapporteurs consider that Article 9, paragraph 2 is respected in Norway.

### 3.8.3 Article 9.3

174. 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.

175. In Norway, taxation accounts for 36.2% of subnational government revenue according to the OECD data.<sup>78</sup> Income tax is the main source of tax revenue. In 2020, the national rate was 22 per cent, with percentage point shares of 11.10 for municipalities and 2.45 for counties. A wealth tax of 0.7 per cent (for amounts over NOK 1.5 million) also accrues to municipalities. These maximum rates are set annually by Parliament. Local authorities can in principle choose a lower rate, but this hardly ever happens because the government then reduces grants by the corresponding amount. The reason is that

<sup>76</sup> It is the task of the committee to submit bi-annual reports containing a compilation of statistics concerning the economic development of the local government sector. See <https://www.regjeringen.no/en/dep/kdd/organisation/styrer-rad-og-utvalg/The-Statistical-Reports-Committee-for-county-and-municipal-government-finance/id449207/>

<sup>77</sup> Contemporary Commentary, para 150.

<sup>78</sup> <https://www.sng-wofi.org/country-profiles>

financial equalisation (see below) depends on actual tax revenues. Municipalities may also levy local taxes on property and natural resources.<sup>79</sup>

176. During the meeting with the delegation and in its written answers, KS pointed out that municipalities and county councils have limited opportunities to influence their own income through taxation. Municipalities can influence to a small extent and the county municipalities almost not at all. The municipalities' opportunity to influence their own income is through the property tax, but the framework for this has been narrowed in later years. The property tax is the only form of financing in which the individual municipality has complete control, and which does not have consequences for other parts of the transfers to the municipalities. Restrictions have been introduced on two occasions on the municipalities' ability to collect property tax on housing and leisure property. From 2020, the maximum tax level was lowered from 7 to 5 %. In 2021, the maximum tax level was reduced from 5 to 4%. Restrictions on the right to collect property tax on other objects have also been adopted. It can thus be pointed out that the municipalities' room for action in their role as local taxation authority is somewhat reduced.

177. The rapporteurs consider that Article 9, paragraph 3, is respected in Norway.

#### 3.8.4 Article 9.4

178. 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.

179. In Norway, 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.

180. The rapporteurs consider that Article 9, paragraph 4 is respected in Norway.

#### 3.8.5 Article 9.5

181. 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.

182. Equal service offers to all residents, regardless of which municipality one lives in, is a fundamental prerequisite in Norwegian society. In the revenue system for the municipalities, this principle is safeguarded through two redistribution schemes which are fully financed by the municipalities themselves.

183. Through tax equalisation, municipalities with high tax revenues from tax own income and wealth must transfer part of their revenues to municipalities with low tax revenues.

184. In the equalisation of expenditure, each municipality calculates their need based on the composition of inhabitants the municipality has, both in relation to age composition and certain socio-economic characteristics. In addition, the municipality's geography is also emphasised. The municipalities that have needs per inhabitant above the national average receive an addition to their framework grant. This is financed in its entirety through corresponding reduction in the framework grant from municipalities with lower needs than the national average.

185. As pointed out by the written answers of KS to the rapporteurs, the equalisation mechanism is transparent but can be experienced as complicated. It works efficiently, thus there is little need for discretionary funds to compensate for conditions that are not captured through the fixed part of the income system.

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<sup>79</sup> Local Government in the Nordic and Baltic Countries. An Overview (2020), cit., p. 58.

<sup>79</sup> <https://dfo.no/om-dfo/instruks-tidelingsbrev-og-arsrapport/dfos-arsrapport-2021>, p. 58.

186. KS also noted that at regular intervals, an expert committee is set up with representatives from municipalities/county councils, the State and academia, for a comprehensive review of the income system. In addition, it should be emphasized that the part of the system that ensures equal services, the equalisation of expenses, is a mechanism that is recognised as a subject and economics assessment, and to a very small extent is made the subject of political assessments and priorities. Further, this has been important for and a contributing factor to the income system having a high level of legitimacy.

187. The rapporteurs consider that Article 9, paragraph 5, is respected in Norway.

### 3.8.6 Article 9.6

188. 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.<sup>80</sup>

189. Consultation is an integral part of local government in Norway, as said above.

190. There are regular consultations between the government and the municipal sector about the local authorities' finances in the State budget. KS meets the government on behalf of the municipal sector. The main purpose of the consultation scheme is to reach agreement on the local authorities' income. Another objective of the scheme is to reduce the use of strong State management tools by establishing agreement on priorities related to the local authorities' resources. The consultation framework has contributed to better relationships between KS and the State, and to a common understanding of the needs of the local sector.

191. The rapporteurs consider that Article 9, paragraph 6 is respected in Norway.

### 3.8.7 Article 9.7

192. 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".

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

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

### 3.8.8 Article 9.8

195. 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.<sup>81</sup>

196. In Norway, local authorities can take out loans, and legislation establishes certain requirements for responsibility. Article 14-14 to 14-17 of the Local Government Act regulates the purposes for which

<sup>80</sup> Contemporary Commentary, para 173.

<sup>81</sup> Contemporary Commentary, para 182-183.

municipalities are allowed to take out loans. Borrowing can only finance investments in buildings, facilities and assets with lasting value. When a municipality decides to take out a loan, the decision must state how the loan is to be paid.

197. Therefore, the rapporteurs consider that Article 9, paragraph 8 is complied with in Norway.

### 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

198. 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.

199. 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.

200. In Norway, Article 17 of the Local Government Act of 2018 allows for and specifies intermunicipal cooperation. Article 18 to 20 regulations three of these types of cooperation. Two or more municipalities or county authorities may together establish an intermunicipal political council.<sup>82</sup> The council may deal with matters that cross municipal or county boundaries. The municipal councils and county councils themselves resolve to establish such a council. An intermunicipal political council cannot be authorised to make individual decisions. However, the council may be authorised to make such decisions on internal affairs within the cooperation and to manage grant schemes.

201. Two or more municipalities or county authorities together may further establish a municipal task community to solve common tasks. The municipal councils and county councils themselves resolve to establish a task community.

202. The Local Government Act also allows for a host municipality cooperation. This means that a municipality can entrust the performance of statutory tasks to another municipality (called the host municipality). The host municipality has the responsibility for producing the service according to the agreement made with the two municipalities. Another form of inter-municipal cooperation are the limited companies regulated by the Intermunicipal Companies Act, this is a common form of cooperation especially in case of municipal business activities.

203. Such inter-municipal and inter-regional cooperation is very common in Norway. Every municipality is involved in at least one cooperative arrangement and most municipalities are members of several cooperative arrangements. Cooperative arrangements have been particularly common in utility services such as power supply, water and sewerage and public transport. Other areas of cooperation include auditing, emergency clinics, emergency services, educational-psychological services, and child welfare.<sup>83</sup>

<sup>82</sup> Cooperation can also take the form of a municipal task community, host municipality cooperation, intermunicipal company, limited liability company or cooperative, an association or in any other way that is legally permitted.

<sup>83</sup> See the SNG-WOFI country profile on Norway available at <https://www.sng-wofi.org/country-profiles/>.



204. The municipalities have wide access to collaborate on both statutory and non-statutory tasks. There is extensive inter-municipal cooperation in Norway. All municipalities in Norway are involved in one or more collaborations. In the following service areas, there is the greatest degree of collaboration: audit, crisis centre, fire service, emergencies, child protection services and IT tasks. In these areas, the degree of cooperation varies from around 50% of the municipalities to 73% of the municipalities.<sup>84</sup>

205. Therefore, the rapporteurs consider that Article 10, paragraph 1 of the Charter is fully respected in Norway.

### 3.9.2 Article 10.2

206. 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.

207. 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).<sup>85</sup>

208. In Norway, the Norwegian Association of Local and Regional Authorities (KS) was formed in 1972 through a merger of the Union of Norwegian Cities and the Norwegian Association of Rural Municipalities.<sup>86</sup> KS represents all municipalities and counties as well as some 500 public enterprises as both an interest and employer organisation. KS employs around 260 people at its headquarters in Oslo, regional offices throughout Norway and a representative office in Brussels. All municipalities and county councils are members.

209. In the latest budget, 75 per cent of revenues are from membership fees and 25 per cent from other sources, including sales of digital solutions and legal assistance to members. KS also owns several companies that provide services to members and others, including consultancy, publishing, a weekly newspaper, training and property leasing.<sup>87</sup>

210. KS is Norway’s largest public employer organisation. All municipalities and county councils (with the exception of Oslo) have authorised KS to negotiate and enter agreements with employee organisations on salaries and other conditions. In total, KS covers about 440,000 employees.

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

### 3.9.3 Article 10.3

212. 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.

213. Norway 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) on 12 August 1980. The Outline Convention entered into force on 22 December 1981. On 18 October 2010, Norway ratified the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159), which entered into force on 19 January 2011.

214. The EU programme Interreg strengthens cooperation across national borders. Projects that promote regional development, exchange of knowledge and sustainable economic growth receive financial support from Norway through several Interreg programs.

<sup>84</sup> KMD Organisasjonsdatabasen 2020, <https://www.regjeringen.no/contentassets/dc7b75e7ad3b40e097d88b13fd330dcf/organisasjonsdatabasen-2020-sluttrapport.pdf>

<sup>85</sup> Contemporary Commentary, para 198.

<sup>86</sup> <https://www.ks.no/om-ks/ks-in-english/about-ks/>

<sup>87</sup> Local Government in the Nordic and Baltic Countries. An Overview (2020), cit., p. 55.

215. Several Norwegian counties are also members of international organisations. The largest and most important are the Conference of Peripheral Maritime Regions (CPMR) and the Baltic Sea States Sub-Regional Cooperation (BSSSC).

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

### 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.

217. 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.<sup>88</sup>

218. In Norway, as see above, in 2018 Article 1-4a in the Act relating to mediation and procedure in civil disputes (The Dispute Act) entered into force. This Article explicitly states that municipalities and county authorities in certain instances can bring an action against the State concerning the validity of decision by a State body. These decisions are for example when a State body annuls or amends a municipal decision upon or without an appeal, imposes obligations on the municipality following an audit or divides rights or obligations between municipal or county authorities.

219. If the municipality or county authority disagree with the State bodies decision, they can now bring that decision to the courts. If the courts find that the State's decision is not valid, the municipalities can also submit a claim for compensation. There are some barriers in place to protect private persons and their rights to important services in cases where there is a court case between the municipality and State about the decision in their case. There are exceptions to the right to sue in child welfare cases where the State is the appeals body.

220. Since this provision entered into force, there have been some cases in courts between municipalities and the State. They have however regarded cases and issues that fall outside the scope of Article 1-4 a.

221. The delegation was informed that the Supreme Court, on 6 June 2023,<sup>89</sup> decided the case raised by the municipality of Beiarn, regarding, among other aspects, the municipality's legal standing. The Supreme Court considered that the rule in Article 1-4 a does not exhaustively state the municipality's jurisdiction to sue, but that municipalities may also have jurisdiction to sue the State in other cases where the general conditions for legal interest is fulfilled.<sup>90</sup>

222. However, KS noted that, notwithstanding this new judicial remedy, the municipalities are not well protected against Parliament, e.g. when, as it happens often, Parliament adopts detailed legislation.

223. As pointed out by the Supreme Court in its written answers, in cases brought before the courts, the courts – with the Supreme Court in the final instance – have the power and a duty under Article 89 of the Constitution to review whether statutory provisions and administrative decisions are in accordance with the Constitution. However, Norway does not have a system of abstract constitutional review, and there is a general requirement of "relevance" before a case may be heard in court. Thus, the constitutionality of a law or a measure is only considered if the issue arises in connection with a specific case.

224. Therefore, the rapporteurs consider that Article 11 is respected in Norway.

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88 Contemporary Commentary, para 206.

89 Supreme Court, HR-2023-1044-A.

90 This interpretation of 1 1-3 was presented by S. Stokstad, *Article 49.2, Commentary*, cit., p. 494: "The relationship will then be governed by the general rule in the Disputes Act § 1-3. Both the extension of the right to legal action and the new constitutional provision could lead to a less restrictive interpretation of Article 1-3 of the Disputes Act in the future".

#### 4. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT: THE IMPACT OF THE COVID PANDEMIC AND OF UKRAINIAN REFUGEE CRISIS ON NORWEGIAN LOCAL GOVERNMENT

##### The impact of COVID pandemic

225. The value of effective multi-level governance became even more important during the Covid-19 pandemic.<sup>91</sup> Municipalities and regions were key partners of national governments for the restoration of the economy, social life, and normal democratic functions at the local and regional level after the Covid-19 pandemic.

226. In Norway, local authorities were instrumental in keeping the level of contamination low, through both implementing local measures and undertaking contact tracing and testing, as well as vaccination, in addition to ensuring that citizens were informed and taken care of.

227. At comparative level, it has been claimed that, among the Scandinavian countries, the municipalities in Norway probably experienced the greatest degree of autonomy during the pandemic.<sup>92</sup> Many municipalities in Norway implemented severe local regulations, such as, the closure of borders between municipalities and quarantining as infection control measures. The Act Relating to Communicable Disease Control (*Smittevernloven § 4-1*) gives municipalities both responsibility and authority for handling and preventing the spread of communicable diseases by means that are considered necessary. It is the county governor's (*Statsforvalter*) role to supervise and control various aspects to do with the legality of the measures.

228. KS acted as contact point and coordinator between the local and national authorities. A government inquest into Norway's handling of the Covid-19 pandemic, however, found that information to and involvement of local governments had important flaws that prevented local governments from responding satisfactorily to many pandemic challenges in the fields of care, healthcare, education, public transport and more. The government commission's report is in line with findings from a KS survey sent to all local governments regarding their assessment of their own response to the crisis.<sup>93</sup>

229. Nevertheless, the government implemented many initiatives to strengthen the municipalities' effort in their crisis management and fighting the pandemic. Among other things the government implemented provisions of information and guidance and provided trained staff to municipalities with severe outbreaks.

230. During the entire Covid-19 pandemic, the government communicated that the municipal sector would be compensated for additional expenses and loss of income incurred due to the pandemic. According to KS, "When we look at 2020– 2022 as a whole, the total compensation received by the municipal sector covered the estimated financial consequences of the pandemic. The pandemic has affected the municipalities differently, and this has led to variations between the municipalities. Therefore, a large part of the compensation was given as discretionary grant".

##### The impact of the arrival of Ukrainian refugees

231. Since the war of aggression caused by Russia in Ukraine in February 2022, Norway has received more than 59,000 asylum applications from persons fleeing the war in Ukraine. Of these 54,200 have been granted temporary protection by mid-September 2023. Norwegian municipalities have resettled more than 44,000 refugees during the same period, with more than 90% coming from the Ukraine. This is the largest number of refugees ever received by Norwegian municipalities in such a short time span, putting several municipal services under considerable pressure. The delegation was told that local willingness in receiving refugees has been formidable, considering the Norwegian system where settling refugees is a voluntary task for the municipalities. Housing and recruitment to services such as health, school and kindergarten are the biggest challenges for the municipalities.

91 A. Fosse, A. Svensson, I. Konradsen, B. Abelsen, *Tension between local, regional and national levels in Norway's handling of COVID-19*, in *Scandinavian Journal of Public Health*, 2022, 1–8, <https://journals.sagepub.com/doi/full/10.1177/14034948221075408>

92 T. Sefton, *Scandinavian Municipalities and COVID-19*, 3 July 2023, <https://nordics.info/show/artikel/scandinavian-municipalities>

93 KS, *Voluntary Subnational Review. Implementation of UN Sustainable Development Goals in the Norwegian Local and Regional Government*, 2021, p. 54 ss., <https://www.ks.no/contentassets/d01c61089c294915bc1c4be4d73ae1ff/Rapport-Voluntary-Subnational-Review-Final.pdf>

232. At the central level, Parliament passed temporary legislation in the spring of 2022 related to several laws, with the aim of easing the total burden on the local authorities in relation to receiving a large number of refugees. This includes legislation related to housing, education and care of children, health services, and the integration of adult refugees. A temporary amendment was added to the Integration Act, reducing the scope of the introduction program and Norwegian language training for refugees from the Ukraine. Also, in the spring of 2023, the government proposed certain extra grants in the revised national budget, related to the refugee situation.

## 5. CONCLUSIONS AND RECOMMENDATIONS

233. Local government represents an inherent part of the Norwegian State tradition. Norwegian democracy has found its modern form in an interaction between democratic participation at national and local level. Since the establishment of the modern local government system, in 1837, local authorities have developed a high degree of autonomy, which has enabled them to build infrastructure and expand welfare.

234. As in other Nordic countries, in the second half of the 20th century, the expansion of social welfare policies, whose implementation relies extensively on the central role played by local government, produced a tense relationship between a welfare State with strong centralist features, but at the same time with a tradition of local self-government.

235. A deeply engrained culture of consultation, mutual trust and loyal collaboration between central government and local authorities, along with a high level of wealth and prosperity has contributed to ensure a satisfactory level of local and regional democracy, as demonstrated by the extensive powers and financial resources enjoyed by counties and municipalities, which have enabled them, in turn, to exercise these powers in a satisfactory manner.

236. However, Recommendation 374 (2015) pointed out several violations of the European Charter of Local Self-Government, many of them related to the weak legal entrenchment of the principle of local self-government.

237. The co-rapporteurs note with satisfaction that, since the 2014 monitoring visit, Norway has addressed many of the issues pointed out by Recommendation 374 (2015). On 31 March 2016 the Norwegian Parliament approved a proposal to amend the Constitution, with the purpose of constitutionalizing local democracy. A new paragraph 2 was added to article 49 of the Constitution, stating that: "The citizens have the right to govern local affairs through local democratically elected bodies. Specific provisions regarding the local democratically elected level shall be laid down by law".

The proposal received broad support in the parliament *and* was adopted with 158 votes in favor and only 5 against the motion.

238. A new Local Government Act was passed in 2018, entrenching the principle of local self-government in legislation and introducing a more thorough regulation of the State supervision.

239. Another reform, aimed at addressing the lack of a judicial remedy against the State (art. 11 of the Charter), was passed in 2018, giving the municipality and the county council a far-reaching general right to take legal action against the State.

240. In this process of reform the Charter was often mentioned, both in government proposals and in parliamentary debates.

241. Despite these important positive developments, the co-rapporteurs note that there are still some aspects that can be improved.

242. First, the territorial reform undertaken by the government in Norway since the 2013 elections highlighted that the procedure of consultation of local communities in the changes of local authorities' boundaries presents relevant shortcomings. The municipal council or county council is free to decide whether to hold consultation and in which form. Finally, the referendum emerges as one tool among many others, on equal terms with opinion polls. There are no legal procedures. As a result, comparatively, Norway was classified as among the 'weak' states in regard to procedures of direct democracy.

243. This legal framework, which generated tensions in the implementation of the territorial reform, also causes problems in relation to Article 5 of the Charter. The government is fully aware of this issue, and the co-rapporteurs encourage the Norwegian authorities to reconsider the full issue of the consultation of local communities in changes of local authorities' boundaries.

244. Secondly, the degree of supervision by the government over local authorities remains too pervasive, as already pointed out by Recommendation 374 (2015), bringing to a partial respect of Article 8.2 of the Charter. Notwithstanding some legal changes, in practice supervision in Norway remains extremely detailed and extensive.

245. The pervasive supervision is also a consequence of a too dense and specific legislation, which raises some issues in relation to Article 4.4 of the Charter. The increase in statutory provisions of individual rights results in disproportionately large restrictions on the municipalities' scope of action. Particularly in the areas of welfare, there are tendencies towards more detailed management through, among other things, requirements in law and regulations relating to procedures, documentation, competence and staffing standards, which do not leave sufficient discretion to the local authorities.

246. In addition, in the last years, new challenges are emerging. Many municipalities experience demographical challenges, with an aging population and a larger share of elderly inhabitants. There are also more people with a migrant background in the population. Immigration is important for many municipalities, as it brings more people who can work and participate in the local community, but it also comes with new requirements municipalities have to deal with, such as integration tasks.

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

248. In conclusion, the rapporteurs suggest:

- a. that local self-government be further reinforced by avoiding legislation that is too dense and specific;
- b. that the procedure of consultation of local communities in the changes of local authorities' boundaries be clarified;
- c. that the scope of the State supervision over local self-government continue to be clarified so as to keep it in proportion to the interests it is intended to protect.

**APPENDIX – Programme of the Congress monitoring visit to Norway**

**MONITORING OF THE APPLICATION OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT IN NORWAY**

**Oslo, Nordland County, Bodø, Beiarn**

**22 - 25 May 2023**

**PROGRAMME**

**Congress delegation :**

Co-rapporteurs :

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Ms Carla DEJONGHE	Rapporteur on regional democracy Chamber of Regions, ILDG Member of the regional Parliament Brussels (Belgium)

Congress Secretariat :

Ms Stéphanie POIREL	Head of Statutory Activities Division Secretary of the Monitoring Committee
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Expert :

Professor Tania GROPPPI	Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress (Italy)
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Ms Sally BAILEY-RAVET and Ms Inger-Johanne BAUER (NOR/EN/FR)  
Ms Anna HERBERT DE LA PORTBARRÉ and Ms Bente RISMO (NOR/FR)

The working languages, for which interpretation is provided during the visit, will be Norwegian, English and French

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<sup>94</sup> EPP/CCE: Group of the European People's Party in the Congress  
SOC/G/PD: Socialists, Greens and Progressive Democrats Group  
ILDG: Independent Liberal and Democratic Group  
ECR: European Conservatives and Reformists Group  
NR: Member not belonging to any political group in the Congress

**Monday 22 May 2023**  
**Oslo**

**JOINT MEETING WITH THE NATIONAL DELEGATION OF NORWAY TO THE CONGRESS, NATIONAL ASSOCIATION (KS), INDEPENDENT EXPERTS AND YOUTH DELEGATE**

– **National delegation of Norway to the Congress**

**Ms Gunn Marit HELGESEN**, Member of the County Council of Vestfold og Telemark, Head of Delegation

**Ms Gry-Anette Rekanes AMUNDSEN**, Municipal Councillor of Nome

**Mr Arne BERGSVAG**, Deputy County Mayor of Rogaland

**Ms Jenny FOLLING**, Member of the County Council of Vestland fylkeskommune

**Mr Bjorn ROPSTAD**, Deputy County Mayor of Agder

**Mr Petter SORTLAND**, Mayor of Høyanger

**Mr Knut HJORTH-JOHANSEN**, Chief Adviser, Secretary to the Norwegian National Delegation

– **Norwegian Association of Local and Regional Authorities (KS)**

**Ms Gunn Marit HELGESEN**, President

– **Independent experts**

**Ms Sigrid STOKSTAD**, Alternate Member of the Group of Independent Experts

– **Youth delegate**

**Mr Simon Ingebrigt GOLOMBEK**, youth delegate

– **Other participants**

**Mr Helge EIDE**, Divisional Director of Policy Affairs

**Mr Frode LINDTVEDT**, Director of Department of Local Democracy, European Politics and International Affairs

**Mr Øyvind RENSLO**, Lawyer

**Mr Erland AAMODT**, Assistant lawyer

**Tuesday 23 May 2023**  
**Oslo**

**CITY HALL**

**Ms Marianne BORGEN**, Mayor of Oslo

**Mr James STOVE LORENTZEN**, Chair to the Standing Committee on Urban Development

**Ms Therese KLOUMANN LUNDSTEDT**, Senior Adviser, The Mayor's Office

**PARLIAMENT (STORTING)**

**Mr Svein HARBERG**, first Vice President of the Storting

**Mr Helge André NJÅSTAD**, first vice chair of the Committee on Local Government

**Ms Marianne BRÆNDEN**, Committee Secretary

**MINISTRY OF LOCAL GOVERNMENT AND REGIONAL DEVELOPMENT**

**Mr Sigbjørn GJELSVIK**, Minister

**Mr Ole Gustav NARUD**, State Secretary

**Ms Ingrid Nikoline SAND**, Political Adviser

**Ms Cathrin SÆTRE**, Director General

**Ms Siri HALVORSEN**, Deputy Director

**Mr Otto LEIRBUKT**, Deputy Director

**MINISTRY OF FINANCE**

**Mr Erlend GRIMSTAD**, State Secretary

**PARLIAMENTARY OMBUD FOR SCRUTINY OF THE PUBLIC ADMINISTRATION**

**Ms Hanne HARLEM**, the Parliamentary Ombud for Scrutiny of the Public Administration

**Mr Gustav HAVER**, Head of Division

**Ms Karoline RAKNEBERG HAUG**, Senior Advisor for Human Rights

**Wednesday 24 May 2023**

**Oslo**

**SUPREME COURT**

**Mr Aage Thor FALKANGER**, Justice

**Mr Knut Erik SAETHER**, Justice

**Thursday 25 May 2023**

**Nordland County, Bodø Municipality, Beiarn Municipality**

**MUNICIPALITY OF BODØ**

**Ms Lisa MARSHALL**, Board member (Senterpartiet)

**Ms Ann-Kristin MOLDJORD**, group leader Bodø Labor Party (Arbeiderpartiet)

**Mr Joakim SENNESVIK**, group leader Bodø Conservative Party (Høyre)

**Mr Tommy WISTH**, group leader Bodø Progress Party (FrP)

**COUNTY OF NORDLAND**

**Mr Tom Cato KARLSEN**, County Governor

**MUNICIPALITY OF BEIARN**

**Mr Andre KRISTOFFERSEN**, Mayor