

The Congress of Local and Regional Authorities



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The role of local and regional authorities in the implementation of human rights

Institutional Committee

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Summary

This report is part of the Congress' ongoing activity in the human rights field. Inter alia, it takes stock of the place of human rights in local and regional authorities, of those authorities' responsibilities in this respect, and also of the cost that the implementation of human rights may entail for a city or a region.

The report notes some good practices found in member states' local and regional authorities and makes some recommendations to member states and their authorities as well as to the Congress with a view to the effective practical implementation of human rights, which is a precondition for any democracy.

¹ L: Chamber of Local Authorities/R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: Group European People's Party - Christian Democrats of the Congress
SOC: Socialist Group of the Congress
NR: Member not belonging to any political group of the Congress



A. DRAFT RESOLUTION²

1. The Council of Europe is the authoritative pan-European organisation where it comes to protecting and promoting human rights, democracy and the rule of law.

2. Whereas it is the intergovernmental sector which is chiefly concerned by the implementation of the commitments made by member states in these areas, the principle of subsidiarity means that Europe's local and regional authorities also have a key role to play in the day-to-day application of the fundamental values of democracy and human rights.

3. Protecting and promoting human rights is a responsibility shared by all the different tiers of authority within each Council of Europe member state. Because of the close relationship between citizens and their elected representatives at this level, local and regional bodies are best placed to analyse the human rights situation, identify the relevant problems and take action to solve them.

4. The Congress points out that it is on the ground, in regions, cities and neighborhoods, as close as possible to people's everyday lives, that human rights need to be nurtured. The way in which the Council of Europe is organised, with its three distinct but complementary pillars of the Committee of Ministers, the Parliamentary Assembly and the Congress of Local and Regional Authorities, represents an unparalleled step forward for local and regional democracy, providing scope for a multi-tiered approach to human rights.

5. The powers and responsibilities of local and regional authorities are increasingly varied and complex. They take one-off or more general decisions relating in particular to education, housing, health, the environment and law and order, which are directly or indirectly connected with human rights and can affect the enjoyment of human rights by citizens.

6. In this connection, as the political assembly bringing together Europe's local and regional elected representatives, the Congress can make an invaluable contribution to the pooling of information and experience and the recording of good practices in the human rights sphere. Since there is no standard blueprint for implementing human rights at local and regional level, the Congress could create as a first step a toolkit of the methods available, which could be adapted to local circumstances.

7. The Congress is also an ideal forum in which to raise awareness about human rights issues among local and regional political leaders and government officials. The main means of prompting local and regional authorities to take responsibility for human rights is the systematic training of political leaders and the dissemination of reliable information among citizens about their rights (particularly among vulnerable groups).

² Preliminary draft resolution and preliminary draft recommendation approved by the Institutional Committee on 15 February 2010

Members of the Committee:

K. Whitmore (Chair), *R. Aguilar Rivero*, *J. Almeida Barreto*, *Z. Alimpic (alternate: D. Milovanovic)*, *M. Y. Barcina Angulo*, *P. Bosch I Codola*, *J. Brons*, *E. Calota*, *M. Catovic*, *L. Caveri*, *V. Chilikov (alternate: D. Ruseva)*, *M. Cohen*, *B. Collin-Langen*, *M. Cools (alternate)*, *C.M. Do Vale Cesar*, *S. Eichler*, *A.U. Erzen (alternate: G. Doganoglu)*, *J. Gabriels*, *B. Grasset*, *A. Gravells (alternate: N. Mermagen)*, *A. Grytsenko (alternate: T. Demchenko)*, *G. Grzelak*, *M. Guégan*, *M. Gulevskiy (alternate: V. Belikov)*, *M. Haak-Griffioen*, *A. Harutyunyan (alternate: E. Yeritsyan)*, *G. Illes*, *M. Kebo*, *W. Kelsch*, *O. Kidik*, *O. A. Kvaløy*, *I. Kulichenko (alternate: Y. Kartashov)*, *J. Landberg*, *F. Lec*, *I. Loizidou*, *J.-C. Mairal*, *Y. Mischeriakov*, *L. O. Molin*, *J. Mrazek*, *A. Muzio (alternate: F. Pellegrini)*, *C. Newbury*, *G. Pavlidis*, *H. Pihlajasaari*, *G. Pieper*, *M. Pineschi*, *G. Policinski*, *C. Radulescu*, *A. Rokofillou*, *B. Rope*, *Y. Rzyeva*, *V. Salygin*, *P. Schowtka*, *D. Shakespeare*, *V. Storm Rasmussen*, *A. Turku*, *S. Ugrehelidze*, *H. Van Staa*, *M. Varnavskiy*, *P. Volner (alternate: K. Bene)*, *J. Wienen (alternate)*, *M.J. Yildiz*, *D. Zmegac*.

N.B. : The names of members who took part in the vote are in italics.

Secretariat of the Committee : S. Poirel

8. The Congress invites local and regional authorities to set up appropriate bodies or procedures for effective monitoring of human rights situations and for rectifying the situation where fundamental rights are not fully respected, particularly during the provision of public services.

9. In view of the foregoing and referring to its joint declaration with the Council of Europe Commissioner for Human Rights and the Swedish Association of Local Authorities and Regions (SALAR) adopted on 6 October 2008, the Congress calls on local and regional authorities:

a. to act with full regard for fundamental rights, particularly with regard to data protection;

b. to contribute the national elaboration of indicators to facilitate the measurement of the fulfillment of human rights at local and regional level and to take part in the drafting of national plans to secure and promote human rights. On the basis of the problems and remedies identified in the course of these planning measures, local and regional authorities will be able to analyse the local human rights situation regularly and refer, where appropriate, to central government;

c. to promote the establishment at local level of independent complaints mechanisms, such as of an accessible and independent decentralised ombudsman's office, designed to deal with allegations of infringements of individual's rights;

d. to foster human rights training for local elected representatives and government officers so that they can identify and deal with human rights issues in the course of their activities;

e. to promote processes of consultation, enabling all participants in local public life to exchange information on the human rights situation and arrive at concerted responses to problems that arise;

f. to guarantee equal access to public services for all citizens and non-citizens without discrimination against anyone, while ensuring that social rights are upheld;

g. where education, health or social services are being privatised, to introduce a system to make the services concerned accountable for their actions and to establish a quality control system;

h. to examine local government budgets from a human rights perspective so that human rights are afforded suitable attention when priority needs are being decided on.

10. The Congress instructs its Institutional Committee to assess the human rights situation systematically on its visits to monitor implementation of the European Charter of Local Self-Government. It also asks the other Congress committees to take account of human rights during their respective activities.

11. The Congress also instructs its Institutional Committee to produce a five-yearly report on the human rights situation at local and regional level in each of the Council of Europe member states.

B. DRAFT RECOMMENDATION³

1. The Congress recalls that:

a. the primary aim of the Council of Europe is to create, throughout the European continent, a common area based on respect for human rights, democracy and the rule of law;

b. democracy and human rights are interdependent. Democracy, including at the local and regional level, cannot exist without an unconditional respect for human rights;

c. local and regional authorities must comply with the human rights duties which stem from the international commitments of the member states, albeit only within their local/regional competences;

d. local and regional authorities are not only agents of central government – they secure human rights at the same time as they fulfil local self-government;

e. good governance is rights-based governance. Complying with human rights duties is a challenge with potential of strengthening democracy at the local level.

2. The Congress has a distinctive role to play within the Council of Europe as it provides a forum where elected representatives can discuss common problems, share their experience and develop policies. It works to strengthen democracy through its monitoring activities.

3. In order to better secure the concrete implementation of human rights by local and regional authorities, the *Congress recommends that the Committee of Ministers* call on all member states to:

a. ensure that the allocation of financial resources to local authorities is set at an appropriate level to ensure the proper implementation of human rights, and that monitoring compliance with these rights can be ensured effectively;

b. associate representatives of local and regional authorities in the drafting of national human rights' strategies, policies and indicators, in order to have their input and make them aware of their responsibilities in the implementation of human rights;

c. encourage local and regional authorities to promote respect for human rights through awareness-raising initiatives and through local and regional action plans;

d. encourage the setting up of independent complaints' mechanisms at local and regional level, and in particular to create independent bodies such as local or regional ombudspersons, or mediators, able to find remedies to cases where human rights are not fully respected, in particular in the delivery of local public services.

e. involve civil society organisations in the planning and implementation of activities for the protection of human rights at all levels.

4. The Congress notes that the best way to effectively secure the protection of human rights is to take measures on the basis of a regular, comprehensive and accurate review of the situation. Therefore, the *Congress asks the Committee of Ministers* to invite member states to consider ways of encouraging local and regional authorities to create appropriate structures and procedures in order to facilitate effective monitoring of the human rights situation at local and regional level. There is no standard solution for implementing human rights at local and regional levels, but a criterion of good governance should be to provide the citizens with sufficient support and advice to exercise their rights.

³ See footnote 2

5. *The Congress also asks the Committee of Ministers to urge member states to ensure that local and regional authorities comply with the principle of non-discrimination in the implementation of human rights.*

6. The Congress stresses that education and benchmarking are crucial to improve the situation of human rights in Europe at all levels. *It recommends that the Committee of Ministers:*

a. encourage a systematic multi-level dialogue between the political levels of all member states, to promote the human rights dimension of local self-governance;

b. foster respect for human rights through the training of local and regional elected representatives and their staff.

C. EXPLANATORY MEMORANDUM

Executive summary

1. Implementation of and compliance with human rights constitute one of the fundamental tasks of the Council of Europe. There is no real democracy, no good governance – whatever the political level – without observance of human rights. Local and regional authorities deal with human right issues on an everyday basis, and politicians and civil servants at the local or regional level are close to citizens' everyday needs. Local and regional responsibility already has a welfare aspect which in many cases and to a large extent is strongly connected to human rights. In line with the principle of subsidiarity, local and regional authorities may be considered to be the primary players in fulfilling the goals of the fundamental international conventions.

2. The importance of systematic work for human rights cannot be underestimated. It is important to involve all stakeholders at all stages of the process, including national human rights institutions, civil society and representatives of disadvantaged groups, and to integrate human rights planning into the ordinary work of the public administration so as to ensure effective co-ordination and co-operation between authorities at all levels. To this end, human rights work needs to be co-ordinated with the budgetary process in order to secure proper funding. The legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out.

3. There is no standard solution for implementing human rights at the local and regional levels, but a first step is to create a toolkit of the methods available and to adapt these to local circumstances. It is also important to foster a human rights culture through education and training. There is accordingly a need for awareness-raising and education among local and regional authorities themselves and among citizens.

4. The protection of human rights requires independent complaints mechanisms. Complaints mechanisms may take different forms in different communities, and there are several examples that could serve as a model – local and regional ombudspersons, national or thematic ombudspersons, consumer complaints boards, patient injury boards, anti-discrimination agencies, etc. The complaints mechanism or bodies can have different functions depending on the kinds of human rights they deal with, but must be seen as important means of safeguarding human rights and handling citizens' complaints at first instance. Systematic work to implement and monitor human rights at the local and regional levels in the member states not only aids the implementation of human rights, but will also reduce the burden for the national level and enable the European Court of Human Rights to function more effectively.

5. The Congress has an important benchmarking, awareness-raising and enabling role to play regarding the role of local and regional authorities in the implementation of human rights. It also has a significant role as a mediator of successful experiences which can be consolidated and systematised. The Congress should collect and communicate good practices. The Congress could be responsible for monitoring activities concerning human rights, by making human rights an indicator in the ongoing monitoring process. The Congress can also prepare special reports on a regular basis in which the

human rights situation in member states is highlighted. Finally, the Congress could examine audit reports on specific themes, each year with a different focus. The chief concern is to incorporate human rights as a new dimension of the ongoing monitoring of local and regional democracy in the member states and seek constantly to reinforce the principle of financing human rights implementation.

1. Introduction

1.1 General introduction

6. Implementation of and compliance with human rights constitute a key element of the Council of Europe's activities, as one of the three pillars which guide the whole action of the organisation. There is no real democracy, no good governance – whatever the political level – without observance of human rights. It is a transversal issue and a constant matter of concern. To a large extent, democracy and human rights are interdependent.

7. The Universal Declaration of Human Rights, the European Convention on Human Rights and all the other relevant international norms are more than declarations of value – they are a strong call for action plans to translate idealistic and philosophical visions into an environment where these rights can be realised and enjoyed, i.e standard-setting. Compliance with human rights entails multi-level governance. It is a matter not only for national governments but for all other political levels too. Local and regional authorities, the level closest to citizens, are logically the most suitable actors to achieve the concrete aspirations which have evolved since these fundamental norms were signed. The case-law of the European Court of Human Rights clearly demonstrates this principle.

8. There are several fundamental standard-setting documents to take into account when analysing human rights and local government:

- The Universal Declaration of Human Rights,
- The European Convention on Human Rights (ECHR),
- The Charter of Fundamental Rights of the European Union,
- The Revised European Social Charter,
- The Covenant on Civil and Political Rights,
- The Covenant on Economic, Social and Cultural Rights,
- The Urban Charter,⁴
- The European Charter of Local Self-Government (if the right to local self-government can be considered a fundamental right), and
- The Reference Framework on Regional democracy (which is not a standard-setting text but a reference tool with regard to regional democracy)

9. The Congress of Local and Regional Authorities, as the political body which represents more than 200 000 local and regional authorities in Council of Europe member states, is very much aware of the importance of the contribution it can make in this respect. The Congress has already taken some important steps in analysing the role of local and regional authorities in the implementation of human rights.⁵ This report can claim to be a follow-up to the 2007 Forum for the Future of Democracy and the Seminar on systematic work for human rights implementation at local and regional level in October 2008.⁶ The Forum affirmed the interdependence of democracy and human rights and the need to

⁴ Resolution 269 (2008)1 European Urban Charter II – Manifesto for a new urbanity.

⁵ Such as the Barcelona Colloquium, the first round table of European regional ombudsmen, Barcelona 2–3 July 2004, co-organised by the office of the Commissioner for Human Rights.

⁶ Council of Europe Forum for the Future of Democracy, Stockholm/Sigtuna, Sweden 13–15 June 2007 and Sveriges Kommuner och Landsting, Systematiskt arbete för mänskliga rättigheter – en utmaning för kommuner, landsting och regioner, Dokumentation från seminarium 6 oktober 2008.

regard development of local democracy both as a tool and as a core objective of all countries in their efforts to improve the implementation of human rights. Therefore, there must be a framework (legal and/or political) for the apportionment of responsibilities among national, regional and local authorities. It is important to remember that the competence of local elected representatives depends on such boundaries, but another very important factor is the professional qualifications of elected representatives and their staff.

1.2 The issue at stake

10. For a number of years the Council of Europe has played a leading role in the efforts to associate all the main stakeholders of a genuine democratic society (parliaments, governments, local and regional authorities, civil society, media and academia) in the promotion of democracy at all levels across the continent. The Parliamentary Assembly of the Council of Europe, the Committee of Ministers, the Congress, the INGO Conference and the European Commission for Democracy through Law (the Venice Commission) have a key role in this ongoing process.

11. However, one must keep in mind that there are 47 member states – of which 27 are also members of the EU – with different traditions to take into account. There cannot be only one standard solution on how to implement human rights. Whatever method is chosen, it is always a local and regional responsibility to make sure that human rights are respected. Therefore, this report will give some general recommendations as to how the implementation should be carried out.

12. The starting point is that the local level is where democracy can be fostered and strengthened, and that local and regional authorities are crucial actors in securing human rights for citizens. But to be able to fulfil these tasks, the local and regional authorities must be given the powers, tools and financial possibilities to fulfil them. Even if respect, and responsibility, for human rights as such must be mainstreamed to be fully implemented at local and regional level, the methods for fulfilling and protecting those rights may differ because of the traditions and circumstances in the member states. This is also logical according to the principles of proximity, subsidiarity⁷ and proportionality.

13. The Congress, which has already initiated several European instruments, especially the European Charter of Local Self-Government and others, should no doubt take the lead in alerting the various Council of Europe bodies to the discrepancy which has gradually emerged between ever more intensive human rights protection and the fact that statements of principle on the requirements of a democratic society have not been applied to “political rights” at any level of public life. Stressing “social cohesion” necessitates reinforcing human rights at the local level.

1.3 The process of the report

14. Following the tradition of the 2007 forum and the 2008 seminar, the aim was to draft this report in an inclusive manner. The Rapporteur has been in close contact not only with the Institutional Committee (which focused on some of the core questions during a round table held on 15 May 2009) but also with other parts of the Council of Europe, such as the Office of the Commissioner for Human Rights and the Court. Key study visits were arranged for the Rapporteur and the expert in Strasbourg on 3 December 2009. In January 2010 a number of “wise persons” were invited to read and comment on a first draft of the report. Throughout the process the Rapporteur was also supported by a reference group in Sweden and last but not least the Secretariat of the Congress. The Rapporteur wishes to thank all those having contributed to the report.⁸

⁷ Article 4.3 of the European Charter of Local Self-Government provides “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.”

⁸ Report prepared with Professor Tom Madell, Umeå University, Sweden, as expert.

1.4 The role of local and regional authorities in the implementation of human rights

15. The tension between the principle of state sovereignty and human rights has existed for a long time. This has been most evident in the work of the UN. In the UN Charter the individual state is seen as sovereign and autonomous. At the same time, the United Nations Universal Declaration of Human Rights stipulates each country's obligation to protect the citizen. Tensions of this kind can arise where a state's compliance with rules laid down in a ratified convention is in doubt. Tensions can also be found between national authorities and local and regional authorities – state sovereignty vs. local and regional self-government - not least when analysing the role of local and regional authorities and the implementation of human rights in the light of the local authority's responsibilities for education, social housing, social security, health care, refugees, etc.⁹ One must remember that these types of services are not only a question of local and regional government responsibilities in the delivery of public services to citizens, but often go back to the responsibility of fulfilling the human rights of the individual.

16. "Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any map of the world. Yet they *are* the world of the individual: the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world."¹⁰

17. The following analysis focuses on three aspects of implementing the rights: 1) securing human rights and honouring local self-government (II), 2) the variety of human rights (III) and 3) the right methods of implementation – including the role of the elected representative (IV).

2. Securing human rights and honouring local self-government

18. The Commissioner for Human Rights, Mr Thomas Hammarberg, has stated that the balance between delivery of human rights on the one hand and local or regional self-government on the other hand is crucial to democracy. In fact, there is a strong interrelation between them – no human rights can be achieved without democracy and no "real" democracy can be achieved without respect for human rights. In other words, democracy will be stronger the more human rights are respected.¹¹ Furthermore, there is no real democracy without local democracy, and if human rights are not respected in everyday life, they never will be respected. There is no conflict between the delivery of human rights and local self-government.

19. Over recent years there has been growing pressure to fulfil the implementation of human rights at local level, and national legislation has often placed the responsibility for managing those rights at a local or regional level. Some responsibilities follow from the powers delegated by the national government, and some powers follow from the principles of local and regional self government. While the state as a whole enters into and is bound by international treaties, the local and regional authorities have the right to organise their responsibilities in the most functional way. This also applies to the interrelation between human rights and local democracy. Thus, local or regional authorities are not only "agents" of central government – they have their own responsibilities to manage human rights on the same basis as central government will have the main responsibility for implementing the treaties.

20. As competences are enlarged and more responsibilities for taking care of individual needs devolve on local and regional authorities, responsibilities for human rights protection and advancement are also enlarged. In a civilised society, social welfare plays a significant role in recognising the support

⁹ Staaf & Zanderin (Eds.), *Mänskliga rättigheter i svensk belysning*, 2007, p. 74.

¹⁰ Eleanor Roosevelt, Remarks at the United Nations, March 27, 1958. Quotation from Chavkin & Chesler, *Where human rights begin: health, sexuality, and women in the new millennium*, 2006, p. 1.

¹¹ Hammarberg, Real Democracy requires respect for Human Rights, CommDH/ Speech(2007)7, Strasbourg, 13 June 2007.

owed to disadvantaged groups such as persons with disabilities, ethnic minorities, victims of sexual discrimination, young children and older people. Local and regional authorities have direct responsibilities in these areas and particularly in enabling members of these groups to become fully participating and respected members of society. Local authorities have become the first line of defence of human rights and also the launching pad for their realisation. All human beings are bearers of human rights regardless of their legal status as non-citizens, refugees, migrants or foreign residents, regardless of whether they are women, children, elderly or people with disabilities, regardless of their religion, ethnic background, political views or sexual orientation. In the eyes of local authorities, they are – or at least they should be – equal members of the community.

21. In honouring local self-government, it is important for the member states to recognise that the local and regional authorities within the legal framework must have the independence and autonomy, guaranteed by the European Charter of Local Self-Government, to make decisions in response to the needs of their communities. The big responsibility that rests on the shoulders of local or regional government can also be discerned from cases brought before the European Court of Human Rights that deal with a variety of local authority actions in the light of the ECHR.¹²

22. The political right to manage local affairs on a local or regional level is found in the Charter of Local Self-Government and it is binding on the member states of the Council of Europe that have ratified it. The Congress report to the 2007 Forum for the Future of Democracy outlines the links between human rights and local and regional democracy. It points out that the protection and promotion of human rights is a joint responsibility of all authorities, but in particular local and regional authorities have a major role to play – given their various powers and the immediate impact of their decisions on citizens. Therefore, the Charter of Local Self-Government plays an important role and must be seen as a cornerstone treaty to the human rights protection system. The report shows by various examples that joint reflection on the protection of human rights at local and regional level has recently begun. It concludes by recommending a list of matrix principles as a common denominator for all players involved in human rights protection at local and regional level. The intention is that the principles can constitute a coherent basis for effective action geared to ensuring the progress of human rights.¹³

23. Since local and regional authorities are the protagonists to address human right issues and the needs of the individuals residing in the community, there is also a need for proactiveness on their part. It is important that initiatives can come from a grassroots level and not only via new directives from central government. Therefore, there is a need for an ongoing dialogue between the different levels of society, but there might also be a need for monitoring and mainstreaming from the Council of Europe. One issue that might need deeper co-operation is the different priorities that must be set concerning which economic and social human rights are the most important to protect when there is a downturn in the local, national or global economy.

3. The variety of human rights

3.1 The different kinds of human rights

24. The rights set out in the European Convention on Human Rights can be split into at least two categories; qualified rights and unqualified rights, some of which are absolute since no derogations under Article 15 are permitted.¹⁴ Some human rights can be upheld by a court and apply to all individuals regardless of nationality, while other rights are thought of as in need of more

¹² See Monserrat Enrich Mas, Selected judgements of the European Court of Human Rights concerning local or regional authorities, updated on 15 September 2009.

¹³ Whitmore, The links between local and regional democracy and human rights, Contribution of the Congress to the Forum for the Future of Democracy (Sigtuna, Sweden, 13–15 June 2007). The expert who prepared the report was professor Emmanuel Décaux, President of the International Permanent Secretariat Human Rights and Local Government, SPIDH, Nantes, <http://www.spidh.org/en/home/index.html>. The report claims the right to manage local affairs to be a "collective" political right. The right to joint control over their affairs at the local level according to the European Charter of Local Self-government is still not recognised as an individual political right, or at least has not yet been brought before the European Court of Human Rights.

¹⁴ Jacobs & White, The European Convention on Human Rights, 2006, p. 6–8.

“sophisticated” methods of implementation – e.g. some cultural rights and some socio-economic rights. The latter must be seen in their economic and cultural environment and in terms of the national and local resources – even if this might be a difficult balance, which also leads us to several important questions. What does this variety mean when it comes to the “space” for local political decision-making, and what limits can be identified? How much variety can be accepted and who is the one to decide? The variety may not only exist between member countries, it could also most certainly exist within some member states.

25. It is important to stress the positive role played by local authorities in protecting and promoting economic, social and cultural rights. Local and regional authorities have varying degrees of responsibility depending on which rights and which areas they are dealing with: e.g. refugees, racial discrimination or sexual intolerance, the right to the opportunity to work and to obtain employment free from prejudice and discrimination, the right to a decent home without undue restrictions, the right for children to be educated, the right to good health care or the right of different nationalities and religions within the communities to be given the same opportunities as indigenous citizens, as well as the tools to enable them to avail themselves of those rights. They are protected by law and upheld by the Court. Where economic and social rights are concerned, the picture becomes more complicated. Those rights can be said to be built up gradually and they may also differ between different communities. Local decision-making and political priorities make it necessary to balance individual rights and political responsibility for sustainable and holistic governance, which might lead to a situation where fulfilling one person’s rights might disadvantage another.

26. All human rights have one thing in common; municipalities must comply with their human rights duties as public authorities in accordance with the international obligations of states, albeit only within their competences/powers. The standard is to be set at a national level. Thus, local police must not commit torture. If a town does not have local police, this is irrelevant; if it does, it is not. Likewise, municipalities have the duty to “promote” decent housing for everyone, which does not mean that everyone is entitled to own a 200 m² apartment in the best part of town tomorrow.

3.2 The classification of human rights

27. There are several ways of classifying human rights. One way is to talk about a) civil and political rights,¹⁵ b) economic, social and cultural rights¹⁶ and finally c) collective rights. A more historical way of describing human rights is to classify them into first, second and third generation rights, where the first generation refers to civil and political rights; the second generation comprises economic, social and cultural rights; and finally, the third generation refers to collective rights.

28. Political rights, along with civil rights, are primarily designed to protect the individual against state interference, and are immediately applicable. Political rights can be seen as covering the right to political participation, that is, the citizens’ right to seek to influence and participate in the public affairs of the society to which they belong. Political participation can take many forms, the most notable of which is embodied in the right to vote.¹⁷ However, it also covers the right to join a political party; the right to stand as a candidate in an election; the right to participate in a demonstration; and freedom of association. Though political and civil rights are distinct, the difference between the two is not always obvious or clear; indeed, they sometimes overlap. The freedom to express one’s opinion, and freedom of association, for example, are clearly linked to the right to political participation, and so are political rights, but they are often also seen as civil rights.¹⁸

29. The right to political participation merits special attention, as it is largely though not absolutely restricted to citizens. Whereas the other rights recognised by the UN Charter, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights are inherent

¹⁵ Sometimes referred to as classical or negative (liberal) rights.

¹⁶ Sometimes referred to as positive rights.

¹⁷ Article 3 of the first additional protocol to the European Convention on Human Rights establishes the right to vote in elections to the legislative assembly.

¹⁸ Cf. the Convention on the Participation of Foreigners in Public Life at Local Level, ETS no. 144.

in human beings on the basis of their status as such, the right to political participation is, in part, limited to people endowed with the status of citizen. Such a status is linked to the context of a political community and, most significantly, a government. The right to political participation therefore presupposes the existence of a government. This right is also guaranteed by the European Charter of Local Self-Government in its preamble.

30. Though distinct, civil rights and political rights are closely linked; the protection and fulfilment of the one to a large extent depends on that of the other. All human rights are indivisible, interdependent and interrelated, which means that the fulfilment and protection of civil and political rights depends on, and influences, other categories of human rights. It is also necessary to point out the importance of access to a court and non-discrimination which is also mainstreamed into all rights, especially for EU citizens according to the EU Charter of Fundamental Rights.

31. Economic, social and cultural rights, or the second generation of human rights, are based on the principles of social justice and public obligation – they are based on continental European concepts of liberty as equality. This kind of human rights developed through those who had a strong desire for the state to provide protection for its most vulnerable inhabitants by giving relief to the less fortunate. The rights have since evolved into what are now known as *cultural and religious rights* – the right to free elementary education, the right to higher education equally accessible to all by merit, the right to education which promotes tolerance and understanding, the right to religion, the rights of minorities and indigenous people¹⁹; *social rights* – the right to health, the rights of migrants, the rights to social housing, shelter and safety for families; and *economic rights* – the right to just and favourable conditions of work, the right of protection against unemployment, the right to equal work for equal pay, the right to rest and leisure as an employee, the right to reasonable limitation of working hours and periodic paid holidays, the right to be member of a union, the right to a basic standard of living, the right to food, clothing, housing, medical care, and necessary social services, the right to security in the event of unemployment, sickness, disability, widowhood, old age, the right to special care and assistance for mothers and children, the right to enjoy remuneration and standards of living adequate for the health, well-being, and dignity of citizens and their families, etc.²⁰

32. A special kind of human rights is the so-called third generation of rights, or collective rights.²¹ It is important to note that the common conception of human rights has changed over time, and apart from absolute fundamental civil, political and social rights, it is common to talk about a new category of rights – the so-called emergent rights: e.g. the right to a safe environment, access to drinking water and to sanitation. These are rights that we aspire to obtain, which are not – at least, not yet – explicitly included in legally binding texts. They are the expression of developments in case law that led to a broad interpretation of a fundamental right already guaranteed. The new dimension of these rights, which are internationally recognised, entails – because of the principle of indivisibility – obligations for national authorities but also for local and regional authorities. Non-compliance with these rights can be condemned by a court. When it comes to the collective rights or third generation rights, a member of a vulnerable minority group can take legal action either individually or together with others as a group – in the same way as for social and economic rights.

33. Accordingly, the role of political authorities evolved in this respect too, and therefore, local and regional authorities are faced with new responsibilities in terms of compliance with these emerging rights. The Congress of Local and Regional Authorities has been very active in this field for years. The European Charter of Local Self-Government is based on good governance and on democratic principles, which imply that human rights must be respected. The Congress has directed the overall thrust of its human rights action at creating an equal and sustainable environment in communities, an environment which integrates political, economic, social, ecological and cultural aspects of their citizens' everyday life, an environment in which they can exercise and realise their rights freely and to

¹⁹ E.g. the Sami communities, which are the largest group of indigenous people in Europe and encompass the northern parts of Sweden, Norway, Finland and the Kola Peninsula of Russia.

²⁰ See, for example, the European Charter for Regional or Minority Languages (ETS 148) and the Revised European Social Charter.

²¹ These rights have existed for a long time, but their classification as human rights is quite recent.

the full. This “equal environment” would include an equal legal and administrative framework for all members of a community – equal protection of rights, equal access to public services, equal non-discriminatory treatment, equal job opportunities and equal enjoyment of the urban and rural environment. However, these rights falls outside the scope of this report.²²

34. To sum up, the civil and political rights and freedoms relate mainly to the state as a whole. However, under recent international agreements the individual also has economic and social rights, which stem from the solidarity between citizens. Breach of the civil and political rights can be brought before the European Court of Human Rights, while most economic and social rights must be interpreted by the member state, which is committed to do its utmost to comply with ECHR. The right to adequate housing, for example, might be fully established even if the standard is a "variable geometry" between different countries, i.e. the standard setting is allowed to differ. This is also the main difference between civil and political rights and social and economic rights. Therefore, it is also dangerous to claim that the latter rights are equal to the civil and political rights since one might end up with a situation where the civil and political rights might also be deemed to depend on financial issues.²³

3.3 Local and regional authorities' responsibilities in fulfilling human rights

35. Local and regional authorities are no doubt key players in implementing different kinds of human rights. It is the local and regional authorities that bear the primary responsibility for implementing these policies and strategies in their communities, tailoring them to the specific situations on the ground and to the needs of their citizens and taking concrete steps for improving citizens' daily lives. One has to keep in mind that beyond the legal texts, human rights are a reality in every single case where they occur, even if we often speak of them in abstract terms.

36. In political life there is always a conflict between the economic situation and the priorities that have to be laid down between what is the best for the individual and what is best for the citizens as a whole. Politicians, whether at the local, regional or national level, always have to answer for the allocation policy and to set priorities– one person's social or economic rights mean disadvantage to another individual or group. It is also in this field that economic issues can be crucial to the decisions that are made. Can one really balance individual rights and political responsibility for sustainable and holistic governance towards the public good if the economy is bad – does the local authority have a choice when it comes to choose between education, the treatment of elderly people or health care? It is not an unusual scenario that two different principles might collide in this situation – there is a conflict between an individual's right and the political allocation policy.

37. These issues become increasingly important in the type of more individual-oriented society that we see today. While human rights and citizens' rights shall be implemented fully and immediately, social and economic rights shall be implemented as fully as is consistent with the resources of the individual member state. However, there must always be someone who takes full responsibility, and the elected representatives are the ones taking the responsibility for the common good and for setting the necessary priorities. These priorities become more difficult the more individual the rights are and the more personal the consequences that follow from the political decisions. It is easier to set priorities when more common values are at stake. Also in this case it is of great importance that the local authorities are prepared and that local action plans are developed in a transparent way – all decisions made should have sound motivation with an easily understandable argumentation. However, these questions are so important that they require activity of the Council of Europe and the national parliaments – it may even be that these priorities cannot be set at a local level if some kind of common standard is to be preserved all over Europe. Here you find a classical question – how do you deal with

²² Mention can be made of the fact that the Revised European Social Charter has an additional protocol of 1995 providing for a system of collective complaints, CETS No. 158.

²³ The compliance of the member states' legislation with these rights is monitored by the Committee of Independent Experts of the European Social Charter. Recommendations are sent to the Committee of Ministers which addresses them to the relevant authorities of the member state concerned. See http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter_en.asp.

large inequalities between different member states and regions within the states and how do you foster empowerment.

38. The first step in preventing human rights issues from being overshadowed by economic arguments might be to actually identify the different human (social or economic) rights. The second step might be to use different kinds of minimum levels of these rights. Here it might be important to find a common European view on the minimum levels of different types of rights. Then the member states and the local and regional authorities – over that minimum level – could set the different priorities depending on the financial situation. However, it is probably even more functional in terms of subsidiarity, legitimacy and financial situations if the identification is made and the minimum levels are set at a national level based on the conditions in each country. No matter how the levels are set, if you provide the citizens with a “list of rights”, the municipalities first and foremost must satisfy those rights, and only when these rights are fulfilled may the municipalities make use of the political space for their own decisions and priorities. To make sure that the human rights are fulfilled and fully protected, the third step is to create a proper monitoring process and sufficient ways of making complaints.

39. At the same time, it is very important to remember that the more detailed the requirements and minimum levels set by a national authority that one accepts; the smaller is the space for local or regional political autonomy. It is here that we must find an acceptable solution. One way of establishing those priorities might be co-operation between the municipalities or the regions and the central government. Negotiations are often a good way of achieving a reliable result, since there might be a risk that the minimum level also becomes the actual level. Thus, negotiations can be an important complement to minimum-level standards – even if the negotiations themselves can be time-consuming. This delineation is also the nexus between the human rights and the right to local self-government. Human rights are binding for the states as a whole, and the responsibility to fulfil rights lies both at a national level and at a local or regional level. Therefore neither a state nor a municipality can refuse to fulfil the obligation with reference to state sovereignty or local self-government. In that sense the minimum levels that are set can never be said to be in conflict with local self-government. One also has to accept the fact that there is a variable geometry. But at least to some extent, this can be solved within the state by using solidarity and compensation mechanisms between the regions, between municipalities, between cities and between different suburbs etc.

40. Whether we are talking about the local, regional and national level – or local, state and federal levels – it is a central task for each community to ensure that the rights of the individual do not fall between the different levels. Here it is important to point out that local and regional authorities perform an essential role when it comes to solving problems that arise from conflicts between equally important rights. Such conflict need not have economic impacts, but it is very important that the authorities act proactively with preparedness for the different kind of situations that can occur – if a conflict is more likely to occur at a local level it is also a local responsibility and not a state responsibility to initially solve the problem. One way of dealing with the problem in a proactive way might be to develop local action plans. It is important that the local and regional representatives take the initiative if they wish to avoid the risk of civil rights legislation for underprivileged groups being imposed on local and regional authorities. Therefore, local and regional decision-makers play an important part in carrying on systematic work to honour and defend local self-government.

41. One prominent feature in the development of modern law is the continuous differentiation with development of new legal areas. The rule of law and the fact of regulating things by law have led to an increasing amount of new acts and legal material – national as well as international. Legal rights evolve out of a range of different social settings and historical contexts, and rights are based on a variety of different values – often the international conventions on human rights – underlying the legal system.²⁴

42. As an example of a conflict between the national and the local level, one can mention the Swedish legislation on disability from 1993 onwards. The Law on Support and Service (LSS) is based on clear

²⁴ See Gustafsson, Rättens polyvalens, 2002.

claimable rights for the disabled and comprehensive duties for the municipal authority in question. The rights regulated in the LSS are assistance in various forms, aid resources, rehabilitation, services and special living facilities. The disabled person himself can arrange the service according to his or her special needs. However, even though the law relies on clear and predictable rights for the disabled and a clear correlation of duties and obligations for the public sector and the municipal authorities, the law soon proved not as successful as was initially hoped. A major problem was that a large number of disabled persons were denied their rights by the local welfare authorities' decisions. The problem was not so much the conditions under which the rights were granted or denied but the fact that they were not implemented properly. There were two main arguments for not giving sufficient weight to social rights. The most common reason given by local authorities for delays was the lack of economic resources. The other argument was the right to local self-government, and it was often claimed that the legislation assigned unconditional rights to the citizens and unconditional duties to the local authorities which encroached on self-government and local democracy – in fact nullified the ability to govern the local service according to its own needs and priorities. However, in Case *RÅ 1993 ref. 11* the Swedish Supreme Administrative Court already took the legal stance that lack of economic means was not a valid ground for denying the stipulated rights. Nevertheless a large number of decisions delivered were not implemented due to “delayed execution”. The situation did not improve until the legislator changed the Act so that it was possible to penalise the local authorities with a fine if they did not execute the rights in accordance with the LSS.²⁵ However, the legislation did not as such solve the problems of how to set economic priorities.

3.4 The costs of human rights

43. One important factor for local and regional authorities is the costs of human rights. Due to its obligation to uphold rights in respect of its citizens, a local or regional authority may be required to make certain investments, e.g. for the provision of specific expenditures to meet requirements for limiting the effects of gas emissions, or for improving a drinking water system or to provide decent and sufficient housing or create panels in minority languages. In sum, this means that compliance with human rights can lead to costs for a local or regional authority.

44. Here we must transcend the black-and-white contrast between the civil and political rights, which imply forbearance on the part of the state, and the social and economic rights involving services provided by the public authorities. The public authorities must accordingly not only respect human rights themselves but also ensure their respect by others, particularly in relations among private individuals, and of course they must implement them and provide appropriate resources to make these rights fully effective. Although economic, social and cultural rights are usually built up gradually, this is precisely why the local authorities can make all the difference by developing rights in the housing, health and employment fields, but also in terms of education and recreation.²⁶

45. The civil and political human rights that follow from international agreements are to be implemented by all member states and at all levels of society. Some of these rights do not actually cost anything – it does not cost anything to respect the ban on torture. When it comes to social and economic rights, the level or standard of the right is supposed to be determined by each treaty signatory or member state. This standard-setting may take the form of a minimum level. Therefore, every member state should determine 1) the implementation arrangements and 2) the levels of the standard. But for this to be of any real value, it is also important to make sure that the standards are fully financed. The legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out. Article 9.1 of the European Charter of Local Self-Government states that “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.”

²⁵ Gustafsson, Rättens polyvalens, 2002.

²⁶ Whitmore, The links between local and regional democracy and human rights, Contribution of the Congress to the Forum for the Future of Democracy (Sigtuna, Sweden, 13–15 June 2007).

46. A lot of money is already spent in the social arena, on services to citizens, education, health, immigrants, etc. but it is always important to consider whether there is a need for better allocation of local and regional authorities' economic resources, i.e. can money be spent in a better way? If human rights are targeted when providing these services, one might perhaps spend the money more efficiently. All human rights require some kind of action by the public authorities; the civil and political rights need to be guaranteed too, but the scope of such action is very different depending on the right involved.

47. If the implementation of human rights should fail, sanctions can be considered. The ECHR has jurisdiction even on the local and regional level, even if the entire member state is the responsible party. This means that the member state can actually consider itself to have a right to recovery from the current local or regional level – cf. the EU and the web-based approaches to the implementation of the Service directive and the regression of structural funds. Therefore, the "incentive structure" for local or regional authorities must be realistic. Thus, everyone will benefit from co-operation between the different levels of society. The question is how this should be done, through negotiation or formal requirements. The important thing is that a common understanding is reached in the local and regional bodies on what needs to be done and how to strive for that goal.

48. Failure to secure human rights involves the risk of a conviction against the responsible state or the public authority concerned. This involves a financial cost but also a political cost for the tier of authority found guilty of violating a fundamental right. Viewed from a different perspective, the implementation of human rights may also include a financial cost in that it implies that the public authority intends to achieve a type of expenditure to enable the implementation of, for example, specific structures necessary to uphold fundamental rights guaranteed by higher standards. Therefore, we can speak of costs for local and regional authorities in the implementation of human rights.

49. As a consequence of infringement by local or regional authorities, and with regard to the responsibility of the state as a whole for the wrongful conduct of local and regional authorities, the central government should not only possess instruments that are aimed at rectifying the infringement within the time limit set, but should also have the possibility of recovering from the local and regional authorities the costs in terms of the financial consequences of such infringement. The question that naturally follows is whether all local or regional authorities are able to meet these costs, or whether the quality of the implementation of human rights depends on the financial capacity of the local or regional authorities. These questions sound provocative, but they are pragmatic and it seems worthwhile to ask them. One must not forget that local or regional authorities may also be forced to pay damages if the requirement of a human right is not fulfilled.

50. It is obvious that it costs much more – especially politically speaking but also in terms of social and economic consequences – for a public authority not to comply with human rights than otherwise. This implies that the decentralisation system must be well developed in the member states and that local and regional authorities receive enough financial resources.

4. The right methods of implementation – including the role of the elected representative

4.1 The challenge

51. When it comes to the question of implementation it is very important to point out that there is no "standard" method to be used. Whether standard setting is done at European or at national or even local level, the implementation must find the locally most effective ways, and there is a variety of methods. One has to consider, for instance, budget review from a human rights perspective, national or local or regional action plans, the need for an independent complaints mechanism independent from the executive of the local authority and from the local elected representatives, and last but not least the process has to involve the citizens. One must always bear in mind that politics is very much a question of listening and responding, a process of "ceaseless communication".

52. The challenge is which methods should be used for implementation, to include the requirements of awareness-raising, proactive approach, exchanges of experience and human rights mainstreaming.

When analysing the implementation, there might be a strong need to focus on standard-setting and the monitoring process. The responsibility of the local or regional authority depends which human right we are talking about, and the social and economic rights are to some extent to be implemented differently in different countries.

4.2 Implementation methods

53. There is a variety of methods that can be used in the implementation of human rights on a local or regional level. One first step may be to mainstream local and regional budget issues and action plans – i.e. standard-setting. One problem is who is going to decide the standard-setting – possibly an international ban on capital punishment, the extent of social care at a national level, support mechanisms at a local level etc.

54. The importance of local action plans was raised again during the follow-up seminar on systematic work for human rights implementation at local and regional level, in October 2008 in Stockholm. It was stressed that one important method for promoting human rights at local level was through local action plans comprising packages of measures, activities and specific projects in a given area. These action plans could form a political action programme for fostering human rights in a given municipality or region. This is, of course, only one way of meeting the challenges faced by territorial authorities, but it is a way of putting human rights activities on a systematic and regular footing on the basis, for instance, of an annual timetable or one lasting for a whole term of office. These action plans can draw inspiration from different sources: action plans concerning minimum levels and priorities that are recommended on a European level, national action plans on minimum levels and priorities, local and regional action plans taking different policy areas into account, but also local and regional action plans related to budget. To be able to do this, there is a need for co-ordination between the Congress of Local and Regional Authorities of Europe, the Committee of Ministers, the Parliamentary Assembly of the Council of Europe (PACE) and other organs within the Council of Europe that are working with human rights and democracy issues, e.g. the Commissioner for Human Rights and the European Commission against Racism and Intolerance (ECRI). Otherwise it will be very difficult to achieve a common and more coherent view on these important questions.²⁷

55. Implementing action plans and measures to promote human rights, which must consist both of protective measures and of measures to secure those rights for citizens, is a key part of participatory democracy at grassroots level. At the same time, it is also a major challenge for local and regional elected representatives because this is a political commitment which must be backed up by the necessary legal skills, financial resources and co-ordination with other stakeholders and this entails the involvement of all tiers of government and their concerted efforts. Among limitations faced by local authorities in carrying out their work in favour of human rights, one must point out the limitations on their legal competences and the scope of their application. The legal framework for the apportionment of responsibilities between national, regional and local authorities is specific in every country and sets the boundaries for what local elected representatives can do.

56. These legal limitations go hand in hand with the adequacy or inadequacy of financial means and possibilities with which local authorities are endowed and which should correspond, ideally and as required by the European Charter of Local Self-Government, to the powers transferred to the local level. Adequate financial and human resources are essential for the implementation of specific measures, initiatives and projects, which is why political and financial support from national governments is crucial to the success of our human rights action in communities, much as is co-ordination and concentration of the efforts with all the other stakeholders involved in human rights issues – private sector and civil society across the board, and the regional, national and international level on the bottom-to-top ladder.²⁸ One can conclude that there are several important questions to be resolved when it comes to implementation.

²⁷ Here the so called quadrilogue – made up of governments, members of parliament, local and regional authorities, and non-governmental organisations – might serve as an interesting model.

²⁸ http://brs.skl.se/brsbibl/kata_documents/doc39367_1.pdf

4.3 Awareness-raising

57. One important question concerning the implementation of human rights is the need to increase awareness of human rights issues among citizens, politicians and civil servants. There is a need for so-called good accountancy on the local and regional levels. It is therefore very important to give politicians and civil servants the tools to create a system where they are aware of the legal boundaries and remits in the field of human rights. It is also important that the citizens (immigrants, ethnic groups etc.) are informed about their rights but also about the minimum levels and the priorities that follow from the action plans. One can say that there is a need for a vision including social cohesion!

58. The work in progress can always be improved. Respect for human rights can be fostered through systematic training of elected representatives and staff. The local authorities have an educational and preventive role to play, but they must also set an example by rejecting all forms of discrimination and handle all cases equally. Here different checklists can be used as tools for achieving good accountancy and good administration.

59. Since local problems have an impact on the state as a whole, an important and necessary task of the member state is to secure the existence of and distribute good information about the content of the ECHR supplemented by the case law of the European Court of Human Rights and leading human rights cases from the national courts. This work could also highlight the lack of access to a fair trial that might exist in some countries and might in the long run increase availability and effectiveness and lead to a common standard in Europe.²⁹ The next step for the member state might be to develop systems for ongoing scrutiny of the implementation of human rights to make sure that practice is in line with the Convention and the case law.³⁰ This scrutiny is important to ensure that the practice is mainstreamed throughout the country. One could also establish help desks on the local and regional level.

4.4 Good examples of how to step up efforts to promote human rights

60. There are a lot of examples in Europe that can serve as an inspiration for how municipalities and regions can step up efforts to promote human rights. One such model is the *Citizen's Charter* that was introduced in Great Britain in 1991. The intention behind the Charter was to strengthen the rights of citizens, to improve public service delivery and to achieve service standardisation.³¹ The Charter stipulated a few basic principles for clarifying and enhancing the standard of service with which public sector organisations provide their users, e.g. openness about how public services are run, how much they cost and whether they are meeting the standards which have been set; full and accurate information in plain language which can be understood by the user; the services should be available irrespective of race or sex; and finally a well-publicised and readily available complaints procedure.³² Service charters are also found in the National Health Service, local authority community care services, the Child Support Agency, primary and secondary education services and in connection with treatment of victims of crime.

61. Various types of Service Agreements, compensation mechanisms and similar instruments are also used in several European countries in order to improve the quality of public services and human rights safeguards.³³ The service charters used differ in terms of legal standing but the purpose is mainly the same, i.e. to specify in advance service targets which must be met. However, the Charter model used in the United Kingdom has also been criticised – partly because of the terminology used in the

²⁹ See Reforming the European Convention on Human Rights; A work in progress, CoE, 2009, p. 266 ff.

³⁰ See Reforming the European Convention on Human Rights; A work in progress, CoE, 2009, p. 472–476.

³¹ See Culpitt, *Welfare and Citizenship. Beyond the Crisis of the Welfare State*, 1992.

³² See Morris & Haigh, *The Citizen's Charter and Quality Management: Harmony or Discord*, in: Chandler (ed.), *The Citizen's Charter*, 1996, pp. 67–84, p. 73 f. See also <http://www.cabinet-office.gov.uk/servicefirst/1998/sfirst/bk1forw.htm>.

³³ See e.g. Naundrup Olesen, *ABSservice 2003 – Almindelige Betingelser for levering af Serviceydelse*, UfR 2002, pp. 276–283, and Kuuttiniemi & Virtanen, *Citizens Charters and Compensation Mechanisms*, Ministry of Finance, Research reports 11/1998.

Charter, partly because standard-setting and conventional measurement of “performance” and “results” are seen as inappropriate characteristics of public services or human rights.³⁴

62. One example of a municipal initiative for ongoing work on human rights at the local level is the Swedish municipalities’ work on the implementation of the Convention on the Rights of the Child (CRC). Every third year the municipality performs an evaluation based on the CRC. The evaluation group consists of three reviewers from three other municipalities. These reviewers liaise with three municipal reference groups: a group of politicians, a group of municipal managers and a group of field-workers. There are about ten people in each group and the meetings are held on a regular basis and each meeting last approximately an hour and a half. The municipality has also made a survey to obtain the views of children and youth. What emerges from these discussions and questionnaires is compiled in a report which can be used in the municipality.

63. Another example from the same municipality is the Inter-Religious Council. The largest religious associations in the municipality have chosen representatives appointed to the Council. These representatives take part in regularly held meetings and discussions. The Council currently consists of three imams, two Free Church pastors, two priests from the Swedish church, and one Orthodox priest. The council is chaired by the chairman of the city council, but the vice-chairman of the city council, the municipality’s Integration Co-ordinator and a secretary from one of the political parties are also included in the group. The Council meets twice a year. It has no discretion, but may raise issues dealt with according to standard practices in the organisation of local government. Responsible officials and policy makers are invited to participate in Council meetings dealing with issues of relevance to them. It can be convened in special sessions when necessary.³⁵

64. The examples show two different types of fairly informal, but still important, procedures for working on human rights issues at the local or regional level. Another more ambitious example is the network of Town and Cities for Human Rights in the region of Catalonia where work is in progress to create local human rights agendas. The signatory cities have undertaken to set up a commission which every two years is called upon to evaluate the implementation of the rights laid down in the ECHR and publish their findings. The first report aimed at identifying the actions that had been implemented and which cities were doing well and those cities where work had to be improved, in other words, an inventory. The next step was to use the findings of the evaluation to draft a proposal on participative strategic planning so that each city council could establish the strategy and actions for safeguarding human rights and define their Agenda for Human Rights.

65. The project shows that strategic planning improves the impact on actions because: a) it establishes the direction to be taken in a clear and precise manner, b) it is realistic, based on the known constraints and the available resources, and c) it helps prevent urgent matters from taking precedence over important matters. The project also shows that the planning requires a series of stages: a) diagnosis, where are we? b) strategic objectives: where do we want to be?; c) planning of actions: How will we do it? Who will do it? Which resources are to be used? What are the specific aims? Time frames? Which indicators will be used to measure the effect? The documentation on the project can probably be a very useful tool for other local and regional authorities in the work of creating local action plans/local agendas for human rights and how to perform an ongoing self-evaluation.³⁶

4.5 Monitoring and mediation

66. For verifying that human rights are implemented and respected, a system for handling citizens’ complaints is necessary – the remedies need not be judicial, but they must be effective and

³⁴ See e.g. Byone, *Beyond the Citizen’s Charter; New Directions for Social Rights*, 1996. Mention should also be made of the development in the United Kingdom of a number of handbooks relating to the UK Human Rights Act that are very clear and down-to-earth and therefore can serve as a helpful tool.

³⁵ See also Pierre Corneloup & Giofranco Martini, *Intercultural and inter-religious dialogue – an opportunity for local authorities*, Recommendation 245 (2008). Another example that can be mentioned is the work with action plans according to the European Charter for equality of women and men in local life elaborated by the Council of European Municipalities and Regions (CEMR).

³⁶ See Diputació de Barcelona, *Pilot test for the creation of a Local Agenda for Human rights 2009*, Equality and Citizenship department, Office for Citizen Participation. www.diba.cat/participatio/dretshumans.

consideration should be given to the system's powers and the guarantees it affords.³⁷ The task for each member state is to create a system at the local level where individuals feel well represented and where they can make complaints in a relatively easy and cost-free way. It is also important that civil society be involved in this process. It is not enough to use the electoral system as a corrective remedy – the remedy cannot only be in the “ballot box”.³⁸

67. As stated above, there are a lot of benefits if the local and regional authorities can manage conflicts and if they have their own control systems and legal bodies to ensure that human rights are honoured. Monitoring can be performed by the local authorities themselves or by independent bodies. In the latter case there are several examples that could serve as a model, local or regional ombudspersons,³⁹ consumer complaints boards, patient injury boards⁴⁰ and anti-discrimination agencies,⁴¹ etc. Such local ombudspersons can also have different functions depending of the issue at stake. First the ombudsperson can have the role of a mediator who seeks friendly settlements, based on fair principles, between an individual complainant and a public authority. Secondly the ombudsperson can have a more legal role as a Human Rights Watchdog, an Ethics in Public Office Commission, or as a Freedom of Information Commissioner.⁴² Thus, the ombudspersons, boards or panels may vary but must be seen as important players protecting human rights and handling citizens' complaints at first instance. Independent agencies of this kind not only support and ease the burden of court appeals at the national level, but also ultimately relieve the burden of the European Court of Human Rights!

68. Even if the complaints mechanisms can vary, it is of great importance that the mechanisms of litigation are free of charge for citizens. There is probably also a need for advocates representing civil society. One can for instance envisage a solution with institutions funded by voluntary organisations or where these organisations are responsible at least for organising the submission of complaints. An independent local ombudsperson or a complaints board – i.e. a body without political influence – would probably be the most attractive from the citizen's point of view. However, even if these monitoring services or complaints mechanisms are provided by independent boards or ombudspersons, one must never forget that at the end of the day it is the politicians at local or regional level – or if such a solution is more attractive in some countries, the state – have the responsibility to make sure that these functions exist! That responsibility cannot be delegated to others.

4.6 The judicial process

69. A central principle of administrative law and decision-making at the local and regional level has for a long time been that a court's jurisdiction to review the acts and decisions of public authorities depends on whether the public bodies have exceeded the powers democratically delegated to them by predominantly state legislation and whether the action may afford remedies if such powers have been exceeded.⁴³ This supervisory activity by the courts represents a positivist image of the role of the courts and forms part of a majority view of democracy. This rationalisation of the function of judicial review has been generally accepted, and recognised as providing a democratic justification for review. Most judicial review cases are about challenges to the decisions of elected bodies or local authorities taken under statutory powers. The courts would have been seen to be usurping the roles of politicians

³⁷ Jacobs & White, *The European Convention on Human Rights*, 4th Ed., 2006, p. 463–471.

³⁸ “The remedy is in the ballot box” means that if a citizen is not happy with the decisions of the elected officials in local government, then he or she can always vote against them at the next election. The argument contends that this is not a matter for the courts but for the political process. A classic situation could be a political decision that was dictated by having to decide about distribution of scarce resources.

³⁹ Whitmore, *The links between local and regional democracy and human rights*, Contribution of the Congress to the Forum for the Future of Democracy (Sigtuna, Sweden, 13–15 June 2007)

⁴⁰ See <http://www.pff.se/Information-in-English/>.

⁴¹ The objective of the Anti-Discrimination Agency's activities is to strengthen anti-discrimination work at the municipal and regional level, to raise visibility, influence and change the discriminatory structures and thereby prevent and combat the various forms of discrimination and to help streamline the application of discrimination legislation.

⁴² See the Congress guidelines on the local and regional ombudsman and the results of the conference in Messina (Italy 13–15 November 1997) on “Making the protection of rights more accessible to citizens: the ombudsman at local and regional level” and Recommendation 61 (1999) on the role of local and regional mediators/ombudsmen in defending citizens' rights.

⁴³ See also the fight against corruption, Resolution 79 (1999) on political integrity of local and regional elected representatives and the Code of Conduct for [Charter on rights and obligations of] elected representatives.

in an anti-democratic way if they had taken it upon themselves to impose restrictions on decision making by those elected bodies, as opposed to giving effect to the express or implied intentions of Parliament. However, the trend seems to be that judicial review has moved on to a concern for the protection of individuals, and for the control of *power*, rather than *powers*. It is logical that the ECHR exhorts the courts to interpret legislation, whenever passed, so as to ensure compatibility with the rights and that the courts must give those rights primacy, regardless of the national parliament's legislative intent.⁴⁴

70. The right to judicial process is fundamental under the ECHR and EU Law. According to Article 6 (1) of the ECHR everyone is, in the determination of his or her civil rights and obligations, entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. The concept of "civil rights and obligations" has never been clear, and it seems to have evolved considerably over time. It is suggested that any claim not manifestly ill-founded under national law should be presumed to concern a civil right or obligation, unless there are clear indications to the contrary in the case law of the European Court of Human Rights.⁴⁵

71. The right of access to judicial process is also one of the general principles of EU law that has evolved in the case law of the Court of Justice of the European Union. It is argued that the individual is entitled to have any claim that raises a question concerning EU law submitted to a court for adjudication, regardless of whether the claim can be regarded as "civil" within the meaning of Article 6.1 ECHR. The requirement that national courts should "protect" the Union's rights presupposes that all cases concerning these rights can be heard by a court. The uniform application and useful effect of EU law requires that all questions of the interpretation of EU law can be referred to the Court of Justice of the European Union by national courts under the Article 267 procedure. In situations where EU law requires access to judicial process, the national legal system is supposed to determine which court has jurisdiction and to resolve any questions of classification of rights or claims that may be necessary for this determination.⁴⁶

72. Another important issue to bear in mind is that the relationship between human rights and local self-government cannot be seen as an isolated phenomenon. For European Union member states, there is also co-existence with the fundamental rights of the EU.⁴⁷ The entry into force of the Lisbon Treaty will give a somewhat new focus to the implementation of human rights in Europe. The EU protocol of fundamental rights has become judicial. There will be two parallel options for court proceedings – individuals taking their case to the European Court in Strasbourg and states taking their case to the EU Court in Luxembourg. The courts will make decisions taking the same human rights into consideration. However, the standard setting of the fundamental documents is alike but not identical and this opens up the possibility of different interpretation and disparate judgments. Developments in coming years will show if and how standard-setting and judicial process monitoring human rights will be affected. In order to consolidate human rights in Europe, EU ratification of the European Convention on Human Rights would be an advantage, and ratification of the Lisbon Treaty makes it possible.⁴⁸ Likewise, given that 27 member countries belong to two human rights systems but 20 of the 47 member states do not, some consideration might need to be given to a potential risk of division of cases between the systems and what will then be the impact on the European Court and the Council of Europe. However, even if these questions fall outside the scope of this report it is important that the Congress work for EU ratification of the ECHR.⁴⁹

⁴⁴ Oliver, *Common Values and the Public-Private Divide*, 1999, p. 38 f.

⁴⁵ See Södergren, *Vem dömer i gråzonen?*, 2009, s. 541. An interesting question that awaits a comprehensive reply from the European Court is whether national rules that absolutely bar certain categories of claims from the courts are in conformity with Article 6 (1) – i.e. whether such rules should be regarded as "substantial" or "procedural".

⁴⁶ See Södergren, *Vem dömer i gråzonen?*, 2009, s. 542.

⁴⁷ Harris, O'Boyle & Warbrick, *Law of the European Convention on Human Rights*, 2009, p. 29.

⁴⁸ The 2005 Juncker Report on co-operation between the EU and the Council of Europe suggested such ratification.

⁴⁹ See also the address given by Secretary General Thorbjørn Jagland at the conference "Fundamental rights in the EU in view of the accession of the Union to the European Convention on Human Rights and Fundamental Freedoms", Madrid, 2 February 2010.

4.7 Local and regional responsibilities

73. Article 4.3 of the European Charter of Local Self-Government provides "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." Since most of the questions concerning human rights are to be dealt with at the local or regional level, it is also natural that the different systems to protect and monitor those rights should be at the same level, i.e. close to the citizens. Even if many human rights issues require access to a court, they can often benefit from other forums for a first appeal, e.g. local ombudspersons⁵⁰ or other authorities or agencies with similar functions – in the same way as different boards and agencies handle consumer issues.⁵¹ As an example, the region of Catalonia has model legislation for cities wishing to employ a local ombudsperson, and there are 40 such local ombudspersons in the region of Catalonia alone.⁵² It is also worth pointing out that – in the same way that public services can be provided by private players – some of these forums can be provided by NGOs and private players. The important thing is that the citizen's human rights are protected.

74. The powers and responsibilities of local and regional authorities are increasingly varied and complex and it is obvious that individual or statutory decisions can sometimes infringe citizens' rights. This necessitates effective remedies, and the stipulation of judicial remedies is a general principle of law shared by all legal systems. Any prejudicial decision taken by a public authority at local or national level can therefore be appealed against before an independent and impartial tribunal. If the right to an effective remedy is to be completely meaningful, access must be guaranteed to all the relevant administrative documents, and adequate reasons must be provided for the administrative decisions at issue. Local and regional authorities have the same role to play as any other public authority in investigating and taking action in the event of a complaint.⁵³

75. It is important to have an independent and functional complaints mechanism at the local and regional level. Even if these mechanisms must be independent from the executive of the local authority and from the local elected representatives, it is probably best from the citizens' standpoint that these mechanisms form part of local self-government – the questions must be handled quickly and it must be easy to make complaints. However, one must keep in mind that there is a need for different kinds of control mechanisms depending which kinds of human rights we are talking about. It is important that different control systems are developed for different issues and that access to the court system to claim one's rights is always secured. It is also important that these independent ombudspersons or complaints boards etc. are given the power to actually make the local and regional authorities follow up their decisions or at least to have a system for pressing charges against the local and regional authorities themselves in court.⁵⁴

76. In the case *R.K. and A.K. v. the United Kingdom, No. 38000/05, 30 September 2008*, the applicants complained that their daughter had been placed temporarily in care due to a medical misdiagnosis and there was no effective remedy for their complaint. The court stated that "The authorities, medical and social, have duties to protect children and cannot be held liable every time

⁵⁰ See for example Russia, Serbia and Spain. It might be worth mentioning that the United Nations Committee for Economic, Social and Cultural rights stated in 2001, with regard to Sweden, that "While recognising that a number of Ombudspersons exist in the State party, the Committee recommends that the State party consider, in the framework of the National Plan of Action for Human Rights, the creation of a national human rights institution to deal with the protection and promotion of all human rights, including economic, social and cultural rights."
<http://www.universalhumanrightsindex.org/documents/827/572/document/en/doc/text.doc>.

⁵¹ E.g. the Swedish system with a Consumer Ombudsman and the National Board for Consumer Complaints (ARN), which is a public authority that functions roughly like a court. Its main task is impartial adjudication of disputes between consumers and business operators.

⁵² See Diputació Barcelona, xarxa de municipals, Els drets humans; Adaptió de les normatives municipals a la Carta Europea, Setembre de 2008, and Diputació Barcelona, xarxa de municipals, Síndics defensors; Apunts per a la seva implementació, Desembre de 2008.

⁵³ Whitmore, The links between local and regional democracy and human rights, Contribution of the Congress to the Forum for the Future of Democracy (Sigtuna, Sweden, 13–15 June 2007).

⁵⁴ See The Congress guidelines on the local and regional ombudsman and the results of the conference in Messina (Italy 13–15 November 1997) on "Making the protection of rights more accessible to citizens: the ombudsman at local and regional level" and Recommendation 61 (1999) on the role of local and regional mediators/ombudsmen in defending citizens' rights.

genuine and reasonably-held concerns about the safety of children *vis-à-vis* members of their families are proved, retrospectively, to have been misguided... The Court is satisfied that there were relevant and sufficient reasons for the authorities to take protective measures, such measures being proportionate in the circumstances to the aim of protecting M. and which gave due account and procedural protection to the applicants' interests, and without any lack of the appropriate expedition... The Court considers that the applicants should have had available to them a means of claiming that the local authority's handling of the procedures was responsible for any damage which they suffered and obtaining compensation for that damage."⁵⁵ Therefore there was a violation of Article 13, but not of Article 8.

77. In case *NJA 2005 s. 462* the Swedish Supreme Court found that there was a general obligation for a member state to pay damages to an individual if there had been a breach of rights under the ECHR. In case *NJA 2009 s. 463*, there was a suspicion that a woman's husband had committed crimes against her. The woman and her three children were therefore moved by the local authority and to a temporary location in the municipality. The woman and the children stayed at the temporary home for a little over a month. The situation can be said to be a typical situation where the same case discloses several human right issues concerning a person. The person has a right to be protected, but what method of protection should be used? Afterwards, the provincial government directed sharp criticism at the municipality since the decision to move the family was considered contrary to the ECHR protection against unlawful detention. The family sued the municipality with a claim for damages due to illegal restraint and misconduct. The Supreme Court found that Article 13 of the Charter required that every person whose rights and freedoms as defined by the Convention were violated should have access to an effective remedy before a national authority notwithstanding that the violation had been committed by someone acting in the exercise of public authority. In accordance with the subsidiarity principle, it followed that national authorities and courts had the prime responsibility for implementation of the ECHR rights.⁵⁶ The Swedish Supreme Court found that the municipality had acted wrongly and stated that a municipality even without specific national legal basis could be required to pay damages for breach of the ECHR if the member state was to meet its obligations under the Convention. This means that individuals can henceforth bring claims for damages under the ECHR against local or regional authorities, with or without national legislation giving the citizen that right.

78. This case is important and represents a step forward in terms of protection of human rights, but it also has broader implications – if the local and regional authorities are responsible for paying damages by virtue of some kind of “polluter pays principle”, it is logical that they are given and also accept responsibility for organising protection of human rights in a functional way. It is better to spend money on organising an efficient system than to pay the same amount in damages due to the lack of a functioning system. There is a need for a functioning incentive structure – the fact that a municipality or a region can be held accountable for badly implemented human rights can probably strengthen the incentive to do right.

5. Conclusions

79. The state as a whole is not the only guarantor of human rights. Local and regional authorities also deal with human right issues on an everyday basis and politicians and civil servants at the local or regional level are closer to citizens' everyday needs. Furthermore, local and regional responsibility already has a welfare aspect which in many cases and to a large extent is strongly connected to human rights. In accordance with the principle of subsidiarity, local and regional authorities may be considered to be the primary players in fulfilling the goals of the fundamental international conventions.. It is accordingly always a local and regional responsibility to make sure that human

⁵⁵ See Monserrat Enrich Mas, Selected judgements of the European Court of Human Rights concerning local or regional authorities, updated on 15 September 2009.

⁵⁶ van Dijk et al, Theory and Practice of the European Convention on Human Rights, 4th Ed., 2006, p. 126, and Pellonpää, Europeiska människorättskonventionen, 2007, p. 139.

rights are respected and that the responsibilities that follow from law and international obligations are fulfilled. As the Commissioner for Human Rights said: "Think globally, act locally".⁵⁷

80. The importance of systematic work for human rights cannot be underestimated. In the conclusions of the International Conference on Systematic Work for Human Rights Implementation, twelve recommendations were issued to the member states.⁵⁸ These recommendations are very important and underline the urgent need for a baseline study giving a broad and accurate picture of the current human rights situation and the development of national human rights action plans or strategies to address the human rights challenges. Such plans should contain concrete activities and indicate the authorities responsible for their implementation. Another important issue is to involve all stakeholders during the entire process, including national human rights institutions,⁵⁹ civil society and representatives from disadvantaged groups of people. Such an inclusive and participatory approach will contribute to the legitimacy of the plan, create shared ownership and make implementation effective. Last but not least, human rights planning needs to be integrated into the ordinary work of the public administration to ensure effective co-ordination and co-operation between the authorities at all levels, by setting up networks or other forums for the exchange of experiences and information, discussions and planning. To achieve this, human rights work needs to be co-ordinated with the budgetary process to secure proper funding. The legal authority to perform certain functions is meaningless if local or regional authorities are deprived of the financial resources to carry them out (cf. Article 9 of the European Charter of Local Self-Government).

81. It is important that local action plans are developed in a transparent and co-operative way – all decisions made should have sound motivation with an easily understandable argumentation. However, these questions are so important that they require activity from the Council of Europe and from national parliaments – it may even be that these priorities cannot be set at the local or regional level if some kind of common standard is to be preserved all over Europe. Here you find a classical question – how to deal with great inequalities between different member states and regions within the states, and how to foster empowerment. It is also important to remember that it does not matter if the local and regional authorities have a presentable action plan if the proper funding for carrying out the plan is not provided – there is always a need for checks and balances.

82. There is no standard solution for implementing human rights at local and regional levels, but a first step is to create a toolkit of the methods available and to adapt to local circumstances. It is also important to foster a human rights culture with education and training. The public officials and other professionals who deal with the human rights of others need proper information and education to ensure that they have a thorough and up-to-date knowledge of the international standards relevant to their field of competence. Thus, there is a need for awareness raising and education among the local and regional authorities themselves and among the citizens.

83. The politicians at local and regional level have a responsibility to keep up ongoing dialogue with citizens and with civil society. There have to be well-developed channels for this communication and collaboration. Requirements will probably also increase in Europe, and so will the need to determine economic priorities, for example the proportion of elderly people is growing at the same time as financial assets are shrinking.

84. Politics is a process of "ceaseless communication" where never-ending interaction between elected representatives and voters is needed. Both the democratic system and the elected politicians will benefit vis-à-vis the voters if one starts thinking in terms of human rights and if human rights are included in the political discourse. The role of elected representatives is not only to present political visions; ability to work in a proactive way and deal with the consequences also counts. The Swedish

⁵⁷ See the [Commissioner's Recommendation on systematic work for implementing human rights at the national level](http://www.coe.int/t/commissioner/Viewpoints/090302_en.asp), http://www.coe.int/t/commissioner/Viewpoints/090302_en.asp.

⁵⁸ Rights work! Make them real! Conclusions from the International Conference on Systematic Work for Human Rights Implementation held in Stockholm on 6–7 November 2008. <https://wcd.coe.int/ViewDoc.jsp?id=1408617&Site=CM> and <http://www.sweden.gov.se/sb/d/11087>.

⁵⁹ <http://www.nhri.net/>.

Supreme Court case clearly shows increased responsibility for local and regional authorities in terms of taking responsibility for human rights in all the different sectors where human rights might occur. Everyone has something to gain if the elected representatives and the public officials become aware of this fact. There will be a win-win situation: “If we do this, we can win that, etc....”

85. Therefore, one must focus on promoting rights as a challenge with potential. Inbuilt promotion is generally better and sounds more positive than concentrating on how to deal with consequences. This work might need some kind of mainstreaming and there might be a need for some kind of human rights help desks at local or regional level. The establishment of a network – like the Network of Towns and Cities for Human Rights in Catalonia – could also be of great help in the work taking place in the different municipalities and regions.

86. Local and regional authorities need to be proactive, and there is a need for increased and improved collaboration between the different levels of society. This might be time-consuming, but will pay off in the end. There are at least two ways to arrange this co-operation: either establish formal rules of proper consultation or choose to work with negotiating rounds – not only between the state and local or regional levels, but also with negotiations between the regions. It is also important that the municipalities start labelling what is already being done in the field of human rights. “An actual problem in the municipality costs this, while providing a human rights solution will cost that, but by doing so we will save this and also gain that.” It would be easier to argue for a national compensation system if the municipalities or the regions could show the actual costs and figures.

87. Some basic requisites are needed for success. One such important element is to make the politicians and the civil servants more aware of the fact that many of the tasks they already perform relate to human rights, and that human rights issues are not just another burden placed on local or regional authorities. The conventions and the case law of the European Court of Human rights must be translated and distributed as manuals and handbooks, etc. Professional training and strategic education of politicians and civil servants would increase the credibility of the political system and its representatives. It is not only important to educate the politicians and staff in local and regional authorities, it is also very important to have ongoing education and an induction programme on human rights policy for newly elected representatives and other staff members who are starting work with a local or regional authority.

88. A human rights perspective mainstreamed into everyday politics might lead to better quality of social services, increased social cohesion and inclusion and less racial and xenophobic tension. Governance should include a form of management where human rights are mainstreamed into all aspects, from the education of administrators and decision-makers and the type of organisational structure to the constructive management of dialogue techniques, efficient co-operation with different partners, benchmarking and evaluation.⁶⁰

89. The possibility of building citizens' confidence requires positive action by local or regional elected officials. We need to increase the importance of human rights issues in the daily political debate. To a large extent it is a matter of how to sell an argument! The challenge is to have the courage to give honest answers to different problems, e.g. providing care for undocumented refugees or a decent life for Roma, etc. can have a positive effect on other areas of society. Rights-based governance might strengthen the trust people have in their elected representatives and thus strengthen democracy.

90. An independent complaints mechanism must be set up. The complaints mechanisms may look different in different communities, and there are several examples that could serve as a model – local and regional ombudspersons⁶¹, national or thematic ombudspersons, consumer complaints boards, patient injury boards⁶² and anti-discrimination agencies⁶³ etc. However, it is of great importance that

⁶⁰ http://brs.ski.se/brsbibl/kata_documents/doc39367_1.pdf

⁶¹ Whitmore, The links between local and regional democracy and human rights, Contribution of the Congress to the Forum for the Future of Democracy (Sigtuna, Sweden, 13–15 June 2007).

⁶² See <http://www.pff.se/Information-in-English/>.

this is free of charge for the citizens, and there is probably also a need for advocates representing civil society. One can for example envisage a solution with institutions funded by voluntary organisations or with these organisations responsible at least for organising complaints procedure. Local information desks or local or regional ombudspersons might be established to provide citizens with help when making complaints. The complaints mechanism or bodies can vary and have different functions depending on which kind of human rights are dealt with. Firstly, the ombudsperson can have the role of a mediator who seeks friendly settlements, based on fair principles, between an individual complainant and a public body. Secondly, the ombudsperson can play a more important legal role as a Human Rights Watchdog, an Ethics in Public Office Commission, or a Freedom of Information Commissioner. The ombudspersons, boards or panels may vary but must be seen as important players protecting human rights and handling citizens' complaints at first instance.

91. It is most important that there should be a transparent and independent complaints body at local or regional level. To avoid errors and omissions, local and regional authorities need to consider mainstreamed human rights dimensions in the transparent planning and budgeting of their activities. This could possibly be done by way of increased co-operation with the Fundamental Rights Agency of the EU based in Vienna. A major task of the Agency is to collect and analyse official and non-official information and data on fundamental rights issues in the EU. Given the differences in data availability and quality across the EU, the Agency is also asked to develop methods and standards to improve data quality and comparability.⁶⁴

92. Since local and regional problems have an impact on the state as a whole, an important and necessary task of the member states is to secure the existence of, and to distribute valid information about, the content of the ECHR supplemented by the case law of the European Court of Human Rights and leading human rights cases from the national courts. Such work would increase availability and effectiveness and lead to a common standard in Europe. Another task for the member states is to develop systems for ongoing scrutiny of the implementation of human rights to make sure that practice is in line with the Convention and the case law. Finally, the member state also has a responsibility to ensure that adequate education and professional training concerning human rights is offered to civil servants, police and judges etc.⁶⁵

93. Systematic work for implementing and monitoring human rights at the local and regional levels in the member states not only helps implement human rights, but will also reduce the burden for the national level and enable the European Court of Human Rights to function more effectively. Injustice and mistakes should be dealt with according to the principle of subsidiarity, i.e. at the level where they occur. Therefore, municipalities and regions must be considered an under-used resource in the struggle to keep the European Court as a last resort. It can also be mentioned that Protocol 14 has long been debated as an efficiency-enhancing reform of the ECHR, but it must be stressed that empowering the municipalities and regions more in the work of promoting human rights might be just as important a reform. Another important development is to make a systematic evaluation (scrutiny) of what national legal systems do to implement human rights. In some cities, the government has established a special monitoring unit to verify that laws and rules are in conformity with the ECHR and its standards. In some countries, there is a separate entity for dealing with the issues in Parliament. Even at the regional level there are similar units, as in Catalonia and the Basque Country. Thus, systematic scrutiny of the local and regional level would be of great importance.

⁶³ The objective of the Anti-Discrimination Agency's activities is to strengthen anti-discrimination work at the municipal and regional level, to raise visibility, influence and change the discriminatory structures and thereby prevent and combat the various forms of discrimination and to help streamline the application of discrimination legislation.

⁶⁴ See http://fra.europa.eu/fraWebsite/home/home_en.htm. The Fundamental Rights Platform (FRP) is a network for co-operation and information exchange, set to act as the main channel for FRA's co-operation with civil society and to ensure a close co-operation between the Agency and relevant stakeholders.

⁶⁵ Recommendation Rec (2004) 4 of the Committee of Ministers to member states, Reforming the European Convention on Human Rights; A work in progress, CoE, 2009, p. 671–675.

94. In principle, the focus of the Congress is human rights and questions concerning democracy or local government. Thus, the Congress has an important benchmarking, awareness-raising and enabling role regarding the role of local and regional authorities in the implementation of human rights. The Congress has an important role as a mediator of successful experiences which can be strengthened and systematised (benchmarking). The Congress should collect and communicate good practices and criticise not so good examples, showing that one should have the political courage to talk even about unpleasant things. The Congress might also create networks where information could be exchanged. Another important role could be played by the Association of Local Democracy Agencies (ALDA), an international NGO that co-ordinates a network of Local Democracy Agencies (LDAs). The LDAs are local NGOs acting to foster human rights and local democracy.

95. The issue of the costs of social and economic human rights consists of two parts: that decided at the national level, which also is secured by proper financing, and the remainder which the municipality or the region can decide in its own remit, which is financed by "local" means. In the latter case, priority problems can occur where substantive rights can be set against each other if there is not enough funding for both. In the first case, the municipality is more of an "agent" to the state as a whole – the basic level should be implemented as well as civil and political rights. However, it is important that the local or regional authorities have enough funding for the proper management of human rights related issues. If the economic situation is unfavourable, there is always a risk that, because of economic priorities, human rights will not be fully fulfilled. The question is crucial, no matter how the relationship between the central and the local/regional level is organised and how local or regional activities are financed, whether the money comes from the state or the economy of the local or regional authorities is financed by taxes. The best way of dealing with the problem is probably through negotiations between central government and local or regional government to reach a solution satisfactory to the parties involved. However, the Congress has to try to ensure "checks and balances", i.e. to make sure that the responsibilities given to the municipalities or the regions are also followed up by the proper funding.

96. The focus of the Congress is human rights and questions concerning democracy and local and regional government. The Congress has an important awareness-raising and enabling role, as well as a role of mediator of successful experiences to be consolidated and systematised. The Congress could therefore be responsible for monitoring activities concerning human rights, i.e. introducing human rights as an indicator in the ongoing monitoring process. The Congress can also prepare special reports in which the human rights situation in member states is highlighted, annually, biannually or in some cases every fifth year.

97. The importance of ongoing monitoring must be underlined. The Congress could therefore also consider audit reports on specific themes, each year with a different focus. The importance of calling on independent authors cannot be understated, and the Congress could perhaps set up a group of independent experts together with the NGOs working on human rights.

98. The Institutional Committee should have the primary responsibility, while each specialised committee should evaluate its own area. But the most important thing is adding human right issues as a new dimension to the ongoing monitoring of local and regional democracy in member states and an ongoing ambition to strengthen the financing principle of human rights implementation.