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

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

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Summary

This is the second report assessing the implementation of the Charter in France since the country ratified it in 2007. The co-rapporteurs note with satisfaction the Prime Minister's announcement of decentralisation reform, the general clause of competence enjoyed by municipalities, and France's ratification of the Additional Protocol to the Charter in 2020 or the special status granted to the City of Paris in 2019. The frequent reference to the Charter in litigations related to local or regional governance is also acknowledged by the co-rapporteurs.

However, the report highlights issues that merit attention, including incomplete decentralisation, as indicated in the assessment by the Court of Auditors in its 2023 annual public report entitled "Decentralisation 40 years on", confusing distribution of competences, over-regulation of the exercise of delegated competences to local authorities, and a gradual reduction in local taxation leading to excessive centralisation of local and regional authority funding. Additionally, the co-rapporteurs note the lack of commensurate funding from the central government, increased reliance of local authorities on grants and contractual funding, and the use of consultation mechanisms primarily as channels for informing local and regional authorities of central government initiatives, plans, and regulations.

Finally, the co-rapporteurs express concern about the increasing threats and attacks against mayors and elected representatives by members of society, often through social media, jeopardising local democratic governance.

Consequently, the co-rapporteurs suggest advancing recently announced decentralisation, clarifying the division of competences, avoiding over-regulation of competences, enhancing fiscal autonomy at subnational level, and periodically reviewing the costs of performing delegated competences to ensure their commensurate funding. Furthermore, they stress the importance of reducing the reliance of local authorities on contractual funding and central transfers, as well as implementing genuine consultation mechanisms.

Lastly, the co-rapporteurs encourage national authorities to strengthen legal protection for mayors and extend limitation periods under criminal law.

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

RECOMMENDATION 507 (2024)²

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

- a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;
- b. Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government”;
- c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;
- d. the contemporary commentary on the explanatory report to the European Charter of Local Self-Government adopted by the Congress Statutory Forum on 7 December 2020;
- e. the Congress priorities for 2021-2026, in particular priority 6b concerning the quality of representative democracy and citizen participation;
- f. the Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goals 11 on sustainable cities and communities and 16 on peace, justice and strong institutions;
- g. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;
- h. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;
- i. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities, adopted on 4 April 2019;
- j. the previous Congress Recommendation on the monitoring of the European Charter of Local Self-Government in France [[Recommendation 384 \(2016\)](#)];
- k. the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in France [[CG 30\(2016\)06-final](#)].

2. The Congress points out that:

- a. France joined the Council of Europe on 5 May 1949, signed the European Charter of Local Self-Government (ETS No. 122, “the Charter”) on 15 October 1985 and ratified it on 1 May 2007;
- b. France signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) on 16 November 2009 and ratified it on 1 September 2020;
- c. France has made a reservation concerning Article 7, paragraph 2, and an interpretative declaration regarding Article 3, paragraph 2, of the Charter;
- d. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (“the Monitoring Committee”) decided to examine the situation of local and regional democracy in France in the light of the Charter. It tasked Bryony Rudkin, United Kingdom (L, SOV/G/PD), and Matija Kovac, Serbia (R, EPP/CCE), with preparing and submitting to the Congress a report on the implementation of the Charter in France. The delegation was assisted

2. Debated and adopted by the Congress during the 46th Session on 27 March 2024, (see document [CG\(2024\)46-16](#), explanatory memorandum), rapporteur: Bryony RUDKIN, United Kingdom (L, SOV/G/PD).

by Prof. Angel Moreno Molina, President of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

e. The two parts of the monitoring visit took place from 7 to 9 March 2023 and from 5 to 7 September 2023. The Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the two parts of the monitoring visit is appended to the explanatory memorandum;

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

3. The Congress notes with satisfaction that:

a. the Prime Minister announced a reform of decentralisation in the Senate on 31 January 2024;

b. municipalities enjoy a general clause of competence;

c. in 2020, France ratified the Additional Protocol to the Charter on the right to participate in the affairs of a local authority and is now one of the few European countries that have signed and ratified all Council of Europe conventions and protocols pertaining to local and regional democracy;

d. the Charter is frequently relied on in legal proceedings between the State and municipalities/regions and is referred to extensively in several rulings by the *Conseil d'Etat* and the Constitutional Council;

e. since 2019, Paris has been a special-status local authority, called City of Paris (Ville de Paris).

4. The Congress draws the attention of the national authorities to the following points:

a. decentralisation has not yet been successfully completed, as indicated in the assessment by the Court of Auditors in its 2023 annual public report entitled "Decentralisation 40 years on";

b. the confusing distribution of powers between the State and the three levels of local and regional government weakens political accountability, undermines residents' identification with local and regional authorities and discourages them from becoming more involved in local politics and taking part in subnational elections;

c. regulations that are too often detailed and restrictive determine the way in which local powers must be exercised, reducing local authorities' leeway in exercising their delegated powers and adapting to local conditions;

d. a gradual reduction in local taxation, for which local and regional authorities have the power to set the relevant rates, and its replacement by transfers and grants from central government is leading to excessive centralisation of local and regional authority funding and thereby undermining implementation of the principle of local financial autonomy within the meaning of the Charter;

e. in practice, the funding transferred by central government to local and regional authorities does not always seem to be in line with the real costs of providing high-quality local/regional services;

f. increasing reliance on the use of grants to local and regional authorities based on contractual funding commonly referred to as "Cahors contracts" is leading local authorities to act more as managers of priorities set by the State, thereby diminishing their local autonomy;

g. the mechanisms for consultation with the main national associations of local and regional authorities are used more as channels for information regarding central government initiatives, plans and regulations than as real frameworks for discussion and negotiation with local and regional authorities;

h. mayors and elected representatives are increasingly confronted with threats and undue pressure and sometimes even physical attacks from members of society, often through social media, which jeopardises their ability to perform their local duties and undermines the foundations of local democratic governance.

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

a. move forward with the decentralisation recently announced in the country, consolidating the principles of local and regional self-government and autonomy ("*libre administration*") while enshrining the subsidiarity principle more explicitly in legislation;

b. clarify and simplify the current system of allocation of powers between the State and local and regional authorities, based on the principles of exclusivity and subsidiarity;

c. avoid over-regulation in the delegation of powers to local and regional authorities so as to provide them with greater margin of manoeuvre in adapting the exercise of these powers to local conditions;

d. increase local and regional authorities' decision-making powers regarding local taxes and the rates thereof so that fiscal autonomy becomes an effective principle, thereby enabling those authorities to enjoy greater financial autonomy;

e. periodically review the costs relating to the powers transferred to local and regional authorities to ensure that the sums transferred by central government cover the real cost of providing local services of a satisfactory standard;

f. gradually reduce the level of contractual funding for local and regional authorities and of Cahors contracts, thereby increasing local and regional authorities' freedom to decide how to use investment transfers received from central government;

g. implement genuine mechanisms for consultation with associations representing local and regional authorities in a true spirit of dialogue and partnership on all issues that affect them, including public finance, so that local and regional authorities are treated as genuine instruments of co-governance;

h. introduce measures strengthening legal action and extending limitation periods to provide better protection under criminal law for mayors who are subject to attacks or assaults by members of the public when exercising their public duties (possibly consider introducing a specific type of offence covering such cases).

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

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

1. Pursuant to Article 1, paragraph 3 of Statutory Resolution CM/Res(2020)1 of the Committee of Ministers, the Congress regularly prepares reports on the state of local and regional democracy in all Council of Europe member states.

2. The French Republic is a party to the European Charter of Local Self-Government (ETS No. 122). France signed the Charter on 15 October 1985 and ratified it on 17 January 2007. The Charter entered into force on 1 May 2007. When ratifying the Charter, France made a declaration, contained in the ratification instrument deposited on 17 January 2007. This declaration contained the following three provisions:

- (a) the French Republic considers that “the provisions of Article 3, paragraph 2, must be interpreted as giving to the States the possibility to make the executive organ answerable to the deliberative organ of a territorial authority”;
- (b) “the French Republic considers itself bound by all the paragraphs of Part I of the Charter, except paragraph 2 of Article 7”. This means that France made an reservation to that provision of the Charter;
- (c) “in accordance with Article 13, the public authorities to which the Charter applies are the territorial authorities which are named in Articles 72, 73, 74 and in Title XIII of the Constitution, or which are created on their basis”. Therefore, the French Republic explicitly stated that “the public establishments of intercommunal cooperation, which are not territorial authorities, are excluded from the scope of application of the Charter.”

3. Consequently, with these statements, France considers itself bound by almost all articles and paragraphs of articles of the Charter, except Article 7.2. Conversely, in ratifying the Charter, France declared that it purports to apply the scope of the Charter to all the territorial entities that are present in its territory and are recognised in its constitution (see below) but the Charter does not apply to the public establishments of intercommunal co-operation (for instance, the the communities of municipalities or urban communities).

4. France has also signed on 16 November 2009 the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) and ratified it on 1 September 2020. The Additional Protocol to the Charter entered into force in France on 1 January 2021.

5. In the field of local and regional democracy, France has also signed and ratified a number of Council of Europe international instruments. In particular, France:

- (a) signed (on 10 November 1982) and ratified (on 14 February 1984) the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106). The convention entered into force on 15 May 1984. Concerning this Convention, France first made a declaration at the time of signature according to which “[t]he Government of the French Republic, referring to paragraph 2 of Article 3 of the convention, declares that its application shall be subject to the conclusion of inter-state agreements”. However, this declaration was later withdrawn by a note verbale from the permanent representation, dated 24 January 1994;
- (b) signed (on 9 November 1995) and ratified (on 4 October 1999) the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, of 9 November 1995 (ETS No.159). This Protocol entered into force in France on 5 January 2000. However, France made a declaration, dated 2 November 1995, later confirmed by a letter from the French Minister of Foreign Affairs dated 15 September 1999. According to that declaration, “the Government of the French Republic declares that it will applies [sic] the provisions of Article 4 only”. This limited scope was replicated later (see below);
- (c) signed (on 20 May 1998) and ratified (on 7 May 2007) Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation, of 5 May 1998 (ETS No. 169). This Protocol entered into force in France on 8 August 2007. However, and similarly to Protocol No. 1, in a declaration contained in the instrument of approval deposited on 7 May 2007, France insisted that “with reference to Article 6, paragraph 1, of Protocol No. 2, the Government of the French Republic

declares that it will apply the provisions of Article 4 of the Additional Protocol of 9 November 1995 only”;

- (d) signed (on 16 November 2009) Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings, of 16 November 2009 (ETS No. 206), and ratified it on 21 January 2013. This Protocol entered into force in France on 1 May 2013.

6. In light of the foregoing, it can be concluded that France is one of the few European countries that have signed and ratified all Council of Europe conventions and protocols pertaining to local and regional democracy.

7. The Monitoring Committee of the Congress appointed Ms Bryony Rudkin, Rapporteur on Local Democracy (SOC/G/PD, United Kingdom) and Mr. Matija Kovač, Rapporteur on Regional Democracy (EPP/CCE, Serbia), and instructed them to prepare and submit to the Congress a report on the application of the Charter in France. The delegation was assisted by Professor Angel Moreno Molina, Chair of the Group of Independent Experts on the Charter as expert. The co-rapporteurs wish to express their thanks to him for his assistance in the preparation of this report.

8. A two-part visit to France was carried out by the Congress delegation in 2023. The delegation would like to thank the permanent representation of France to the Council of Europe, as well as all their interlocutors for the information they provided during the two visits. The first leg of the monitoring visit took place in Dijon and Besançon from 7 to 9 March 2023 and included online meetings with local representatives from Réunion. The second leg of the visit took place in Paris from 5 to 7 September 2023 and included a round of meetings with national French institutions and political representatives. The detailed programme of this two-parts visit is appended to the present report.

9. According to Rule 88.3 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent on 4 December 2023 to all interlocutors met during the two visits for comments, possible adjustments or corrections (“consultation procedure”).

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

2.1 Local and regional government system (constitutional and legislative frameworks, reforms)

2.1.1 Constitutional and legislative framework

2.1.1.1 Introduction

10. The first French Constitution was passed on 3 September 1791. The constitution currently in force was promulgated on 4 October 1958 and has been amended several times.

11. Throughout its history, France has been a unitarian country. This essential principle has, however, been compatible with local decentralisation. As a matter of fact, the principle of local autonomy (*libre administration*), has been a long-standing principle of the French Republic. Moreover, a mild regional decentralisation was launched in the seventies of the past century. In this respect, Article 1 of the French Constitution states that: “France shall be an indivisible, secular, democratic and social Republic... It shall be organised on a decentralised basis”.

12. The unitarian character of the country, the legacy of the French Revolution and its inspiring principles,³ the exclusive legislative competence of the national (and only) parliament to legislate on territorial and governmental matters... - all these factors explain that the system of local and regional authorities has traditionally been symmetric and homogeneous (at least in the continental part of France),⁴ while derogations and special status have been granted to big cities (Paris, Lyon, Marseille) and to insular and overseas territories.

3. *Liberté, égalité, fraternité*, today enshrined in Article 2 of the French Constitution.

4. The European, continental part of France together with Corsica forms the so-called metropolitan France (*France métropolitaine*).

13. At present, France has three territorial levels of government: (a) the state level, which is competent for most issues of national interest, such as domestic legislation in all matters (including those of local and regional governments), international affairs, defence, taxation and finances, judicial system, external commerce, institutional reforms, etc.

14. Apart from the state level, France is territorially organised in different types of local and regional authorities, which are altogether called *collectivités territoriales* (Title XII of the constitution). Namely, Article 72 of the constitution states that “[t]he territorial communities⁵ of the Republic shall be the Communes, the Departments, the Regions, the Special-Status communities and the Overseas Territorial communities to which article 74 applies”.

15. (b) The regional level. This is a complex structure, composed basically of two types of entities: on the one hand, standard or regular regions in the continental part of France⁶ (*régions*); on the other hand, a heterogeneous group of insular entities enjoying a variable degree of autonomy and whose legal scheme departs from that of the regular regions and departments. In that group, one should include territories in Europe and on other continents. The first type only includes Corsica, which enjoys a special status (see below). The other overseas territories are situated in America, Africa, Oceania or in the Indian Ocean, and were traditionally called DOM-TOM but currently have been renamed as overseas territories of France.⁷ These territories are constitutionally part of France (see Articles 73 and 74 of the French Constitution).

16. (c) The local level, composed of two types of authorities: on the one hand, the municipalities (*communes*), which are the first-tier local authorities; on the other hand, the departments (*départements*), which are the second-tier local authorities, and are similar to entities that may be found in Belgium, Italy or Spain under names such as *provinces*, *provincias*, *provincies*. Apart from these territorial entities, other local entities may be created by national legislation (such as the centres for social services), to which the Charter does not apply. The bodies for intermunicipal co-operation (IMC) also constitute an important feature of local government. However, they are public-law bodies and are not recognised as territorial authorities.

17. As French scholars have noted, “municipalities, departments and regions have the same constitutional status of local self-government”⁸ and they all enjoy the principle of *libre administration* or autonomy. All three levels are summarily described below.

2.1.1.2 The national level

18. At national level, the political branches of the French Republic are structured around the principle of separation of powers. The most important political institutions are the President of the French Republic, the government, the parliament and the judicial power.

19. The head of state is the President of the French Republic. Currently, this position is held by Mr Emmanuel Macron. Contrary to other presidencies of republics having a quasi-honorary character (such as Germany), the President of the French Republic exercises the key political and executive functions of the nation, and is the true political leader of the country. The French system is a presidential one, therefore the president has its own electoral legitimacy and does not depend on the confidence of parliament.

20. The president is the top political officer and discharges relevant executive functions. Among others, the president ensures the proper functioning of the public authorities and the continuity of the state; guarantees national independence, territorial integrity and due respect of the treaties subscribed by France;⁹ appoints some members of the Constitutional Council and its president;¹⁰ ensures the independence of the judiciary,¹¹ etc. The President of the French Republic is elected for a term of five years by direct universal suffrage. Only two consecutive terms may be served by the same person.

5. *Collectivité* is usually translated into English by communities but this term may be misleading. In reality, the concept *collectivité* is hard to translate into English. A *collectivité* is a moral person regulated by public law and enjoying its own legal personality. In this document, we use the terms entities or authorities.

6. A territory frequently identified in France as the Hexagon (*l'Hexagone*).

7. *Départements et régions d'outre-mer* or DROM.

8. Hertzog R. (2012), “Local government in France”, in Moreno Molina, A (ed.), *Local government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, p. 206.

9. Article 5, French Constitution.

10. Article 56, French Constitution.

11. Article 64, French constitution.

21. The government (*le gouvernement*) exercises the executive powers and competences of the state, implements legislation, etc. The government is composed of the prime minister and a variable number of ministers. For the purpose of this report, it is worthwhile mentioning the existence of the ministry of the interior and overseas territories, which is the key agency in the domain of local and regional authorities. The ministry of the interior has different directorates and services concerning local authorities.

22. Parliament is composed of two chambers, the assembly (*assemblée nationale*) and the senate (*sénat*). The national assembly has 577 members, called deputies (*députés*). These are elected by direct universal suffrage in a first-past-the-post system, for a term of five years. The national assembly discusses and approves the different types of statutes and parliamentary resolutions provided for by the French Constitution: ordinary acts (*lois*); organic or special acts (*lois organiques*), constitutional acts (*lois constitutionnelles*), etc.

23. For the purpose of this report, the most important are the organic acts, pieces of legislation that need a special majority in parliament, and which lay down, for instance, the status and competences of certain overseas territories. The national assembly also controls the government and performs the regular functions of any national parliament.

24. For its part, the senate is composed of a number of senators that cannot exceed 348, who are elected for a term of six years. The peculiar feature of the senators is that they are not directly elected by citizens but indirectly by a number of electors (*grands électeurs*), who are in essence members of the local and regional authorities and bodies. That is, senators are elected mainly by local elected representatives. Moreover, a senator may discharge at the same time the functions of local councillor and senator. Consequently, senators are the genuine representatives of all the sub-state territorial governments that form France.

25. This feature is unique in comparative law (at least in Europe) and constitutes a powerful mechanism for the intervention and participation of local/regional authorities in the legislative and political life of the nation. Moreover, Article 24 of the French Constitution explicitly states that “[t]he Senate shall ensure the representation of the territorial communities of the Republic”.

26. In order to better understand the French territorial system, it is important to underline that in France the subject matter of local and regional authorities belongs exclusively to the national government and parliament. Regions do not have normative or executive competences in this field. As a consequence, the legal scheme and operational framework for local/regional governments is quite homogeneous across the nation. In practice, the national authorities are the only decision makers in the matter of local/regional authorities, and the central authorities or the Prefect are the only relevant political interlocutors of those entities.

27. The judicial power follows the French tradition and is structured around the ordinary or judicial jurisdiction, the administrative jurisdiction and financial jurisdictions. The former includes civil, commercial, criminal and labour courts, and at the top is the Court of Cassation. This judicial body acts as a kind of Supreme Court, except for administrative proceedings. The administrative jurisdictions include first-level administrative courts (*tribunaux administratifs*), appeal administrative courts (*cours administratives d'appel*) and the Council of State (*Conseil d'État*) at the top, which is the apex of the administrative jurisdiction.

28. The Constitutional Court (*Conseil constitutionnel*) has exclusive competence to check the constitutionality of the acts of parliament, clarify the allocation of powers among the different entities composing France, ensure the legality of national referendums and elections, protect the fundamental rights embodied in the French Constitution, etc.

29. The judicial system is also a fully national responsibility. For managerial and administrative purposes, the key body is the High Council of the Judiciary (*conseil supérieur de la magistrature*).

2.1.1.3 The regional level

30. As noted above, in the 1970s, a mild process of regional decentralisation took place in France. Originally, in 1959, regions were mere territorial subdivisions of the national territory created to foster economic development but progressively they were granted a growing political role and more

competences, and different functions and services. Since 1986, the regions became decentralised territorial communities.¹²

31. However, regions lack legislative authority; however, they are empowered to execute legislation through regulatory mechanisms. Different reforms have taken place in recent years, including a change in their names, number and territorial scope. The last such reforms took place in 2015 and as a consequence of it, the current regions obtained a new territorial scope and, for many of them, a new name. A region includes the territory of several departments.

32. Currently, there are 13 regions in the continental part of France¹³ and two overseas regions Guadeloupe and Réunion. French Guiana and Martinique have a single collectivity status, having absorbed the region and the department (2010). Mayotte also has a special status. Here, as referred above, the system is quite uneven and two groups may be considered: on the one hand the 12 regions placed in *l'Hexagone*, which have quite a symmetric and homogeneous scheme of organisation and competences. On the other hand, Corsica and all the overseas entities have special competences and a greater autonomy, and form a heterogeneous group (see below). Special reference should also be made to New Caledonia, whose statute is governed by Title XIII of the French Constitution (Articles 76 and 77). "French Polynesia and New Caledonia, on their part, form overseas countries ('Pays d'outre-mer') within the Republic. However, French Polynesia is classified as an "overseas territory," whereas New Caledonia holds a provisional status as a "special territorial entity".

33. The internal organisation and competences of regional governments are presented in detail below, in Chapter 3 of this report. At this point it is enough to state that all of them have a regional council, whose members are directly elected in universal and free elections, happening every six years. The last regional elections took place in June 2021. The regional council has a permanent committee, elected among the members of the council. The regional president and the vice-presidents are elected by the council. The president has classical executive functions.

34. Leaving aside the special case of Corsica,¹⁴ the regions situated in the European territory of France¹⁵ are not homogeneous in terms of extension and respond to a rational division of the territory, and some of them do not respond to traditional, natural or historical regions.¹⁶

2.1.1.4 The local level

35. The local level of public administration involves basically two types of entities having a territorial basis: the municipalities (*communes*) and the departments (*départements*). Both types of entities are mentioned in the constitution, which provides some rules on their organisation and powers in Articles 72 and following. Municipalities and departments were created at the beginning of the French Revolution in 1789 and they share some common institutional features. Both types of entities are granted the principle of local autonomy (*libre administration*).

Municipalities

36. Municipalities (*communes*) are the first-tier level of local administration. Currently, there are 34 945 municipalities in France, including 129 in the overseas departments. This is by far the largest number of municipalities in any European country. The number of municipalities has been falling in recent years as a result of mergers between *communes*. In addition, 97% of municipalities have fewer than 10 000 inhabitants, and 71.6% have fewer than 1 000 inhabitants. As many other constitutional features of France, the roots of this situation can be traced back to the French Revolution, where, in contrast to the previous situation (where only the king could grant the status of municipality to a given settlement), the revolutionaries decided to grant that status to any parish, city or town existing in the country.¹⁷

12. Hertzog R. (2012), "Local government in France", in Moreno Molina, A (ed.), *Local government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, p. 220.

13. In alphabetical order: Auvergne-Rhône-Alpes, Bourgogne-Franche-Comté, Bretagne, Centre-Val de Loire, Corse, Grand Est, Hauts-de-France, Île-de-France, Normandie, Nouvelle-Aquitaine, Occitanie, Pays de la Loire, Provence-Alpes-Côte d'Azur.

14. Corsica is the smallest (8 680 km²) and least populated region (327 000 inhabitants) in metropolitan France.

15. In French, this territory (continental France plus Corsica) is called *France métropolitaine*.

16. The biggest is Nouvelle Aquitaine (84 061 km²) and the smallest Paris/Île-de France (roughly 12 000 km²). The most populated region is the Paris region (roughly 12.2 million inhabitants) and the least populated is Centre-Val de Loire (2.5 million inhabitants).

17. Hertzog R. (2012), "Local government in France", in Moreno Molina, A (ed.), *Local government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, p. 203.

37. This structural fact has been a recurring matter for political discussion but a process of amalgamations was never seriously undertaken for genuinely French political features: that process usually encounters not only the opposition of the local populations but also, and more importantly, the reluctance of the senate, where the senators are elected by local or regional politicians. Amalgamations of municipalities are thus performed on a scattered, unsystematic and voluntary basis, and they have had a minor impact on the number of municipalities.¹⁸

38. As noted above, the legislation applicable to the municipalities is exclusively enacted by the national parliament. The most important piece of legislation is the Code of Local Government, a codified compilation first enacted in 1996 that has been subsequently amended or updated. Here we will refer to it as “General Code”.¹⁹

39. Municipalities have full administrative powers to adopt individual decisions concerning individuals and corporations located in their territory. They maintain regulatory authority and have an important set of competences to deal with all matters of local interest, which are presented in detail below (see Chapter 3 of this report).

Departments

40. The departments (*départements*) are the second-tier level of local administration in France, intermediate between the regions and the municipalities. Historically, they were a creation, too, of the 1789 Revolution and constitute a typical 19th-century subdivision of the territory for the discharge of the functions of the state administration.

41. At present, there are 101 departments in France. Most are located in the continental part of France, considering that Corsica ceased to have its two departments in 2015, and the rest are located overseas. For instance, Guadeloupe, Mayotte and Réunion are departments, too, while they enjoy special features due to their geographical and political peculiarities.

42. The very existence of the departments is guaranteed by the constitution, whose Article 72 enumerates them among the *collectivités territoriales*. Since all these bodies enjoy similar constitutional provisions, some of the basic rules presented above for the municipalities apply also, *mutatis mutandis*, to departments.

43. Departments are also endowed with autonomy (*libre administration*); they have a council whose members are elected by the people in universal, periodical and free elections (two-round majority binomial system) held every six years (seven for the current term). They have a president, elected by the departmental council, etc.

44. In general, departments are competent to administer and manage the matters and issues of provincial interests, mainly social and territorial solidarity, and defend the interests of small municipalities or intermunicipalities. They ensure the management of departmental roads and second-level schools, etc. A detailed presentation is included in Chapter 3 of this report.

Reforms

45. The French system of territorial government has remained mostly stable over the last two centuries and the essential features stem from the principles proclaimed by the French Revolution of 1789. However, some reforms and elements of change have taken place in the last decades, and these are summarised here.

46. To begin with, the whole concept and effective crystallisation of decentralisation has been the object of numerous pieces of legislation and regulations, which have touched on different forms of intervention for government action, regarding the distribution of competences of local authorities, human and financial resources, and the electoral system for local and regional elections, etc. Among these laws stand:

- the Act of 2 March 1982, on the rights and freedoms of municipalities, departments and regions, a law that is usually referred to as the first stage of decentralisation;
- the Act of 6 February 1992, on the territorial administration of the Republic, which consolidated decentralisation;

18. In 2011, the number of municipalities in France was 36 791. In 2015, this number was slightly lower: 36 744.

19. *Code général des collectivités territoriales*.

- the Constitutional Act of 28 March 2003, usually called the second stage of decentralisation;
- the Act of 16 December 2010, on the reform of territorial entities;
- the Act of 27 January 2014 (the MAPTAM Act);
- the Act of 7 August 2015, (the NOTRe Act).

47. A second important element of reform has been the emergence and progressive consolidation of the regions as a new actor in the territorial landscape of France. In 1986, the regions gained their full recognition in political and constitutional terms. They were enshrined within the Constitution during the 2003 reform, and now are listed among the *collectivités territoriales* that structure the French Republic. In 2015, a change in its number, name and boundaries took place, by means of the Act of 16 January 2015, on the new delimitation of regions and the new electoral system for regions and departments. This development will be analysed in detail in Chapter 3 of this report (and in connection with Article 5 of the Charter). Since then, the number and boundaries of regions have remained unchanged.

48. In general, French regions constitute a mild attempt of regional decentralisation as their autonomy, resources, powers, and competences are moderate. Leaving aside the cases of Corsica and certain overseas territories, the constitutional and political relevance of French regions are far from other similar experiences and names that may be found in countries such as Belgium, Italy or Spain. This situation, however, is deeply rooted in the political conscience of the French. In this sense, it is important to remind that in a national referendum held in 1969, the French people even refused the idea of establishing regions.

49. A third element of change and reform has been the approval of specific or special status for certain territories, which include Corsica and the overseas territories as well as European Collectivity of Alsace (*Collectivité européenne d'Alsace*). Concerning Corsica, the island has specific features and is a delicate political question in the nation. The island enjoys a special status, which has been established by means of subsequent acts of parliament (Acts of 13 May 1991 and 22 January 2002). Since 1 January 2018, in accordance with the law of 7 August 2015, on the new territorial organisation of the Republic, Corsica is a local authority endowed with a specific status (*à statut particulier*). However, political tensions (pro-autonomy movements, Corsica nationalism and even pro-independence advocates) have been a permanent feature during the last decades (see, for example, the political statements made by President Macron on his trip to Corsica in late September 2023, in favour of a deeper autonomy for Corsica). In relation to the European Collectivity of Alsace, this newly formed entity, resulting from the merger of the two departments (Bas-Rhin and Haut-Rhin), has assumed a leading role in cross-border cooperation within its jurisdiction. It has been vested with additional specific competencies, notably concerning bilingualism and multilingualism policies, tourism, as well as the management of the non-concessionary national road network, in accordance with Law No. 2019-816 of 2 August 2019, regarding to the competencies of the European Collectivity of Alsace.

50. In the overseas parts of the country, different laws have been passed with the aim of granting more autonomy and specific legal schemes to many of them. For instance, the organic Act of 12 April 1996, on French Polynesia and the Constitutional Act of 20 July 1998, on New Caledonia, both reinforced the autonomy of these overseas territories. In the latter case, the definition of its legal and political status has triggered long negotiations, institutional changes and even popular consultations on the future of the territory.²⁰

51. The fourth element that should be noted here is the important growth of IMC. During the last decades, this trend has produced a very high number of bodies for co-operation among the municipalities (associations, unions and the like) forming several categories and having different scopes (referred to as IMC bodies in this memorandum). Today, France is probably the European country where IMC has developed the most and has produced the largest number of associative bodies. This tendency has been fostered by the very high number of small and even very small municipalities.²¹ In view of their lack of resources, these municipalities are constrained to co-operate among themselves to discharge many local services and responsibilities. This trend has produced different types of bodies and structures. This trend is presented in more detail in Chapter 3 of this report.

20. An independence referendum was held in New Caledonia in 1987 but a popular majority rejected the prospect of becoming an independent country. Two subsequent referendums were held in 2018 and 2020, with the same result. However, the pro-independence parties formally demanded in 2021 to have another referendum organised.

21. In 2012, 14 352 municipalities had less than 300 inhabitants and 20 233 municipalities had less than 500 inhabitants (Hertzog R. (2012), "Local government in France", in Moreno Molina, A. (ed.), *Local government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, p. 207).

52. Lastly, the fifth element of reform has to do with the uniformity of the legal scheme for municipalities. Recently, special arrangements and schemes were enacted for the biggest three municipalities in France: Paris, Lyon and Marseille. A new concept, that of the metropolis (*métropole*), has been introduced: the metropolis of Lyon was established by the MAPTAM Act of 2014.²² The case of Paris is presented below.

2.2 The status of the capital city

53. Paris has been the administrative, economic, political and intellectual capital of France since the Middle Ages. The capital of the country changed several times throughout the convulse history of the nation (and was located in different cities such as Versailles, Bourges, Tours, etc.). However, since 1792, Paris has permanently been the stable capital of the country, although there is no express constitutional provision on this specific question.

54. Currently, the city of Paris (not to be confused with the Paris region²³) is the seat of the top national political and judicial institutions, the court of audits, top judicial bodies, etc. It is also the seat of all foreign embassies and many international organisations (the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Organisation for Economic Co-operation and Development (OECD), etc.).

55. Paris is unique among the French municipalities because it is a city and a department (No. 75) at the same time. Conversely, the department of Paris is the only one having just one municipality. Not to forget the existence of Greater Paris (*la Métropole du Grand Paris*), which is a specific type of IMC body, created in 2016 and grouping Paris and several nearby municipalities. The surface area of the department/city of Paris is 105.40 km² and its population is 2 187 526 inhabitants, with a density of 20 755 inhabitants/km². Thanks to a specific piece of legislation,²⁴ Paris has since 1 January 2019 been a special-status local authority, called city of Paris (*Ville de Paris*).

56. The two-fold status of Paris makes that its council and its mayor have competences in both legal capacities. The mayor of Paris is thus also the president of the departmental council, and the council of Paris is at the same time a municipal council and a departmental council, having two series of competences. However, the powers of administrative policing are presently divided between the Mayor of Paris and the Prefect of Police, the latter being a senior state official.

57. Like Lyon and Marseille, Paris is divided in *arrondissements* (a sort of districts or quarters). In May 2020, the first four *arrondissements* of Paris were merged to form the area of Paris Centre, and the rest of the municipal/departmental territory has been divided in 20 *arrondissements*. The relations between the central bureaucratic structure of Paris and its *arrondissements* are regulated by the Act Paris-Lyon-Marseille. Each district has a council and a mayor (*maire d'arrondissement*). Local elections take place at district level, not at local central level. After the local elections, the local councillors in the higher positions form the general council of the city of Paris, which in turn elects the mayor of Paris. A bill aimed at changing this specific 'Paris-Lyon-Marseille voting system is currently under examination.

58. As most capital cities in the world, the city of Paris is confronted with specific problems, which were highlighted by local politicians during the second leg of the monitoring visit in September 2023. Namely, city of Paris representatives reported the following basic complaints to the delegation. First, the city of Paris does not collect specific or special taxes for being the capital city; second, the challenges for administering the urban/metropolitan space are great, in light of the big extension of the conurbation; and third, the difficulties to combine the policies at district and at central local level (the mayor of a given district and the mayor of Paris may belong to different parties). However, the representatives met by the delegation did not make specific complaints about the status of Paris and in general they were not critical of the current legal scheme.

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

59. As multiple experts have underlined, France was very active at the stage of discussing the Charter, and was actually one of the states that signed it immediately, in October 1985²⁵ (see above). However,

22. On this specific status, see: Verpeaux M. et al. (2016), *Les collectivités territoriales. La décentralisation*. La documentation française, pp. 30-33.

23. *Île-de-France*. In reality, Paris region is only an English term.

24. Law No. 2017-257 of 28 February 2017, relating to the status of Paris and metropolitan planning.

25. Hertzog R. (2012), "Local government in France", in Moreno Molina, A (ed.), *Local government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, p. 210.

the Charter was only ratified many years later, concretely in 2006, and became effective only on 1 May 2007. This means that France was one of the last countries to ratify the Charter.

60. France considers itself bound by almost all articles and paragraphs of articles of the Charter, except Article 7.2. Conversely, in ratifying the Charter, France declared that it purports to apply the scope of the Charter to all the territorial entities included in its territory (those mentioned in the French Constitution), but the Charter does not apply to the public establishments of intercommunal co-operation.

61. Regarding the status of the Charter in the domestic legal order, the binding nature of that instrument derives not only from the Charter itself as an international treaty, but also from the domestic constitution. The place of the Charter in the French legal order is indeed clear and it binds parliament and the government. Article 55 of the constitution is the key provision in this field, as it states that “[t]reaties or agreements duly ratified or approved shall, upon publication, prevail over acts of parliament, subject, with respect to each agreement or treaty, to its application by the other party”.

62. According to some scholars, “the impact of the Charter is marginal. The idea of subsidiarity, that was new in France, has been included in Article 72 of the constitution in 2003”.²⁶ Therefore, it is generally considered that the French legal scheme for local and regional authorities largely complies with the basic requirements of the Charter and, since the principle of local autonomy (*libre administration*) is an old principle in the French constitutional system, the ratification of the Charter did not mean any radical change or shift in the national situation.

63. Without prejudice to this general finding or opinion, it is also true that the Council of State and the Constitutional Council have referred extensively to the Charter in a number of decisions and that the Charter is frequently invoked in legal proceedings opposing the state and one or more municipalities or regions (see below, Chapter 3 of this report, the commentary on Article 11 of the Charter).

64. Last but not least, reference should be made to the advisory activity of the Council of State in the domain of the respect of the Charter. The French Council of State has five advisory sections. In discharging its advisory functions, the Council of State provides legal advice to the state bodies and parliament. In this capacity, the Council of State plays a role in the normative process and may call the attention of the political branches on a potential breach or violation of the Charter, when the national bodies want to approve a new piece of legislation or regulation.

2.4 Previous Congress reports and recommendations

65. So far, the situation of local and regional democracy in France has been the subject of only one monitoring exercise, carried out in 2015. That year, a Congress delegation composed of Mr Jos Wiene (Netherlands, L, EPP/CCE) and Ms Gudrun Mosler-Törnström (Austria, R, SOC) conducted a visit to different French cities and met many local, regional and state representatives.

66. As a result, Congress adopted on 22 March 2016 a recommendation on local and regional democracy in France.²⁷ On that occasion, the co-rapporteurs noted that there had been progress on the whole in the decentralisation process in France and underlined the national efforts accomplished in the field of co-operation between local and regional authorities, especially regarding transfrontier co-operation. They also observed that local authorities enjoy greater financial autonomy as a result of the increasing proportion of own resources in their budgets.

67. However, with respect to the territorial reform carried out in 2016, the co-rapporteurs expressed concern about the lack of any real consultation of local authorities before the adoption of the legislation. They also underlined the financial imbalance between local and regional authorities due to an inappropriate equalisation system.

68. Consequently, the Congress recommended that the French authorities review the process for consulting local authorities’ direct representatives on all decisions concerning them (Article 4), in particular those concerning their boundaries (Article 5). The Congress further recommended that France review its equalisation system to render it more equitable, transfer responsibility for deciding local tax rates back to the local level and clarify the sources of local authorities’ financial resources.

26. Ibid.

27. Recommendation 384 (2016) on local and regional democracy in France.

69. Lastly, the report called on the French authorities to clarify the division of responsibilities between the different tiers of local government to avoid all overlaps and recommended to continue increasing the proportion of own resources in local authorities' budgets.

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

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

Article 2

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

70. In connection with this article, it should first be explored whether the principle of local self-government is recognised in the French Constitution, as demanded ("where practicable") by this provision of the Charter. The answer is affirmative as the French Constitution does explicitly recognise the principle of local self-government in Article 72.

71. On the one hand, the constitution enumerates the territorial authorities existing in the Republic (under the French terminology *collectivités territoriales*). These are: municipalities (*communes*); departments (*départements*); regions (*régions*); entities having a special status (*collectivités à statut particulier*) and entities located overseas (*collectivités d'outre-mer*). On the other hand, the constitution proclaims that all these entities enjoy self-government.

72. However, the French Constitution uses a specific terminology. Instead of saying local autonomy (*autonomie locale*) or self-government (*auto-administration*), the constitution uses the term *libre administration*.²⁸

73. This terminology (rooted in the French political tradition) is in contrast with the official version of the Charter in French, which uses throughout the whole document the wording *autonomie locale*. However, this discrepancy in legal terminology has no meaningful repercussion, since the principle of *libre administration* is unanimously understood in France (in the legal, judicial and academic environment) as a full equivalent to the more widely used term *autonomie locale*.²⁹ In any case, it concerns administrative autonomy and not "political autonomy".

74. Regular legislation should then be considered. In this regard, the most important piece of legislation is the above-mentioned codification achieved in 1996 (*Code général des collectivités territoriales*), repeatedly amended and updated. This is the most important and comprehensive regulation of local and regional government in France. This legislative codification does implicitly recognise the principle of self-government for territorial entities in Article L1111-1: "municipalities, departments and regions are freely administered by elected councils" (*Les communes, les départements et les régions s'administrent librement par des conseils élus*).

75. Therefore, the French Constitution and the key national statute for the territorial local and regional entities proclaim the principle of self-government as a constitutive element of the territorial organisation of the French Republic.

76. In light of the precedent, the co-rapporteurs understand that France fully complies with Article 2 of the Charter.

3.2 Article 3 – Concept of local self-government

Article 3

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive

28. Original wording: « Dans les conditions prévues par la loi, ces collectivités s'administrent librement par des conseils élus... ». In the usual English translations of the French Constitution, the text reads as follows: "In the conditions provided for by statute, these communities shall be self-governing through elected councils..."

29. On the principle of *libre administration* in French public law, see, in general: Faure B. (2021), *Droit des collectivités territoriales*, 6th edition, Dalloz, pp. 31 and ff.

organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

3.2.1 Article 3.1

77. To determine whether Article 3.1 of the Charter is respected in a given country, it is first necessary to identify the competences, powers, services and functions that can (or must) be discharged and implemented by local authorities, and then ascertain whether this realm of action, this group of competences, is sufficient or substantial under most common European standards.

78. The fact that there are different types of territorial authorities in France implies that a separate analysis needs to be done for each of them.

Municipalities

79. The competences of the municipalities include a substantial number of governmental functions and local services in many domains, and they have the power to issue binding local regulations.³⁰ Municipalities are public-law moral persons, and they have full legal personality and capacity to enter into all types of legal transactions.

80. It is important to underline that municipalities are the only territorial entities that enjoy the general clause of competencies (*clause générale de compétence*). This clause empowers them to manage all matters of local interest and to take initiatives for the well-being of their residents, even if the necessary competence to do so is not explicitly granted to municipalities in the law (it is required, indeed, that this competence should not be attributed to the state). Consequently, they may take actions and initiatives in all domains that are considered to be local and for the benefit of local residents, even if they are not explicitly singled out in the legislation.³¹

81. Apart from this general power, numerous statutes and governmental regulations on different sectors of governmental action have attributed specific powers to municipalities in a wide variety of areas. These powers may be identified as explicit competences. Consequently, these legal rules should be checked in order to identify the municipal competences. The key competences, powers and services are:

- town and urban planning (approval of local town planning plans, subject to the competences of other bodies);
- housing; the issuance of building permits;
- urban public transport; public transport facilities;
- to grant permits and licenses, for instance the issuance of permits for small-scale businesses, such as restauration and entertainment places (*horeca*);
- firefighting;
- cemeteries and funeral services;
- social services and social assistance, in particular through the community centres of social action (*Centres communaux d'action sociale*);
- culture and heritage;
- tourism and sport (campsites, sports facilities);
- to give orders on businesses and individuals, as required by the needs of the general police;
- to perform expropriations and engage other real estate operations concerning the local immovable assets;
- to build and operate local markets, bus terminals, cultural centres, slaughterhouses, etc;
- environmental protection: combatting environmental pollution;
- basic infrastructure such as local roads, streets, squares and parks;
- to manage and protect the local public domain; to clean streets and public spaces;
- to regulate and control the transit of vehicles;
- education: construction and maintenance of state primary schools (*écoles primaires*);
- the power to impose the collection of fees and levies for rendering local services;

30. Article L1111-2 of the Code of territorial entities. On this regulatory power of French municipalities, see: Faure B. (2021), *Droit des collectivités territoriales*, 6th edition, Dalloz, pp. 519-525.

31. The legal bases of such inherent power is currently Article L2121-29 of the General Code, which provides that "the municipal council regulates the affairs of the commune through its deliberations" (*Le conseil municipal règle par ses délibérations les affaires de la commune*).

- the power to impose penalties and administrative sanctions to wrongdoers in specific domains such as police, motor vehicle traffic, etc.

82. Apart from these genuine municipal tasks and competences, municipalities concur with the other levels of government in some areas. For instance, (a) municipalities concur with the state in several domains such as planning; economic, social and cultural development; education; the promotion of health and environmental protection, especially the fight against climate change; and (b) they concur with the departments in the social area.

83. On the other hand, municipalities may also discharge state powers or responsibilities in the local territory, such as marriages, passport applications, and the like.

84. It is important to note at this point that in many cases, municipalities do not exercise their own competences themselves (directly) but by means of IMC bodies (*intercommunalités*), where the participating municipalities join and mutualise their resources. This is especially frequent in areas such as the supply of water to households and local industries; transport; waste collection and management; education, etc.

85. It is commonly understood that the domain of activities of municipalities has not been substantially enlarged in recent years. What is more, in the course of the visit many interlocutors of the delegation pointed out that there is a clear trend of recentralisation of competences and spheres of power on the part of the state, in an improper, indirect or subtle manner.

Departments

86. It should be noted that departments have a dual nature: on the one hand, they are full territorial entities and considered second-tier local authorities; on the other hand, they are a form or subdivision of the territory of the French Republic for many state administrative purposes: geographical distribution of the *préfets* and other organs of the deconcentrated state administration, electoral districts, etc. Departments were established by the legislators of the French Revolution (1789) as a way to divide the French territory in a rational and symmetrical manner, with names that did not follow the traditional names of the natural regions and communities of France.

87. Departments as territorial entities have been the subject of many proposals and much speculation concerning their possible dissolution or elimination, in order to clarify the complex local/regional governmental mosaic existing in France (usually referred to as *le mille-feuille territorial*). However, until now these initiatives have not resulted in anything meaningful.

88. Contrary to municipalities, the general competences clause does not apply to departments. Therefore, they can only exercise the competences that are clearly and explicitly attributed to them by legislation. The powers of the departments were modified and clarified in 2015 by an act of parliament called the NOTRe Act. In particular, this statute emphasised and strengthened the role of departments in the promotion of territorial cohesion and in the domain of social solidarity.

89. The main areas of responsibility of the departments are:

(1) Social action and services (*action sociale*). Social assistance to vulnerable groups and individuals is a key mission of the departments, and its costs represent on average more than half of their operating budget. This activity mainly concerns:

- children: child welfare, mother and child protection, adoption, support for families in financial difficulty, etc.;
- disabled people: accommodation and social integration policies, disability compensation benefit, centres for disabled people;
- the elderly: creation and management of retirement homes, policy for maintaining the elderly at home;
- statutory social welfare benefits: management of schemes such as basic income (*revenu de solidarité active*), the amount of which is set at national level.

(2) Secondary schools (the first level of secondary schools, called *collèges*).

(3) Infrastructure such as departmental roads.

90. Moreover, and by virtue of a 2014 statute, departments may also manage the initiatives and actions pertaining to the European Social Fund, by delegation of the state.

Regions

91. Regions are the youngest form of territorial entities in France and their inception took place in 1982. Regions are mainly competent for managing European regional funds, economic development of the region, regional roads, and the like.

92. Contrary to municipalities, French regions do not enjoy the clause of general competences. Currently, the regions' main competences relate to economic development, regional planning, digital development, vocational training, management of secondary schools and transport.³² In particular, regions:

- contribute to the economic, social and cultural development of the region;
- draft and approve different types of economic planning; for instance, each region a regional plan for economic development and innovation;
- manage the European regional funds;
- decide on the granting of aid to companies in the region;
- participate in the co-ordination of public services of employment; for instance, they draw up co-ordinated strategies for employment in conjunction with the prefect;
- approve regional waste prevention and management plans, including targets for waste prevention, recycling and recovery;
- implement a wide range of powers in the area of water management;
- organise inter-urban mobility;
- draw up regional plans on sustainable development.

93. Regions have been at the centre of the French political debate and they were substantially reshaped in 2015. As a consequence of that crucial reform, French regions are now bigger in terms of extension but they have not been substantially revitalised or upgraded in terms of competences and the amount of spending. Compared to the situation of regionalisation in countries such as Italy or Spain (not to mention the German or Austria *Länder*), the French experience constitutes a much lighter form of regional decentralisation.

Overseas entities

94. The French overseas entities (departments, regions and special status entities) have, in general, the same types of competences as their counterparts in continental France, although some of them enjoy special features (for instance Réunion).

95. Once we have presented the competencies of the different types of territorial entities, we must decide on how substantial this share of competences is. When performing a monitoring exercise such as this, an uneasy question for the co-rapporteurs is to ascertain whether in the monitored country the local-regional authorities do "regulate and manage a substantial share of public affairs", where the adjective substantial is the most critical question, especially as the Charter itself (or the explanatory memorandum) does not provide clear standards as to which share of public affairs is supposed to be substantial.

96. In the case of France, there are many local and regional entities, not to mention the non-territorial bodies (IMC bodies) that also manage an ever-growing set of responsibilities. If all those powers, competences and responsibilities are assessed in a joint or cumulative manner, it is clear for the co-rapporteurs that the amount, type and relevance of the affairs that in France are handled by subnational entities and administrations is substantial, in light of the most common European standards and realities.

97. The co-rapporteurs therefore consider that French local/regional authorities do currently exercise and implement competences and powers that may be deemed substantial, even if there are many differences between the number and relevance of the powers enjoyed by municipalities and those enjoyed by departments, which are much lower.

98. In light of the foregoing, the co-rapporteurs believe that Article 3.1 is respected in France.

32. Article L4221-1 of the General Code states: "[The regional council] is competent to promote the economic, social, health, cultural and scientific development of the region, support for access to housing and housing improvement, support for city policy and urban renewal and support for education policies and the development and equality of its territories, as well as to ensure the preservation of its identity and the promotion of regional languages, while respecting the integrity, autonomy and attributions of the departments and communes".

3.2.2 Article 3.2

99. This provision requires two different aspects of the French system of local governments to be analysed: first, the basic organisation of the local-regional authorities and their democratic origin; second, the ways in which citizens can participate in the running of local affairs.

100. It should also be noted that when France ratified the Charter in 2007, it made a declaration stating that “[t]he French Republic considers that the provisions of Article 3, paragraph 2, must be interpreted as giving to the States the possibility to make the executive organ answerable to the deliberative organ of a territorial authority”.

The key organs of local and regional authorities

Municipalities

101. The key organs of municipalities are (a) the council; (b) the mayor; and (c) the deputy mayors. They are briefly underlined below.

The council

102. The council (*conseil municipal*) is the decision-making body of a municipality, the deliberative body (*l'organe délibérant*). Municipal councillors are directly elected by popular vote on the same election day (which is different from the election day for departments and regions). Apart from being direct, “suffrage is always universal, equal and secret” (Article 3 of the constitution). Any person having the French nationality and being over 18 may vote in these elections.

103. Apart from that basic requirement, the French Constitution provides that, under European Union law, the right to vote and to stand as a candidate in municipal elections shall also be granted to citizens of the European Union residing in France. However, such citizens shall neither hold the office of mayor or deputy mayor (Article 88-3).

104. The members of the municipal council are elected for a six-year term in a two-round election. The last municipal elections (the second round of which was postponed because of the Covid-19 health crisis) were held in March and June 2020. The next elections for the local councils will therefore be held in 2026.

105. Voting is not compulsory but, contrary to other countries, voters are not included *ex officio* by the electoral administration in a universal census or electoral register: citizens must register themselves on such a list. This fact should not be forgotten when one assesses the official turnouts in the different elections held in France. Thus, the participation rate in the second round of the last municipal elections (held in 2020) was 41.6%. In the case of the regions, this participation rate was even lower: 34.69% in the second round of the 2021 regional elections.

106. These figures are a matter of concern among French politicians, especially if one considers that they are not calculated with reference to the total number of electors over 18 but with reference only to the number of those citizens who actually registered as voters. Since there might be a number of people who did not even register themselves on such lists, the turnout rates are in reality much lower.

107. Under the General Code, the number of members of the municipal council varies according to the population of the city: in small towns with less than 100 inhabitants, only 7 councillors are elected. That figure increases accordingly: 19 councillors in towns with 1 500 to 2 499 inhabitants; 39 councillors in cities with 30 000 to 39 999 inhabitants, and 69 in large cities with more than 300 000 inhabitants.

108. The high number of municipalities in France, put together with the relatively high number of representatives in each local authority, triggers the result that there are more than 500 000 local representatives in France, at least at municipal level.

109. The municipal council is convoked and chaired by the mayor or, in their absence, by the person replacing them (usually, a deputy mayor).

110. The council's paramount power is to “regulate the affairs of the municipality through its deliberations”, which is a sort of general clause of responsibility. Consequently, the municipal council is the natural place to take local decisions.

111. The most relevant competences of the municipal council are the following:

- approve the municipality's strategic plan, work programme and investment programme;
- approve the municipal budget;
- manage local assets, installations and infrastructure;
- encourage the economic development of the local community;
- set up and suppress local public services;
- grant financial assistance to local associations;
- give its opinion whenever required by other authorities or the state, as provided by the law;
- issue wishes on all matters of local interest;
- decide on the creation and location of public elementary schools and nursery schools;
- name local streets, roads and localities;
- approve the administrative accounts presented annually by the mayor;
- hear, debate and adopt the management accounts of the receivers;
- appoint among its members those who will sit on the IMC bodies to which the municipality has adhered to certain public inter-municipal cooperation bodies.

112. An important element of local organisation, from the perspective of Article 3.1 of the Charter, is the responsibility of the mayor vis-à-vis the municipal council. This is especially relevant in light of the declaration made by the French Republic at the time of ratifying the Charter.

113. In this respect, the local council does not have the explicit power to dismiss its mayor, and conversely, the mayor cannot dissolve the municipal council). Despite this fact, it is pertinent to ascertain whether the mayor is responsible before the council, in the sense of the Charter.

114. It could be argued that, under a strict, literal reading, the French mayor is not responsible before the council in the sense that they cannot be removed by a motion of censorship or similar mechanisms (as happens in other European countries).

115. Under a larger interpretation, though, the French mayor is answerable and responsible before the council. To begin with, the mayor must report to the council in a general manner: under Article L2122-23 of the General Code, "the mayor must report to the municipal council at each of its mandatory meetings". This reporting obligation is already a form of accountability. Further, the council must approve the accounts and the financial management of the mayor, which is another clear expression of accountability.

116. In this context of relationships, the council can voice negative criticism towards an action or initiative of the mayor. Moreover, the council may also criticise in a more general way the mayor's performance, to the point that in extreme cases the council may issue a formal reprimand (*un blâme*) to the mayor. A situation of political deadlock wherein the council systematically refuses to vote on the mayor's proposals may also lead the latter to resign.

117. In extreme cases, the council may bring the central government to hold new elections in the event of a political deadlock at municipal level (for instance, if a high number of local councillors resign). In that scenario, the council resulting from the new elections might appoint a new mayor.

The mayor

118. The mayor is the key executive organ (*l'organe exécutif*). The mayor is elected by the municipal council by a secret and absolute-majority vote in the first two rounds, and by a relative majority in the third round. The mayor is elected for a six-year term. The mayor is usually the person at the top of the list of candidates who obtained the majority of votes in the municipal election but this practice does not have a written rule and someone else can sometimes be elected mayor by the municipal council. Only councillors who have the French nationality may be elected mayor or deputy mayor, or may perform any of these functions, even temporarily.

119. The French system is usually regarded as producing a model of powerful mayors, probably one of the strongest models for mayors in Europe.³³ Although not directly elected by local residents, the

33. Mouritzen P. E. and Svava J. H. (2002), *Leadership at the apex. Politicians and administrators in western local governments*. University of Pittsburgh Press.

mayor is a very strong political officer, the visible head of the local administration and the moral and political leader of the local community.

120. Although the top managerial official, the mayor may delegate their powers to other local elected representatives, such as the deputy mayors or local councillors with a special mandate, or subordinate local top bureaucrats such as the director general of services or the general manager of the city.

121. The mayor is also politically strong because they control the municipal budget and manage the staff. They also appoint and remove all municipal administrators and employees, except certain tenured officials.

122. A traditional feature of the French local system is that the mayor is on the one hand the leading political official of the municipality but on the other hand an agent of the state who performs state functions.

123. As a state representative, the mayor performs functions such as the celebration of marriages or keeping the civil register (the mayor and deputy mayors are civil registrars). This peculiar arrangement is usually called the double hat system (*double casquette*) in France.

124. As the top local political official of the municipality, the mayor is the natural legal representative of the local authority and is generally competent to implement and execute the decisions, plans and programmes approved by the council. Beyond this general mandate, the General Code enumerates some of the mayoral competences:

- preserve and administrate the properties of the local authority and to undertake, accordingly, all acts for the preservation of its rights;
- manage local revenues;
- oversee the municipal establishments and watch over the municipal accounting;
- draft the municipal budget to propose it for the council's approval;
- authorise local expenditures;
- decide on investments;
- manage municipal public properties;
- manage local works;
- manage and preserve local roads;
- subscribe contracts, lease property and award contracts for local works in accordance with laws and regulations;
- sign deeds of sale, acquisitions and transactions, and accept gifts or bequests;
- represent the municipality before any other governmental authority, or in court proceedings;
- chair the meetings of the municipal council and implement their decisions and resolutions.

125. Under the authority of the representative of the state in the department (the prefect), the mayor is responsible for the publication and enforcement of laws and regulations, the execution of general security measures and the discharging of special functions assigned to them by law.

Deputy mayors

126. Deputy mayors are also appointed by the municipal council. The municipal council determines the number of deputy mayors, which may not exceed 30% of the legal number of members of the municipal council. Deputy mayors replace the mayor when the latter cannot discharge their duties, or receive specific mandates or delegations. Although the mayor is solely responsible for the local administration, they may, under their supervision and responsibility, delegate part of their duties by decree to one or more of their deputies and to members of the municipal council.

127. Moreover, a deputy mayor may be appointed as the specific manager or ruler of a section or district of the city. In the latter case, the deputy in charge of the neighbourhood is responsible for all matters relating to it. They must keep residents informed about municipal decisions and encourage participation in the life of the neighbourhood.

Departments and regions

128. The basic institutional organisation of departments and regions largely mirrors that of municipalities, so we do not need to duplicate the precedent description. In both types of authorities,

there is a council and a president. The former is the deliberative organ and the latter is the executive organ. In the case of departments, the council is the *conseil départemental* and in the case of regions, the *conseil régional*. As in the case of municipalities, the number of members of such councils depends of the population of each authority.

129. In both cases, the council is the body for policy discussion and the supreme decision-making body. Provincial and regional councillors are directly elected by popular vote on the same election day (which is different from the election day for municipalities). Suffrage is always universal, equal and secret. Regional councillors are elected at regional level, while departmental councillors are elected at the level of the *cantons*, which are a territorial subdivision of departments purely for electoral purposes. The next local and provincial elections are scheduled for March 2028.

130. Regional and departmental councillors are elected for a term of six years but the electoral systems differ somehow: while regional councillors are elected by a list system combining majority and proportional representation, in the departments a female-male team is elected in each *canton* by a two-round, simple majority system.

131. Departments and regions both have a president, who is appointed by the council from among its members. As in the case of the mayor, the provincial or regional president is usually the candidate at the top of the electoral list that won the elections. The mayors, departmental and regional presidents are the key executive officials of the said authority and discharge, *mutatis mutandis*, parallel competences and powers that are enjoyed by a mayor. They are answerable to the council in a similar manner to the municipalities.

Public participation in local and regional governance

132. The last sentence of Article 3.2 of the Charter states that local representative democracy (as exercised by the councils) shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute. In this respect, it should be noted that France has indeed signed and ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, of 16 November 2009. The ratification instrument was deposited on 1 September 2020 and the Additional Protocol to the Charter entered into force in France on 1 January 2021.

133. The matter of citizen's participation in the conduct of local and regional authorities enjoys a constitutional relevance, something that is not so common in comparative law. The controlling provision here is Article 72-1 of the French Constitution. Different elements can be distinguished.

134. First, the constitution provides for the right of petition, by which citizens may ask a local/regional authority to discuss a given item, take a decision or action. Thus, the constitution provides that the law shall determine the conditions under which "the electors of each territorial entity may, through the exercise of the right of petition, request the inclusion on the agenda of the deliberative assembly of that community of a matter falling within its jurisdiction".

135. Second, the constitution provides for the possibility of holding local referendums, under the conditions laid down by organic law: "[d]raft resolutions or acts falling within the remit of a local authority may, on its initiative, be submitted to the electors of that authority for a decision by means of a referendum".

136. Third, a specific form of local referendum is provided for when it is planned to create a territorial authority with a special status or to modify its organisation. In this case, "it may be decided by law to consult the voters registered in the authorities concerned".

137. Fourth, voters may be consulted on changes to the boundaries of local authorities, in accordance with the conditions laid down by law.

138. Apart from these constitutional provisions, the French laws governing the different types of local authorities include some provisions on this matter but there are also important elements and tools in the legislation governing the relations between citizens and the public administration³⁴ (especially in the domain of transparency) which fully applies to all local and regional entities.

34. The most important of such laws is Law No. 2000-321 of 12 April 2000, relating to the rights of citizens in their relations with administrations.

139. For its part, the main tool for popular participation is clearly the local referendums. These referendums or popular consultations are explicitly recognised and regulated in the applicable laws and regulations of local/regional government. Thus, the General Code provides rules on the matter of local referendums. Namely, Article LO1112-1 provides that “the deliberative assembly of a territorial authority may submit to a local referendum any draft resolution intended to regulate a matter falling within the competence of that authority”. The following articles lay down precise rules on local referendums, regulating their format, organisation, ballots, costs, etc.

140. Various restrictions apply to local referendums: they may not be held on certain days or during certain periods (Article LO1112-6 of the “General Code”). In addition, a local/regional authority may not hold several local referendums on the same subject within one year.

141. A second relevant mechanism for participation of electors in the conduct of local affairs are consultations, which have a different legal nature and a separate legal scheme. Contrary to local referendums, consultations are triggered by the electors themselves who ask a consultation on any matter falling under the jurisdiction of this assembly. In this case, the vote of citizens is just advisory, non-binding. However, in practice it is hard for a council to approve a decision that has been explicitly rejected by the electors.

142. This form of citizen’s participation was introduced by a statute of 13 August 2004, which provides that “the electors of a regional or local authority may be consulted on decisions that the authorities of that authority intend to take in order to regulate matters falling within the competence of that authority. Consultation may be limited to the electors of a part of the local authority’s area of jurisdiction, for matters of particular interest to that part of the local authority”.

143. Once more, the General Code lays down precise rules on the conduct of these consultations. In a nutshell, it is provided that:

- (a) In a municipality, one tenth of the electors registered on the electoral roll (in other territorial entities, one twentieth of the electors) may request that a consultation on any matter falling within the remit of the decision of the assembly be held.
- (b) The popular request is sent to the mayor or chair of the deliberative assembly.
- (c) The decision to hold the consultation lies with the deliberative assembly of the local authority. The deliberative assembly of the local authority decides on the principles and procedures for organising the consultation. The decision should state expressly that this consultation is only a request for an opinion.
- (d) By voting, local residents indicate whether they approve or not the draft resolution or act presented to them.
- (e) After taking note of the results of the consultation, the competent authority of the local authority adopts its decision on the matter referred to it.

144. Apart from conducting referendums and consultations, local and regional authorities may also organise different participatory schemes in the decision of local affairs. For instance, in some cities (such as Paris), it is now very fashionable to organise participatory budgeting (*budgets participatifs*), by which residents of one specific district or section of the city may decide democratically which investments or public works should be accomplished in the said section, by including them in the draft budget that will later on be discussed by the council.

145. Specific social groups may also be engaged in specific bodies for consultation and decision making, for instance in the case of youth (*conseil des jeunes*). In this vein, the law provides that a local authority or public body for intercommunal co-operation may set up a youth council to give its opinion on decisions relating to youth policy.

146. This body may formulate proposals for action. It has to be composed of young people under the age of 30 who live in the city or town, or who study in secondary education establishments of the city. The operating procedures and composition are determined by a decision of the governing body of the local authority or public institution for intercommunal co-operation.

147. Another element for public participation is the open nature of local and regional councils. Their meetings are public, and citizens and the press may freely observe those meetings.

148. We should also make reference to the right that local groups and associations (representatives of professional and civil society organisations, universities, neighbours, etc.) have to submit proposals

to the municipal council, and the municipal council has the obligation to consider those proposals. Therefore, citizens may channel their concerns as local residents directly towards the council, in domains such as the protection of the environment, maintenance of parks and green areas, public transport, culture, and the like.

149. Finally, it is also possible for local and regional authorities to conduct public opinion polls and surveys (*sondages, enquêtes*) in order to find out about the opinions of local residents on local services and on the handling of local affairs.

150. Summing up, the democratic origin of the members of the councils (at all levels) is clearly undeniable, and the laws guarantee and make possible a pattern of participation of citizens and involvement in the running of local-regional affairs, whose intensity may vary according to different circumstances.

151. In light of the foregoing considerations, the co-rapporteurs conclude that Article 3.2 of the Charter is respected in France.

3.3 Article 4 – Scope of local self-government

Article 4

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

3.3.1 Article 4.1

152. The French Constitution does not specify or enumerate the precise competences of local or regional authorities. Those powers are rather laid down in the general statutes on local government (now codified in the General Code) and on the sectoral administrative legislation (transport, environmental protection, urban development and planning, licensing of economic activities, education, etc).

153. Consequently, and although there is a general legal code of the legal rules on local and regional authorities, there is not (as in many other countries) any comprehensive and systematic codification of all competences of all territorial entities in France.

154. The competences of the three main types of local and regional authorities have been presented above (see point 3.1 above). At this point, it is pertinent to analyse some cross-cutting questions:

(a) As required by the Charter, the basic powers and responsibilities of local authorities are prescribed by statute, and not by the constitution itself. This is fine for the purpose of this report and this is the general situation across Europe.

(b) Only municipalities enjoy the general clause of competence (*clause générale de compétence*), while departments and regions do not. Consequently, the scope of action of municipalities is necessarily wider than that of departments and regions, because these latter entities can only implement and discharge the competences that the laws and regulations allocate to them.

(c) During the two parts of the monitoring visit, the delegation asked various local and regional representatives whether they were satisfied with the number and importance of the competences attributed to them. In general, local representatives seemed satisfied and nobody made significant

claims to want to obtain more competences. Rather, they were more worried about having their actual competences properly financed.

(d) Another sensitive question is whether, in light of the recent developments in this domain, the local/regional competences have been enlarged or reduced in recent years, especially since the last Congress monitoring in 2016. That is, whether the process of decentralisation is getting on, or whether there is a pattern of recentralisation of competences. The delegation heard many complaints from local representatives on this matter. Local representatives (and experts) joined in this appreciation that there has been a pattern of recentralisation during recent years.

(e) Another common concern expressed by the interlocutors of the co-rapporteurs is the fact that the allocation of competences among the several local/regional entities, and between those entities and the state, is far from clear. Allegedly, there are many cases of encroachments and overlapping of competences, together with duplications.

155. Despite concerns expressed by local elected officials, the co-rapporteurs conclude that France complies with Article 4.1 of the Charter.

3.3.2 Article 4.2

156. Municipalities enjoy a general clause of competence (*clause générale de compétence*) that empowers them to manage any matter pertaining to the municipal interest, and to take initiatives for the well-being of their residents, even if the said competence is not explicitly granted to them by law. The above clause seems to be a reception of the principle laid down in Article 4.2 of the Charter.

157. However, the general clause of competence is not widespread in the local/regional scenario: only municipalities enjoy the general clause of competence, while departments and regions do not. This matter has had a convoluted history: first, the Act of 2 March 1982 gave the region a general competence clause, by saying that: “the regional council shall, by its deliberations, regulate the affairs of the region”. On this legal basis, at that time the regions had the power of initiative, provided that their actions corresponded to the interests of their territory.

158. The general competence clause was abolished for regions and departments in 2010 but the said clause was restored again for the benefit of regions and departments by the Act of 27 January 2014 on the modernisation of territorial public action and the affirmation of metropolises (known as the MAPTAM Act).

159. Finally, the clause was eventually abolished for regions and departments by the law of 7 August 2015 on the new territorial organisation of the French Republic (the NOTRe Act). Consequently, at present, regions and departments can only exercise competences that are clearly and explicitly attributed to them by legislation.

160. In light of the above considerations, one could argue that France meets the requirements of Article 4.2 but only partially, that is only in connection with municipalities. The principle would not be respected in the case of departments and regions.

161. This understanding, however, should be discarded. Municipalities are the true recipients of the general clause of competence, since they are closest to the citizens and act as a sort of security net above all the territory. On the other hand, although it is relatively easy to ascertain what can be of interest to a local resident, it is harder to extricate what is a departmental interest and whether this notion is totally different from a local interest.

162. Another argument is that, if all three types of local/regional authorities present in France were to have their own and distinctive general clause of competence, the risk of overlapping or confusion would be clear, due to the fact that it is very difficult to make a clear distinction between the respective interests of the municipality, the department and the region. Finally, none of interlocutors met during the visit claimed that departments and regions should have their own *clause générale de compétence*. At the moment, this is not something that has been called for by the local elected representatives, and during the monitoring visits, the co-rapporteurs did not hear any criticism of this clause being enjoyed only by municipalities.

163. In conclusion, the co-rapporteurs believe that France complies with Article 4.2 of the Charter.

3.3.3 Article 4.3

164. There is a general agreement in France on the fact that the provision in Article 4.3 of the Charter embodies the so-called principle of subsidiarity. For its part, Article 72, 2nd indent, of the French Constitution states that: "[t]erritorial communities may take decisions in all matters arising under powers that can best be exercised at their level".³⁵ Another relevant provision here is Article 1 of the said constitution, according to which the organisation of the French Republic is decentralised.³⁶

165. There was consensus among the interlocutors of the co-rapporteurs that this constitutional provision embodies the principle of subsidiarity, although the term subsidiarity is clearly missing in that wording.

166. So, in essence, the principle of subsidiarity is recognised by the constitution; therefore, it has a constitutional value and relevance. However, for a principle to be a living creature, it is not enough to see it recognised in a law or constitution. It is necessary to see whether this principle is respected in practice, whether it is applied regularly, and finally, if it is protected by the laws and the courts.

167. All the testimonies heard by the delegation on this issue affirmed, along similar lines, that the principle of subsidiarity is not explicitly invoked as the basis for conducting a decentralisation strategy (at the time of the monitoring visit there was no such strategy in France).

168. The co-rapporteurs had the impression that most political decisions show that the guiding political principle is just the reverse from what they have as the goal to allocate competences to the higher or bigger units instead of to the smallest and first-level scale. Examples are the creation of bigger regions in 2015 (to the detriment of the pre-existing, smaller ones but more connected to the territories and to the people); the creation of big metropolises (which in practice make the little towns surrounding the big city irrelevant, which are absorbed by the intermunicipal bureaucratic structure), etc.

169. Finally, the principle of subsidiarity has played absolutely no decisive role in the adjudication of the French Constitutional Court (*Conseil constitutionnel*). The principle remains seldom invoked in that court and there is no case law on this principle. In any case, the Constitutional Council has never sanctioned a law as violating this principle. In general, this principle is regarded as a matter of political discretion, which is difficult to enforce in courts.

170. During the consultation procedure, central authorities informed the co-rapporteurs that the reforms carried out over the past five years aimed to "restore discretion to local actors in their organisation." The 2019 "commitment and proximity" law aimed to remove the obligation to exercise a minimum number of optional competencies in the public establishments of intermunicipal cooperation (*établissements publics de coopération intercommunale* or *EPCI*) having their own taxation, and to introduce more flexibility in the exercise of structuring competencies, particularly in water, sanitation, and stormwater management. Additionally, it aimed to strengthen the mayor's police powers. The 2021 "climate and resilience" law aimed to enhance environmental policing powers assigned to mayors (transferable to presidents of EPCI having their own taxation), by granting them regulatory powers over the use of protected natural areas located within their territory, and by decentralizing the state's authority over public advertising, signs, and commercial signs to the municipal level. Finally, the 2022 "3DS" law aimed to further decentralize certain state competencies to local authorities, particularly concerning the transfer or reversion of competencies between municipalities and EPCI, and to further streamline the exercise of competencies in water and sanitation matters.

171. In light of the foregoing considerations, the co-rapporteurs conclude that France complies with Article 4.3 of the Charter. However, although the principle of subsidiarity is recognised in the Constitution, the co-rapporteurs argue that it should be explicitly enshrined in legislation to ensure clearer implementation in future reforms. Additionally, introducing explicitly the principle of subsidiarity into legislation would likely facilitate its invocation before and by the courts.

3.3.4 Article 4.4

172. French local authorities have notable competences and powers. Theoretically, these powers are full and exclusive in the sense of the Charter, since they are depicted so in the applicable statutes on

35. The French original version states that: « Les collectivités territoriales ont vocation à prendre les décisions pour l'ensemble des compétences qui peuvent le mieux être mises en œuvre à leur échelon ».

36. "France shall be an indivisible, secular, democratic and social Republic...It shall be organised on a decentralised basis."

local government. However, the local and regional interlocutors of the delegation made different complaints about the exclusive or free discharge of their competences. They complained about different phenomena, whose cumulative impact is a notable reduction in the actual freedom to discharge their competences and deliver their services.

173. The complaints heard by the delegation related notably to:

- 1) the existence of overregulation by the central government;
- 2) too much state control or state interventionism in planning decisions that correspond to the local authorities (in domains such as urban planning, transport planning, housing, etc.);
- 3) too many restrictions on spending (see below, Article 9);
- 4) too many restrictions when municipalities decide which is the most appropriate structure for IMC (see below, comment to Article 10.1 of the Charter);
- 5) local authorities have too limited financial autonomy and null fiscal autonomy (see below, comment on Article 9);
- 6) state grants are increasingly given for purposes identified and prioritised by the state authorities (see below, Article 9).

174. Most of these features will be considered in more detail under various headings of this report but here the focus needs to be done on the clarity of the system of allocating competences and whether these competences are exclusive.

175. In reality, a recurrent complaint made by all the interlocutors met by the delegation is that the allocation of competences between the state and the three levels of territorial authorities is confusing and convoluted. Overlapping and duplication of competences are numerous and frequently denounced by local leaders, for instance in the matter of tourism.

176. Moreover, the interlocutors at local level have complained that the system of competences is not stable; according to them it changes frequently and this introduces a further element of complexity and uncertainty, even among the population.

177. As the court of accounts has recently acknowledged in its 2023 public annual report, the competences of all these layers are “increasingly entangled, often exercised by several different levels”. This produces, according to the court, “extraordinary complexity”.³⁷ The court also found that all four levels of public administration are in one way or another still involved in the management of 19 of the 24 areas of competences that were identified for clarification in 2015, in the wake of the re-organisation of the regions decided by the legislator. The court went even further, stating that “the confusion surrounding the division of powers between the State and local authorities increases the perception of a dilution of responsibilities and alienation or abandonment of the public service”, recalling the high level of voter abstention (a serious problem, as indicated above).

178. It is clear that a confusing allocation of powers, where governmental responsibilities are not clearly allocated, dilutes the political responsibility and the willingness of the citizens to engage in political choices, elections and initiatives.

179. In light of the foregoing considerations, the co-rapporteurs believe that there is partial violation of Article 4.4 of the Charter in France.

3.3.5 Article 4.5

180. The scheme, by which the state delegates one specific competence to one single municipality is regulated in the law, concretely in the General Code (Articles L1111-8-1 and ff.). The legal requirements are: (a) a given municipality or a public establishment for intercommunal co-operation having fiscal powers asks the state to delegate a given competence to it; (b) a dossier is completed and a procedure followed; certain opinions are requested; (c) if the demand for delegation is accepted by the state, a draft agreement (*une convention*) is sent to the local authority or public body; (d) if accepted, then the state and the requesting authority sign the agreement, which establishes the conditions under which the competence will be exercised; (e) the delegation is decided by means of a governmental decree; (f) the powers delegated under this article are exercised in the name and on behalf of the state.

37. Cour des comptes (2023), *Rapport public annuel 2023. La décentralisation 40 ans après*. Paris.

181. In those cases, the ability of the local authority to adapt the exercise of the delegated competence to local needs is almost zero, since the law clearly states that the delegation “may not empower the local authorities or public bodies concerned to derogate from rules that fall within the scope of the law or regulations”.

182. It should be further noted that the agreement sets the duration, defines the objectives to be achieved, specifies the resources to be deployed and the terms and conditions for state control of the delegated local authority or public intercommunal co-operation body (the terms and conditions of this agreement are specified by a decree of the *Conseil d’État*). Regarding adaptations falling within the legislative domain, Article 2 of the 3DS Law of 21 February 2022 stipulates that departments, regions, Corsica, and certain overseas territories may propose legislative adaptations to Parliament and the government. The Prime Minister acknowledges receipt of the proposals submitted to him.

183. During the different interviews with local and regional elected officials, they consistently pointed out that, when the central government delegates powers to the local and regional authorities, they are allowed no discretion in adapting their exercises to local conditions. Moreover, the government issues, on the contrary, comprehensive and detailed regulations that direct the manner in which the said competences should be exercised. This further limits the ability to adjust the competencies of local authorities.

184. Consequently, the delegation believes that there is partial violation of Article 4.5 of the Charter.

3.3.6 Article 4.6

185. Article 4.6 of the Charter is one of the most important provisions in the domain of local and regional authorities. Thus, it is necessary to identify whether there are bodies or structures for consultation and eventually negotiation between the state and local-regional authorities; whether these structures work in practice; and whether there is a true spirit of partnership and co-governance.

186. With this idea in mind, it should be noted that in the French system of government there is no body, administrative organ or bilateral commission established as a general forum for consultation with all local/regional authorities and to allow their participation in the decision making of the state bodies on any matter that concerns them.

187. However, there are different bodies in which this consultation or exchange of information takes place. The most important are the following:

(a) The committee of local finances (*Comité des finances locales*).

This body was created by a national law in 1996 and will be examined in more detail in connection with Article 9.6 below.

(b) The council for the assessment of legal rules (*Conseil d’évaluation des normes*).

188. This body is responsible for assessing the state legal rules that are applicable to local authorities and their public establishments for intercommunal competencies. It is made up of representatives of the relevant government departments, of members of parliament and local authorities. In particular, and on the side of the territorial authorities, in this body there are four regional councillors, four departmental councillors, five municipal councillors elected by the public establishments of intercommunal co-operation having taxing powers; and ten municipal councillors elected by the French mayors.

189. This council must be consulted by the government on the technical and financial impact that draft statutes or regulations might have on local authorities and on their public establishments for IMC, if the said draft creates or modifies legal rules applicable to the territorial authorities. At the government’s request, it may also issue an opinion on the technical and financial impact that draft European Union legislation might have on local authorities or on their public bodies.

(c) The national agency for the cohesion of the territories (*Agence nationale de la cohésion des territoires*).

190. Among other functions, this state agency is responsible for monitoring and alerting the different public administrations, as well as public and private operators, on the territorial impact of their decisions in terms of cohesion and equity. The agency also co-ordinates the use of European structural and

investment funds, and assists the minister responsible for regional planning in defining, implementing and monitoring national and European policies for economic, social and territorial cohesion.

191. Like the bodies mentioned above, the steering organ of this agency is composed of representatives of all governmental levels in France. The board of directors includes representatives of the state, two members of parliament, two senators, as well as representatives of local authorities and their groupings.

(d) Apart from the above-mentioned multilateral bodies and structures, there are also specific committees for dealing with specific territorial authorities. Among the most important ones is the interministerial committee for the overseas territories and departments (*Comité interministériel des Outre-mer*). In this forum, there is a specific consultation with these overseas authorities. Governmental officials claimed that, in recent years, more than 60 different measures had been negotiated with representatives of the overseas territories and departments.

192. It is also important to note that the Council of State (*Conseil d'État*) also plays a role in this domain, not by discharging jurisdictional powers but advisory ones. Indeed, the Council of State is internally divided into several sections: the judicial one (*section du contentieux*) which includes ten chambers responsible for having the final say on jurisdictional administrative disputes, and the five advisory sections that must be consulted by the Executive on bills and draft decrees in the Council of State.).

193. In this capacity, the *Conseil d'État* has the mission to verify that, in approving a legislative draft or an administrative regulation, all statutory procedural steps have been duly followed and all required reports and opinions have been requested. Consequently, the Council of State verifies whether the consultations of the local-regional authorities - where demanded by legislation - have been effectively accomplished.

(e) Last but not least, one should not forget a peculiar feature of the French constitutional system: the role of the upper parliamentary chamber as a forum for representation of the local and regional authorities. Indeed, the French Senate is unique in the sense that its members are not directly elected by the people but by a college of great electors, who are mainly local and regional elected representatives (see above, paragraphs 25 and 26). For this reason, it is understood that local and regional authorities have their own, strong voice in the parliamentary debates leading to the adoption of pieces of legislation, and that the senate represents local-regional authorities in the legislative process.

194. In the case of legislation concerning the organisation of local authorities, the senate is the first to be consulted in the legislative process. To assert its role as representative of local authorities, in 2009 the senate set up a delegation for local authorities, which ensures respect for free administration and local authorities, and plays an active role in the senate's oversight function in areas concerning the status, activities and future of local authorities.

195. Consequently, there seems to be a certain factual pattern of political communication or interchange of information and views among central and local stakeholders and there are, indeed, several bodies for intergovernmental consultation. However, local and regional representatives made consistent complaints that these consultation mechanisms are not true settings for discussion and eventual negotiation but mere channels to inform or communicate state initiatives, plans and regulations. According to them, local and regional authorities "are listened to but not heard".

196. Under a large reading of the Charter, the existence of these governmental structures and its regular functioning is enough to meet the requirements of Article 4.6, although it would be desirable that the state renews dialogue and negotiation with the territorial entities with a true spirit of partnership of co-governance.

197. In light of the foregoing considerations, the co-rapporteurs believe that France complies with the requirements of Article 4.6 of the Charter but there is certainly room for improvement.

3.4 Article 5 – Protection of local authority boundaries

Article 5

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

198. The possibility of local resident to intervene in a process of merger or fusion of territorial entities is explicitly provided for by the French Constitution, which states that: "...voters may also be consulted on changes to the boundaries of territorial communities, in accordance with the conditions laid down by law" (Article 72-1). However, this popular consultation is depicted as optional, not obligatory.

199. In order to find whether Article 5 of the Charter is respected in France, it is necessary to consider separately the mechanisms and procedures concerning the three types of territorial authorities.

Municipalities

200. Regarding the territorial modification of municipalities, two different situations should be distinguished: first, the simple change in the boundaries of one municipality vis-à-vis a neighbouring municipality, by which the delimitation of the territorial basis of the respective authorities is re-arranged. This situation triggers no concern under Article 5, since French legislation explicitly determines that this must be a voluntary procedure, agreed among the intervening entities.

201. The other situation is more transcendent, as it implies the merger or fusion of two or more territorial entities, to form a higher governmental unit, which in principle replaces the existing ones. These types of operations are regulated in the legislation governing the different types of local authority, mainly the General Code.

202. The merger of municipalities has frequently been thought of as a way to fight the structural problem represented by the very high number of municipalities in France, many of which are very small (see above, paragraph 35). Similar to many aspects of the French political system, the origins of this situation can be traced back to the French Revolution of 1789, when legislators, by the Act of 14-22 December that year, established a municipality in all towns, villages, cities, boroughs or farm communities existing at that time. In 1793, there were some 44 000 municipalities in France and today there are still roughly 35 000. The problem of the municipal fragmentation (*l'émiettement communal*) is therefore a recurrent, still unresolved problem in France.

203. For this reason, there have been different legal schemes to ease the voluntary mergers of municipalities, like the one enacted in 1971, a move that has not been very fruitful. Nevertheless, the positive feature of that approach from the viewpoint of local self-government is that it did not try to be an obligatory or coercive mechanism imposed by the state, as has happened in other European countries.

204. Currently, and after the Act of 16 December 2010, the main form of accomplishing the merger of municipalities is the creation of new municipalities (*communes nouvelles*).³⁸ This objective can be achieved through two mechanisms or schemes, whose details do not need to be presented here.³⁹

205. The relevant feature for the purpose of Article 5 is that the initiative to merge is essentially of a voluntary nature. Thus, the initiative to merge must be taken unanimously by the contiguous municipalities involved in the merger, or by the steering organ of the IMC body endowed with taxation powers (EPCI), grouping together different municipalities. The merger cannot be imposed unilaterally by the state, or by the region or department.

206. Moreover, the possibility - in reality - the obligation to organise a consultation is explicitly provided in the legislation. This happens when the initiative to merge is not decided by the councils of the contiguous municipalities but by two thirds of the councils of the municipalities participating in the above-mentioned EPCI. In this case, the merger can only be accomplished if more than half of the registered voters take part in the ballot and if the project is approved by an absolute majority of the votes cast in each of the communes concerned, as provided by Article 2113.3 of the General Code.

207. Thus, in the case of the first-tier local authority, the merger of municipalities is a fully voluntary procedure, originating in the participating entities. Consequently, Article 5 of the Charter is clearly respected, since the legislation goes well beyond the requirement to consult the concerned local authorities.

38. The current procedure is codified in Article 2113-9 and following the General Code.

39. On this type of change of boundaries, see Faure B. (2021), *Droit des collectivités territoriales*, 6th edition, Dalloz, pp. 53-56.

Departments

208. The existence of the current departments can also be traced back to the legislative action of the French Revolution (Act of 15-16 February 1790). Initially in the 80s, currently there are 101 departments (96 in continental France and 5 overseas). In the past, there have been different governmental attempts to reduce the number of departments (in 1945, 2008, 2014) but they were never successful.

209. At present, the possibility to merge two contiguous departments to make a bigger one is explicitly provided in the legislation. Again, the merger cannot be imposed in an obligatory manner by the state: it is provided that the initiative to merge must be taken by the councils of the concerned departments (each council must decide by three fifths of their members). However, participation or consultation of citizens is not provided for in the law.

210. The departments must be located in the same region. The merger must be officially approved by means of a decree of the Council of State. In 2019, the two traditional departments present in Alsace (Bas-Rhin and Haut-Rhin) merged into one single higher territorial unit, called European Collectivity of Alsace.

211. In light of the precedent, France complies with Article 5 of the Charter as far as departments are concerned.

Regions

212. Regions were created in 1982 and were totally reshaped by a piece of national legislation in 2015 by the Act of 16 February 2015. The existing 22 regions were reduced to 13, and their borders and territorial scope were totally reshaped by the legislator. Corsica remained untouched due to its insular location and special status.

213. The massive merger of the existing regions and the re-organisation of its territorial basis was then carried out by parliamentary legislative enactments, and it was apparently based on reasonable arguments such as effectiveness, rationality and resource deployment.⁴⁰ However, and according to the statements of the local and regional representatives met by the delegation, this structural reform was carried out without consultation with the affected regional authorities. Neither the populations, nor the regional councils or the regional presidents were, according to them, consulted and nobody at local or regional level had the opportunity to negotiate these measures with Paris (government and parliament).

214. This reform was analysed in detail by the Congress in its 2016 monitoring report and the explanatory memorandum presented it in detail (pages 40-45). A violation of Article 5 of the Charter was detected and reasoned at length. For this reason, the co-rapporteurs consider there is no need to repeat the same analysis in the present report.

215. The 2016 monitoring report also explained that this clear violation of the Charter had no practical repercussions in the legal proceedings that were instituted before the Constitutional Court⁴¹ and the Council of State,⁴² for reasons of domestic constitutional and administrative law. Furthermore, Article 72-1 of the constitution provides for local referendums just as a possibility, not as a mandatory requirement.

216. In any case, at the moment of the monitoring visit, there were no plans for carrying out further restructuring of the map of regional authorities in France.

217. The legal scheme in force (L. 4122-1-1 of the General Code of Territorial Communities), concerning the modification of regional boundaries, stipulates that regional and departmental councils must be consulted, and these modifications can be initiated by these same councils. The list of regions is included in the General Code of Territorial Communities in Article L. 4111-1, providing a legislative level of protection.

218. It should also be noted that the question does not arise in the same way as in 2015, at the time of the far-reaching territorial reform which would then have been implemented.

40. Other unofficial versions of the reasons behind this massive territorial re-organisation point out that the reshaping of the region was a price that France (at that time ruled by Mr Hollande) had to pay to Brussels, in order to get a relief from the European Union treaties rules on excessive deficit.

41. Decision n° 2014-709 DC of 15 January 2015.

42. Decision n° 393026 of 27 October 2015.

219. The co-rapporteurs observed that at the time of the monitoring visit, France complied with Article 5 of the Charter.

3.5 Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

Article 6

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

3.5.1 Article 6.1

220. In France, the internal administrative structures of the territorial authorities are regulated in great detail in the General Code, which devotes different sections to the three basic types of entities, plus specific provisions for the overseas territories and departments. As presented above, the codified legislation enumerates and regulates the main organs (deliberative-executive) of the territorial authorities, their selections, basic rules for action and decision making, etc.⁴³

221. The national legislation, by regulating in such detailed way the organs and the bureaucratic structures of those entities, achieves its objective of establishing a maximum homogeneity and standardisation across the country. However, this is compatible with the principle of differentiation (which is acquiring a growing importance in recent times) under which the state may issue specific rules for certain authorities, such as the overseas territories and departments.

222. However, this state legislation does not exhaust the matter of self-organisation, and the local and regional authorities still have a certain capacity to determine their own administrative structures, within the respect of the state rules, laws and regulations.

223. For instance, in municipalities with more than 1 000 inhabitants, the council approves its own rules of procedures (Article 2112-8 of the General Code).

224. Still in the case of municipalities, the council also has the power to set up certain specific committees (*commissions*) in the municipal organisation, which in theory prepare the meetings of the council and assist the council to take its decisions. The composition of such commissions respects the proportional representation of each political group in the plenary council. There are many types of such commissions: special consultative commissions, municipal consultative committees, consultative commissions for local public services, youth councils, etc.

225. At departmental level, there are also permanent commissions, which can receive delegated decision-making powers from the plenary council. This phenomenon is also present, with the same name, at regional level.⁴⁴

226. Based on the foregoing considerations, the co-rapporteurs believe that France complies with the requirements of Article 6.1 of the Charter.

3.5.2 Article 6.2

227. The group of people working for all governmental entities or bodies at state, regional or local level under a status of civil servants (*fonctionnaires*) are called *fonction publique* (civil service). This bureaucracy universe has its own rules and mechanisms (different from regular labour and employment law), which are regulated in detail by the state for the entire republic.

228. Following the French tradition, the bunch of laws and statutes pertaining to the civil service are codified in a single legal text, regularly updated and harmonised, called *Code général de la fonction publique* (general code of civil service). In addition to the general code of civil service, there are plenty

43. See for the municipalities Articles L2121-1 to L2124-7 of the General Code.

44. See Faure B. (2021), *Droit des collectivités territoriales*, 6th edition, Dalloz, pp. 188-195.

of governmental regulations that supplement or further concretise the statutes and legal rules on the matter.

229. Within the French civil service, there are three different subdivisions or groups: the state civil service (*fonction publique de l'État*), the local/regional civil service, and the hospital civil service (*fonction publique hospitalière*). Civil servants working for local and regional authorities form a specific group of human resources, called *fonction publique territoriale* (territorial civil service).

230. This introduction is necessary to understand two important points. In France, contrary to what happens in other European countries: (a) most of the people working for local and regional authorities are territorial civil servants (*fonctionnaires territoriaux, agents territoriaux*),⁴⁵ while others may work as regular labour-law employees or workers (*agents publics contractuels*); (b) the state legislation regulates comprehensively, and in a uniform way, most of the aspects and elements of all civil servants: recruitment, career, continuous training, retirement requirements, mobility, scales of pays and salaries, etc.

231. In light of this structure of the legal system, local and regional authorities acting on their own have very limited capacity to regulate any relevant aspect of the working conditions of their own civil servants. Again, it is possible to see here a structural aspect of the French constitutional tradition: uniformity and standardisation across the country, to achieve the higher value of equality.

232. There is no specific or independent body of legislation for civil servants and other employees working at municipalities, departments and regions. Their working conditions are governed by the general codified legislation on the matter. This is compatible with the fact that the code sets specific rules for local civil servants, where applicable.

233. In a typical middle or large local authority, its human resources may include different categories of personnel: civil servants, contract staff and other people (trainees, detached personnel, etc). Usually, the top and managerial positions are held by civil servants but in case of urgency, where a municipality does not have qualified staff for such positions as architects, engineers or lawyers, it may employ staff on the basis of a fixed-term contract. For their part, the positions having a professional or manual workers profile may be discharged by contractual employees. Not to forget that many local services may be delivered by external companies (for in-house activities such as cleaning, security, gardening, etc.), in which case the actual jobs will be discharged by workers belonging to such external companies.

234. In the case of small municipalities, the number and types of employees is logically more reduced, and in many cases these authorities cannot even hire fulltime employees. For instance, in the small town of Dorans (located in the department of Territoire de Belfort), visited by the delegation, the staff was very reduced: a municipal secretary working 30 hours a week, a contractual employee, a cleaning lady working parttime, and a trainee.

235. The Charter provides that “the conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided”. Here again, the recruitment and remuneration of the territorial civil servants are also governed by the general code of civil service (and by the annual law on the national budget).

236. As far as recruitment is concerned, the usual procedures for filling vacancies or for hiring permanent employees are regulated by the general code of civil service. The usual way for your graduates to become civil servants is to succeed in the recruitment procedures consisting of competitive exams (*concours*), which are organised nationwide. The successful candidates are not allocated a job immediately but are signed on an aptitude list for three years, and during this time they have to find a job in a concrete local authority that has a vacancy to fill. According to a French scholar, this system “allows a good balance between liberty of decision by each candidate and a guarantee of minimal qualifications of the personnel recruited”.⁴⁶

45. According to Article L4 of the general code of civil service, the persons working as civil servants for a local or regional authority or establishment are called territorial agents (*agents territoriaux*), and they are defined as: “persons who have been appointed to permanent employment and have been appointed to a rank in the administrative hierarchy of the local authorities or in their public establishments...”.

46. Hertzog R. (2012), “Local government in France”, in Moreno Molina, A (ed.), *Local government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, p. 222.

237. Some positions in the local and regional authorities are reserved for territorial agents. There is a specific professional career for those civil servants having a national dimension, within this track of the civil service.

238. According to the interlocutors met during the monitoring visit, local and regional authorities are free to hire new personnel for vacant positions (within the limits of their budget and financial resources), either on a static basis or as a result of a mobility contest (*concours*) among civil servants already working in other local authorities who are interested in career advancement.

239. For instance, in the case of Paris, the interlocutors of the co-rapporteurs declared to be rather satisfied with the working conditions and remunerations of their local employees, and that they were capable to hire high-qualified people. Moreover, they pointed out in addition that the former French prime minister, Ms Borne, was previously a top manager in the city of Paris administration. The case of Paris is very special, because for historical reasons the capital city has its own *fonction publique*, which is handled in an autonomous way by the municipality.

240. As far as the remunerations of territorial agents are concerned, these are governed by two different legal rules: on the one hand, the general code of civil service defines the different division, scales and professional tracks of the *fonction publique territoriale* but the actual amount of their remuneration is in great part established in the annual law on the national budget and finances. According to the interlocutors, this fact hinders significantly the ability of local/regional authorities to establish incentives for good performance, excellence in the civil service, specialisation and the like.

241. Regarding the issue of training opportunities (in the Charter's wording), the law defines the rights and opportunities that local employees have in this domain. In fact, there are massive state financial resources allocated to that goal, and specific training centres for local/regional employees have been set up both at national and deconcentrated level.

242. At national level, the most important body is the *Centre national de la fonction publique territoriale* (CNFPT),⁴⁷ based in Paris. This body has an impressive curriculum of courses, training programmes and career development opportunities for territorial agents (*agents territoriaux*) in the entire country.

243. Apart from that, there are also training centres in many places around France. Currently, the CNFPT has 29 regional delegations, plus an antenna in all departments. In this way, local employees do not need to go to Paris to receive training (not to mention the many possibilities of e-learning offered by the CNFPT).

244. In this domain of training, the delegation also heard complaints from some regional elected representatives: they stated that some years ago, the regions had competences in the domain of training for civil servants but today the state has recentralised this competence and now the regions have a much smaller remit of competences in this matter.

245. The delegation did not hear complaints about unsatisfactory conditions of employment of local government employees and they were rather satisfied with the training opportunities and career development of their human resources. Interlocutors complained, however, that the national laws and regulations left them with too little freedom to articulate their own personnel policy or to decide on remunerations, career design and incentives.

246. In light of the precedent, the co-rapporteurs believe that Article 6.2 is respected in France.

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

Article 7

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office

47. Available at www.cnfpt.fr, accessed 28 November 2023.

shall be determined by statute or fundamental legal principle.

3.6.1 Article 7.1

247. Article 7.1 of the Charter provides that “the conditions of office of local elected representatives shall provide for free exercise of their functions”. In France, there are roughly 509 000 local elected people.

248. The group of legal rules relating to the exercise of local elected mandates (members of councils at municipal, departmental and regional level, members of the executive organs on all these levels) is called status of the local elected (*statut de l' élu local*). This includes, *inter alia* aspects such as remunerations, compatibility with other functions, affiliation to social security, declaration of assets and properties, responsibilities, training rights and opportunities, and the like.

249. For its part, the General Code includes in Article L1111-1 the so-called charter of the local elected representative (*charte de l' élu local*), which enunciates the duties of the local elected and the deontology dimension of their activities. However, these legal rules are not collected in one single or harmonious statute or codification.

250. The Charter requires that those conditions of office “shall provide for free exercise of their functions”. This is a rather broad provision in the Charter, which allows for different interpretations, especially as regards the term “free exercise” of local functions. In a modern interpretation, it is understood that local representatives should act in a legal and social context that does not exert undue pressures or threats to their independence of their free decision making. Those pressures may come from different sources and situations, and may be tantamount to mass media or governmental pressure.

251. From this perspective, the French situation presents a satisfactory aspect in the sense that the cases of governmental suspensions of mayors and municipal councillors are very infrequent. They are only due to wrongful acts and they are, in principle, decided only after adversarial disciplinary proceedings.

252. In this sense, the law provides that a mayor or deputy mayor - after being properly heard - can be suspended by means of ministerial order (*arrêté ministériel*), for a duration of one month at most, for the commission of wrongful acts. On those grounds, they can only be revoked by a reasoned decree adopted by the council of ministers. The revocation order implies that the sanctioned mayor or deputy mayor cannot discharge such positions for the time of one year. Both decisions are immediately challengeable by the concerned elected representative in the courts of the administrative jurisdiction.⁴⁸

253. Local elected representatives confirmed the delegation that, in the day-to-day conduct of their activities, they feel free and they can freely express their thoughts and political opinions, untied from governmental interference. There was no discussion on that.

254. Another, more sensitive, point is the threats or pressures that mayors and local elected representatives receive from the society as a whole, from social networks and from citizens themselves. From this perspective, the interlocutors pointed out to the delegation that in recent times, there have been more and more cases of hate speech in social networks against local/regional elected representatives (mainly mayors), and that some mayors have even been physically attacked by local residents, something that had never occurred in the past.⁴⁹

255. The co-rapporteurs consider that this is a serious matter that causes much concern, and requires precise policy for a set of measures to fight this situation. They consider it desirable to enhance criminal penalties for violence committed against local elected officials.

256. During the consultation procedure, central authorities shared the co-rapporteurs' view on the seriousness of the situation, emphasising that in the face of the increase in violence against elected officials, several measures have been taken at the national level to strengthen existing mechanisms. The Government announced a national plan for the prevention and combating of violence against elected officials in July 2023, consisting of 12 measures and endowed with 5 million euros. This plan is

48. See Article L2122-16 of the General Code.

49. According to data submitted by the Association of Mayors, in 2022 alone, more than 230 mayors had been attacked by citizens in France. Taking this into consideration, the association decided to create an observatory and this trend is unfortunately not decreasing.

based on a center for analysing and combating attacks on elected representatives (CALAE), tasked with coordinating all national-level actors working for the security of elected officials. This plan will be supplemented by legislative measures aimed at strengthening the security and protection of elected officials, which are currently being discussed in Parliament.

257. The co-rapporteurs commend the responsiveness of the French authorities and these recent developments. They consider that Article 7.1. of the Charter is respected in France.

3.6.2 Article 7.2

258. From the outset, it should be noted that France did not include Article 7.2 among the ratified provisions of the Charter. Although France is not bound by this provision, reference to this issue should be made for the sake of completeness.

259. The remuneration of local elected representatives is regulated, like many other local matters, by national laws and rules governing the different types of local authorities. The economic advantages, rights and benefits of the local elected representatives have been notably increased in recent years, not only in the sense of increasing their salaries but also to make possible a better conciliation between the professional side of the person and their performance as a local representative.

260. In recent years, different legal rules have been promulgated to grant the local elected representative more rights and benefits to make the profession of local representative more attractive, in light of the existence of a certain crisis of vocations, especially in the rural environment. It is then necessary to examine those different elements separately.

261. As remunerations are concerned, the old principle of the unpaid public service (*gratuité du mandat*) typical from the 19th century, is still in force nowadays, and is explicitly included in the General Code.⁵⁰

262. Consequently, discharging a local position is not considered to be a job or a source of a real salary. Since 1944-45 though, in practice, the principle was abandoned because different travel and subsistence allowances were included in the legal scheme. Later, benefits and allowances under the name of *indemnités de fonction* were introduced.

263. Technically, local elected representatives are not paid for their work but they are compensated because they hold an elected mandate. Under the present rules, municipal councillors receive an allowance for the meetings they participate in (assistance allowances). Councillors are also reimbursed for expenses whenever they are assigned outside the city. For their part, mayors and vice mayors receive a monthly amount of money set in national legislation, which is calculated on the basis of the population of the local authority.

264. "The system of official allowances is based on the principle that the amount of an elected representative's allowance must correspond to the hardship to which he or she is exposed as a result of the actual exercise of his or her mandate. Functional allowances for local elected representatives are voted by the local authority in compliance with ceilings set by law. These maximum rates are set by category of office and increase with the population of the local authority. For example, in a town with a population of between 1 000 and 3 499, the maximum amount that can be granted to the mayor is €2 121 per month (before tax). This ceiling increases progressively: in a town with a population of over 100 000, the monthly amount is €5 960.

265. Thus, in a small town such as Dorans (cited above), the mayor received an indemnity or allowance of €1 400 per month. At the other end of the wage scales stand the mayors of the largest French cities. For instance, in 2019, the mayor of Paris, asked by readers of *Le Parisien* (a local newspaper) declared to earn €6 500 net per month, plus an allowance of around €1 000 as vice-president of the Greater Paris metropolis.

266. In recent times, the remunerations of the mayors have been raised: two years ago, the state raised the remunerations that are paid to local elected representatives. By the way, this increase was decided by the national parliament. The state did not transfer the appropriate financial resources to the municipalities to face these extra expenses (which were calculated by local representatives to be roughly

50. Article L2123-17 of the General Code: "Without prejudice to the provisions of the present chapter, the offices of mayor, deputy mayor and municipal councilor are unpaid".

€600 million). These unexpected and extraordinary expenses had to be paid by the local authorities from their own funds. During the consultation procedure, the central authorities pointed out that in order to ensure that small rural municipalities have the necessary resources to implement measures relating to the conditions for exercising local mandates, a special State allocation is reserved for small rural municipalities (Dotation particulière relative aux conditions d'exercice des mandats locaux or DPEL) and that this has been significantly increased in 2020, its amount rising from 65 million to more than 101 million euros. Nearly €36 million of this has been concentrated on the smallest municipalities.

267. As noted above, the economic perspective of the local elected representatives includes not only the salary (in the form of allowances - *indemnités de fonction*) but also other elements, which aim to make the discharge of local positions attractive and, especially, to reconcile public service with the professional career of the local elected representative.

268. Thus, it is noteworthy to mention that a 1992 statute improved essentially this angle of the situation, by providing different measures. This act improved the system for granting time off, in connection with local office (credit for hours) and provided further career guarantees (for instance, the right of the mayor to come back to their previous job in the private sector). It also recognised the right of elected representatives to training, setting a minimum number of hours that could be dedicated to that purpose. Furthermore, it brought the tax regime into line with common law and extended the right to retirement for elected representatives.

269. An act passed in 2019 (engagement and proximity act) further enlarged the rights of the local elected representatives, by providing, *inter alia* the right to a 10-day elective leave, granted to all candidates in municipal elections for campaigning purposes. Moreover, this statute established the right of all municipal councillors to be reimbursed by the municipality for the cost of childcare or assistance for the elderly or disabled persons incurred by the local representative when they must attend a mandatory meeting of the council.

270. Currently, local elected representatives are entitled to 18 days of training during their term of office (plus 20 hours of training in matters not connected to their mandate). Moreover, mayors and deputy mayors have the right to be reinstated in their previous jobs in the private sector when their term of office expires.

271. The delegation specifically raised the question of remunerations of local elected representatives⁵¹ and did not hear complaints about insufficient remunerations. The mayors met during the visits declared themselves to be in general satisfied with their salaries, allowances and similar benefits. Others, on the contrary, pointed out that the retributions schemes prevent professionals from dedicating to public affairs (this would allegedly be especially true in small towns). They also pointed out that there is a loss of talent among local and regional councillors, and that the quality of local councillors is bound to decline, because the high-qualified graduates usually prefer to work in the private sector.

272. As indicated above (cf. para. 2), France has not ratified Article 7.2. This non-ratification can be explained by the existence of legal provisions stipulating that "the duties of mayor, deputy mayor and municipal councillor are free of charge" (Article L. 2123-17 of the CGCT). It is by way of exception to this principle that allowances may be provided. Article 3 of the NOTRe law updates the provisions relating to compensation for members of municipal executives and councillors in municipalities with more than 100 000 inhabitants. Compensation for municipal councillors in municipalities with fewer than 100 000 inhabitants remains optional.

273. Consequently, in order to be able to ratify Article 7.2 effectively, a legislative revision would be necessary to comply with the Charter in law.

⁵¹ According to data provided by the Fifth Survey of the Observatory of Local Democracy by AMF-CEVIPOF/SciencesPo published in November 2023

<https://medias.amf.asso.fr/docs/DOCUMENTS/af7a0a4081e390662629f76f995d0919.pdf>), which also addressed the issue of mayors' perception of the allowances they receive, 48% of mayors consider their allowance to be insufficient, compared with 25% in June 2020 at the start of their term of office (33% consider it to be sufficient and 19% have no strong opinion). However, according to the survey, "the extent of this complaint varies greatly depending on the size of the municipality. 43% of mayors in small municipalities (less than 500 inhabitants) said that the allowance they received was insufficient, whereas 78% of their counterparts in larger municipalities (9,000 inhabitants or more) shared this opinion, even though their allowance was higher. This result confirms both the corrective effect of the Commitment and Proximity Act and the dissatisfaction of mayors whose duties (for municipalities with more than 3,500 inhabitants) often involve a full-time commitment", p.5.

274. In conclusion and in the light of the foregoing, the co-rapporteurs consider that, in practice, Article 7.2 of the Charter appears to be complied with, although this provision is not binding on the country.

3.6.3 Article 7.3

275. The national laws and regulations governing the different types of local authorities and those regulating the status of the elected representatives identify the functions and activities which are deemed to be incompatible with the holding of a local elective office. The possibility to hold a second position of office in the public sector, together with that of local/regional representative is called in France *cumul de mandats*.

276. In this vein, Article L2122-4 of the General Code states different rules on incompatibilities for local elected representatives. Thus:

(a) the office of mayor or deputy mayor is incompatible with the exercise of one of the following elective offices: president of a regional council or president of a departmental council;

(b) the office of mayor or deputy mayor is also incompatible with that of member of the European Commission, member of the Executive Board of the European Central Bank or member of the Monetary Policy Council of the Banque de France;

(c) since 2017, the members of the executive organ of any territorial entity (mayors and deputy mayors, presidents and deputy presidents of departments and regions) cannot be at the same time members of the national parliament or of the European Parliament. Conversely, it is possible for someone to be a member of the national or European Parliament and a member of the local council; or member of a department or regional council.

277. On the other hand, the offices of mayor, or deputy mayor, are incompatible with those of a serving member of the military.⁵² Any mayor holding a position that places them in one of the above-mentioned situations of incompatibility must cease to hold the office of mayor.

278. Activities that are incompatible with the discharge of the position of mayor are thus clearly regulated in the law, since these are mainly fulltime local representative roles. Activities concerning the members of the municipal council are not regulated in the law, which is understandable since the members act as local representatives only when they attend the meetings of the council, and they are not supposed to be professional politicians but manual or professional in other economic activities in the private sector.

279. In light of the foregoing considerations, the delegation believes that Article 7.3 of the Charter is respected in France.

3.7 Article 8 – Administrative supervision of local authorities' activities

Article 8

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

3.7.1 Articles 8.1 and 8.2

280. For reasons of consistency and clarity, the application of these two provisions of the Charter will be analysed jointly, since they are very close in meaning and aim.

52. Act No. 2018-607 of 13 July 2018.

281. To begin with, the French system of local administration provides for instances of monitoring, supervision or control by some state bodies and authorities. Nevertheless, the system has experienced an important transformation since 1982. Before that date, the state administration had a strong grip on municipal decisions, acts and decisions, to the point that in the words of a distinguished French scholar, “France enjoyed a kind of co-administration of local affairs”.⁵³

282. The state’s peripheral administration (mainly by means of the prefect) exercised a strong control over the decisions, actions and initiatives of local authorities (municipalities and departments). This situation is well-known in the French tradition as *tutelle*. Today, the system has changed to a control that is essentially a control of legality.

283. In the matter of control or supervision, the present French Constitution lays down in Article 72 two paramount principles:

(a) on the one hand, “no territorial community may exercise authority over another”. This means that all three basic territorial levels (municipalities/departments/regions) are in principle equal in rights, and none is placed in a place of subordination to each other;

(b) on the other hand, it is provided that “in the territorial communities of the Republic, the state representative...shall be responsible for national interests, administrative supervision and compliance with the law”. This state representative is precisely the prefect. The political figure exercising supervision or control over the territorial authorities is still the prefect but it is noteworthy not to forget other state institutions and bodies, which are summarily presented below.

284. A broad overview of the types of control and supervision carried out by the state bodies over French local entities includes the following:

The prefect

285. The most important body or political figure in this domain is certainly the prefect (*le préfet*). This is a pivotal figure in the French peripheral state administration and this figure has been replicated in many other countries, from Türkiye (where it is called the *vali*) to Spain (the old *gobernador civil*), or Italy (*il prefetto*). The prefect is appointed by the president or by a ministerial authority. The prefect represents the state in the department/region and has a very special connection with all territorial entities in France: municipalities, departments and regions are subject to their control of legality, and they entertain many other forms of relations with those entities: for instance, the prefect is the head of the police forces deployed in the department, in co-ordination with the mayors.

286. Decentralisation and tutelage (*tutelle*) were for many years two sides of the same coin. However, the *tutelle* over local and regional authorities was abolished in 1982 and currently, the control that is exercised by the prefect is only a control of legality, in the sense that they can sue in the administrative court any local authority that adopts a decision or regulation which, in the opinion of the prefect, is illegal. The court, though, has the last word in the controversy, so that the system is totally judicial in its working.

287. Broadly speaking, the system works as follows. Four basic principles are respected: (a) the scope of the prefect’s control: they control not only all territorial entities (municipalities, departments and regions) but also the establishments set up for IMC (EPCI); (b) the prefect discharges their control on the decisions and regulations (*actes administratifs*) which are final and executive (*force exécutoire*); (c) it is supposed to be a strict control of legality, which excludes any considerations of expediency; and (d) if the prefect invokes the illegality of one of such decisions, only the administrative judge has the power to annul it.

288. Thus, the control exercised by the prefect is an a posteriori control, never an a priori one (as it was the case prior to 1982). Nowadays, the local/regional authorities do not need to have any a priori visa or authorisation, if they want to adopt a decision, plan or regulation.

289. The prefect may react upon receiving information or a notification of a decision/plan/regulation adopted by a municipality/department/region. The prefect knows about the existence of such decisions because the territorial entities are supposed to inform their prefect of any decision, plan or regulation

53. HERTZOG R. (2012), “Local government in France”, in Moreno Molina, A (ed.), *Local government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, p. 226.

that they adopt. In recent times, the types of decisions that must be notified to the *préfecture* have been reduced and such decisions are communicated online.

290. The prefect has no power to annul by their own authority any decision, plan or regulation adopted by a territorial authority, and they cannot substitute any territorial authority or oblige said authority to adopt a certain decision. When the prefect understands that a given decision/regulation is illegal or has legal irregularities, they may address a warning (*lettre d'observation*) to the local authority, explaining why they believe that the decision/regulation is illegal.

291. In such case, the local authority is given a deadline to amend, withdraw or modify the administrative decision. In practice, as noted by the interlocutors, the use of this mechanism frequently leads to a sort of amicable termination of the dispute and the local authority amends the decision or regulation.

292. However, if the local authority does not modify or withdraw the controversial decision, then the prefect may decide to sue the local authority in the administrative court. A legal proceeding will be triggered, where the prefect will be the plaintiff and the local authority the defendant. At the end of the proceeding, the administrative court may find the decision illegal and, consequently, may annul the controversial decision.

293. It is also possible that the prefect asks the administrative court to suspend the challenged local decision, for reasons of urgency, during the length of the proceedings and until the final judgement will be pronounced. This procedure is called *référé*. However, the prefect cannot suspend the challenged decision by themselves.

294. The prefect also controls the legality of consultations and referendums performed at local level, as provided by Article L1112-17 of the General Code. Under this provision, any prospect for a local referendum, once approved by the local council, must be communicated to the prefect, at least two months before the actual holding of the consultation.

295. If the prefect considers that the local referendum initiative is illegal, they may bring a legal action against the local authority in the administrative court, within a deadline of 10 days upon receiving the appropriate communication. In that case, they may ask the court to suspend the holding of the referendum until a final judicial decision will be rendered on the legality of the consultation.

296. Apart from the regular control over local decisions and activities, the prefect discharges important controlling competences on the budgeting of local authorities, which will be presented below, in connection with the analysis of Article 9 of the Charter.

297. Last but not least, the prefect is not only a watchdog of the territorial authorities but also entertains relations of co-operation and assistance with them. Namely, the prefect discharges a permanent mission of advice to these authorities, in order to prevent the adoption of any decision that might not comply with the law. The dialogue between the prefect and local authorities, according to our interlocutors, is ongoing. The Covid-19 health crisis of 2020, in particular, brought the pair prefect/mayor back into the spotlight as essential for managing crises at the local level.

The regional courts of accounts

298. In France, the public sector can be subject to audit by the court of accounts. There is a national court of accounts (*Cour des comptes*) and one court of accounts in each region: the regional courts of accounts (*chambres régionales des comptes*). Its members have a status of magistrates, most of their activity is not litigation but control and audit. However, the jurisdiction may also be called to pronounce on litigation between local authorities or between a local authority and the State in the framework of audits.

299. As a rule, the national court of accounts does not have direct relations with the territorial authorities. This activity is carried out by each regional court. Each regional court of accounts supervises the financial activity of all municipalities and departments located in its region, and the region itself.

300. Commonly, the regional courts of accounts do not perform any a priori control over the budgets of the territorial entities and they have no power of injunction over those authorities. In application of the constitutional principle of free administration, local authorities are free to approve their annual budgets

and to plan their expenses and actions, with due respect to some basic rules and limits, such as mandating that budgets must be consolidated and balanced.

301. In general, regional courts only perform an *ex post* external audit: they intervene a posteriori, after the execution of the local budgets. As a consequence of the audit, the regional courts may issue recommendations at the end of their audits. The law stipulates that, after one year, the local executive must present to its deliberative assembly the actions taken in response to the court's observations and recommendations.

302. The case of supervision exercised by the regional courts over the accounts and budgets of local authorities results from its intervention at the request of the prefect in matters of budgetary control. Local authority budgets are subject to strict budgetary rules and these rules are enforced by the prefect, who represents the state.

303. If a local authority's budget fails to comply with these rules, the prefect refers the matter to the regional audit chamber, which draws up a draft budget (the prefect may depart from it, provided they give reasons for not following the chamber's proposal). This mechanism makes it possible to deal with local authorities in a deteriorated financial situation at an early stage, and to take the necessary measures to bring them back into balance. If this is necessary, the framework of a multi-year plan is approved for the most deteriorated situations.

304. Finally, in the domain of audit, municipalities are supposed to provide for internal audit mechanisms, by means of specific audit commissions, although this type of internal control falls outside the scope of Article 8.1 of the Charter.

The high authority for transparency of public life

305. Like all elected representatives, holders of a local executive mandate are affected by the laws of 11 October 2013, which aim to prevent conflicts of interest and guarantee transparency in public life. These laws lay down the obligation for the local elected representatives to provide the high authority for transparency of public life (*haute autorité pour la transparence de la vie publique*) with a declaration of interests and a declaration of assets.

The ministry of the interior and the government

306. The ministry of the interior and the government (*le ministre de l'intérieur et le conseil des ministres*) are key bodies of the state administration and may adopt decisions on the dissolution of municipal or department councils but this only happens in very serious cases of malfunctions and irregularities in the management of the local authority.

307. Article 8.1 of the Charter provides that "any administrative supervision of local authorities may be exercised only according to such procedures and in such cases as are provided for by the constitution or by statute". All the controls presented above are recognised or regulated by statute, no informal or out-of-the-law controls take place. Therefore, the co-rapporteurs consider that Article 8.1 of the Charter is respected in France.

308. As far as Article 8.2 is concerned, it should be noted again that, since 1982, the traditional system of strong supervision of municipalities by the *préfet* was transformed into a control of legality. This control of legality hits not only municipalities but also departments and regions. Consequently, the system is rather uniform and the same rules apply, independently from the territorial entity concerned.

309. For these reasons, the co-rapporteurs consider that France complies with Articles 8.1 and 8.2 of the Charter.

3.7.3 Article 8.3

310. As explained in the preceding items, French central authorities implement some mechanisms for supervising, monitoring or even controlling the activities of local and regional authorities. As noted, these controls are strictly regulated by law, restricted to controls of legality and in the cases when legal proceedings are triggered, the control is in reality exercised by the administrative courts themselves, which are totally independent.

311. In light of the present situation, the co-rapporteurs believe that the system respects the principle of proportionality embodied in Article 8.3 of the Charter. The depth and scope of those controls do not result in a political pressure on local authorities and the controls in place do not seem to be disproportionate, in light of the usual practices in most European countries.

312. For these reasons, the co-rapporteurs consider that France complies with Article 8.3 of the Charter.

3.8 Article 9 – Financial resources of local authorities

Article 9

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

3.8.1. Articles 9.1 and 9.2

313. The analysis of the respect of Articles 9.1 and 9.2 of the Charter will be performed jointly, since they are strongly connected.

314. As in many other aspects, this analysis must begin by consulting the constitution. In this sense, the French Constitution includes several provisions that are relevant for Articles 9.1 and 9.2 of the Charter. Thus, the key provision is Article 72-2 which provides, *inter alia* that:

- Territorial communities shall enjoy revenue of which they may dispose freely in the conditions determined by statute.
- Whenever powers are transferred between central government and the territorial communities, revenue equivalent to that given over to the exercise of those powers shall also be transferred.
- Whenever the effect of newly created or extended powers is to increase the expenditure to be borne by territorial communities, revenue as determined by statute shall be allocated to said communities.

315. Consequently, the French Constitution is not precisely silent on the matter of local/regional finances and enunciates several principles which, in principle, go in the same line as the requirements set by the Charter.

316. For French experts, these constitutional provisions enshrine the financial autonomy (*autonomie financière*) of the territorial authorities, without naming it.⁵⁴ Furthermore, an organic Act of 29 July 2004 defined the own resources of those entities and established the rule that those resources must be at least the determining share (*la partie déterminante*) of their resources; moreover, this part should never be lower than the proportion reached in 2003 (i.e. 60.8% for communes and EPCIs, 58.6% for departments and 41.7% for regions).

54. VERPEAUX M. et al. (2016), *Les collectivités territoriales. La décentralisation*. La documentation française, p. 165.

317. Thus, French local authorities are entitled to financial resources of their own, of which they can dispose within the framework of their powers.

318. According to a specific 2022 report of the court of accounts, currently, proper local resources account for around half of all local authority revenues. Nevertheless, this distribution is highly unequal between the different levels of local government: while they account for 65.8% of the municipalities and EPCI, the local resources of the departments represent only 34.3% of their revenues, and 17.2% of those of the regions.⁵⁵

319. In the words of a French expert, “local government resources are numerous, complex, different for each tier and in constant evolution”.⁵⁶ As a matter of fact, the financial revenues of the three basic territorial entities are very different from each other and even within the category of municipalities the situation may be rather different, on the basis of factors such as the population or the location of the municipality, or on the basis of ad hoc decisions adopted by the respective council. Consequently, it is very difficult to provide a full-fledged presentation of this complex matter in this memorandum, which needs to be short and concise.

320. Another source of complexity is a feature of the French system, which is unique in the sense that the institutional schemes for IMC are very developed, probably more than in other European countries. In general, these bodies are called *établissements publics de coopération intercommunale*, or EPCI. A striking feature of these EPCI is that some of them are endowed with their own fiscal powers (*EPCI à fiscalité propre*).

321. That is, these intermunicipal structures have the right to levy taxes in addition to those collected by the communes, or, in some cases, in place of the communes (for example the business tax, abolished in 2010). Consequently, the analysis of this dimension should be included when the application of Article 9 of the Charter is scrutinised.

322. From a legal point of view, the most relevant feature is that all legal rules governing this matter are state rules; there are no substantive regional or overseas legal rules on the matter. The most important pieces of legislation are, again, the General Code, the laws and regulations governing the different taxes (*code général des impôts as well as the General Code of Local Authorities and the Code of Taxes on Goods and Services*), and the annual laws on the national finances and budget.

323. At this point of the explanatory memorandum, it is necessary to present summarily the different sources of revenues for the territorial entities, and subsequently, try to conclude whether these resources are adequate, freely disposable and commensurate with their statutory tasks.

324. The starting point is again the General Code, which in Article LO 1114-2 describes the own resources (*ressources propres*) of the territorial entities. These resources are:

(i) “The proceeds of taxes of all kinds for which the law authorises them to set the base, rate or tariff, or for which it determines, for each local authority, the rate or a local share of the base, financial products or donations and bequests”. This provision seems to refer separately to genuine local taxes within the meaning of the Charter and to shared taxes. They need to be presented separately.

325. Own taxes: French territorial entities have a limited taxing power. The local authorities of the communal block (municipalities and inter-municipal cooperation structures) have fiscal powers over various types of taxes, including property taxes, business property tax, and the tax on secondary residences and other furnished premises not used as the main residence. Departments and regions have a very limited taxing power. In reality, the taxing powers of these authorities have been progressively reduced and eventually suppressed by different state laws. These taxes are presented below in connection with Article 9.3 of the Charter.

326. Shared taxes: local governments are entitled to a share or proportion of the annual collection of some state taxes. Indeed, many revenues allocated to the communal block, departments and regions consist of a share of national taxes, considered by the law as own revenues. Despite this terminology, local/regional governments do not have any regulatory or executive powers in relation to those taxes. Local authorities do not collect those taxes, they do not have the right to impose a surcharge on the rate

55. Cour des comptes (2022), *Rapport relatif au financement des collectivités territoriales*, Paris.

56. HERTZOG R. (2012), “Local government in France”, in Moreno Molina, A (ed.), *Local government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, p. 234.

set by the central government, etc. Local authorities have little, if any, share in the regulation and collection of those taxes: they simply receive the monies from the central government.

327. In a 2022 report on the financing of territorial authorities, the French court of accounts stated that the shared national taxation (*fiscalité nationale partagée*) currently accounts for around 21% of local authority revenues, thanks to three taxes: value-added tax (VAT) (€37.4 billion), the domestic tax on the consumption of energy products (€11 billion) and the special tax on insurance policies (€8.2 billion). However, the proportion of shared national taxation is highly uneven across the three local authority levels: while it accounts for 70% of operating revenues at regional level, it represents only 40% of those at departmental level, and just 6% of those at local authority level.⁵⁷

(ii) Fees for services rendered: local authorities may collect user fees and charges (*redevances*) for the use of public assets or facilities (for instance, a local swimming pool) or for the discharge of certain local services such as the issuance of permits or certificates. These are presented in more detail in connection with Article 9.3 of the Charter.

(iii) Income from property: these are mainly private law revenues, such as those obtained through the sale, rent or lease of municipal properties and the economic benefits obtained by local companies; the sale of publications or tourist merchandising; the product of privatisation operations.

(iv) Town planning contributions: companies and land owners who participate in urban development and building operations must pay some special contributions to the municipalities.

(v) Financial income: that is, borrowing and access to capital markets. This source of income is presented in more detail below, in connection with Article 9.8 of the Charter.

(vi) Gifts and bequests: that is, voluntary donations from physical or moral persons and inheritances.

328. There are other miscellanea and minor sources, such as fines and penalties for petty offences (example: parking violations).

329. Apart from the own resources, territorial authorities receive many different forms of grants from the state budget (block and investment grants) known as *dotations* in France. They are presented below in more detail in connection with Article 9.7 of the Charter.

330. In order to determine how adequate the financial resources of French local governments are and how deep the level of financial decentralisation is, different data and indicators should be taken into consideration. In this vein, the most commonly used indicators are local revenues and expenditures as shares of total public revenues and expenditures, and as a percentage of gross domestic product (GDP).

331. According to the committee of the regions, 20% of total public expenditure was accounted for by subnational governments in France in 2018. In 2016, public expenditures by subnational governments was 11.1% of GDP. And according to the OECD, in 2016, 51.7% of local resources was raised by taxes set and raised locally or by shared taxes, 31.1% from state grants, and the remainder from other revenues from the sale of goods and services and asset management.⁵⁸

332. Other more updated sources still point in the same direction: the relatively low proportion of local/regional spending in the overall spending of the French public sector. Maybe the best source for this is the annual report, released shortly before the monitoring mission by the national court of accounts, which deals monographically with decentralisation.⁵⁹ The conclusions of this report are very straightforward.

333. At least from a financial viewpoint, France is still a little decentralised country, as highlighted by the Court of Auditors.

334. Their spending represents only 12% of the country's wealth, when the average in the European Union is 17.9% of GDP. France is clearly lagging behind in this aspect.

57. Cour des comptes (2022), *Rapport sur le financement des collectivités territoriales*, Paris.

58. Available at [CoR - France Fiscal Powers \(europa.eu\)](https://european-council.europa.eu/media/1000000/1/CoR-France-Fiscal-Powers.pdf), accessed 5 December 2023.

59. Cour des comptes (2023). *Rapport public annuel 2023. La décentralisation 40 ans après*. Paris.

335. As regards the structure of revenues of the territorial authorities, today the revenues that are considered to be own resources account for around half of all territorial authorities' revenues, that is almost €129 billion (broken down into €96.9 billion in tax revenues, €19.7 billion in fees and €6 billion in own investment and exceptional revenues).⁶⁰

336. Nevertheless, this distribution is highly unequal between the different levels of local government: while own local resources over which local authorities have taxing powers ("own" within the meaning of the Charter), account for 65.8% of total revenues of municipalities, they represent only 34.3% of revenues of the departments and 17.2% of those of the regions.⁶¹ It should be noted that the usual approach in France is to include the shared taxes in the chapter of own resources, something that is at least arguable.

337. During the meetings of the co-rapporteurs with various interlocutors, the co-rapporteurs did not hear recurrent or relevant complaints in the sense that they lacked financial resources to provide their main local services. However, local and regional representatives made, recurrent complaints which seem to be well-founded in this domain and which may be listed under ten separate points:

- 1). The fiscal autonomy of territorial entities is weak in the case of municipalities, very or extremely weak in the case of departments and regions.
- 2). The abolition of the *taxe d'habitation* on main residences (a local tax on housing or dwellings) has had a very bad effect on the local finances of municipalities.
- 3). Regions and departments are mainly funded by state transfers and grants, or by shared taxes. In practice, departments and regions do not have substantive resources of their own within the meaning of the Charter. The most important transfer is the *dotation générale de fonctionnement* but the amounts of this grant are not updated in accordance with inflation.
- 4). Especially in the case of departments and regions, territorial entities have been deprived of genuine local taxes, which have been replaced by a share or percentage in the overall collection of some state taxes. The reduction of revenue stemming from local taxation is in theory compensated by the state, which allocates part of the shared taxes to the territorial authorities. However, according to the interlocutors, this compensation does not really match the loss of revenue and there is a chronic imbalance here.
- 5). Increasingly, the state allocates grants to the territorial authorities on a contractual basis and following a competitive procedure, where the local authorities must compete in a call for tenders and adhere to the priorities established by the state authorities. The state gives monies for the projects that the state identifies, to the winning local authority and they must be achieved in the manner established unilaterally by the state (*contrats de Cahors*). This system transforms local authorities into mere managers of the priorities set by the state.
- 6). The state imposes by law new spending obligations, without transferring the necessary financial resources to meet those needs. The best example is the allowances raise for local elected representatives that has been mentioned above.
- 7). The state usually transfers new competences and responsibilities to local/regional authorities but does not transfer financial resources in the amount needed to deliver local/regional services of good quality. The state does not re-evaluate periodically or systematically the changes in the costs of the policies transferred to local/regional authorities.
- 8). The state has repeatedly imposed a cap or limitation on the local/regional spending on the grounds of national economic policy. In this vein, for instance, the Public Finance Programming Act for 2018-22 set a target of 1.2% annual growth in the operational expenditure for the largest local authorities. Furthermore, the same act for 2023 provides for a new framework for local spending.
- 9). During the last 20 years, the weight that the chapter of own resources has had in the budget of the territorial authorities has declined steadily and gradually, while at the same time the state's financial contributions to local and regional budgets have increased. This is a clear indicator of the

60. Cour des comptes (2022), *Rapport sur le financement des collectivités territoriales*, Paris.

61. Cour des comptes (2023), *Rapport public annuel 2023. La décentralisation 40 ans après*, Paris.

loss of financial autonomy that the territorial entities have suffered. They may well receive equivalent monies from the state but the source is totally different.

10). Considered in a historical perspective over the last 30 years, the state grants have increased significantly, while at the same time the proportion of local taxes has decreased steadily, following the suppression of various local taxes. This is another evidence of the clear decline of the financial autonomy of the territorial entities. Stated in other words: territorial entities have today financial sufficiency but reduced financial autonomy and very reduced fiscal autonomy (in fact, there is nothing like fiscal autonomy in the constitution, according to the Constitutional Court).

338. All these complaints will be examined in the paragraphs below with further details. The programme of the monitoring mission envisaged in its second leg a meeting in Paris with high representatives of the ministry of the treasury and economy (*ministère de l'économie et des finances*), during which the co-rapporteurs could have checked this vision with local and regional elected representatives. Unfortunately, it was not possible for representatives of this ministry to meet the delegation. The co-rapporteurs regretted this missed opportunity for political dialogue with the Ministry.

339. Apart from the allegations formulated by the local elected representatives, the general assessment among French scholars of the vitality and effectiveness of the principle of financial autonomy proclaimed both by the Charter and by the French Constitution is rather negative. Some, for instance, point that "the last twenty years have seen a decline in local financial autonomy... since 2011, the regional level has lost freedom to set tax rates, and since 2021, the departments have lost (property tax on built-up properties) the last part of their direct tax system with the power to set tax rates".⁶²

340. Others, in the same line, have analysed the case law of the French Constitutional Court on the principles enshrined in Article 72-2 of the constitution and have concluded that the Constitutional Court has interpreted the principle of financial autonomy in a very narrow and restrictive manner. For instance, it has declared that the constitution does not embody the principle of fiscal autonomy (Decision 2009-599, 29 December 2009, on the Act of finances for 2010).⁶³

341. During the consultation procedure, the central authorities expressed their disagreement with most of the statements made by local elected representatives mentioned above. In addition, they placed greater emphasis on the need to dissociate the fiscal autonomy of local authorities from their financial autonomy, pointing out that the Constitution does not recognise the principle of fiscal autonomy and noting that shared national taxation is part of local own resources within the meaning of the Constitution and the organic law (Constitutional Council decisions no. 2004-500 DC of 24 July 2004 and no. 2019-796 DC of 27 December 2019). The central authorities refer to compliance with the financial autonomy ratios defined by the Organic Law and therefore consider that local authorities (notably departments and regions) have substantial resources of their own within the meaning of Article 72-2 of the Constitution.

342. In this regard, the rapporteurs consider it necessary to refer to the contemporary Commentary on the Explanatory Report of the European Charter of Local Self-Government, which stresses that, within the meaning of the Charter, fiscal power is a key element of the financial autonomy of local authorities, and that "local taxation creates a basis for local revenues to finance local services". It is therefore a critical indicator for measuring local autonomy. Paragraphs 3 and 1 of Article 9 of the Charter explicitly state the relevance of a local tax policy and the power to decide on rates as a precondition for local decentralisation⁶⁴. Moreover, "local taxes are not only an important source of funding for local authorities. They are also a tool for making political choices, influencing the behaviour of local residents and companies and promoting local economic development'. This opens the way for political accountability". In addition, the rapporteurs recall that the previous monitoring report had already raised the issue of the extensive interpretation of the notion of "own resources" in French law and had suggested not to include revenue whose rate cannot be at least partly defined, by local/regional authorities in the category of "own" revenue.

62. Verpeaux M. et al. (2016), *Les collectivités territoriales. La décentralisation*. La documentation française, p. 168.

63. Roux, A. (2018), "L'autonomie financière des collectivités territoriales dans la jurisprudence du Conseil Constitutionnel", in *Les grandes décisions du Conseil Constitutionnel*, Dalloz, 19th edition.

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

343. During their visit and following the meetings, the rapporteurs noted an excessive centralisation of the financing of local and regional authorities in France, which constitutes an obstacle to the implementation of the principle of financial autonomy within the meaning of the Charter.

344. In view of the above, Articles 9.1 and 9.2 of the Charter are not fully respected.

3.8.2. Article 9.3

345. Once again, it is necessary to start by checking the domestic constitution, to see whether the requirements of Article 9.3 are also included in the Magna Carta. The answer is yes: Article 72-2 of the French Constitution clearly provides two important rules: first, that local/regional authorities “may receive all or part of the proceeds of taxes of all kinds. They may be authorised by statute to determine the basis of assessment and the rates thereof, within the limits set by such statutes”.

346. The constitution provides also that “tax revenue and other own revenue of territorial communities shall, for each category of territorial community, represent a decisive share of their revenue. The conditions for the implementation of this rule shall be determined by an institutional act”.

347. The matter of local/regional taxation is extremely complex in France, because there are three basic types of entities, each one having its own situation and taxation; because some taxes are optional; and because the difference between genuine local taxes and charges is sometimes murky. The local/own taxes and the charges and fees will be examined separately.

Local/regional taxes

348. There are a number of points to note about local taxation in France.

349. First, territorial entities cannot create or establish new taxes in order to feed their budgets, apart from those that are fixed by the law. Local taxation, then, is totally governed by state laws and regulations.

350. Furthermore, since 1980, territorial entities were recognised the capacity to decide on the rates of the four traditional direct taxes (the right to “vote” those rates, as said in the French terminology). However, since 2011, the regions no longer vote the rate of any direct local tax; the freedom to set the rate of taxes is now restricted to municipalities and to IMC public institutions (EPCI) endowed with fiscal powers (*intercommunalités à fiscalité propre*). Departments and regions have a very limited fiscal power.

351. The law frames this freedom within precise limits to avoid unequal treatments between taxpayers across the nation. The most relevant rule here is the annual law on finances (*Loi annuelle des finances*).

352. Local taxation in general and the taxing powers of the local authority are a matter for the national legislature, and certain provisions voted by Parliament in the light of public policy considerations may have an impact on taxation and the power to set rates.

353. Finally, French local-regional governments do not have the power to collect their own taxes through their own personnel and services. The power to collect taxes is supposed to be a monopoly of the state and the principle of the single treasury for the whole nation is strictly applied. Thus, the state collects local taxes and later on transfers the amounts collected to each territorial entity.

Municipalities

354. Traditionally, the main local taxes have been the following ones:

(a) The land tax (*taxe foncière*) is the most important of all taxes of the municipal block. The rate of this tax, paid by the owners of real estate properties, is determined by the municipal council or the community council, subject to compliance with the limits stipulated in the General Tax Code. The taxable basis is the value of the real estate property, which is determined by the tax authorities on the basis of declarations by the owners concerning the nature of the property.

355. In reality, there are two different taxes within this tax: on the one hand, the tax hitting land plots that have not been built (*taxe foncière sur les propriétés non bâties*) and the tax hitting land with a building or construction on it (*taxe foncière sur les propriétés bâties*).

356. In this area, a recurrent complaint made by many local leaders is that the real estate properties have not been re-evaluated for a long time. Some of them have not been re-evaluated since the 1970s. Since this operation can only be performed by the state, municipalities feel powerless to increase the taxable basis, which is very different from real market prices.

(b) The tax for households or dwellings (*taxe d'habitation*) hits the fact to live in a dwelling or home and is theoretically different from the land tax. It must be said that this tax has traditionally been a very important source of revenue for municipalities. However, some years ago, a reform was undertaken by the state and this tax was progressively suppressed. This suppression for main residences became total on 1 January 2023.

357. This reform has been a source of much controversy within French municipalities. Nowadays, the main residence is not hit by this tax, and it only survives as a tax hitting secondary residences (for instance homes that are only used during the summer holidays, or during weekends) and other furnished premises that are not subject to business property tax. The housing tax on second homes (*taxe d'habitation sur les résidences secondaires*) and on other furnished premises not used as a main residence, is calculated on the basis of the cadastral rental value (the annual rent that the property could produce if it was rented). The tax amount is obtained by multiplying the rental value by a tax rate, a rate determined by the municipal council the town and community council.

(c) In some municipalities that fall within the “zones with high demand” as defined in article 232 of the CGI (General Tax Code), land owners have to pay, with some exceptions, a tax hitting houses or apartments that are not used as a residence but are vacant. The name of this tax, which is not too important in the overall figures, is the *taxe annuelle sur les logements vacants*. In areas where there is no demand, local authorities can reintroduce council tax on these furnished premises.

(d) The tax on the sale of non-built land plots that became buildable by means of a planning amendment (*taxe sur la vente de terrains nus rendus constructibles*). This tax hits the capital gain that a modification in the local urban land development plan may produce on someone's land. Under this scheme, an owner who sells land that is not built upon but which has been made constructible following a modification of the local urban plan, must pay tax on the capital gain at the moment of the sale (they bought a non-buildable land plot but sell a buildable one, which has a higher market value). The local council may choose between different possible rates, which are defined in the legislation governing this tax.

Departments

358. Traditionally, departments were entitled to receive – in total or together with municipalities and the EPCI having their own taxation – collection of the following taxes: the land tax on built real estate properties (*taxe foncière sur les propriétés bâties*, the same as above); business value added tax, flat-rate network taxes, transfer duties and tax on mining operations (mining royalty).; and the tax on mining operations (*redevance des mines*).

359. However, in recent years, there have been important changes in this area: since 2021, departments are no longer entitled to the above-mentioned land tax. In compensation, the state has set in favour of the departments a share in the collection of VAT, which is a national tax but whose collection is shared with the territorial authorities (shared taxes, *impôts partagés*). Similarly, Parliament replaced the CVAE [cotisation sur la valeur ajoutée des entreprises] compensated for by departments with a dynamic fraction of VAT.

360. Here, it is possible to see another clear symptom of the trend that was denounced by the local representatives: local authorities are deprived of genuine local taxes over which they have the power to set rates and revenues are replaced by a share or percentage in the overall collection of some state taxes. With this move, local authorities lose autonomy and decision power in fiscal revenues, because the replacing taxes are completely regulated and managed by the state.

Regions

361. The main funding source that may be considered as local taxes for the regions has traditionally been the levy on the added value of companies (*cotisation sur la valeur ajoutée des entreprises*, CVAE). This tax was a component of the territorial economic contribution (*contribution économique territoriale*), which replaced the professional tax in 2010. This tax hits companies with a volume of affairs higher than a certain threshold, updated regularly by the law (the last one was €500 000 annually).

362. It should be noted, however, that in recent years, the CVAE has suffered some important changes. On the one hand, in 2021, the state decided to suppress this source of funding for the regions and to replace it with a share in the total collection of dynamic VAT.

363. Another source of fiscal income for the regions is represented by the tax on consumption of energy products (*taxe intérieure de consommation sur les produits énergétiques*, TICPE). However, this is a national tax and the state allocates a share or percentage of the total collection to the regions.

364. Apart from this tax, there is another minor tax for the regions, namely the tax on registration certificates of vehicles, usually referred to as grey cards.

365. In the case of the overseas territories, some specificities may be found. For example, in the case of Réunion, the territorial authority sets the rate of the tax on energy products and collects it in the island. This authority also collects a tax called *octroi de mer*, which also benefits the municipalities of this island.

366. The situation of fiscal income of the regions constitutes (like in the case of departments) another evidence of the situation denounced by the local elected representatives: (a) the substitution of genuine local taxes with shares in the collection of state taxes; and (b) the suppression or reduction of local taxation for reasons of national economic policies of the state.

367. During the consultation procedure, the central authorities pointed out that the rental value used to establish local taxes for business premises was revised in 2017 and that the next revision of rental values for residential premises should take place in 2028. They noted that the abolition of the *taxe d'habitation* was accompanied by full compensation for local authorities from 2021, in the form of the allocation of specific dynamic resources: the *Taxe Foncière sur les Propriétés Bâties* (TFPB) for communes, a share of the shared tax and VAT for EPCIs and departments, aimed at preserving the financial autonomy of local authorities.

368. Thus, the central authorities consider that, although departments and regions do not have the power to set rates, they have dynamic resources that enable them to carry out all of their responsibilities, and that the State provides compensation for the resources that have been eliminated in a dynamic manner.

Charges and fees

369. Local authorities may collect user fees and charges, which in French are generally known as *redevances*. As indicated above, this is an "own" resource within the meaning of Article 72-2 of the Constitution. For instance, French municipalities collect charges and fees from local citizens for the use of local facilities and installations (such as public swimming pools), or for the delivery of local services, such as sanitation of urban waste waters.

370. In the case of Paris, for instance, the city collects fees for entries or tickets to visit some of the landmark touristic attractions of the *ville lumière*, such as the Eiffel Tower or the catacombs (many local museums, however, are free of charge).

371. However, the difference between a genuine tax and a charge or fee may not be totally clear, because the local authority may decide to set up one or the other. The best example of this latter case is the collection of household waste, which may be financed by means of a tax on waste collection (*taxe d'enlèvement des ordures ménagères*, TEOM) or by means of a charge/fee on waste collection (*redevance d'enlèvement des ordures ménagères*, REOM). Here we should focus on the latter.

372. Thus, the REOM fee must be paid by those local residents who actually use the local household waste collection service. Consequently, it is for the person who actually lives in the dwelling to pay for it. The fee is calculated according to the importance of the service provided (volume of garbage and waste collected, in particular). Different tariffs are possible. In some cases, there is a combination of a fixed and a proportional share. In others, there is a flat rate per household, multiplied by the number of people living in the household. The municipal or communal council decides on the REOM billing and payment dates.

373. In light of the foregoing, the co-rapporteurs believe that the matter of fees and charges is satisfactory but the issue of local taxation presents a very critical situation: in the case of municipalities, local taxes are insufficient and have been reduced drastically in recent years; in the case of departments and regions, the relative weight of taxes is very reduced.

374. Consequently, and in light of the minimum requirements of the Charter (“a part, at least”), the co-rapporteurs believe that France partly complies with Article 9.3 of the Charter and that there is substantial room for improvement as far as regions and departments are concerned.

3.8.3. Article 9.4

375. This provision of the Charter embodies two different requirements. On the one hand, the structure of local finances ought to be sufficiently diversified, which means that local authorities should not get revenue from one or two main sources. The second requirement is that the local finances system must be buoyant (in the French version of the Charter: *de nature évolutive*). This requirement must be understood in the sense that the local finances system must enable local authorities to “keep pace as far as practically possible” with the real evolution of the cost of their tasks and the services they deliver.

376. As far as the first requirement is concerned, and in light of the system and structure of local finances as presented in this report, it may be concluded that the different types of local government revenues are sufficiently diversified, as they cover all possible sources of local funding usually included in most European systems of local finance. This prong of Article 9.5 would then be satisfied but it should be recalled that the true or genuine local taxes are very reduced.

377. The buoyancy of the local financial system in France is more difficult to assess because it is a very subtle and even controversial concept, open to different perspectives and assessments. In any case, during (and after) the mission, the local-regional representatives made claims that the local financial system in France prevented them from keeping pace with the real evolution of the cost of carrying out their tasks. They provided different examples or symptoms of this structural failure, which has been allegedly aggravated over the last 10 years.

378. Among these allegations are the following:

- State grants are not updated or increased regularly, to keep pace with the increasing cost of living.
- The constant reduction in own tax revenues on which local authorities have the power to set their own rates (which has remained constant over the last 20 years) has eroded the financial autonomy of local authorities.
- The state imposes new spending obligations to local authorities, such as the raise in remunerations of local elected representatives (see above, point 3.6.2) without transferring simultaneously additional, new financial resources to face that unexpected increase.
- The ability of local authorities to set the rate of the (few) local taxes that are still in place is reduced. This fact hinders their ability to increase their fiscal revenues, necessary to face the spending obligations derived from the new tasks that are transferred or delegated by the state.

379. A recent political controversy arising in the city of Paris during the mission (September 2023) might well illustrate this situation. The city council of Paris decided to increase the local land tax for 2024 by 52%, as compared to the rate of the previous year. This tax raise was bitterly criticised by the local opposition but the mayor of Paris contended that the city was somehow obliged to decide on this increase because it was the only possibility for the capital city to ensure that it could deliver its local services.

380. More precisely, Ms Hidalgo announced that the city was going to sue the state in the competent courts because the central administration was not fulfilling its obligations to ensure financial autonomy of the local authorities. Namely, she pointed out that “the grants that the state allocates to Paris had gone from €930 million to “zero” in eight years”.⁶⁵

381. During the consultation procedure, the Government highlighted that the reduction in tax revenues over which local authorities have a rate-setting power “has not undermined their financial autonomy” because “the abolition of certain local taxes has been offset to the nearest euro by revenues that are highly dynamic (TFPB growth rate of 3.4% in 2022 and 7.1% in 2023 and VAT growth of 5.4% in 2022 and around 4% in 2023)”.

382. In light of the precedent considerations and based on the well-founded and consistent claims of the local elected representatives met during the visit, the co-rapporteurs believe that there is partial violation of Article 9.4 of the Charter.

65. *Le Monde*, 15 September 2023 (consulted online on www.lemonde.fr).

3.8.4. Article 9.5

383. The French Constitution includes a provision that goes clearly in line of this article. Namely, Article 72-2 states that “equalisation mechanisms intended to promote equality between territorial communities shall be provided for by statute”. In a decision of 17 July 2003, the French Constitutional Council has specified that “the purpose of this provision is to reconcile the principle of freedom with that of equality by introducing mechanisms of financial equalisation”.

384. Consequently, under the French Constitution it is obligatory to have equalisation mechanisms but the Constitution itself does not regulate in detail how these mechanisms should be, and largely defers to the legislators the definition and technical details of such mechanisms.

385. Financial equalisation is mainly achieved at local level and among municipalities, through different instruments that are examined below. To begin with, one should distinguish two types of financial equalisation: vertical equalisation (*péréquation verticale*) and the horizontal one (*péréquation horizontale*). The first one involves the transfer of specific funds or grants by the state to the financially weaker local-regional authorities (a form of redistribution of wealth). The second one involves a redistribution of the income collected by municipalities among themselves (or among departments or regions). Here, the equalisation mechanism works within the same territorial level among rich and poor local authorities.

Vertical equalisation

386. Vertical equalisation is mainly achieved through the allocation of the global operating endowment (*dotation générale de fonctionnement*, DGF), which is the most important grant that the state gives to local authorities (€26.8 billion in the financial law for 2022). The DGF includes a pillar that is a lump sum and another one that has an equalisation goal. This part of the DGF itself includes several components.

387. The part of the DGF that pursues an equalisation goal represented a share of 32% of the total endowment of the fund in 2022, that is €8.6 billion. This part is composed of grants, which target specific authorities. In the case of municipalities, the most important grant is the urban solidarity endowment (*dotation de solidarité urbaine*). This fraction had in 2022 a budgetary endowment of €2.6 billion. This amount is distributed among the weaker municipalities, according to a complex set of criteria and variables.

388. Apart from this, there is another block grant that exclusively targets rural municipalities (towns and villages). Its name is rural solidarity endowment (*dotation de solidarité rurale*) and its amount in 2022 was €1.9 billion. Moreover, the national equalisation endowment (*dotation nationale de péréquation*) is intended to compensate for differences in the fiscal potential of certain municipalities. In 2022, it had an endowment of some €0.8 billion.

389. The IMC bodies (EPCI) have their own block grant intended for equalisation purposes, named intercommunality fund (*dotation d'intercommunalité*), with a budgetary endowment of €1.7 billion in 2022).

390. In the case of departments, there is also a specific equalisation mechanism in the form of a block grant, called urban equalisation endowment (*dotation de péréquation urbaine*), with a budgetary endowment of €0.6 billion in 2022.

391. Finally, for the specific case of departments having a predominantly rural nature there is another block grant, called minimum operating endowment (*dotation de fonctionnement minimale*), with a budgetary endowment of €0.9 billion in 2022.

Horizontal equalisation

392. Under the horizontal equalisation mechanisms, amounts are levied by the richest communities and payments to the poorest are made, on the basis of a series of indicators of resources and expenses.

393. Until 2010, horizontal equalisation was mainly concentrated in the Île-de-France region (around Paris), where the city of Paris was a net contributor to the system but currently it is general for the country. For instance, in the annual law on finances for 2022, vertical equalisation (share of DGF set aside for equalisation) was set at €8.6 billion, while the horizontal equalisation involved roughly €4.5 billion.

394. To this end, different schemes (in the form of funds targeting different categories of territorial authorities) have been set up, such as the *fonds national de péréquation des ressources intercommunales et communales* in the case of municipalities, or the *fonds de péréquation des ressources des régions* in the case of regions.

395. During the various meetings held by the delegation, the local elected representatives stated that in general they were satisfied with the current system of financial equalisation.

396. In light of the foregoing considerations, the co-rapporteurs consider that France complies with Article 9.5 of the Charter.

3.8.5. Article 9.6

397. The general pattern of consultation of territorial authorities by the state has been examined above in connection with Article 4.6 of the Charter. At this point, we need to focus on one specific consultation: “on the way in which redistributed resources are to be allocated to them”. Although the literal wording of the Charter seems to be restricted to a very narrow matter (redistribution of resources), this provision is usually understood to cover the consultation of local authorities in financial matters, broadly speaking.

398. From this perspective, it should be noted that in France, there is a specific body for the consultation of local authorities or for political intragovernmental negotiation on local finances: the committee of local finances (*Comité des finances locales*). This body was created by a national statute in 1996. It is composed of members of parliament and elected representatives of regions, departments, municipalities and IMC bodies, as well as representatives of the state administration.

399. Concretely, this committee has 2 deputies; 2 senators; 2 presidents of regional councils elected by their peers; 4 presidents of departmental councils elected by their peers; 7 presidents of IMC bodies elected by their peers; 15 mayors elected by their peers, some of whom represent overseas territories; and 11 state representatives appointed by order of the ministers concerned. The committee is renewed every three years, with the last renewal at the end of 2023.

400. The most important mission for this committee is to discuss and control the allocation of the *dotation générale de fonctionnement*, which, as presented above, is the most important grant that the state allocates to the territorial authorities.⁶⁶ Apart from that, the committee discharges relevant advisory functions. For instance, it is supposed to provide the government and parliament with the analyses needed to prepare the provisions of the annual finance bill that concern local authorities, the methods of evaluation, and the amount of compensation for transfers of powers between the state and local authorities.

401. Moreover, the committee may be consulted by the government on all legislative bills, government amendments and financial regulations concerning local authorities. However, it should be noted that in those cases the state is not obliged to consult the commission, as this request for advice is optional.

402. It was pointed out to the delegation that the local elected representatives were convoked to meetings of the said commission and informed of the decisions that would have already been taken by state officials. According to the interlocutors met by the co-rapporteurs, there is no genuine negotiation or concertation on the measures proposed.

403. However, this allegation is hard to prove. The commission exists, is periodically convoked and proceedings take place. Here again, the delegation regrets the fact that the meeting with representatives of the ministry of economy and finance did not take place. In any case, the fact that the local/regional elected representatives have not been able to avoid or to abort any of the many negative developments that have taken place in the field of local finances in the last 20 years could well confirm the allegations heard.

404. Apart from this specific structure for consultation, one should not forget the specific role of the senate in representing the voice of local authorities in the parliamentary works and debates, every time a legal proposal hitting the local finances is tabled. This input of the senate, while not excluding consultation with the main national associations, should be especially strong when the law on the state budget (*loi de finances*) is discussed every year in parliament.

66. See Article L1211-3 of the General Code.

405. In light of the foregoing considerations, the co-rapporteurs consider that France complies with Article 9.6 of the Charter.

3.8.6. Article 9.7

406. As in most European countries, the central public administration in France allocates every year a relevant sum of financial resources from the state budget to local and regional authorities (and also to the EPCI, IMC bodies). In general, these transfers of monies are called *dotations* and they are a substantial part of the resources of the territorial entities.

407. According to a 2022 report of the court of accounts, the state transfers represent roughly 28% of the revenues of the territorial authorities (other sources speak of one third),⁶⁷ but this is an average figure, which means that the proportion of the state transfer is much higher in the case of regions.⁶⁸

408. A conceptual problem arises when one analyses this element of local/regional finances in France. As noted above, in France there are shared taxes, in the sense that some territorial entities (mainly departments and regions) receive a part of the total collection of some national taxes (such as VAT and the tax on the consumption of energy products).

409. Since, in both cases, there is a net transfer of financial resources from the state to the territorial entities, one could wonder whether these shared taxes are in reality also grants. Technically, at least in the French financial system, they are not, and the part of the tax collection is considered to be own resources of the territorial entities, and not grants.

410. The *dotations* of the state are at the centre of the political debate concerning local and regional authorities. The system of state grants that are allocated to local and regional authorities is complex and can be presented around the following ideas.

411. From the outset, it should be clarified that these grants are allocated exclusively by the state. Consequently, departments do not allocate grants to municipalities, and regions do not allocate such grants neither to their municipalities, nor to their departments. Each level of territorial authority is independent of each other. However, investment grants may be paid by several local authorities for the same project.

412. There are different types of grants (up to 20) and some of them have an equalisation purpose (examined above). Some are earmarked for specific purposes (especially in the case of investments); some are not (if they aim at covering the operational expenses of the territorial authorities).

413. Considered in a historical perspective over the last 30 years, the state grants have increased significantly (while at the same time, the proportion of local taxes has decreased steadily, following the suppression of various local taxes, as noted above). Thus, between 1996 and 2010, grants and transfers allocated by the state to the budgets of territorial entities have increased from €37 billion to €75.4 billion, which represents a raise of 103%.⁶⁹

414. The most important state grant aimed at assisting territorial entities to face their operational expenses is – once more – the general functioning grant (DGF), since, as noted above, this grant has a pillar that is a lump sum or block grant.

415. This part of the DGF is not earmarked. The amount of this important grant is determined by the government every year in the annual law on the budget (*loi de finances*), based on the statutory framework, the multi-annual financial planning of the public sector, the results of the consultation-negotiations with the territorial authorities (especially in the context of the committee of local finances, see above). As a result of this decision-making process, the actual endowment of this grant is eventually included in the annual state budget, which is discussed and eventually approved by parliament.

416. In 2014, the amount of this grant was €40.1 billion but was reduced in 2015 (€36.6 billion) and further reduced in 2016 (€30.9 billion). In 2022, the amount was €26.6 billion. These figures support the truth of

67. See the website of the ministry of ecological transition and cohesion of the territories: www.ecologie.gouv.fr, accessed 6 December 2023.

68. Cour des comptes (2022), *Rapport relatif au financement des collectivités territoriales*, Paris.

69. Verpeaux M. et al. (2016), *Les collectivités territoriales. La décentralisation*. La documentation française, p. 176.

some of the allegations of the local elected representatives mentioned above in connection with Articles 9.1 and 9.2 of the Charter (progressive reduction of some state grants).

417. It is important to note that the beneficiaries of the DGF are municipalities, IMC bodies (EPCI) and departments. Regions are not beneficiaries of this grant. Some years ago, that was the case but in 2018, the state decided to eliminate the regions among the beneficiaries of this fund. Instead, the state set a fraction or share in the total collection of VAT to allegedly compensate the regions for this loss of revenues.

418. Apart from the free or block grants and transfers, the state also allocates different types of transfers to local authorities in the form of earmarked grants, mainly for assisting the territorial entities in carrying out investment projects.

419. Here, there are different schemes or programmes, each one having its own regulations, criteria, endowments and beneficiaries. For this reason, it is pertinent just to mention the most important ones:

- (a) the local investment support grant (*dotation de soutien à l'investissement local*);
- (b) the rural amenities grant (*dotation d'équipement des territoires ruraux*);
- (c) the city policy grant (*dotation politique de la ville*); and
- (d) the departmental investment support grant (*dotation de soutien à l'investissement des départements*).

420. In 2022 the state claimed to have allocated roughly €2 billion to these grants, which helped financing more than 27 000 projects carried out by municipalities, EPCI and departments in the whole country.⁷⁰

421. In this domain of investment grants, local elected representatives recurrently alleged that the state is increasingly resorting to the use of earmarked grants whenever local investments are involved (for the building of local facilities and infrastructure). This trend is so relevant and important that it has received a specific name: contractual financing (*actions contractualisées*). Under this scheme, the state publishes an open call for tenders, offering the possibility to co-finance some investments at local and regional level. The interested local authority must sign an agreement with the state, setting all the details of the investment. However, the state is the one who decides where and how the monies will be spent: for instance, which local road or school needs to be refurbished.

422. This scheme of financing is usually referred to as *contrats de Cahors*, because it was decided during an important territorial conference that took place in the city of Cahors in 2017. Local elected representatives consistently assessed this scheme of financing in a negative way from the perspective of local autonomy.⁷¹

423. Unanimously, these competitive schemes are perceived by local elected representatives as vexatious, likened to a form of trusteeship from the government. They claim that this scheme calls into question the financial autonomy of local authorities.

424. For its part, the government defends the goodness and opportunities of this scheme, since it allegedly involves local authorities in the national investment strategy.

425. Summing up, currently, an increasing part of the state grants for investments that are allocated to local authorities are earmarked for the financing of specific projects, which are unilaterally decided by the state and where the local authorities do not have any discretion.

426. In light of the foregoing, the co-rapporteurs believe that there is partial violation of Article 9.7 in France.

3.8.7. Article 9.8

427. Territorial authorities have the capacity to access borrowing as an extra source of revenue where the apportionments from the state budget and their own revenues are insufficient. The golden rule here is that local-regional authorities can only have recourse to borrowing to finance investments, they cannot finance regular or operational costs, such as personnel, etc.

70. Source: website of the ministry of ecological transition and cohesion of the territories.

71. *La Gazette des Communes*, 12 December 2022 (www.lagazettedescommunes.com).

428. Here again, municipalities and IMC bodies (EPCI) must be put together in the same drawer. Thus, in 2019, the total amount of borrowing of this group of entities was €13.6 billion, a figure that has been calculated as representing 5.5% of their total revenues.⁷²

429. As it happens in many other fields, this aspect is regulated in the General Code, and the main provisions thereof are Articles L.2337-3, L.3336-1, L.4333-1 and L.5211-36. Under those rules:

(a) municipalities, EPCI, departments and regions may take out loans from the private sector;

(b) the decision about borrowing is the responsibility of the council. However, this power may be delegated to the mayor (in municipalities), to the standing committee or to the president of the departmental council (in the case of departments), to the standing committee or to the president of the regional council (in the case of regions) or to the bureau of the president (in the case of an EPCI);

(c) the control over borrowing of local authorities is exercised through the principle of budgetary equilibrium: under no circumstances may borrowing be used to cover an operating deficit, or to cover the cost of debt repayment. As control is concerned, an interesting feature is that the borrowing contracts are considered to be private-law contracts, which are not subject to the control of legality of the prefect. However, the prefect might intervene in certain cases.

430. Apart from the general right of local and regional authorities to borrowing and the general rules herein presented, it should be noted that in France, there is a specific kind of public bank or credit institution, named *Agence France Locale* which was set up in 2013. This financial agency works specifically with territorial authorities and provides them with credit. This credit institution is owned 100% by the territorial entities themselves and only gives loans to territorial authorities to assist them in carrying out investment projects.⁷³

431. In light of the foregoing considerations, the co-rapporteurs understand that France complies with Article 9.8 of the Charter.

3.9 Article 10 – Local authorities' right to associate

Article 10

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

3.9.1 Article 10.1

432. French local authorities are entitled to co-operate and form consortia and other types of collective structures and bodies with other French local authorities. Thus, French municipalities may establish associations or partnerships among themselves to carry out tasks of common interest and to discharge common local services.

433. In France, IMC is not just another feature of the local government landscape but a distinctive feature, and there is a specific name to describe this phenomenon: *intercommunalité*.⁷⁴ France is probably the European country where IMC is the most developed. Indeed, IMC has given rise to a very important and politically relevant reality, with an extraordinary number of entities and types of co-operation structures, which have not stopped growing during the last few years.

72. Verpeaux M. et al. (2016), *Les collectivités territoriales. La décentralisation*. La documentation française, p. 169.

73. Available at www.agence-france-locale.fr/, accessed 5 December 2023.

74. It should be noted that the word *intercommunalité* is used in two ways in France: (a) to identify the whole phenomenon of the municipal groupings for the joint delivery of local services; and (b) each individual body or group of them; in this case, the noun can be used in its plural form *les intercommunalités*, or, more colloquially, *les intercos*.

434. The reasons for such development of IMC structures is clear: in France, there are more than 35 000 municipalities and almost half of them have less than 500 inhabitants (the historical roots for this structural situation have been explained above).

435. Contrary to other European countries⁷⁵, France has never tried to carry out a massive operation of reduction of municipalities by means of compulsory mergers or fusions. The incentives provided for encouraging the voluntary merger of municipalities have never rendered the expected results.

436. As a consequence, the policy direction has been to foster IMC, so that small municipalities may put their resources together by establishing a common, external and shared body or establishment, endowed with its own legal personality, capacity and means, which would assume the task(s) that the several municipalities cannot deliver by themselves.

437. In this way, the EPCI, or more colloquially, *intercos*, were born. Consequently, the bodies for IMC constitute the French alternative to compulsory amalgamation.

438. IMC takes place mainly in the fields of transport infrastructure, environmental and water services, cultural services, education and economic development (water supply, garbage collection, electricity or gas works, urban transport).

439. The development of IMC bodies has a long history. It started in 1890, when the Act of 22/3/1890 issued a model of municipal union called *syndicat de communes*. These bodies had a legal personality of their own, different from the partner municipalities, and were allowed to assume in full a given local responsibility or service, which was delivered by the *syndicat*, not by the municipalities. Consequently, the competences and responsibilities for that function or service were shifted from the participating municipalities to the new public body.

440. In 1959, the law authorised the creation of multi-purpose unions or *syndicats* (that is, the *syndicat* could deliver not only one specific local service but several ones). Thousands of unions were created in the 1960s and 1970s. The procedure for creating a *syndicat* starts from the councils of the municipalities, who have the power to decide on this. If unanimity (generally) or a qualified majority of municipal councils approves the project, then the prefect issues a decree that creates the union formally and defines its by-laws. The union is then a legal entity. It is run by an assembly composed of delegates elected by each municipal assembly (normally two). The *syndicat de communes* elects a president and vice-presidents, who have executive power.⁷⁶

441. From then on, the law allowed the creation of bigger and more complex IMC bodies. For instance, Law no. 66-1069 of 31 December 1966 on urban communities created four “compulsory urban communities in specially fragmented metropolitan areas (Bordeaux, Lille, Lyon and Strasbourg). Others were subsequently created on a voluntary basis...they have a wide range of competences and full fiscal power”.⁷⁷ These are an example of the so-called EPCI with fiscal powers (*intercommunalité à fiscalité propre*) that have been referred to above.

442. In 1999, parliament adopted the Act on simplification of intermunicipal co-operation, which reduced the number of community types to three: *communautés d'agglomération*, *communautés urbaines* and *communautés de communes*.

443. Thus, in 2011, there were roughly 2 600 IMCs in France, which involved 35 041 municipalities, 95.5% of their total number, and 91.2% of the national population.⁷⁸ In 2017, there were 1 266 EPCI, involving a total of 35 411 municipalities.⁷⁹ A new law adopted in 2010 brought about new changes in this complex universe, and, *inter alia* allowed the creation of a new form of IMC bodies: the metropolis (*métropole*).

444. As a consequence of the legal evolution in this field, currently, there are two main types of EPCI: those with their own fiscal powers (*intercommunalités à fiscalité propre*) and those without. Among the latter group are only the *syndicats de communes* (either single-purpose or multi-purpose ones). Their

75. Examples include Latvia, Cyprus and Germany - see [Carta Monitor](#) for more information.

76. Hertzog R. (2012), “Local government in France”, in Moreno Molina, A (ed.), *Local government in the member states of the European Union: a comparative legal perspective*, INAP, Madrid, p. 217.

77. Ibid.

78. Ibid.

79. *Les collectivités locales en chiffres 2017*, Direction Générale des Collectivités Locales.

resources consist mainly of a budgetary contribution made by the participant municipalities (they allocate the necessary resources for the operation of the EPCI).

445. The rest of the EPCI belong to the first type, which is the most relevant and politically important. Contrary to the second group, these bodies substitute partially or totally the partner municipalities in the adoption of tax decisions, such as the determination of the rate of local taxes and the rest of taxing operations. In this group are: (a) the *communautés de communes*; (b) the metropolitan areas (*métropoles*); (c) the *communautés urbaines*; (d) the *communautés d'agglomération*; and the *syndicats d'agglomération nouvelle*.

446. In light of the complexity of the systems of *intercommunalité*, it is sometimes difficult to provide a full account of the existing IMC bodies. For this reason, the information presented below on the IMC bodies with tax powers, is taken from the 2023 annual public report of the Court of Accounts, which deals with decentralisation.⁸⁰

**Development of IMC bodies with their own tax powers
(between 1992 and 2021)**

Type of IMC body	1992	1995	1999	2010	2015	2021
<i>Métropoles</i>	-	-	-	-	11	21
<i>Communautés urbaines</i>	9	9	12	16	9	14
<i>Communautés d'agglomération</i>	-	-	-	181	226	223
<i>Communautés de communes</i>	-	756	1 347	2 409	1 884	995
<i>Syndicats d'agglomération nouvelle</i>	9	9	9	5	3	-
<i>Districts</i>	214	324	305	-	-	-
<i>Communautés de ville</i>	-	4	5	-	-	-
Total		1 102	1 678	2 611	2 133	1 253

447. In view of their importance and far-reaching implications, the spread of IMC bodies (*l'intercommunalité*) has triggered an important political and even sociological debate, whose elements go beyond the strict scope of the Charter.

448. For instance, the co-rapporteurs have heard during their mission that these bodies not only empty municipalities, in the sense that municipalities involved in IMC are no longer responsible for delivering local services but also de-legitimise them, since IMC bodies are not elected by the people.

449. In this respect, some of the interlocutors met during the visit, pointed out to the co-rapporteurs that IMC bodies constitute an opaque bureaucratic world, where local citizens do not have participation and which might resemble not really to an intermunicipal level but to a true supra-municipal level, replacing municipalities and lacking popular participation and political accountability.⁸¹ For many citizens, these bodies constitute a hidden layer of government.

450. Furthermore, some specific forms of IMC bodies have their other negative aspects: for instance, in the case of a metropolis, it is argued that the small municipalities surrounding the leading municipality risk to be absorbed *de facto* by the big, centre municipality. Indeed, the steering committee of such bodies represents proportionally the size and population of the participating municipalities. The best example of this could be the métropole.

451. During the consultation process, the Ministry emphasised that inter-municipal structures make it possible "to draw up joint development projects within areas of solidarity" in accordance with the provisions of article L. 5210-1 of the CGCT. In this way, they enable municipalities to pool their resources in order to develop joint projects, and also respond to the need for financial solidarity in that they facilitate the sharing of resources and costs between municipalities in the same area, thereby contributing to the equality of the latter.

80. Cour des comptes (2023), *Rapport public annuel 2023. La décentralisation 40 ans après*, Paris.

81. Dumont G. F. (2018), "Intercommunalité ou supracommunalité", in *Populations & Avenir*, No. 740, p. 3.

452. All these aspects are relevant and form part of the political discussion in France but in this report, the phenomenon should be focused on being analysed from the perspective of the Charter.

453. From this viewpoint, there are two important elements. The first one: municipalities are recognised the freedom or ability to form IMC bodies and consortia, and from this perspective the requirements of the Charter are met in France. The second one is more controversial: during the mission, the delegation heard repeated claims that the laws and regulations governing the IMC are too strict.

454. For instance, these laws require a certain number of inhabitants involved to form an IMC body; the same laws require that a minimum geographical extension be covered. Allegedly, municipalities are not totally free to decide to join one IMC body or another, and they are obliged to take part on the IMC that corresponds to its location or geographical distribution. This freedom for local authorities is strictly regulated by law.

455. In view of the foregoing considerations, the co-rapporteurs believe that France complies with Article 10.1 of the Charter.

3.9.2 Article 10.2

456. To perform the analysis of Article 10.2, two dimensions should be considered: the right to join a national association and the right to belong to international associations.

Domestic associations

457. In France, local authorities are entitled to belong to associations for the protection and promotion of their common interests. As a matter of fact, this aspect of local/regional government in France presents two striking features: (a) on the one hand, the fact that there are many different associations; (b) on the other hand, the fact that some of these are formed by the elected representatives as physical persons (usually the holders of the executive organ of the authorities), not by public-law entities. In fact, these associations are better known as *associations d'élus* (associations of local elected representatives), instead of *associations de collectivités* (association of entities).

According to a governmental website,⁸² the list of such associations includes the following ones:

- *Assemblée des communautés de France* (AdCF);
- *Départements de France* ;
- *Association des maires de France* (AMF);
- *Association des maires ruraux de France* (AMRF);
- *Association des petites villes de France* (APVF);
- *Association nationale des élus de la montagne* (ANEM);
- *Association nationale des élus des territoires touristiques* (ANETT, ex-ANMSCCT);
- *Association nationale des élus du littoral* (ANEL);
- *Fédération des élus des entreprises publiques locales* (FEDEPL);
- *Fédération nationale des communes forestières* (FNCOFOR);
- *France urbaine* (Association de l'AMGVF et l'ACUF);
- *Régions de France* (ex-ARF);
- *Association nationale des élus de la vigne et du vin* (ANEV).

458. During the mission, the co-rapporteurs held meetings with some of these associations, which are the most representative ones. In order to keep this explanatory memorandum as concise as possible, only the associations listed below will be briefly presented.

Association of mayors of France (*Association des maires de France*)

459. This is the largest association at local level, representing not only municipalities but also IMC bodies.⁸³ Here, again, municipalities and their IMC bodies must be put together for obvious reasons. This association was founded in 1907 and today has more than 34 000 members, including mayors and presidents of IMC bodies.

82. Available at www.collectivites-locales.gouv.fr/institutions/associations-delus, accessed 5 December 2023.

83. Available at www.amf.asso.fr, accessed 5 December 2023.

460. This association carries out an impressive array of activities, such as representing the world of municipalities in political and interterritorial dialogue, training and knowledge-sharing activities, awareness raising, and the like. It informs, advises, assists and represents the first-tier level of French local governments.

461. The association also publishes books and newsletters, and organises seminars and conferences around France. It promotes IMC and delivers opinions on legislative drafts of interest to municipalities. The association is funded through membership fees, which are paid by all French municipalities and IMC bodies.

Association « Villes de France »

462. *Villes de France* (cities of France) is an association of elected representatives from France's cities and conurbations (*agglomerations*). This is a pluralist association of elected representatives that brings together municipalities with populations between 10 000 and 100 000 and their conurbations throughout France, which together represent the living environment of almost half the French population (30 million inhabitants).

463. Consequently, this association does not target small towns nor big cities. It was founded almost 30 years ago, and today its members are elected representatives from 860 towns and 400 sub-metropolitan intermunicipalities in France.⁸⁴

Association of regions of France (*Association des régions de France*)⁸⁵

464. *Régions de France* represents French mainland regions, as well as overseas regions and assimilated local authorities in their dealings with public authorities. This association works for the building, support, dissemination and development of regional political projects. It covers all regional policies, in all dimensions. The council of regions is the top decision-making body and brings together the 19 presidents of the member regions. It meets once a month, and deliberates and defines the position of *Régions de France* on draft legislative and regulatory texts submitted to the association.

Association of rural mayors of France (*Association des maires ruraux de France*)⁸⁶

465. This association was founded to represent the interests of small municipalities located in rural areas. Founded in 1971, this association brings together nearly 12 000 rural mayors in a network that claims to be independent of political powers and parties.

466. The members of AMRF represent the voice of rural communities and defend their specific issues in their relations with the rest of territorial and governmental powers. The AMRF is very diffused in the country and, internally, it is based on a network of 87 departmental sections.

Association of small towns of France (*Association des petites villes de France*)⁸⁷

467. This association was set up in 1990, with the aim of representing the positions and realities of small towns, with populations ranging from 2 500 to 25 000 inhabitants, and to promote their specific role in regional development. Today, it has almost 1 200 members in every department of mainland and overseas France.

Departments of France (*Départements de France*)⁸⁸

468. As its name suggests, this association was founded to represent the interests of the second-tier local authorities in France, the departments. It was created in 1946 and brings together elected representatives of these local authorities. Currently, the membership includes the presidents of 103-member local authorities (95 *départements* and 8 local authorities with departmental powers). This association carries out the actions that are typical to these bodies: lobbying, networking, knowledge sharing, creating common positions, etc.

84. Available at www.villesdefrance.fr/page19.php?id=13, accessed 5 December 2023.

85. Available at <https://regions-france.org/>, accessed 5 December 2023.

86. Available at www.amrf.fr, accessed 5 December 2023.

87. Available at www.apvf.asso.fr, accessed 5 December 2023.

88. Available at www.departements.fr/, accessed 5 December 2023.

469. Noting the current large diversity of associations of local elected representatives, the co-rapporteurs point out, however, that the extensive fragmentation of associations is not conducive to a bigger political size and a stronger negotiation power with the state.

International associations

470. The general freedom enjoyed by French local authorities to form or join domestic national or regional representative associations is matched by their capacity to join international associations. In this vein, the French association of the council of European municipalities and regions (*Association française du conseil européen des communes et régions*, AFCCRE) should be mentioned.⁸⁹

471. Founded in 1951, this association brings together almost 1 000 French territorial authorities of all kinds: regions, departments, intermunicipal bodies and municipalities. It is a pro-European organisation that was at the origin of the European twinning movement. The association is the French branch of the Council of European Municipalities and Regions (CEMR), a European organisation that brings together nearly 100 000 local and regional authorities in Europe.

472. The association deals with all European policies of direct or indirect interest to French local authorities. The AFCCRE acts in four main areas: (a) advocacy of the European project and of local and regional autonomy; it fights especially for the inclusion of local and regional authorities in all European policies; (b) advice and support to French local and regional authorities on European and international issues and policies at local level; (c) representation and territorial lobbying at national, European and international levels; (d) exchange of experience between local and regional elected representatives on European issues; (e) training for elected representatives (accredited by the French ministry of the interior).

473. Apart from this specific organisation, most of the other organisations have their own international department, such as the ADF or the AMF.

474. In view of the foregoing considerations and of the extraordinary vitality of the associations of territorial entities, the co-rapporteurs believe that France fully complies with the requirements of Article 10.2 of the Charter.

3.9.3 Article 10.3

475. It should be recalled that France signed and (eventually) ratified an important set of Council of Europe's treaties on transfrontier co-operation, which have already been presented above (see paragraph 5). The most important one is naturally the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), which was signed by France on 10 November 1982 and ratified on 14 February 1984. The convention entered into force on 15 May 1984.

476. In connection with this treaty, it is important, from the perspective of local autonomy, to recall that France first made a declaration at the time of signature according to which "[t]he Government of the French Republic, referring to paragraph 2 of Article 3 of the Convention, declares that its application shall be subject to the conclusion of inter-state agreements". Consequently, transfrontier co-operation between (for instance) a French and Spanish local authority was not absolutely free, in the sense that, as a preliminary requirement, these two countries had to first sign an agreement.

477. However, this declaration was later withdrawn by a *note verbale* from the permanent representation, dated 24 January 1994, which means that today, this requirement is no longer in force, something that must be celebrated from the viewpoint of local autonomy.

478. As a matter of fact, French local authorities are engaged in many initiatives and projects of co-operation with local authorities located in other states. A special mention should be made of the actions included in the European Union's Interreg programme. According to governmental sources, France is involved in 23 such programmes, by which French territorial entities co-operate with their counterparts in all neighbour countries, such as Italy, Spain, Switzerland, etc. Out of these 23 programmes, there are 9 cross-border, 5 five transnational, 4 interregional and 5 programmes for the outermost French regions.

89. Available at www.afccre.org, accessed 5 December 2023.

479. Since France has territories in different continents, the international co-operation of French local/regional authorities may reach many different and distant places in the world. For instance, and still within the Interreg programme, there are programmes for the outermost regions. Two of them, (involving St Martin and Mayotte) are cross-border programmes and three (Indian Ocean, Caribbean and Amazon) combine elements of cross-border programmes and broader transnational programmes.⁹⁰ The island of Réunion, for instance, has co-operation programmes with the islands of Seychelles, Maurice and Madagascar.

480. In addition, French local authorities have formed sister-city agreements or “twinning” with many foreign local authorities but we cannot provide a comprehensive description of this trend in this report.⁹¹

481. In view of the foregoing considerations, the co-rapporteurs believe that France complies with the requirements of Article 10.3 of the Charter.

3.10 Article 11: Legal protection of local self-government

Article 11

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

482. The analysis of the legal protection of local/regional self-government in France must consider two different aspects: access of local authorities to regular and administrative courts, and access to the Constitutional Court to defend the principles of local self-government, as enshrined in the Charter or in the French Constitution.

483. As regards the first aspect, local authorities enjoy *locus standi* to go to the regular courts (*juridiction judiciaire*) to defend their rights, properties and interests, just as any other juridical (or moral) person would. This is especially the case when a municipality (for instance) engages in private or civil law relations with individuals or firms.

484. A distinctive feature of the French judicial power is the existence of a separate set of courts that adjudicate claims and legal proceedings under public and administrative law. This is the case when local and regional entities act as *potentior personae* (*puissance publique*): this happens when local and regional entities act as governmental bodies exercising governmental competences, delivering public services and putting in practice their public law powers and prerogatives (executive decisions, fines and sanctions, public domain, expropriations, etc.). This jurisdiction is traditionally identified as *juridiction administrative* in France, and it is composed of first instance courts, appeal courts and the Council of State (*Conseil d'État*) which is the Supreme Court in administrative matters.

485. In these courts, a local or regional authority may act as plaintiff or defendant. For instance, it will act as a defendant when the prefect sues a municipality in the context of legality control (see above, point 3.7.2). In these proceedings, the municipality may well invoke the principles of local self-government enshrined in the constitution, in the General Code or in the Charter as an argument to defend the legality of its decision.

486. A local authority may also act as a plaintiff in the administrative courts. For instance, a municipality may file a legal action in the administrative jurisdiction by which it may challenge a decision, act or regulation issued by the state authorities (either at the central level, for instance a minister, or a deconcentrated level, for instance a *préfet*) and in these legal proceedings, the local entity may also invoke the principles of local self-government. In that case, the *locus standi* rules that apply are the ones enshrined in the administrative jurisdiction. In addition, local authorities can also use the “*référé-liberté*” procedure (art. L.521-2, Code of Administrative Justice), which makes it possible to put an end to a manifest infringement of a fundamental freedom as a matter of urgency (with the administrative judge ruling within 48 hours). This is possible because the free administration of local authorities has been recognised by the administrative judge as one of the fundamental freedoms that can be defended using this procedure.

90. Available at www.europe-en-france.gouv.fr/fr/ressources/fiches-programmes-cooperation-interreg, accessed 5 December 2023.

91. An old (2016) list of these *jumelages* (the French word for twinning) can be found on Wikipedia, available at https://fr.wikipedia.org/wiki/Liste_des_villes_jumel%C3%A9es_de_France, accessed 5 December 2023.

487. The bunch of decisions rendered by the administrative courts form an interesting case law, in which the Council of State and other administrative courts have interpreted and eventually applied the legislation protecting local authorities, as well as the constitutional provisions on decentralisation, or the Charter itself. The delegation did not hear any complaints from local leaders or representatives regarding this state of facts.

488. In reality, the relevance of the Charter in this judicial adjudication is relative. According to Council of State members met by the co-rapporteurs, the use of the Charter as a main argument in administrative litigation has only been invoked some 10-15 times. The usual claims connected with local self-government are rather connected with the principle of free administration enshrined in the constitution, not with the Charter.

489. A different question is whether French local authorities have a specific remedy or legal action by which they can defend precisely (or only) the principle of self-government in the regular or administrative courts. The reality is that they do not; such special proceedings do not exist. However, under general procedural law, a local authority may well claim a violation of the Charter, of the constitutional principles on local self-government, or the breach of the regular legislation on local authorities, and this violation might eventually render illegal (for reason of *excès de pouvoir*) a governmental decision concerning one municipality/department/region, or even an administrative regulation approved by the government (*ordonnances* and other forms of regulations). Consequently, the need for such a special remedy in the administrative courts is not felt, as the law in force allows any territorial authority to invoke the principles and rules on local self-government in any proceedings.

490. It is important to note that territorial authorities cannot bring to the administrative courts a direct judicial challenge against a statute or an act of parliament, because these courts do not have jurisdiction on that, and this control can only be performed by the Constitutional Court (*Conseil constitutionnel*).

491. Consequently, we need to consider now the possibility for local authorities to stand in the Constitutional Court for the protection of the principles of self-government (either those embodied in the Charter or in the French Constitution). This possibility is non-existent, at least for what concerns direct actions. The reason is that under current French law, local authorities do not have standing to sue in the Constitutional Court alleging the unconstitutionality of a statute (relying on the claim that the principles of local self-government – or of decentralisation – have been infringed).

492. The French Constitutional Court may check the constitutionality of statutes and other acts of parliament in two different ways: before the act is actually promulgated (a priori control) or after the act has entered into force (a posteriori control). In the first case, standing is restricted to certain qualified applicants: the president of the republic, the prime minister, the president of the national assembly, the president of the senate or sixty deputies or senators. Consequently, local and regional authorities have no standing to trigger an a priori direct challenge of unconstitutionality on a statute that could reduce or breach the principles of local self-government.

493. The a posteriori control of the conformity of statutes and acts of parliament with the constitution is mainly discharged through a specific procedure, called priority question of constitutionality (*question prioritaire d'inconstitutionnalité*, QPC). This QPC procedure, which is actionable since 2010 (under organic Act No. 2009-1523 of 10 December 2009) enables any litigant to challenge the constitutionality of a legislative provision already in force, which controls the lawsuit.

494. The question may be raised at any stage of the proceedings in an administrative or judicial court. The applicant can ask the court that is handling the trial to file a QPC in the Constitutional Court. The final decision on that referral, however, lays on the court that is solving the proceedings, and this is not an automatic decision (the court may reject the application to refer the CPQ to the Constitutional Court).

495. When a QPC is referred to the Constitutional Court, it will examine the compatibility of the legislative provisions with the French Constitution, and it may eventually rule that the contested legal provision is unconstitutional (because it violates any provision of the constitution).

496. Thus, in the course of (for instance) proceedings pending before an administrative court triggered by a local/regional authority, the said plaintiff may argue that a legislative provision which controls the legal dispute infringes the rights and freedoms guaranteed by the constitution (in this case, the principle of *libre administration*). The matter may be referred to the Constitutional Court by the administrative courts.

497. Consequently, it would be possible for a local authority to trigger a lawsuit in an administrative court against a governmental decision or decree and for that court (mainly the Council of State) to submit to the Constitutional Court a preliminary question on the constitutionality of the act that allows the adoption of such regulation, when the plaintiff claims for instance a violation of Article 72 of the constitution. Consequently, local/regional authorities have a sort of indirect way to have access to the Constitutional Court.

498. This has already happened several times. Consequently, there is a noticeable body of case law of the Constitutional Court on the principles of decentralisation and self-government that are enshrined in the French Constitution. In general, this case law is very deferent to the political choices adopted by the legislators, and only in exceptional cases a statute or a provision has been declared to be unconstitutional for violating the constitutional provisions dealing with decentralisation and local self-government.⁹²

499. A worrying trend of the constitutional case law is relating to the financial autonomy of local/regional entities, which has been presented above (see point 3.8.2).⁹³ A good example of this restrictive approach are the Constitutional Court rulings that (a) declared that the progressive suppression of the *taxe d'habitation* (dwelling tax) for local authorities decided by the finance law of 2018 and 2019 (see point 3.8.3) was not unconstitutional;⁹⁴ (b) did not find unconstitutional an important reduction of the *dotation globale de fonctionnement*, decided by the state in the finance law of 2015;⁹⁵ or (c) went on to declare that the principle of free administration and that of financial autonomy do not grant the local authorities a fiscal power of its own, and that the state legislator has the exclusive responsibility for regulating local taxes.⁹⁶

500. A final but important mention should be made of the role and relevance of the Charter in the judicial adjudication of the Constitutional Court. To state it in a few words, the Charter does not play any role. It is not possible to trigger a QPC on the grounds that the controversial legal provisions infringe the Charter.

501. The reason is that, according to the Constitutional Court, the Charter is an international treaty, ratified under the procedures laid down in Article 55 of the constitution, and international treaties cannot be used as parameters to assess the constitutionality of a given statute (not even as a source of authoritative interpretation of the constitutional provisions). The mission of such court is not to verify the conformity of the national pieces of legislation with international treaties (a check that is called *contrôle de conventionnalité*) but only with the constitution itself. Furthermore, France is not a monist country.

502. This somehow restrictive approach contrasts with the case law of other European Constitutional Courts⁹⁷.

503. Accordingly, the control of the conformity of statutes and acts of parliament with the Charter should be performed by other courts (for instance the *Conseil d'État*) but not by the Constitutional Court. This control should be accomplished by the regular/administrative courts. These courts may declare that a given domestic legal provision is incompatible with an international treaty duly subscribed by France⁹⁸ (under French constitutional law, international treaties duly ratified have precedence over domestic statutes and regulations).

504. For this reason, in the previous example, the Council of State will not apply the controversial domestic provision, something that is described in French as “putting apart” that law (*écarter l'application d'une loi*). However, the domestic provision will remain in force.

505. This interpretation was clearly put into practice on the occasion of the direct challenge of unconstitutionality that was lodged by several deputies and senators against the legislative provisions

92. For instance, in its ruling No. 2016-745 DC of 16 January 2017, the Constitutional Court declared that the suppression of the state grant for urban solidarity and social cohesion (attributed until then to the municipalities), approved by the *Loi relative à l'égalité et la citoyenneté*, was unconstitutional because it deprived some municipalities of a substantial part of their revenues.

93. On this matter, see: Roux, A. (2018), “L'autonomie financière des collectivités territoriales dans la jurisprudence du Conseil Constitutionnel”, in *Les grandes décisions du Conseil Constitutionnel*, Dalloz, 19th edition.

94. Ruling No. 2017-758 DC of 28 December 2017. According to the court, this reduction in local taxation revenues was not a breach of the principle of free administration because it was going to be compensated by further state transfers.

95. Ruling No. 2014-707 DC of 29 December 2014.

96. Ruling No. 2016-589 QPC of 21 October 2016.

97. For example, Latvia, Switzerland, and Belgium. For more information, see [Carta Monitor](#).

98. A different issue is whether that treaty is directly applicable.

that brought about the re-ordering of the territory and number of French regions (Act No. 2015-29 of 16 January 2015). Among other grounds for their appeal, the plaintiffs invoked the violation of Article 5 of the Charter, since no prior agreement, consent or even consultation of the then existing regions had been accomplished, and no referendum was held.

506. The Constitutional Court, in a rather expeditious manner, rejected this argument and stated that the principle of the higher force of international treaties over domestic legislation that derives from Article 55 of the constitution should not be ensured in the context of the control of the conformity of statutes with the constitution. Furthermore, it did not belong to that court to examine the conformity of a given statute with an international treaty (ruling No. 2014-709 DC of 15 January 2015, paragraph 4).

507. The Constitutional Court case law is connected with that of the *Conseil d'État*, so that the findings of the former may determine the results of the adjudication of the latter. Thus, still on this topic of the re-arrangement of regions accomplished in 2015, there were also applications brought to the *Conseil d'État*. In this case, the subject of the applications was not the law itself (which the State Council has no jurisdiction to censure), but the decrees implementing the said law, which called the electorate to the regional elections in the newly created regional authorities. The applicants sought the annulment of these decrees.

508. Among other contentions, the plaintiffs invoked Articles 4.3 and 5 of the Charter. However, in its ruling No. 393026 of 27 October 2015, the *Conseil d'État* dismissed those pleas. Concerning Article 4.3, it declared that the act on the new delimitation of regions did not involve a transfer of competences between territorial entities belonging to different levels, and that this provision of the Charter was not intended to create legal effects vis-à-vis the individuals (paragraph 4).

509. Concerning Article 5 of the Charter, the Council of State declared that, although under Article 55 of the constitution it has the power to annul an administrative decision based on a statutory provision that violates an international treaty, in this precise case the court declined to uphold the argument that the 2015 Act was approved following a procedure that was not in accordance with the Charter. This holding of the Council of State implies that this court may well examine the conformity between a substantive provision of a domestic statute and an international treaty, but cannot check whether the procedure followed to approve that statute complies with the procedural requirements established in that treaty.

510. The result of all these developments is that until now, the concept and principles of local autonomy (as enshrined in the constitution) have played a certain role in the context of constitutional review of legislation, while the Charter itself has played no role at all.

511. In light of the foregoing considerations, the co-rapporteurs believe that in the present circumstances, the French system of local government meets the requirements laid down in Article 11 of the Charter.

4. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT

512. In the analysis of local and regional democracy in France, there are other matters that are not directly raised in the text of the Charter but that have an important influence on local and regional government. Here, we will refer to three issues: first, the protection of human rights at local level; second, the impact of the Covid-19 pandemic and the health crisis on local and regional authorities; and third, the impact of Russia's war against Ukraine.

4.1 The ombudsman and human rights at local level

513. In France, there is a national ombudsman,⁹⁹ called *le défenseur des droits*. The ombudsman protects the fundamental rights enshrined in the constitution, defends and promotes the rights of children, and fights against cases of discrimination and inequalities.

514. Due to its scope of activities, the ombudsman may well receive complaints from the local authorities or connected to the works of the local authorities. The ombudsman has full authority to conduct investigations or inquiries on the local and regional authorities, as part of the public sector. Apart from that, there are local delegates of the ombudsman in the several departments who mainly work on

99. Available at www.defenseurdesdroits.fr, accessed 6 December 2023.

a pro bono basis (*délégués départementaux*). Individual cities may, on their own initiative, also set up a specific, local ombudsman but this is not an obligation.

515. Since territorial authorities are included in the public sector and in the large understanding of the concept public administration (*administration publique*), the *défenseur des droits* may receive complaints from citizens which have a connection with the works and activities of municipalities, IMC bodies, departments and regions. In fact, the ombudsmen receive such complaints, and they deal with topics such as social services, welfare, education and housing.

516. The co-rapporteurs regret that their request for a meeting with the ombudsman during the monitoring visit did not receive a positive follow-up.

4.2 The impact of the Covid-19 pandemic on local authorities

517. As in other European countries, the Covid-19 pandemic has had an important impact on French local and regional authorities. The two parts of the monitoring visit allowed the Congress delegation to obtain first-hand and updated information on the impact that the Covid-19 crisis has had so far on regional and local authorities in France.

518. The pandemic had a very negative economic impact on local finances. The first and most noticeable impact on local authorities is that the pandemic caused a clear drop in local revenues, due to the economically-induced effects of lockdowns and the subsequent economic slowdown. This reduction in revenues was mainly due to the shrinking of revenues (taxes, fees, etc.) derived from multiple economic activities.

519. For instance, in the case of regions, the pandemic produced a sharp reduction in their revenues coming from the part of the VAT collection that is allocated to them (it should be recalled that this specific income represents more than 50% of their operational revenues). However, the state established safeguard clauses in favour of regions, equivalent to the loss of income triggered by the economic slowdown and the drop in domestic consumption.

520. Conversely, the pandemic has also produced an increase in local expenses. For instance, local authorities were supposed to carry out different activities such as disinfection of public premises and facilities. Moreover, local authorities intensified their efforts towards the jobless and those needing humanitarian aid.

521. In the case of regions, many of these have mobilised important amounts of money to face the new situation. For instance, the region of Bourgogne-Franche-Comté has mobilised express funds of €100 million for the support of companies and associations, etc. Apart from that, the region has used its funds coming from the European Regional Development Fund to allocate financial assistance to the public health system and to buy hospital material, Covid-19 tests, etc. (roughly €11 million).

4.3 The consequences of Russia's war against Ukraine

522. Another area of concern for some local authorities, linked to another crisis situation, has been the military invasion of Ukraine by the Russian Federation. This war has produced an enormous number of displaced people and refugees around Europe. In the case of France, this situation represented a challenge to which the State, municipalities and regions responded in a spirit of solidarity. From a budgetary point of view, although €400 million had been made available by the State at the start of the crisis, the cost of accommodation and asylum allowances alone exceeded this amount. All in all, the total cost of all the aid measures was €634 million for the whole of 2022.

523. The region' Bourgogne-Franche-Comté council held an extraordinary meeting on 11 March 2022 and adopted a pack of measures of solidarity with a financial endowment of €300 000. Among other measures, the regional council decided to use a specific fund for international action for this purpose (called FACECO) of €150 000. The council also decided to allocate a financial aid package of €50 000 to a humanitarian non-governmental organisation that works in the neighbouring countries of western Ukraine, to react urgently to the needs of the displaced populations. Moreover, the council approved an extraordinary expense of €100 000 for the support of different initiatives that host the Ukrainian refugees who come to the region.

524. This is just an example of the important solidarity effort that the French local and regional authorities are deploying in the whole country (and abroad) in coping with the consequences of this devastating war.

5. CONCLUSIONS

525. France is a unitary state with a long tradition of centralisation. In the last decades, a clear pattern of decentralisation has taken place. Notably, in 1982-83, legal reforms have created the regions, and in the last 40 years a number of decentralisation reforms and initiatives have been implemented.

526. France signed the Charter very soon but was among the last countries to ratify it. Nevertheless, the Charter has now been a part of the French legal order since 2007, and almost the full Charter is binding in France, with a slight exception (Article 7.2 of the Charter) which is currently explained by a legislative incompatibility.

527. France also ratified the Additional Protocol of the Charter on the right to participate in the affairs of a local authority. The monitoring mission has allowed the delegation to draw the conclusion that France largely complies with this Additional Protocol. Notwithstanding these facts, France remains a particularly centralised country, an assessment that was shared by most of the interlocutors of the co-rapporteurs.

528. The respect of Article 5 should be clarified: there was a clear violation of this provision in 2015-16 (restructuring of regions), and this violation was proclaimed by the 2016 Congress monitoring report. Nevertheless, no similar action has been detected in recent times, and the present legal scheme guarantees the active participation of regions in any similar process.

529. The monitoring mission has allowed the delegation to draw the conclusion that France complies with many provisions of the Charter. However, compliance with several provisions of the Charter requires particular attention.

530. In particular, the co-rapporteurs believe that there are important failures as regards the financial autonomy and the finances in general of local and regional authorities. The reduction (or elimination) of own local taxes and its replacement by state transfers and subsidies is a worrying trend. Although government officials claim that the state compensates local and regional authorities with additional state transfers, it remains according to the co-rapporteurs that those authorities progressively lose control over the apportionment and management of these funds.

531. The co-rapporteurs also agree with the local elected interlocutors that decentralisation in the country is not progressing. This can be deduced from the approval of legislation (such as the act on climate change and resilience, or the act on urban development) which *de facto* reduces the autonomy and margin of manoeuvre of local authorities (especially municipalities) on local issues: key policy objectives are adopted at state level and local authorities are expected to execute these decisions in their territories.

532. Furthermore, according to local and regional interlocutors, governance structures are based on a centralised approach. The local and regional authorities should be sincerely seen by the central authorities as true and unavoidable instances for co-governance.

533. Seen now from a broader perspective, the restructuring of regions (accomplished in an executive and expeditious manner by the state, from the point of view of local and regional elected representatives at that time) is mostly regarded from a rather negative perspective, for reasons such as (a) the resulting territorial delimitation of the new regions is not fully satisfactory: the new regions are too big, they comprise heterogeneous territories which do not respect natural or historical regions, and some of them want to get out of the present structures; (b) the re-organisation has not triggered the savings and economies of scale that were expected; (c) the reform has not revitalised the political visibility of the regions among citizens, who seem to be little concerned about these territorial governments (as evidenced by the very low turnout in regional elections).

534. On the other hand, social identification of territorial entities by citizens and the responsibility link between them and citizens are very weak, due to (a) the confusing allocation of powers between the state and the three territorial levels; and (b) the impressive development of IMCs (which somehow dilute the identification of municipalities as responsible governments among local residents).

535. Other issues of concern, also observed in other European countries, are the low rate of participation in local and regional elections and the pattern of increasing number of threats and aggressions that the mayors are suffering.

536. The co-rapporteurs particularly note that since 2016, the system has undergone no profound evolution or reform (at the time of the mission there appeared to be no plan or concrete political project put in place aimed at furthering decentralisation of the country).

537. However, at the time of carrying out the monitoring mission, important political actors (such as the court of accounts) demanded to go further, claiming that decentralisation is “in the middle of the journey” and that the country needed an ambitious decentralisation reform.¹⁰⁰ In this vein, President Macron held interviews with the top local elected representatives in March 2023 and made statements in favour of continuing the decentralisation of the country.¹⁰¹ He has entrusted MP Éric Woerth with a mission on decentralisation, the work on which is currently underway.

538. Recently, during his speech to the Senate on 31 January 2024, Prime Minister Gabriel Attal outlined his plan for the territories to the Senators, which includes simplification, protection for local elected representatives and improvements to their status. He also announced a law on decentralisation for the end of 2024. The co-rapporteurs welcome this announcement by the Prime Minister and hope that this future legislative work will advance decentralisation while further entrenching the principle of local and regional self-government.

539. In light of the precedent considerations, the co-rapporteurs would suggest in the Recommendation, among other things, to re-activate and pursue the local and regional decentralisation of the country, deepening the principles of local and regional self-government and free administration, as well as to revitalise local and regional governments, by devolving more powers and responsibilities to them (and consequently, sufficient financial means to deliver them). In addition, the co-rapporteurs consider that it would be necessary to increase the taxing powers of local and regional authorities so that fiscal autonomy of local authorities becomes an effective principle, allowing these authorities to have greater financial autonomy.

540. It would also be advisable to clarify and simplify the current system of allocation of competences between the state and territorial authorities, on the one hand, and between the three levels of territorial authorities on the other. In this process, the leading principles should be those of exclusivity (Article 4.4 of the Charter) and subsidiarity (Article 4.3 thereof).

541. Furthermore, the co-rapporteurs believe that it is essential to implement consultation mechanisms with local and regional authorities with a true spirit of governmental partnership, so that the current bodies and settings are not just used as information tools but as true instruments for a genuine and sincere co-governance.

542. Finally, given the ratification by France in 2020 of the Additional Protocol to the Charter on the right to participate in the affairs of a local authority and in line with recital 4 of the preamble of the Charter, appropriate measures (political, awareness raising, communication) should also be recommended to increase the interest of citizens in local public affairs and in this way contribute to increasing the turnout in elections for local, departmental and regional councils.

100. « Décentralisation : la Cour des Comptes réclame une réforme ambitieuse », *Le Monde* newspaper, 9 March 2023.

101. « Emmanuel Macron invite les élus locaux à mettre en place « une vraie décentralisation » », *Le Monde* newspaper, 13 March 2023.

APPENDIX I – Programme of the first part of the Congress monitoring visit to France
Monitoring of the Application of the European Charter of Local Self-Government in France
(1st part)

Saint-Denis (Réunion), Besançon, Dijon, Dorans

7-9 March 2023

Programme

Congress delegation

Rapporteurs

Ms Bryony RUDKIN

Rapporteur on local democracy
Chamber of Local Authorities, SOC/G/PD¹⁰²
Councillor (Ipswich Borough Council)
United Kingdom

Mr Matija KOVAČ

Rapporteur on regional democracy
Chamber of Regions, EPP/CCE¹⁰³
Member of the Assembly of the Autonomous Province of
Vojvodina (Novi Sad)
Serbia

Congress secretariat

Ms Svitlana PEREVERTEN

Co-Secretary of the Monitoring Committee

Expert

Mr Angel MORENO MOLINA

Chair of the Group of Independent Experts on the
European Charter of Local Self-Government (Spain)

Interpreters

Ms Pascale MICHLIN

Ms Christine TRAPP-GILL

The working language of the meetings will be English. Interpretation from and into French will be provided by the Congress.

102. SOC/G/PD: Socialists, Greens and Progressive Democrats Group.

100. EPP/CCE: European People's Party Group in the Congress.

Tuesday 7 March 2023
Remote meetings

- **REGIONAL COUNCIL OF RÉUNION**

Mr Wilfrid BERTILE, Regional adviser responsible for regional co-development

- **REPRESENTATIVES OF THE NATIONAL DELEGATION**

Mr Thibaut GUIGNARD, Head of Delegation

Ms Mélanie LEPOULTIER, Deputy Head of Delegation

Ms Isabelle BOUDINEAU, Regional Councillor (Nouvelle-Aquitaine)

- **REGIONAL AUDIT CHAMBER OF RÉUNION (AND MAYOTTE)**

Mr Nicolas PEHAU, President

Wednesday 8 March 2023
Dijon

- **CITY OF DIJON AND DIJON MÉTROPOLE**

Ms Sladana ZIVKOVIC, Deputy Mayor in charge of international relations, Tourism and Congresses; Vice-President of Dijon Métropole

- **PREFECT OF BOURGOGNE-FRANCHE-COMTÉ**

Mr Hugues NORDI, Diplomatic adviser to the regional prefect

Mr Jean-Luc MILANI, Director of Local Authorities and Elections

- **REGIONAL AUDIT CHAMBER OF BOURGOGNE-FRANCHE-COMTÉ**

Ms Valérie RENET, President

Thursday 9 March 2023
Besançon, Dorans

- **REGIONAL COUNCIL OF BOURGOGNE-FRANCHE-COMTÉ**

Mr Patrick AYACHE, Vice-President

- **CITY OF BESANÇON AND THE GREATER BESANÇON MÉTROPOLE**

Ms Anne VIGNOT, Mayor of Besançon, President of Grand Besançon Métropole

- **DORANS**

Mr Daniel SCHNOEBELEN, Mayor

Mme Brigitte PAROLA, Deputy Mayor

APPENDIX II – Programme of the second part of the Congress monitoring visit to France

Monitoring of the Application of the European Charter of Local Self-Government in France (2nd part)

Paris

5-7 September 2023

Programme

Congress delegation

Rapporteurs

Bryony RUDKIN

Rapporteur on local democracy
Chamber of Local Authorities, SOC/G/PD¹⁰⁴
Councillor (Ipswich Borough Council)
United Kingdom

Matija KOVAČ

Rapporteur on regional democracy
House of Regions, EPP/CCE¹⁰⁵
Member of the Assembly of the Autonomous Province of
Vojvodina (Novi Sad)
Serbia

Congress secretariat

Svitlana PEREVERTEN

Co-Secretary of the Monitoring Committee

Expert

Angel MORENO MOLINA

Chair of the Group of Independent Experts on the European
Charter of Local Self-Government (Spain)

Interpreters

Ms Claudine PIERSON
Ms Odile MONTPETIT

The working language of the meetings will be English. Interpretation from and into French will be provided by the Congress.

104. SOC/G/PD: Socialists, Greens and Progressive Democrats Group.

105. EPP/CCE: European People's Party Group in the Congress.

Tuesday 5 September 2023
Paris

MEETING WITH MEMBERS OF THE NATIONAL DELEGATION OF FRANCE TO THE CONGRESS

Mr Thibaut GUIGNARD, President of the Delegation, Mayor of Plœuc-l'Hermitage
Ms Mélanie LEPOULTIER, Vice-President of the Delegation, Mayor of Sommervieu
Ms Véronique BERTHOLLE, Strasbourg, Deputy Mayor
Ms Zohra DARRAS, Allonville, Councillor
Mr Benoit PILET, Angers, Deputy Mayor
Mr Stéphane HAUSSOULIER, Department of the Somme, President of the Departmental Council
Ms Pascale PFEIFFER, Vice-President of the European Collectivity of Alsace
Ms Isabelle BOUDINEAU, Nouvelle-Aquitaine, Regional Councillor
Ms Françoise GROLET, Grand Est, Regional Councillor
Mr François-Xavier PRIOLLAUD, Normandie, Vice-President of the Regional Council

JOINT MEETING WITH MEMBERS OF LOCAL AND REGIONAL GOVERNMENT ASSOCIATIONS

- **ASSOCIATION OF MAYORS OF FRANCE**

Ms Murielle FABRE, Secretary General, Mayor of Lampertheim

- **ASSOCIATION VILLES DE FRANCE**

Mr Gil AVÉROUS, President

- **ASSOCIATION OF REGIONS OF FRANCE**

Mr Philippe BAILBÉ, General Delegate
Mr Pascal GRUSELLE, Adviser on European Affairs

- **FRENCH ASSOCIATION OF THE COUNCIL OF EUROPEAN MUNICIPALITIES AND REGIONS**

Ms Mélanie LEPOULTIER, Vice-President of the Council

- **DEPARTMENTS OF FRANCE**

Mr Christophe RAMOND, President of the Department of Tarn and Chairman of the International Relations and Europe Committee
Mr. Jean-Léonce DUPONT, President of the Department of Calvados and President of the Finance Commission of Departments of France

CITY OF PARIS

Mr Paul SIMONDON, Deputy mayor
Mr Sylvain LEMOINE, Deputy Director of the Mayor's Office

INDEPENDENT EXPERTS

Prof. Bertrand FAURE, Professor of Public Law, Faculty of Law and Political Science, University of Nantes

COURT OF ACCOUNTS

Mr Pierre MOSCOVICI, First President
Mr Jean-Pierre VIOLA, Legal adviser to the Court of Auditors
Mr Christian CHARPY, President of the Fourth Chamber of the Court of Auditors

Wednesday 6 September 2023
Paris

FRENCH PARLIAMENT

Mr Eric COQUEREL, National Assembly, Chairman of the Finance Committee
Mr Claude RAYNAL, Senate, Chairman of the Finance Committee

Mr Gérard-François DUMONT, Professor at the Sorbonne University

Thursday 7 September 2023
Paris

MINISTRY OF THE INTERIOR AND OVERSEAS DEPARTMENTS AND TERRITORIES
MINISTRY OF THE ECOLOGICAL TRANSITION AND TERRITORIAL COHESION

Mr Simon CHASSARD, Director of the Minister's Office
Mr Nicolas EVRARD, Adviser on Specific Territories and Europe
Ms Karine DELAMARCHE, Deputy Director of Local Skills and Institutions
Mr Paul-Marie CLAUDON, Deputy Director of the Office
Ms Paola DEBRIL-LOISEAU, Adviser in charge of international and European affairs

STATE COUNCIL

Mr Yves GOUNIN, State Councillor, Delegate for International Relations, Reports and Studies Section
Mr Vincent DAUMAS, State councillor, assessor to the Ninth Chamber of the Administrative Jurisdiction Division
Mr Jean-Baptiste MATTEI, State Councillor in extraordinary service, rapporteur for the Finance Section

CONSTITUTIONAL COUNCIL

Mr Jean MAÏA, Secretary General