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**The Congress of Local and Regional Authorities –
1988-2018: 30th anniversary of the European Charter of
Local Self-Government – taking stock of its core
provisions**

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Translated from the original German version

1988-2018: 30th anniversary of the European Charter of Local Self-Government – taking stock of its core provisions

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1. Local self-government as a key element of the European model of society.

The Council of Europe is the only international organisation worldwide with an international treaty, the European Charter of Local Self-Government,¹ which applies to all 47 member states and contains verifiable criteria for democratically legitimised sub-national structures, namely local and regional authorities. 1 September 2018 was the 30th anniversary of the Charter's entry into force.

1.1 Political ambition in the preamble to the Charter

In the preamble to the Charter, which was opened for signature in 1985, the governments of the member states describe local self-government as a key element of the European social model and commit themselves to “realising the ideals and principles which are their common heritage”. Despite the diverse nature of state structures and historical experiences, they emphasise that “the local authorities are one of the main foundations of any democratic regime”; [...] that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe; [...] that it is at local level that this right can be most directly exercised”. The preamble goes on to state that “the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen” and that “the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power”. It also points out that, for this Europe with horizontal and – as here – vertical checks and balances, which means avoidance of a concentration of power, “this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment”.

These principles, which serve as guidelines for the interpretation of the 18 articles of the Charter, and the normative provisions of the Charter itself were the result of long negotiations between representatives of the member states on proposals made by the predecessor of the Council of Europe Congress of Local and Regional Authorities.

1.2 Different approaches at the Council of Europe and in the European Union

The establishment of the Congress of Local and Regional Authorities following the Council of Europe's 1993 Vienna summit, building on the former Conference of Local and Regional Authorities of Europe dating from 1957, gave local self-government a new institutional status within the Council of Europe.²

The ratification of the European Charter of Local Self-Government by all 47 member states – San Marino closed the circle on 1 February 2014 – resulted in obligations, compliance with which the Congress verifies by means of its monitoring procedure. The member states undertake to enshrine local self-government in law, ensure the performance of responsibilities at the closest level possible to the citizen, guarantee local authorities their own sphere of action, carry out consultations with local authority umbrella organisations, ensure the free exercise of local elected representatives' functions, provide adequate funding, ensure the right to form consortia and introduce legal remedies to safeguard the exercise by local authorities of their own powers and responsibilities, etc.

While the Council of Europe possesses in the form of the Charter a legal instrument containing criteria for sub-state political levels, the European Union is committed in Article 4(2) TEU to ensuring respect for the national identities of the member states: “The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government”.

1 *European Charter of Local Self-Government*, European Treaty Series (ETS) No. 122. See the website of the Treaty Office of the Council of Europe: <https://www.coe.int/en/web/conventions/>.

2 For more on the Congress's establishment, tasks and monitoring activities, see Andreas Kiefer, “Der Kongress der Gemeinden und Regionen: Grundlegende Reform und neue Dynamik für Monitoring”, in *Europäisches Zentrum für Föderalismus-Forschung Tübingen (Ed.): Jahrbuch des Föderalismus 2012. Föderalismus, Subsidiarität und Regionen in Europa*, Baden-Baden, pp. 455-474, and Andreas Kiefer, “Gemeinden und Regionen im Europarat: Einsatz für lokale und regionale Demokratie seit 1957”, in Kurt Ebert (ed.), *Herwig van Staa – Festschrift zum 25-jährigen Jubiläum seines politischen Wirkens*, Innsbruck, pp. 119-149.

1.3 The Congress as part of the Charter monitoring system

The tasks of the Congress were set out in a Committee of Ministers resolution of 14 January 1994.³ Article 2(3) and (4) of the Congress charter includes the remit⁴ for monitoring the implementation of the Charter of Local Self-Government and for the observation of local and regional elections. Since 1994, the Committee of Ministers has received country reports on the implementation of the Charter, which came into force in 1988, in all 47 Council of Europe member states. Since 2012, the remit has applied *mutatis mutandis* to the Additional Protocol to the Charter on the right to participate in the affairs of a local authority (ETS No. 207)⁵ in those 18 states that had ratified it by 1 October 2018.

The Congress carries out monitoring visits in all member states about every five to six years and, depending on the financial resources available, observes three to four local or regional elections a year. The findings are submitted to the Committee of Ministers and the states concerned together with concrete recommendations.⁶ The Congress then suggests a political post-monitoring dialogue to the governments of individual member states, the aim being to implement recommendations made in the monitoring report through a politically binding roadmap and to carry out a joint evaluation of the latter. Up to mid-2018, the Congress had reached agreements on roadmaps with the governments of Portugal, the Republic of Moldova, Armenia, Ukraine and Georgia.

2 Recurring issues in several member states

At the 32nd plenary session of the Congress, the members adopted on 28 March 2017 a comparative analysis on the implementation of the Charter in 47 member states on the basis of the recommendations on local and regional democracy in member states adopted by the Congress.⁷ This report contains a detailed analysis of all monitoring reports of the previous seven years and serves as a basis for identifying problems facing several member states with regard to implementing the Charter. This analysis of recurring issues also provides the Committee of Ministers with a kind of early warning system, thus making it possible to identify trends that run counter to the member states' intentions as expressed in the preamble and laid down in the Charter, which they have voluntarily undertaken to comply with.

Together with the findings and recommendations of other monitoring bodies, the Congress's recommendations to the member states and the Committee of Ministers are incorporated into the action plans that the Council of Europe draws up for its member states and for which it seeks special funding. The Congress participates in their implementation.⁸

At its 32nd plenary session, the Congress also discussed the political consequences and need for action resulting from the analysis just described with regard to those Charter articles the implementation of which is leading to difficulties in several states. The report adopted by the Congress on 28 March 2017,⁹ with Resolution RES412(2017) to the Congress bodies and Recommendation REC395(2017) to the Committee of Ministers, identified the fact that the Charter is not directly applicable in the legal systems of member states as one of the root causes of the recurring issues described in more detail below.

3 See Statutory Resolution (94)3 creating the Congress of Local and Regional Authorities of Europe, adopted by the Committee of Ministers on 14 January 1994 at the 506th meeting of the Ministers' Deputies, further developed by several Committee of Ministers resolutions, most recently by CM/RES (2015) 9 of 8 July 2015. The current version can be found at <https://rm.coe.int/16807b308f> (01.08.2018).

4 "3. 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, in particular, that the principles of the European Charter of Local Self-Government are implemented" and "4. The Congress shall also prepare reports and recommendations following the observation of local and/or regional elections."

5 The full text with the status of signatures and ratifications is available at the Council of Europe Treaty Office website: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/207> (01.08.2018).

6 All Congress reports and adopted texts can be searched on the Congress website www.coe.int/congress (01.08.2018).

7 Report, CG32(2017)22final. Appendix 3 contains a table with the articles and paragraphs of the Charter ratified by each member state. See <https://rm.coe.int/16806fb970> (01.08.2018).

8 See the monitoring reports by the various Council of Europe bodies on each member state: <http://www.coe.int/en/web/portal/47-members-states> and the portal on all Council of Europe action plans involving member states and states covered by the Council of Europe's neighbourhood policy: <https://www.coe.int/en/web/programmes/documents> (01.08.2018).

9 Report entitled "Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016)", CG32(2017)19 final, of 28 March 2017: <http://rm.coe.int/doc/09000016806fb9a8> (01.08.2018).

3 Implementation of the Charter

The Congress mentions as the main problems regarding the Charter “the inadequacy of financial resources, the restricted definition, allocation and exercise of local competences and the lack of consultation with regard to central government” and sees in this an increasing trend towards the (re)centralisation of functions in the member states.

In the foreword to his 2016 annual report on the state of democracy, human rights and the rule of law,¹⁰ the Secretary General of the Council of Europe, Thorbjørn Jagland, described the decisions of some national parliaments to implement international agreements only after a reassessment of national interests as a “dangerous tendency towards legislative nationalism”. In view of the inclination of some supreme courts only to refer to the Charter, if at all, as an aid to interpretation in the case of conflicts of responsibility or complaints about excessive supervision of local government, it can be seen that there is not only nationalism on the part of individual legislatures but also judicial nationalism.

3.1 Inadequate financial resources

In almost all Congress monitoring reports, the rapporteurs deplore the inadequate financial resources made available for the functions delegated to local authorities and the severely limited freedom of local government bodies to make decisions on financial matters. In many cases, the resources available are insufficient for local authorities to properly carry out their statutory functions. Sometimes, lump-sum grants just about cover the basic statutory functions, but additional initiatives of their own and suggestions made by residents cannot be implemented. This in turn undermines the core aspects of local self-government and is contrary to the spirit and letter of the Charter.

The relevant provisions of the Charter can be found in Article 9, “Financial resources of local authorities”, and apply in full to almost all member states.¹¹

3.1.1 Implementation shortcomings

In the context of Article 9(1) of the Charter, in the period 2010-2016, only seven states in 19 monitoring reports provided the necessary own resources and thus fulfilled the obligations of the Charter, whereas the rest were found to be partially or completely in violation of the Charter.¹²

The commensurateness principle in Article 9(2) was complied with only partially by 13 states, whereas 16 were found to be in violation.¹³ Article 9(3) provides that local authorities should generate part of their income themselves. 13 states partially met their obligations, and violations were identified in another 13,¹⁴ including Austria, Croatia, Estonia, France, Greece, the Netherlands, Slovenia and Spain. At the same time, France was mentioned as a positive example because its local authorities themselves decide assessment rates based on a reference financial autonomy ratio determined in 2003 and can thus set priorities through decisions of their political organs. The extent to which this has been reversed by the changes in the law made by the Macron government in 2018 will be the subject of the next assessment in 2020. Article 9(4) calls for the diversification of sources of finance. Six states partially met this requirement, while a violation of the Charter was found in four cases. The requirements of a fair financial equalisation procedure set out in Article 9(5) were partially met in 22 cases, while a violation of the Charter was identified in five. Article 9(6) is discussed in the section on consultation below. The trend towards more and more earmarked transfers is contrary to Article 9(7). The monitoring reports show six cases of this being partially taken into account and five clear examples of violations, including in Albania, Azerbaijan, Cyprus and Latvia. Access to the capital market – Article 9(8) – is subject to severe and restrictive limitations imposed by supervisory authorities in numerous states.

The comparative analysis describes the system of local authority financing as over-centralised in many cases. This means the local authorities and their umbrella organisations are inadequately involved in the preparation of the relevant laws and regulations and of distribution mechanisms. The

¹⁰ “State of democracy, human rights and the rule of law – A security imperative for Europe”, Report by the Secretary General of the Council of Europe, 2016, p. 4.
<http://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680646af8> (01.08.2018).

¹¹ See fn. 7.

¹² Para. 57 of the Explanatory Memorandum on the “Comparative analysis on the implementation of the European Charter of Local Self-Government in 47 member States”, CG32(2017)22final, mentions Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia and Cyprus as states that inadequately implement Article 9(1). See <https://rm.coe.int/16806fb970> (01.08.2018).

¹³ Ibid, para. 59. These include Cyprus, Denmark, Estonia, Lithuania, Poland and Spain.

¹⁴ Ibid, para. 62 and, on a positive note, para. 63.

reasons for this – and for the observations described below – probably lie in the repercussions of the financial crisis from 2008 onwards and the subsequent debt crisis from 2010. The analysis points to the fact that “recentralisation tendencies are [...] sometimes also connected to authoritarian tendencies and/or the will to instrumentalise grants and finance in order to subjugate local democracy to central government will and priorities”.¹⁵

Local authorities’ own revenues often account for only a small proportion of their budget, one reason being that there are no exclusively municipal taxes or that cities and municipalities have only little or no leeway in determining assessment rates or surcharges or with regard to granting reductions.

Very often, the delegation of functions from national or regional governments to local authorities is not accompanied by the necessary financial resources. In addition, it is frequently the case during the relevant legislative process that no adequate consultation takes place with municipal umbrella organisations and – with few exceptions, such as in the case of the Austrian consultation mechanism – there are no realistic or transparent cost calculations. This means that local authorities not only have to bear the material costs but also make the necessary staff available. Mention is made of the example of the Netherlands in 2015, where the state assigned the local authorities new functions and financial resources, but reduced the amount made available with the argument that the cities and municipalities could carry out the tasks concerned more effectively and at lower cost.

In some states, there are no transparent and predictable financial equalisation systems to support financially weak local authorities, as provided for by Article 9(5) of the Charter. Another factor is financial payments based on close political ties, a particularly striking example of which is provided by a study undertaken by the Romanian NGO, Expert Forum, which has since 2004 published a constantly updated “clientelism map”¹⁶ showing state grants to local authorities and counties (*judete*) on the basis of the party affiliation of mayors or chairs of county councils.

In many states, local authorities receive earmarked grants from national or regional governments, i.e., grants for carrying out specific projects previously drawn up at higher governmental and administrative levels. The Charter does not prohibit earmarked grants, but Article 9(7) provides that grants should “as far as possible” not be tied to a particular purpose. In the Congress’s opinion, the proliferation of earmarked grants at the expense of freely disposable transfers will increasingly lead to undermining of local self-government, which in some cases is no doubt intentional, but at any rate is acquiesced to.

The states particularly affected by the economic and financial crisis – Spain, Italy Portugal and Greece – introduced strict controls on local authority budgets and expenditure, partly by means of legislation and partly by means of statutory instruments. Examples of this are the establishment of a multi-year financial plan aimed at reducing the deficit or debt levels, giving precedence to debt repayments to financial institutions and other creditors and an obligation to seek prior approval for expenditure and provide proof of funding. These states introduced concomitant spending controls to be carried out in local government administrations by national ministerial officials required to follow instructions, as well as regular audits based on principles laid down by central agencies. They ordered across-the-board cuts in state transfers and imposed austerity measures, such as the freezing of or reduction in staffing levels or the postponement of infrastructure projects. Many local authorities were forced to establish specific local authority consortia to achieve economies of scale in the delivery of services. In a number of cases, the merger of local authorities was actively encouraged, promoted with incentives and sometimes decreed. However, anyone seeking evidence of permanent savings actually made in the following years will do so in vain.

3.1.2 Congress proposals

The Congress proposes concrete measures¹⁷ to improve the financial situation of local authorities so as to enable them to fulfil their tasks as policy-driven corporations rather than merely decentralised administrative units.

Local authorities must be provided with adequate financial resources commensurate with their powers and responsibilities. This should be done, inter alia, by developing and/or reviewing the criteria and formula of equalisation mechanisms on the basis of local authorities’ fiscal capacities and financial needs.

¹⁵ Ibid, para. 72.

¹⁶ See <https://expertforum.ro/en/clientelism-map/> (01.08.2018)

¹⁷ See fn. 7, here para. 73.

The Congress also calls for the greater involvement of local authority umbrella organisations in financial matters, including estimating the cost implications of any new legislation to be implemented at local level. In addition, the monitoring reports and recommendations propose the following measures:

- improving tax collection mechanisms at local level;
- improving the status, and increasing discretion in management, of municipal property;
- sufficiently diversified revenues that include both dynamic sources and sources that are relatively unresponsive to the effects of inflation, recession and other economic factors, but without becoming too complex and non-transparent;
- developing responsive systems of funding and fiscal consolidation that sufficiently take into account local authorities' many different needs and characteristics;
- the development of transparent, fair, diversified, flexible and adaptable equalisation systems in close co-operation with local authorities and their associations;
- appropriate and timely consultation with local authorities on finance, the allocation of grants and austerity policies, especially at times of crisis, in order to achieve a consensus and fair burden sharing;
- the avoidance of top-down and "one size fits all" austerity measures. Rather, tailor-made consolidation agreements should be concluded with over-indebted municipalities, and the local authority umbrella organisations should be integrated into national fiscal policy deliberations.

3.2 Insufficient consultation

The consultation of local and regional authorities is a key element of Articles 4, 5 and 9 of the Charter. The purpose of these provisions is to ensure the involvement of cities and municipalities – through their representative associations – in reaching decisions on legislation and policies that impact the local government level. This should not only ensure the relevant expertise and the application of the principle of democracy but also comply with the transparency requirement and the subsidiarity principle.

3.2.1 Structures and consultation fora

Almost all states have statutory joint committees – some policy-making bodies, others expert committees – with representatives of government bodies and local authority umbrella organisations, and ministries involve local authority representatives in formal and informal working groups. In federal states and states with strong regions, such as Italy and Spain, there are also such fora at regional level. In some cases, consultation is a requirement, and failure to consult can result in decisions being challenged or declared invalid. Mostly, however, the relevant position statements, whether individual or the result of structured consultations, are not binding but merely have to be taken into consideration in decision-making.

In addition to governmental structures, some parliaments set up committees to ensure that the voices of local authority umbrella organisations are also heard in the context of parliamentary initiatives.

Most EU member states have specific procedures for providing information and ensuring consultation and participation in connection with the EU's regional policy and policies that impact local authorities. A particular role is played here by procedures to monitor compliance with the subsidiarity and proportionality principles and by the various regulatory and environmental impact assessments.

In addition to these structured consultations, there are numerous informal channels of influence and lobbying opportunities. In France, for example, mayors are sometimes elected as senators and see themselves as spokespersons for local authorities in parliament.

3.2.2 Shortcomings

Less satisfactory are the comments in some Congress monitoring reports that despite the existence of consultation mechanisms, they are either not activated or not implemented seriously, i.e. regarded as mere formalities. Many of these bodies have no legal basis but only exist by tradition and can be abolished at any time. Others are not regularly convened or are not convened in good time, are not asked to deal with really important issues or do not have enough time to develop and internally coordinate well-reasoned positions on proposals presented. Finally, the lack of an obligation at least to state grounds for not taking key objections into consideration is another weakness of the system.

With regard to Article 4(6), the Congress notes seven violations and 19 cases of partial compliance. Only ten states fully implement the article, and positive examples can be found in the monitoring reports on Finland and Poland as well as in Albania with the introduction of a consultative council made up of representatives of the ministries and the three associations of local authorities and regions (*qarks*). In the case of changes in local authority boundaries, Article 5 provides for the

communities concerned to be consulted. 22 states meet their obligations here and nine do so partially, but violations have been established in France and the Russian Federation.¹⁸ Consultation in financial matters in accordance with Article 9(6) is only carried out satisfactorily in five cases, whereas a breach of the Charter was determined in seven cases.

3.2.3 Proposals by the Congress

In a report submitted by Anders Knappe on 27 March 2014,¹⁹ the Congress approved a strategy on the right of local authorities to be consulted by other levels of government. In it, the Congress calls for systematic, structured and regular consultations on all areas affecting local authorities.

3.3 Powers and responsibilities

The clear distribution of powers between different authorities is a basic precondition for properly functioning local self-government. The core provisions are to be found in Articles 3, 4 and 8.

3.3.1 Acknowledged weaknesses

Together with the provision of financial resources, the distribution of tasks is the Congress's biggest cause for concern. In many countries, powers are not clearly laid down by law. Even when the principles of multi-level governance are applied, powers, and therefore responsibilities, must be perfectly clear. Often, instead of the legal term "powers" it is more likely for words like "responsibilities", "tasks", "duties", "initiatives", etc., to be used, which will lead to different interpretations and, therefore, difficulties in the event of disputes. Many constitutions do not contain specific catalogues of powers. Rather, powers are regulated by laws governing particular fields, such as land-use planning, urban and settlement development, cultural affairs, social services, roads and transport, environmental provisions, the police and commerce.

Some legal systems tend to employ a restrictive definition of the powers of local authorities. In 2013, Spain limited the scope of a general clause on these powers, which resulted in the local authorities being unable to respond quickly to new challenges, such as the refugee crisis, because they lacked the powers and necessary resources. The law in the Slovak Republic prohibits an extensive or dynamic interpretation of these powers, which leads in cases of doubt to local authorities being unable to act because they do not have explicit authorisation. In other states, too, there is an emerging trend towards amending residual clauses at the expense of local authorities, which also undermines application of the subsidiarity principle and can lead in municipal policy, local government administration and among the population to something like an attitude of dependency, i.e. the expectation that higher authorities will in any case (have to) take action.

Another worrying development is the trend towards stricter supervision of local authorities by higher tiers of government. Although there was a sense in the last few decades that authorisations before the taking of decisions or ex ante supervision were being abolished, in the period under review, assessments of and checks on expediency celebrated a comeback, in some cases disguised as the need for "co-ordination" in order to harmonise plans or set inter-municipal projects in motion at the wish of higher authorities.

In many states, local authorities are prevented from carrying out important functions, i.e. a substantial share of public tasks. They do have some powers but these are marginal or subject to restrictive checks and procedures by supervisory authorities. Imprecise provisions on powers also play a part in the problems faced and sow the seeds of disputes, the overlapping of powers and conflicts of responsibility.

3.4 Legal protection and domestic implementation of the Charter

There is no doubt that the Charter is binding on member states under international law. As a multilateral treaty, it is subject to the Vienna Convention on the Law of Treaties of 23 May 1969. After the entry into force of the Charter, as provided for in Article 15, the Charter or the articles and paragraphs ratified by a member state become fully binding in relation to the Council of Europe and the other member states.

For many years, the legal consequences brought about by the Charter in national legal systems and among parliaments, administrative authorities and the judiciary have been a key focus of the Congress in its capacity as the Charter's guardian. The comparative analysis examined both the implementation of Article 11 ("Legal protection of local self-government") and also the legal

18 See para. 40 of the explanatory memorandum to the "Comparative analysis on the implementation of the European Charter of Local Self-Government in 47 member States", CG32(2017)22final (cf. fn. 7).

19 CG(26)9FINAL of 27 March 2014, <https://rm.coe.int/1680719a33> (01.08.2018).

obligations imposed by the Charter on the bodies that apply the law, i.e. parliaments, administrative authorities and the courts.

The actual domestic implementation of the Charter depends on a state's constitutional tradition. Some states employ a monistic approach, under which the Charter becomes binding and applicable as soon as it is ratified, while others adopt a dualistic approach, under which the Charter is not incorporated into the national legal order until various steps have been completed, such as decisions taken by the legislature and/or publication in the official gazette. In most Council of Europe member states, international treaties like this one rank between the constitution and ordinary laws.

Can the Charter have legal effect at national level, especially when there is a conflict between domestic legislation and its provisions, if the provisions are not clear? The Congress has complained in a number of monitoring reports about the reluctance of courts to regard the Charter as directly applicable international law (a self-executing treaty) and therefore to base their judgments directly on individual articles. Its binding force and direct applicability must accordingly also be considered from the point of view of the Charter's precision and clarity.

Some provisions of the Charter are in fact worded in somewhat general terms. This has to do with how it came into being;²⁰ officials from national ministries worked for several years on acceptable compromises, as can be found in both the content and the wording, such as vague terms in Article 9 like "adequate financial resources of their own" or "commensurate with the responsibilities provided for". Paragraph 7 contains two sentences, one indeterminate and the other unequivocal: "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".

However, the core provisions of the Charter are unambiguous and therefore directly applicable. The question of direct applicability must be examined article by article and paragraph by paragraph by practitioners. The precise provisions include Article 2, according to which "the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution". It is a simple matter to check this when preparing the monitoring reports. The same applies to Article 3(2), which provides for representative bodies "composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage", and to Article 5, which lays down that consultations must be held before any boundary changes.

Consideration also needs to be given in this context to Article 11, in which the member states undertake to give local authorities "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". Eight states are mentioned in the reports as being partially in compliance with the Charter, while five are found to be in breach of Article 11.²¹ Without legal remedies or the judicial protection of rights to self-government, local self-government is incomplete and vulnerable, and political commitments are just empty promises. For this reason, almost all the Congress's recommendations contain a call to member states to ensure the direct applicability of the Charter in their domestic legal orders. Local authority umbrella associations should be given the right to institute legal proceedings (class actions) on behalf of cities and municipalities, for example when powers are exceeded, when there is excessive supervision of local authorities or when it is alleged that local autonomy and the subsidiarity principle have been undermined, as well as in the case of violations of applicable provisions of the Charter.

4 Observation of elections

The second task of the Congress as a Council of Europe monitoring body is the observation of local and regional elections. In its election observation missions, the Congress operates on the basis of the same international standards as are applied by the Organisation for Security and Co-operation in Europe (OSCE/ODIHR), the Parliamentary Assembly of the Council of Europe and the Venice Commission's Council for Democratic Elections.

Between 2010 and 2016, the Congress adopted 23 reports and recommendations on local and regional elections.²² As "recurring issues", it identified the accuracy and quality of electoral rolls, the improper use of administrative resources by incumbents in election campaigns, the lack of

20 For details on this, see Chris Himsworth, *The European Charter of Local Self-Government. A Treaty for Local Democracy*, Edinburgh, 2015.

21 Paras. 78 to 81 of the explanatory memorandum (see fn. 7) discuss these aspects in detail.

22 A complete list is contained in paras. 17 and 19 of the explanatory memorandum to the report, "Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016)", CG32(2017)19 final, of 28 March 2017 (cf. fn. 7).

professionalism and the often high degree of politicisation of election administrations at all levels and, more generally, voter confidence in election procedures.

In its follow-up to these issues and in addition to its country-specific reports, the Congress adopted in 2015 and 2016 reports on electoral rolls and on voters residing de facto abroad, on experience with lowering of the voting age to 16 and on the conditions and criteria for standing in local and regional elections.

In addition to the remit explicitly granted by the Committee of Ministers, the interest of the Congress in these issues is based on Article 3(2) of the Charter, in which the member states undertake to hold free local elections on the basis of universal suffrage.

5 Outlook

On the occasion of the Charter's thirtieth anniversary, the question also arises as to whether its provisions are still in keeping with the times or need updating. This matter is repeatedly debated in the Congress and addressed at meetings, for example those held between the Congress Bureau and the chair of the Committee of Ministers' Rapporteur Group on Democracy (GR-DEM). It is generally considered that some adaptation is necessary, but in view of the trends toward centralisation also described above, it cannot be ruled out that a revision could lead to lowering of standards or weakening of the binding force of the provisions. The member states' reluctance to enter into new commitments is shown in the deliberations on the review of the Council of Europe conventions submitted by Secretary General Jagland on 10 April 2013.²³ In order to avoid undesirable backsliding, so to speak, consideration is being given within the Congress Secretariat to producing with the assistance of the Group of Independent Experts on the Charter²⁴ a commentary on the Charter based on the experience gained from the monitoring reports produced over a period of nearly 25 years (since 1994) and on the comparative analysis dating from 2017. This commentary would provide clarification regarding the definition of vague terms in the Charter and be able to consider the new demands being made on local self-government, such as digitisation, without having to submit the text to revision and ratification.

An encouraging sign in this context are the Guidelines for civil participation in political decision making²⁵ adopted by the Committee of Ministers on 27 September 2017. On 21 March 2018, the Committee of Ministers went even further and adopted a recommendation to the member states on the participation of citizens in local public life.²⁶ This new version is a big step forward in the Council of Europe's commitment to local democracy and, without explicitly mentioning individual articles, points to numerous cornerstones in the Charter. The Committee of Ministers is thus renewing its commitment to the role of local self-government as a key element of the European social model and a factor in democratic stability.

A precondition for effective civil participation is, according to the recommendation, first of all, a balance of powers exercised at the national, regional and local levels. This is also a recurring demand of the Congress in its monitoring reports. According to the guidelines, only when elected local bodies are actually able to take decisions of strategic importance for the local community will citizens be prepared to become involved in an interactive consultation process. However, it must be borne in mind that the guidelines constitute soft law and do not provide for any monitoring bodies or obligations on member states to submit reports, so there is some merit in the path chosen by the Congress not to do anything that might affect the Charter's legal status.

6 Conclusions

When an anniversary comes up, it is only natural for attempts to be made to bring about further improvements for the future on the basis of current experience. The analysis presented may therefore create the impression that things are not looking so good for local self-government and democracy in cities and municipalities. That is one side of the story, showing existing shortcomings and a need for improvements.

At the same time, however, the Congress has noted significant and major progress in the application of the Charter in almost all its monitoring reports. The monitoring visits made at five-year intervals

23 Council of Europe website: <https://www.coe.int/en/web/conventions/review-of-the-council-of-europe-conventionsreview-of-the-council-of-europe-conventions> (01.08.2018).

24 A list of members and the Statute of the Group are available at <https://www.coe.int/en/web/congress/group-of-independent-experts-on-the-european-charter-of-local-self-government-gie-> (01.08.2018).

25 [CM\(2017\)83-final](#) of 27 September 2017. Available in English, French, Armenian, Greek, Romanian, Russian, Turkish and Ukrainian at <https://www.coe.int/en/web/good-governance/standards> (01.08.2018).

26 [CM/Rec\(2018\)4](#) of 21 March 2018. Available in English and French at https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016807954c3 (01.08.2018).

enable member states' governments and parliaments to initiate, implement and evaluate reform programmes. Especially in those states with which the Congress has agreed roadmaps following a monitoring report, progress is to be expected. Several of these governments are currently in the process of developing and implementing decentralisation strategies. The results will be visible in the next few years and can then be assessed against the background of the Charter. The fact that seven states have ratified the Additional Protocol to the Charter since 2015 (probably as a consequence of the Congress's monitoring reports) is also a positive development and shows the relevance of local self-government and democracy in cities and municipalities.

In addition to the problems common to several states, it might be useful to describe positive developments and initiatives in a comparative analysis. They could then be publicised as good practices and serve as a source of ideas for reforms in other states. After all, the ministers who regularly take part in discussions with members of the Congress in plenary sittings express their commitment to the principles of local self-government.

As well as monitoring the application of specific articles, the Congress will probably also increasingly have to reiterate the principles set out by the member states in the preamble to the Charter. In 2019, there will be two particularly suitable occasions for this: the 25th anniversary of the inaugural session of the Congress, held on 31 May and 1 June 1994, and the celebrations of the 70th anniversary of the founding of the Council of Europe through the Treaty of London, signed on 5 May 1949. These occasions can provide new impetus for defending, safeguarding and further developing local self-government as a key element of the pluralistic European social model with its horizontal and vertical checks and balances.

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