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# Local and Regional Authorities as Actors and Guarantors of the Rule of Law

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

Rapporteur:<sup>1</sup> Stewart DICKSON, United Kingdom (R, ILDG)

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### Summary

The Council of Europe rests on three pillars: the protection of democracy, human rights and the rule of law. Local and regional authorities are rarely mentioned as having a direct impact on the rule of law, even though their role in this area is crucial.

This report shows the importance of the rule of law for local and regional authorities and their administrations. Local and regional elected representatives have a duty to protect citizens against arbitrariness, injustice and discrimination. At the same time, the rule of law also acts as a safeguard for local self-government, as national authorities must respect their commitments, in particular under the European Charter of Local Self-Government (ETS No. 122).

The rule of law guarantees that citizens elect their representatives freely and democratically, that laws are applied uniformly, that no one is above the law and that no one is discriminated against or left out. Local and regional authorities therefore have an obligation to comply with domestic judgments and also with judgments of the European Court of Human Rights that concern them. They also have a duty to combat arbitrariness and attempts at corruption that may arise at their level.

This report explores the concrete actions that can be taken by local and regional authorities to ensure respect for the rule of law at their levels of governance and thus strengthen or restore citizens' confidence in democratic institutions and guarantee respect for the fundamental rights of all.

In the French version of the document, the concept of the rule of law may be understood as "prééminence du droit" (primacy of the law) to refer to the French version of the Statute of the Council of Europe (ETS No. 001).

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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.

## **RESOLUTION 499 (2024) <sup>2</sup>**

### 1. Referring to:

- a. the Statute of the Council of Europe (ETS No. 001);
- b. the European Charter of Local Self-Government (ETS No. 122) (“the Charter”);
- c. the Council of Europe Reykjavik Declaration “United around our values”, and especially the Reykjavik Principles for Democracy (Appendix III);
- d. the United Nations Sustainable Development Goals (SDGs), and particularly SDG 16 “Promote peaceful and inclusive societies for sustainable development, provide access to justice and build effective, accountable and inclusive institutions at all levels”;
- e. the study entitled “The Council of Europe and the Rule of Law - An Overview” (document CM (2008)170), prepared at the initiative of the Swedish Presidency of the Committee of Ministers;
- f. the Report on the Rule of Law of European Commission for Democracy through Law (Venice Commission), CDL-AD (2011)003rev;
- g. the Rule of Law Checklist of European Commission for Democracy through Law (Venice Commission), CDL-AD(2016)007;
- h. Parliamentary Assembly Resolution 2437 (2022) “Safeguarding and promoting genuine democracy in Europe”;
- i. the Call for Action of the High-Level Political Conference held in Reykjavik on 15 May 2023.

### 2. The Congress of Local and Regional Authorities:

- a. is deeply concerned about democratic backsliding across the world and within Europe, which has resulted in a weakening of checks and balances, obstacles to and limitations on the exercise of civil and political rights and freedoms, limits to local self-government, and an erosion of the rule of law;
- b. considers that genuine democracy, as enshrined in the Statute of the Council of Europe (ETS No. 1), cannot be achieved and preserved without effective implementation of the rule of law at all levels of public power;
- c. emphasis that, as stated in the Reykjavik Declaration, democracy needs to strengthen the separation of powers through appropriate checks and balances between different State institutions at all levels, to prevent any excessive concentration of power;
- d. considers that local and regional authorities are key in upholding and defending democracy, human rights and the rule of law, not only within their communities, but as part of the system of checks and balances which forms the backbone of a genuine pluralistic democracy;
- e. considers that the implementation of the rule of law by local authorities, including the execution of the judgements of the European Court of Human Rights, is part of the general rule of law implementation;
- f. underlines that the monitoring of the application of the Charter – which establishes the standards on local self-government and local democracy – is an important contribution to monitoring and strengthening the rule of law;

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2. Debated and adopted by the Congress during the 46th Session on 26 March 2024 (see document [CG\(2024\)46-20](#), explanatory memorandum), rapporteur: Stewart DICKSON, United Kingdom (R, ILDG).

g. considers that the monitoring reports on compliance with the Charter serve as an important indicator that can point to possible democratic backsliding in member States.

3. In light of the foregoing, the Congress invites its Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (Monitoring Committee) to:

a. work together with the other institutions of the Council of Europe, notably the Venice Commission and the European Court of Human Rights, to include local self-government within the rule of law monitoring activities;

b. pursue a political dialogue with national, regional and local authorities in the framework of post-monitoring activities with all member States concerned by an erosion of the rule of law;

c. promote the dissemination of Charter monitoring activities among governmental and non-governmental organisations assessing the state of democracy and of the rule of law;

d. entrust the Congress advisors on constitutional matters with contributing to Congress activities aimed at promoting the role of local and regional authorities in upholding the rule of law among local and regional elected representatives.

**RECOMMENDATION 499 (2024)<sup>3</sup>**

1. Referring to Statutory Resolution CM/Res(2020)1 relating to the Congress of Local and Regional Authorities of the Council of Europe and to the Council of Europe Reykjavik Declaration “United around our values”, the Congress:

a. is deeply concerned about democratic backsliding worldwide and within Europe, which has resulted in a weakening of checks and balances, obstacles and limitations on the exercise of civil and political rights and freedoms, restrictions on local self-government, and erosion of the rule of law;

b. considers that genuine democracy as enshrined in the Statute of the Council of Europe (ETS No. 1) cannot be achieved and preserved without effective implementation of the rule of law at all levels of public power;

c. emphasises that, as stated in the Reykjavík Declaration, democracy needs to strengthen the separation of powers through appropriate checks and balances between different State institutions at all levels, to prevent any excessive concentration of power;

d. considers that local and regional authorities are key in upholding and defending democracy, human rights and the rule of law, not only within their communities, but also as part of the system of checks and balances which forms the backbone of a genuine pluralistic democracy;

e. underlines that monitoring the application of the European Charter of Local Self-Government (ETS No. 122, “the Charter”) – which establishes the standards on local self-government and democracy – contributes to the strengthening of the rule of law;

f. considers that the Congress recommendations on monitoring of compliance with the Charter represent an important part of an early warning system for the Council of Europe that can point to possible democratic backsliding in member States;

g. considers that the implementation of the rule of law by local authorities, including the execution of judgments of the European Court of Human Rights that concern local or regional authorities, should also be monitored.

2. In light of the foregoing, the Congress invites the Committee of Ministers to:

a. call on member States to guarantee good democratic governance by ensuring compliance with the Charter and the implementation of the recommendations of the Congress;

b. use the Congress monitoring reports as an early warning mechanism to prevent or address worrying developments with regard to compliance with democratic standards and practices in member States;

c. consider including the implementation of the rule of law by local authorities, including the execution of the judgements of the European Court of Human Rights at local level, in its activities relating to democracy and the rule of law in Council of Europe member States.

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3. See footnote on page 2.

**EXPLANATORY MEMORANDUM<sup>4</sup>****Table of contents**

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4. This explanatory memorandum has been prepared with the contribution of Prof. Tania GROPPi, Vice-President of the Group of Independent Experts on the Charter and adviser to the Congress on constitutional matters.

## PART I – THE CONCEPT OF THE RULE OF LAW

### 1. Rule of law: definitions

1. In the 21st century, the rule of law is a concept of universal value. The “need for universal adherence to and implementation of the rule of law at both the national and international levels” was endorsed by all member States of the United Nations in the 2005 Outcome Document of the World Summit (§ 134).<sup>5</sup> More recently, Sustainable Development Goal 16 (Peace, Justice, and Strong Institutions) included “Promote the rule of law at the national and international levels” within its targets (target 16.3).<sup>6</sup>

2. The rule of law is mentioned in the Preamble to the Statute of the Council of Europe as one of the three “principles which form the basis of all genuine democracy”, alongside individual freedom and political liberty. Article 3 of the Statute establishes respect for the principle of the rule of law as a precondition for the accession of new member States to the Organisation. Additionally, the rule of law is acknowledged as an element of common heritage in the Preamble to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No.5, “European Convention on Human Rights”). According to the European Court of Human Rights, “One of the fundamental components of European public order is the principle of the rule of law, and arbitrariness constitutes the negation of that principle.”<sup>7</sup>

3. The rule of law, as expressed in the Preamble to and Article 2 of the Treaty on European Union (TEU), is one of the founding values shared between the European Union (EU) and its Member States. The rule of law is one of the four political conditions (under the 1993 Copenhagen Criteria) for becoming an EU Member State, alongside democracy, human rights and the protection of minorities. Respecting it is necessary for accession to the EU.<sup>8</sup> States can only apply for EU membership if they accept these conditions (Article 49 of the Treaty on European Union). Since 2014, the European Union has established a special framework to strengthen the rule of law,<sup>9</sup> and since 2019 a rule of law mechanism has been in force, which includes the publication of a yearly monitoring report for each EU member State.<sup>10</sup> The EU rule of law monitoring mechanism covers four pillars: “justice systems, an anti-corruption framework, media pluralism and media freedom, and *other institutional issues related to checks and balances* (emphasis added).<sup>11</sup>

4. However, the rule of law has been considered as “an essentially contested concept.”<sup>12</sup> The expression “essentially contested” is not intended as a form of criticism but rather to express the difficulty of reaching a widely shared and consensual definition. Currently, the meanings traditionally attributed to the rule of law, especially in the British context<sup>13</sup> – limitation of power, legality, government of laws and not of men – are no longer sufficiently satisfying, and a more substantial concept was developed in the 20th century.

5. First, the concept has historically encompassed the expressions *Stato di diritto*, *État de droit* and *Staatsrecht*. Although the historical trajectories and the theoretical, institutional and constitutional developments of these notions are different, and while there are those who still argue that they should be distinguished, it is difficult to deny that these notions have progressively converged - perhaps also

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5. <https://www.un.org/en/conferences/environment/newyork2005#:~:text=The%20Outcome%20Document%20stated%2C%20in,cleansing%20and%20crimes%20against%20humanity>, accessed 16 august 2023.

6. <https://www.un.org/ruleoflaw/sdg-16/>, 16 august 2023.

7. European Court of Human Rights (GC), *Dulimi and Montana Management Inc. v. Switzerland* ECtHR no. 5809/08, 21 June 2016, § 145

8. European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), [https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership\\_en](https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/conditions-membership_en), accessed 16 august 2023.

9. Communication from the Commission to the European Parliament and the Council - A new EU Framework to strengthen the rule of law COM/2014/0158 final.

10. [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en), accessed 16 August 2023.

11. [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report_en)

12. Waldron, J. (2002), *Is the rule of law an Essentially Contested Concept?*, in *Law and Philosophy*, 21, pp. 137-164.

13. On the historical origins of the rule of law, European Commission for Democracy through Law (Venice Commission), *Report on the rule of law*, CDL-AD (2011)003rev, para. 7 ff.

due to the global success of English as a lingua franca – and merged into a richer concept of the rule of law, both formal and material or substantive elements.<sup>14</sup>

6. Second, over the decades, the rule of law has progressively become a landmark concept in contemporary constitutionalism, so much so that the paradigm of contemporary constitutionalism has often been framed in terms of the Rule-of-Law Constitutional State.<sup>15</sup> From this perspective, the separation of powers and the presence of checks and balances, aimed at limiting the prerogatives of ruling majorities to protect minorities' rights and, more generally, the principle of pluralism, represent a key aspect of the rule of law.<sup>16</sup>

7. Third, it has been pointed out that, by focusing exclusively on the rule of law *strictu sensu*, we fail to take account of how democracy and the rule of law mutually support each other. It has been broadly accepted for some time that the rule of law, and especially certain fundamental political rights, are preconditions for a democratic process. However, one should not forget reverse causality either: namely, that the rule of law is itself a product of democratic changes of government; if governing parties have no fear of being outvoted and finding themselves in opposition, they will inevitably be less inclined to respect the separation of powers, particularly judicial independence, and fundamental rights.<sup>17</sup> Moreover, democratic accountability as a limitation on government power itself contributes to the rule of law, as it works to curb unlimited government power.<sup>18</sup>

## 2. Rule of law and “genuine democracy”

8. The close and mutual relationship between rule of law and democracy is particularly evident within the Council of Europe. Since the adoption of the Statute of the Council of Europe (ETS No.1), the principles of “individual freedom, political liberty and the rule of law” (Preamble) have been recognised as principles which form the basis of “all genuine democracy”.

9. In 2008, the Committee of Ministers, endorsing the document titled “The Council of Europe and the rule of law - An overview”, prepared at the initiative of the Swedish Presidency, pointed out that “Like democracy and respect for human rights, the rule of law is a principle pertaining to the organisation and functioning of the State. In accordance with Article 3 of the Statute, Council of Europe member States must accept this principle; they are therefore expected to be States based on the rule of law”, The document points out that “There can be no democracy without the rule of law and respect for human rights; there can be no rule of law without democracy and respect for human rights, and no respect for human rights without democracy and the rule of law”.<sup>19</sup>

10. The European Commission for Democracy through Law (Venice Commission), in its 2011 report on the rule of law,<sup>20</sup> considers, quoting the OSCE Commitments relating to the rule of law, that “Democracy is an inherent element of the rule of law”.

11. The 2016 Rule of Law Checklist of the Venice Commission further develops the link between democracy and the rule of law: “The rule of law is linked not only to human rights but also to democracy, i.e., to the third basic value of the Council of Europe. Democracy relates to the involvement of the people in the decision-making process in a society; human rights seek to protect individuals from arbitrary and excessive interference with their freedoms and liberties and to secure human dignity; the rule of law focuses on limiting and independently reviewing the exercise of public powers. The rule of law promotes

14. Venice Commission, *Report on the rule of law*, cit., para. 41; European Commission for Democracy through Law (Venice Commission), *The Rule of law Checklist*, CDL-AD(2016)007, para. 18.

15. Rosenfeld, M. (2001), “The rule of law and the Legitimacy of Constitutional Democracy”, in *Southern California Law Review*, 74, pp. 1307-1346; Bingham, T. (2010), *The rule of law*, London, Penguin.

16. Pin, A. (2023), *Rule of law come parametro costituzionale in prospettiva comparata*, in T.E.Frosini (ed.), *Rule of law come costituzionalismo*, Bologna, Il Mulino, p.153 ff.

17. Ginsburg, T. and Huq, A. (2018), *How to Save a Constitutional Democracy*, Chicago, University of Chicago Press, p.14.

18. Jakab, A. (2022), *Three Misconceptions about the EU rule of law Crisis*, in *VerfBlog*, <https://verfassungsblog.de/misconceptions-rol/>, accessed 16 August 2023; Jakab, A. (2019), *What Can Constitutional Law Do Against the Erosion of Democracy and the rule of law? On the Interconnectedness of the Protection of Democracy and the rule of law*, MPIL Working Paper, p. 7 ff.; Binder, C. and Morales Antoniazzi, M. (2021), *Towards Institutional Guarantees for Democratic Rotation: The Inter-American Court's Advisory Opinion OC-28/21 on Presidential Re-election*, *VerfBlog*, <https://verfassungsblog.de/towards-institutional-guarantees-for-democratic-rotation/>, accessed 16 August 2023.

19. Committee of Ministers, *The Council of Europe and the rule of law - An overview* CM(2008)170, para. 24 and 27.

20. Venice Commission, *Report on the rule of law*, para. 26.

democracy by establishing accountability of those wielding public power and by safeguarding human rights, which protect minorities against arbitrary majority rules”.<sup>21</sup>

12. More generally, in its activity, the Venice Commission has opted for the model of a democratic *Rechtsstaat* (constitutional democracy) where majoritarian democracy is restricted both by human rights and by mutual checks and balances among State institutions: a conception of democracy that can be equated to the above-mentioned Rule-of-Law Constitutional State.<sup>22</sup>

13. In its 2022 report on “Safeguarding and promoting genuine democracy in Europe”, the Parliamentary Assembly of the Council of Europe pointed out that “Liberal democracy means a democratic system of government in which individual rights and freedoms are officially recognised and protected and in which the exercise of political power is limited by the rule of law. Although it does not use the term ‘liberal democracy’, the preamble to the Statute of the Council of Europe provides that “all genuine democracy’ is based on principles of individual freedom, political liberty and the rule of law”<sup>23</sup>.

14. Based on that report, the Parliamentary Assembly expressed its deep concern about clear democratic backsliding across the world, pointing out the “urgent need for Council of Europe member States to renew their commitment to safeguarding and promoting genuine democracy, based on the principles of individual freedom, political liberty, other human rights and the rule of law, as enshrined in the Statute of the Council of Europe (ETS No. 1), while addressing the root causes of democratic backsliding” (Resolution 2437 (2022)).

15. More recently, in the Reykjavik Declaration, adopted at the Fourth Summit of the Council of Europe (Reykjavik, 16-17 May 2023), the Heads of State and Government committed to ensuring “the diligent respect for the rule of law, benefitting every citizen and building a European legal community of shared values and dialogue between the jurisdictions of its member States, including by raising the profile of, and strengthening the Venice Commission, by for example giving more visibility and status to its Rule of Law Checklist and exploring ways by which the Organisation can better support the implementation of its recommendations”.

### 3. Rule of law and separation of powers

16. The relationship between the rule of law and the separation of powers is commonly accepted by scholars.<sup>24</sup> They argue that, in acknowledgment of the perils of tyranny deriving from every monopolisation of power, the powers of the governing institutions must be divided into separate branches (typically, but not necessarily legislature, executive and judiciary) providing checks and balances for one another.<sup>25</sup>

17. In addition, the separation of powers as a component of the rule of law is mentioned in several documents of international organisations, starting with the United Nations.

18. The report of the United Nations on “The rule of law and transitional justice in conflict and post-conflict societies” considers the rule of law as “a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires, as well, measures to ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the

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21. Venice Commission, *The Rule of Law Checklist*, para. 33.

22. European Commission for Democracy through Law (Venice Commission), *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist*, CDL-AD(2019)015.

23. Parliamentary Assembly, Doc. 15486, 25 March 2022, *Safeguarding and promoting genuine democracy in Europe Report*, para. 6.

24. See Bellamy, R. (2016) (ed), *The Rule of Law and The Separation of Powers*, London-New York, Routledge, Waldron, J. (2023), *The Rule of Law*, in *The Stanford Encyclopedia of Philosophy*, at 5.2 (Edward N. Zalta & Uri Nodelman eds., Fall ed. 2023), available at <https://plato.stanford.edu/entries/rule-of-law/>, accessed 16 August 2023; Sunstein, C. R. (2023), *The Rule of Law*, p. 5, available at <https://ssrn.com/abstract=4405238>, accessed 16 August 2023.

25. Holterhus, T. P. (2022), *Rule of Law*, in Binder, C., Nowak, M., Hofbauer, J. A., Janig, P. (eds), *Elgar Encyclopedia of Human Rights*, p. 212.



application of the law, *separation of powers*, participation in decision-making, legal certainty, avoidance of arbitrariness and procedural and legal transparency” (emphasis added).<sup>26</sup>

19. In the same vein, a 2005 Resolution of the United Nations Commission on Human Rights Commission on “Democracy and rule of law”, calling on States to strengthen the rule of law and promote democracy, focuses on upholding the separation of powers, guaranteeing that no individual or public or private institution is above the law and respecting equal protection under the law.<sup>27</sup>

20. Within the EU, the 2020 Rule of law Conditionality Regulation gave a more precise definition, which includes the separation of powers.<sup>28</sup> It has been enforced by the Court of Justice, according to which Article 2 TUE is “not merely a statement of policy guidelines or intentions” and “the EU legislator is entitled to adopt a specific definition of the rule of law on account of the specific aims and subject matter of the relevant piece of legislation”.<sup>29</sup>

21. As for the Council of Europe, the Venice Commission Rule of Law Checklist recognises that “the distribution of powers among the different State institutions may also impact the context in which this checklist is considered. It should be well adjusted through a system of checks and balances. The exercise of legislative and executive power should be reviewable for its constitutionality and legality by an independent and impartial judiciary. A well-functioning judiciary, whose decisions are effectively implemented, is of the highest importance for the maintenance and enhancement of the rule of law”.<sup>30</sup>

22. The Reykjavik Principles for Democracy (Appendix III to the Reykjavik Declaration), adopted at the Fourth Summit of the Council of Europe in Reykjavik, which aim at preventing and resisting democratic backsliding, not only refer to the necessity of actively enabling and encouraging democratic participation at national, regional and local levels through free and fair elections, but also to the separation of powers. The Heads of State and Government make a commitment to “uphold the separation of powers with appropriate checks and balances between different State institutions, *at all levels*, to prevent any excessive concentration of power” (emphasis added).<sup>31</sup>

23. It is clear from all these documents that a “genuine democracy”, as a democracy based on the rule of law, requires a system of divided powers.

## PART II – RULE OF LAW AND SUBNATIONAL AUTHORITIES

### 1. An overlooked relationship

24. Since the origins of constitutionalism, scholars pointed out that “as a system of divided powers, federalism proceeds from the very essence of constitutionalism, which is limited government operating under the rule of law”<sup>32</sup>. In other words, the “vertical division of powers” is an aspect of the separation of powers, and as the latter, serves as a guarantee against authoritarianism and arbitrariness, that is, an essential aspect of the rule of law.

25. In the famous paragraph 51 of the Federalist Papers, James Madison wrote: “In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each subdivided among distinct and separate

26. United Nations, *Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies* Doc. S/2004/616, 23 August 2004, para. 6.

27. United Nations, HR Res. 2005/32 *Democracy and the rule of law*.

28. Regulation 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget [2020] OJ L 433 I/1 art. 2: “The rule of law’ [...] includes the principles of legality implying a transparent, accountable, democratic and pluralistic law-making process; legal certainty; prohibition of arbitrariness of the executive powers; effective judicial protection, including access to justice, by independent and impartial courts, also as regards fundamental rights; separation of powers; and non-discrimination and equality before the law. The rule of law shall be understood having regard to the other Union values and principles enshrined in Article 2 TEU”.

29. *Hungary v European Parliament* (C156/21) EU:C:2022:97 at [232] and *Poland v European Parliament* (C-157/21) EU:C:2022:98 at [264]. See Pech, L. (2023), *The European Union’s Rule of Law Crisis: From Rule of Law to Rule of Lawlessness in Europe?* in 70 *Irish Jurist* 10, pp.10-28.

30. Venice Commission, *The Rule of law Checklist*, para. 39.

31. Reykjavik Principles for Democracy, Appendix III, para. 4. See <https://www.coe.int/en/web/portal/fourth-council-of-europe-summit>, accessed 16 august 2023.

32. Lenaerts, K.(1990), *Constitutionalism and the Many Faces of Federalism*, *The American Journal of Comparative Law*, Vol. 38, No. 2, pp. 205-263.

departments. Hence, a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself".<sup>33</sup>

26. It is therefore particularly surprising that the many indicators designed to assess the state of constitutional democracy and/or the rule of law worldwide do not take into account the vertical separation of powers (in its various institutional arrangements, going from federal or regional government to local self-government).

27. An example of this attitude is represented by the Venice Commission Rule of Law Checklist, which makes only a brief reference to the principle of separation of powers and mentions local government solely in terms of how well local authorities perform their duties, especially in relation to the issue of corruption.<sup>34</sup>

28. A brief reference to local and regional authorities can be found in the Parliamentary Assembly Resolution 2437 (2022) "Safeguarding and promoting genuine democracy in Europe". In this resolution, the Parliamentary Assembly called upon member States, among other things, to "guarantee good democratic governance, by ensuring, in particular, that local and regional authorities have the necessary powers, adequate financial resources and skilled staff to provide the best possible services to the entire population", thus implicitly recognising the role of local self-government in enhancing democracy and rule of law.<sup>35</sup>

29. Local self-government, and more generally the vertical separation of powers, is also absent from the EU mechanism on the rule of law<sup>36</sup> and from the UN indicators.<sup>37</sup>

30. As for non-governmental organisations, the World Justice Project,<sup>38</sup> the main rule of law assessment project, also ignores the separation of powers and checks and balances, even though one of the four factors of the rule of law scrutinised is that "the government and its officials and agents, as well as individuals and private entities, are accountable to the law".<sup>39</sup>

31. The scores and rankings of the WJP Rule of Law Index are organised around eight primary factors: constraints on government powers, absence of corruption, open government, fundamental rights, order and security, regulatory enforcement, civil justice and criminal justice.<sup>40</sup> The only reference to local authorities is related to regulatory enforcement, where the question is asked whether: "In practice, in your country, the "Due Process of Law" is respected in administrative proceedings conducted by the following authorities: Local authorities?".<sup>41</sup>

32. Other popular indicators aimed at assessing the level of democracy, on the other hand, such as those of Freedom House or the Economist Intelligence Unit, only refer to local authorities as they assess the fairness of local elections.<sup>42</sup>

33. *The Federalist*, New York, McLean, 1788, para. 51.

34. Venice Commission, *The Rule of law Checklist*, para 114.

35. Council of Europe, Parliamentary Assembly, Resolution 2437 (2022) Safeguarding and promoting genuine democracy in Europe, para. 10.

36. The indicators on "other institutional issues related to checks and balances" are: (iv) process for preparing and enacting laws consultations, use of fast-track procedures or emergency procedures, regime for constitutional review of laws (v) independent authorities (vi) accessibility, judicial review of administrative decisions (vii) Enabling framework for civil society". Among the sources, the following sources are mentioned: "Council of Europe reports: in particular Venice Commission, Group of States against Corruption (GRECO)". See [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism/2022-rule-law-report_en), accessed 16 August 2023.

37. The UN indicators only refer to criminal justice institutions, including the police and other law enforcement agencies, the courts, the prosecution and the defence, and corrections. See The United Nations rule of law Indicators, 2011, [https://peacekeeping.un.org/sites/default/files/un\\_rule\\_of\\_law\\_indicators.pdf](https://peacekeeping.un.org/sites/default/files/un_rule_of_law_indicators.pdf), accessed 16 August 2023.

38. <https://worldjusticeproject.org/rule-of-law-index/>, accessed 16 August 2023.

39. The other factors are: 2) The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property. 3) The process by which the laws are enacted, administered, and enforced is accessible, fair, and efficient. 4) Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are of sufficient number, have adequate resources, and reflect the makeup of the communities they serve. <https://worldjusticeproject.org/about-us/overview/what-rule-law>, accessed 16 August 2023.

40. <https://worldjusticeproject.org/rule-of-law-index/about#whatwemeasure>, accessed 16 August 2023.

41. Botero, J. C., Ponce, A., *Measuring the rule of law* (November 30, 2011). Available at SSRN: <https://ssrn.com/abstract=1966257> or <http://dx.doi.org/10.2139/ssrn.1966257>, accessed 16 August 2023.

42. Freedom House subnational elections and opposition <https://freedomhouse.org/reports/freedom-world/freedom-world-research-methodology>, accessed 16 August 2023; EUI municipal elections <https://www.eiu.com/n/campaigns/democracy-index-2022/>, accessed 16 August 2023.

33. However, there are some exceptions, such as indicators that take into consideration the independence of local self-government among the variables used to assess the level of democracy in a country. An example is represented by the V-Democracy Index,<sup>43</sup> where the Local Government Index and the Regional Government Index are considered.<sup>44</sup> The question examined is: “Are there elected local (or regional) governments, and — if so — to what extent can they operate without interference from unelected bodies at the local level?”. According to the explanations, “The lowest score would be reserved for a country that has no elected local (regional) governments. A medium score would be accorded a country that has elected local (regional) governments but where those governments are subordinate to unelected officials at the local (regional) level perhaps appointed by a higher-level body. A high score would be accorded to a country in which local (regional) governments are elected and able to operate without restrictions from unelected actors at the local (regional) level with the exception of judicial bodies”.

34. Similarly, Freedom House’s Nations in Transit, which assesses the state of democracy in the region stretching from Central Europe to Central Asia, pays particular attention to local self-government, including “local democratic governance” among the seven indicators it examines.<sup>45</sup> “Local democratic governance” includes “the decentralisation of power; the responsibilities, election, and capacity of local governmental bodies; and the transparency and accountability of local authorities”. The questionnaire submitted to the experts contains detailed questions, aimed at assessing six aspects: “1. Are the principles of local democratic government enshrined in law and respected in practice? 2. Are citizens able to choose their local leaders in free and fair elections? 3. Are citizens ensured meaningful participation in local government decision-making? 4. Do democratically elected local authorities exercise their powers freely and autonomously? 5. Do democratically elected local authorities have the resources and capacity needed to fulfil their responsibilities? 6. Do democratically elected local authorities operate with transparency and accountability to citizens?”.

35. Therefore, local self-government impacts on the Freedom House Democracy Score. Based on the Democracy Score, Freedom House assigns each country to one regime type, in a range of six, going from consolidated democracies to authoritarian regimes.

36. Many of the aforementioned documents highlight the close link between democracy, rule of law and separation of powers. Some statements may be quoted from above: “There can be no democracy without the rule of law; there can be no rule of law without democracy”; “the rule of law is one of the principles which form the basis of all genuine democracy”, “Democracy is an inherent element of the rule of law”; a “genuine democracy”, as a democracy based on the rule of law, requires a system of divided powers.

37. There is a clear consensus within the Council of Europe on the interrelationship between democracy, the rule of law and the separation of powers, notwithstanding the fact that the rule of law remains an “essentially contested concept”, as stated above.

38. In its Preamble, the European Charter of Local Self-Government (ETS No. 122, “the Charter”) takes a step forward in linking democracy, the rule of law, and the separation of powers to local self-government by stating that local authorities are one of the main foundations of any democratic regime. Additionally, this role of local authorities is implicit in many paragraphs of the Charter’s preamble.<sup>46</sup>

39. As highlighted by the Contemporary Commentary on the Explanatory report of the European Charter of Local Self-Government, the Preamble “points out the link between local government and democracy, which should be considered the ‘core’ of the Charter. Based on an approach guided by the principle of decentralisation, the Charter assumes that local democracy is a cornerstone of democracy, so it once again connects the Charter with the founding aims of the Council of Europe: local authorities

43. <https://v-dem.net/>, accessed 16 August 2023.

44. Codebook, para. 2.2.15, p. 54 <https://www.v-dem.net/data/the-v-dem-dataset/>, accessed 16 August 2023.

45. The seven indicators are: National Democratic Governance; Electoral Process; Civil Society; Independent Media; Local Democratic Governance; Judicial Framework and Independence; Corruption. See the methodology here: <https://freedomhouse.org/reports/nations-transit/nations-transit-methodology>, accessed 16 August 2023.

46. For example, para. 4: “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”; para. 5: “it is at local level that this right can be most directly exercised”; para. 7: “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”; para. 8 “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”.

are considered to be one of the main foundations of democracy, which is the core mission of the Council of Europe<sup>47</sup>.

40. Local and regional authorities are therefore key to upholding and defending democracy, human rights and the rule of law, not only within their communities, but also as part of the system of checks and balances which represents the backbone of a genuine pluralistic democracy.

41. As stated in the Reykjavík Declaration, adopted at the 4th Summit of the Council of Europe in Reykjavik, democracy needs to strengthen the separation of powers with appropriate checks and balances between different State institutions, *at all levels*, to prevent any excessive concentration of power.

42. As stated in the “Call for action” signed in Reykjavik by the representatives of several associations of local authorities, on the margins of the 4th Summit of the Council of Europe, “Local and regional democracy is at the foundation of strong democratic, inclusive, sustainable and cohesive societies”, based on the rule of law.<sup>48</sup>

43. The next section will examine the practical application of the principle of the rule of law at the level of local self-government.

## **2. Local self-government as guarantor of the rule of law**

44. As pointed out by the Venice Commission Rule of Law Checklist, “The rule of law must be applied at all levels of public power”.<sup>49</sup>

45. This perspective implies that local authorities, like any public authority, are bound by the principle of the rule of law. Upholding the principle of the rule of law at local level involves ensuring that citizens in communities are protected by law. To achieve this, local authorities, just like national authorities, must implement the principles of human rights protection, accountability, including democratic accountability, transparency and good governance.

46. Those aspects are especially enshrined in Article 3 of the Charter.

47. Article 3.1 states that: “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*” (emphasis added). By mentioning “the limits of the law”, it explicitly introduces the rule of law as principle that is binding on local authorities. Additionally, by referring to the interests of the local population as a guiding principle for local government actions, it aims to exclude any arbitrariness and abuse of power.

48. Article 3.2 states, in its first part, that “This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them”. Together with Article 7, paragraph 1 (“The conditions of office of local elected representatives shall provide for free exercise of their functions”), it introduces the principle of democratic accountability. This principle necessitates free and fair elections, the respect of political rights, and the recognition of the role of the opposition at local level.

49. The Venice Commission’s Rule of Law Checklist develops some of these aspects. It considers the “prohibition of arbitrariness” as one of the sub-fields of the rule of law. To this purpose, it sets several benchmarks. Among them, the “Prevention of abuse (misuse) of powers”. One of the aspects to be assessed under this heading is “Are there legal safeguards against arbitrariness and abuse of power (*détournement de pouvoir*) by public authorities? *i.* If yes, what is the legal source of this guarantee (Constitution, statutory law, case-law)? *ii.* “Are there clear legal restrictions to discretionary power, in particular when exercised by the executive in administrative action?”.<sup>50</sup>

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47. Congress of Local and Regional Authorities, A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government, CG-FORUM (2020)02-05prov, 12 February 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>, para. 5, accessed 16 August 2023.

48. <https://rm.coe.int/call-for-action-congress-high-level-conference-in-the-margins-of-the-c/1680ab3b97>, accessed 16 August 2023.

49. Venice Commission, *The Rule of Law Checklist*, para. 17.

50. Venice Commission, *The Rule of Law Checklist*, p.17.

50. Another aspect of the Checklist included under “Challenges to the rule of law”<sup>51</sup> is related to corruption. It points out that “corruption leads to arbitrariness and abuse of power since decisions are not made in line with the law, which leads to decisions being arbitrary in nature. Moreover, corruption can violate the principle of equal application of the law: it therefore undermines the very foundations of the rule of law”.

51. The only explicit reference to local authorities in the Checklist is included in a question related to corruption: “Are all categories of public officials covered by the above measures, e.g. civil servants, elected or appointed senior officials at State and *local levels*, judges and other holders of judicial functions, prosecutors etc.?” (emphasis added).<sup>52</sup>

52. The Congress of the Council of Europe has developed these principles in several documents. To tackle the challenge represented by corruption and provide local and regional elected representatives with concrete tools, it has adopted a European Code of Conduct for all Persons Involved in Local and Regional Governance and a Roadmap to Prevent Corruption and Promote Public Ethics at Local and Regional Level. This comprises six reports that form the “Public Ethics” series: conflict of interest, transparency and open government, transparent public procurement, administrative resources and fair elections, fighting nepotism and protecting whistleblowers.<sup>53</sup> In addition, the Congress promotes the right of citizens to participate in the conduct of public affairs at local level based on the standards set out in the Additional Protocol to the Charter on the right to participate in the affairs of a local authority (CETS No. 207).

### **3. The implementation of the rule of law by local authorities: the execution of the judgments of the European Court of Human Rights**

53. The effectiveness of judicial decisions is an inherent aspect of the rule of law. As stated by the Venice Commission, “the right to a fair trial and the Rule of Law in general would be devoid of any substance if judicial decisions were not executed.”<sup>54</sup> Among the decisions to be executed, those of regional or international courts must be also taken into account. Their implementation is part of a broader issue: the execution of international obligations, which is, at domestic level, an endeavour that may involve multiple actors. All State organs must abide by the country’s human rights obligations and contribute to the implementation of these obligations, case-law included, within the limits of their competences. Even more so in the field of human rights. Both the implementation of the international obligation and the implementation of the human rights should be considered, according to the Venice Commission “Rule of Law Checklist”, as a component of the rule of law.<sup>55</sup>

54. However, this recognition has rarely, until more recently, been translated into a careful examination of the roles played by the various national authorities (parliament, government, courts, local authorities) in the implementation process. In particular, the role of local authorities has been overlooked.<sup>56</sup>

55. In fact, however, it must be pointed out that in a number of cases, human rights violations originate from local authorities’ action (or, more frequently, inaction). It can happen that national human rights institutions, such as Ombudspersons, learn of those violations, ordering local authorities to act.<sup>57</sup> Or it may happen that local authorities’ acts are challenged in courts. In both cases (Ombudsperson’s or judicial decision), local authorities may be called upon to act as protectors of human rights, by enforcing decisions aimed at protecting human rights. In particular, the European Court of Human Rights has stated that, when an administrative authority, regardless whether it is a national or local one, “refuses

51. Venice Commission, *The Rule of Law Checklist*, p.29.

52. Venice Commission, *The Rule of Law Checklist*, p. 29.

53. <https://www.coe.int/en/web/congress/corruption-and-public-ethics>, accessed 16 August 2023.

54. Venice Commission, *The Rule of Law Checklist*, p. 27.

55. Venice Commission, *The Rule of Law Checklist*, pp. 11-12.

56. Pavani, G., Profeti S. and Tubertini, C. (2023), *Le città collaborative ed eco-sostenibili. Strumenti per un percorso multidisciplinare*, Bologna, Il Mulino, p 18.

57. Congress resolution to endorse the Principles on the Protection and Promotion of the Ombudsman Institution (“The Venice Principles”) - Resolution 451 (2019):

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168098acd3>, accessed 16 August 2023.

or fails to comply, or even delays doing so, the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose.”<sup>58</sup>

56. Within the Council of Europe, the execution of the judgments of the European Court of Human Rights deserves special attention.

57. Appendix IV to the Reykjavik Declaration, adopted at the Fourth Summit of the Council of Europe highlights that “executive, national and local authorities, national courts and national parliaments bear responsibility for implementing the Convention and complying with the judgments of the Court”. Therefore, the Congress is invited “to strengthen a political dialogue with the respective national interlocutors on the implementation of judgments” while national authorities are invited “to strengthen co-operation with local and regional authorities in order to facilitate the process of executing the judgments which concern them”.

58. The European Court of Human Rights has dealt with various applications concerning local and regional authorities.<sup>59</sup> The Court has considered that “The authorities of a territorial entity of the State are public-law institutions which perform the functions assigned to them by the Constitution and the law. In that connection, the Court reiterates that in international law the expression ‘governmental organisation’ cannot be held to refer only to the government or the central organs of the State. Where powers are distributed along decentralised lines, it refers to any national authority exercising public functions”.<sup>60</sup>

59. In all such cases, the execution of the judgments of the European Court of Human Rights at national level ultimately depends on local authorities and on their co-operation with the national government. This also implies that mechanisms provided at national level to comply with international obligations may come into conflict with local self-government.

60. The examples presented open a window on a larger subject that needs to be explored in greater depth. Local authorities play an important role as actors and guarantors of the rule of law, as far as they are required to execute case-law. This obligation demonstrates once again the extent to which democracy, human rights and rule of law are intertwined.

#### **4. Local authorities as authorities “ruled by law”**

61. The relationship between local self-government and the rule of law implies a second aspect: local self-government in itself, as envisaged by the Charter, is part of the system of checks and balances and, ultimately, of the constitutional system of rule of law. Therefore, local self-government itself should be protected by law, or “ruled by law”, in order to be able to fulfil, *inter alia*, its important function as a guarantor of the rule of law in relation to citizens.

62. In this respect, by submitting the State authorities to the rule of law, the Charter acts as an instrument to ensure legality and avoid arbitrariness in relations between different levels of government.

63. As expressed by the Venice Commission Rule of Law Checklist, “The distribution of powers among the different State institutions may also impact the context in which this checklist is considered. It should be well-adjusted through a system of checks and balances. The exercise of legislative and executive power should be reviewable for its constitutionality and legality by an independent and impartial

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58. European Court of Human Rights, *Ekholm v. Finland* no. 68050/01, 24 July 2007, § 73: “By lodging an appeal with the State’s highest administrative court the litigant seeks not only annulment of the impugned decision but also and above all the removal of its effects. The effective protection of a party to such proceedings and the restoration of legality presuppose an obligation on the administrative authorities’ part to comply with a judgment of that court. The Court observes in this connection that the administrative authorities form one element of a State subject to the rule of law and their interests accordingly coincide with the need for the proper administration of justice”.

59. A list of cases of European Court of Human Rights dealing with local authorities may be found at the Congress webpage: <https://www.coe.int/en/web/congress/echr-case-law>, accessed 16 August 2023.

60. European Court of Human Rights, *Assanidze v. Georgia* no. 71503/01, 8 April 2004, § 148. From that statement, several consequences flow: 1) decentralized authorities have no standing to make an application to the Court under Article 34 of the Convention; 2) the higher authorities of the State are strictly liable under the Convention for the conduct of their subordinates; it is only the responsibility of the State itself – not that of a domestic authority or organ – that is in issue before the Court. It is not the Court’s role to deal with a multiplicity of national authorities or courts or to examine disputes between institutions or over internal politics.

judiciary”.<sup>61</sup> This being so, the exercise of legislative and executive powers must respect local self-government, as enshrined in the Charter, as part of the system of checks and balances which are essential to preserve a “genuine democracy”.

64. Under the subheading “Legality, including a transparent, accountable and democratic process for enacting law”, the Venice Commission Checklist further points out that “State action must be in accordance with and authorised by the law”.<sup>62</sup> Under the heading “Supremacy of law”, the Checklist asks: “Is effective judicial review of the conformity of the acts and decisions of the executive branch of government with the law available?”. It also considers that “a basic requirement of the rule of law is that the powers of the public authorities are defined by law”,<sup>63</sup> asking “Is the delineation of powers between different authorities clear?”.

65. Within the Charter, this concept is developed in several articles, starting with Article 2, which states that “the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution”. According to the Contemporary Commentary,<sup>64</sup> the practical and operational consequences of such recognition can be fully understood in the light of Article 11, according to which “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”.

66. The titles of the two articles indicate their connection with the rule of law. The title of Article 2 is “Constitutional and legal foundation for local self-government”. Article 11 is entitled “Legal protection of local self-government”.

67. The Contemporary Commentary points out that “Recourse to a judicial remedy” means access by a local authority to either a properly constituted court of law or an equivalent, independent, statutory body. This is therefore a crucial and instrumental device for ensuring that local autonomy is actually recognised and protected in a particular country. If this point is not recognised by national law, the domestic courts will in many cases not be able to ensure compliance with the principles of local self-government. If local autonomy is deprived of effective judicial safeguards, its substance and implementation will be largely left to the will or discretion of the political branches of government, i.e. the legislature and the executive, so this article may have significant repercussions in countries where intergovernmental disputes are considered to be beyond the jurisdiction of courts and should instead be resolved by the political branches of government”.<sup>65</sup>

68. Article 4 of the Charter represents the projection of the rule of law principle on the scope of local self-government.

69. Paragraph 1 states that: “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”.

70. As pointed out by the Contemporary Commentary, “Article 4.1 requires clarity and legal certainty for the regulation of the “basic powers and responsibilities” of local government bodies. They should be prescribed by the constitution or by statute, so as to ensure predictability, permanence and protection for the benefit of local self-government. Therefore, the tasks of local authorities should not be assigned on an ad hoc basis and should be properly enshrined in written parliamentary legislation. Establishing local powers and competences by means of administrative regulation should be avoided and goes against the spirit of the Charter.”<sup>66</sup>

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61. Venice Commission, *The Rule of Law Checklist*, para. 39. Accordingly, it considers that: “Assessing whether the parameters have been met requires sources of verification (standards). For legal parameters, these will be the law in force, as well as, for example, in Europe, the legal assessments thereof by the European Court of Human Rights, the Venice Commission, Council of Europe monitoring bodies and other institutional sources” (para. 26).

62. Venice Commission, *The Rule of Law Checklist*, para. 44.

63. Venice Commission, *The Rule of Law Checklist*, para. 45.

64. Congress of Local and Regional Authorities, CG38(2020)11prov “A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government”, para. 19.

65. Congress of Local and Regional Authorities, CG38(2020)11prov “A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government”, para. 207.

66. Congress of Local and Regional Authorities, CG38(2020)11prov “A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government”, para.49.

71. On the other hand, Article 4, paragraph 4, states: “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”.

72. The Contemporary Commentary points out that “lawmakers should establish a clear definition of the responsibilities of the various tiers of government and a balanced distribution of roles between these tiers in the field of local services. Such distribution of roles, accepted by the stakeholders concerned, would make it possible to avoid both a power vacuum and the duplication of powers. Moreover, this allocation of responsibilities should promote predictability and guarantee continuity in the provision of certain local public services that are considered to be essential for the population.”<sup>67</sup>

73. Finally, Article 8 of the Charter can be mentioned, which aims to prevent the arbitrary use of the power of supervision, by the State, considering that: “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”.

74. Therefore, the Charter should be considered as the fundamental document establishing the standards to be respected by the State authorities in order to protect local self-government and create an environment where the rule of law prevails, and which enables local authorities to effectively fulfil their role of actors and guarantors of the rule of law, democracy and human rights. The monitoring of the implementation of the Charter in the member States by the Congress of Local and Regional Authorities is thus an important contribution to the strengthening of the rule of law. It constitutes an important instrument that can point to possible erosion of democracy and rule of law in member States.

75. Several monitoring reports of the Congress of Local and Regional Authorities in recent years have captured this aspect, pointing out that very often the processes of democratic regression through an accumulation of piecemeal changes, resulting in the degradation of the structures and substance of constitutional democracy, go hand in hand with processes of recentralisation, eroding the level of autonomy of local authorities.<sup>68</sup>

76. The democratic backsliding that is taking place across the world and in Europe, which has resulted in a weakening of checks and balances and of the role of the opposition, in obstacles to and restrictions on the exercise of civil and political rights and freedoms, in an erosion of the rule of law, in restrictions on local self-government and in recentralisation, undermines genuine democracy, as enshrined in the Statute of the Council of Europe.

77. For all these reasons, it is essential that the outcomes of the monitoring of the application of the European Charter of Local Self-Government and of the implementation of the rule of law by local authorities, including the execution of the judgments of the European Court of Human Rights at local level, are used by the Committee of Ministers, the Parliamentary Assembly of the Council of Europe and the European Commission for Democracy through Law in their activities related to democracy and the rule of law in the Council of Europe member States.

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67. Congress of Local and Regional Authorities, CG38(2020)11prov “A contemporary commentary by the Congress on the Explanatory Report to the European Charter of Local Self-Government”, para. 68.

68. See Congress of Local and Regional Authorities, CG36(2019)13final 2 April 2019, Local and regional democracy in Poland, para. 35-36; Congress of Local and Regional Authorities, CG-FORUM(2021)01-03final 12 February 2021, Monitoring of the European Charter of Local Self-Government in Hungary, para. 22.