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

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

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Summary

This is the second monitoring report on the application of the Charter in Andorra.

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

They note that the level of local democracy is satisfactory and that a culture of consultation and dialogue between local and national authorities exists. They also note that Andorran municipalities have broad competences and sufficient financial and human resources. The rapporteurs also highlight the existence of a constitutional guarantee for parishes as they are directly represented in the Andorran Parliament.

The report however highlights a number of issues that deserve particular attention. For example, the absence of law providing for consultation and negotiation procedures between national and local authorities, as well as the lack of specific autonomy granted to the capital Andorra la Vella. The rapporteurs also stress that Articles 9.2 and 9.5 of the Charter have still not been ratified, despite the fact that they are currently applied in practice.

Therefore, it is recommended to formalise in the legislation the mechanisms for consultation between national and local authorities, and to establish a specific autonomy for the capital Andorra la Vella to take into account its particular situation compared to the other municipalities. The Andorran authorities are also encouraged to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) and to ratify Articles 9.2 and 9.5 of the Charter.

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

RECOMMENDATION 505 (2024)²

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

a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities, appended to Statutory Resolution CM/Res(2020)1, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 1, paragraph 3, of Statutory Resolution CM/Res(2020)1, under which “the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government”;

c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of the monitoring procedures;

d. the Contemporary Commentary on the explanatory report to the European Charter of Local Self-Government adopted by the Congress Statutory Forum on 7 December 2020;

e. the Congress priorities for 2021-2026, in particular priority 6b on the quality of representative democracy and citizen participation;

f. the Sustainable Development Goals (SDGs) of the United Nations Sustainable Development Agenda for 2030, particularly goals 11, for sustainable cities and communities, and 16, for peace, justice and strong institutions;

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

h. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

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

j. the previous Congress Recommendation on the monitoring of the European Charter of Local Self-Government in Andorra [Recommendation 415 (2018)];

k. the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Andorra.

2. The Congress points out that:

a. the Principality of Andorra joined the Council of Europe on 10 November 1994. It signed the European Charter of Local Self-Government (ETS No 122), “the Charter” on 27 October 2010 and ratified it on 23 March 2011 with the exception of Article 9.2 on commensurate financial resources, Article 9.5 on financial equalisation, and Article 9.8 on access to the national capital market. The Charter came into force for Andorra on 1 July 2011. Andorra has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

b. the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (Monitoring Committee) decided to examine the situation of local and regional democracy in Andorra in the light of the Charter. It instructed Jean-Paul Bastin, Belgium (L, EPP/CCE) and Christine Chevalley, Switzerland (L, ILDG), to prepare and submit to the Congress a report on the application of the Charter in Andorra. The delegation was assisted by Professor

² Discussed and approved by the Chamber of Local Authorities on 27 March 2024 and adopted by the Congress on 27 March 2024, 2nd sitting (see document CPL(2024)46-02, explanatory memorandum), Co-rapporteurs: Jean-Paul BASTIN, Belgium (L, EPP/CCE), Christine CHEVALLEY, Switzerland (L, ILDG).

André Roux, member of the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress secretariat;

c. a Congress delegation visited Andorra on 19 and 20 September 2023 and met representatives of various institutions at all levels of authority. The programme of the visit is appended to the explanatory memorandum;

d. the co-rapporteurs wish to thank the Permanent Representation of Andorra to the Council of Europe and all the people it met on the visit.

3. The Congress is pleased to note that in Andorra:

a. the level of local democracy is generally satisfactory. The Principality of Andorra appears to be a state which fully supports local self-government;

b. Andorran municipalities currently have very broad powers in accordance with the subsidiarity principle, and the human and financial resources they need to exercise these in globally satisfying conditions. Recent reforms (in 2017, 2018 and 2021) affecting municipal powers and local finances have reflected progress in this respect;

c. there is a culture of consultation and close dialogue between the State and local authorities stemming from long-standing traditions and facilitated by the country's small dimensions, which enable direct contacts and interpersonal relationships;

d. the autonomy of parishes was guaranteed from the outset in the constitution and is reflected in particular in the composition of the Andorran Parliament (*Consell General*), in which the municipalities are directly represented.

4. The Congress notes that the following points call for particular attention:

a. no law sets out the consultation and negotiation procedures between the state and the municipalities for all major decisions concerning them;

b. the city of Andorra la Vella has not been special autonomy under Congress Recommendation 452 (2021);

c. paragraphs 2 and 5 of Article 9 of the Charter have still not been ratified despite Congress Recommendation 415 (2018), which was attached to the previous report on local democracy in Andorra, whereas these provisions are applied in the country.

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

a. to formalise in law the mechanisms for consultation of local authorities which already exist in practice;

b. to establish special autonomy for Andorra la Vella in the light of Recommendation 452 (2021) of the Congress on the Status of Capital Cities in order to establish legal provisions taking account of the capital's particular situation compared to other municipalities;

c. to consider ratifying paragraphs 2 and 5 of Article 9, which are already applied in Andorra;

d. to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

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

EXPLANATORY MEMORANDUM

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

1. Under Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities ("the Congress") appended to Statutory Resolution CM/Res (2020)1, the Congress of Local and Regional Authorities regularly prepares reports on the state of local and regional democracy in all Council of Europe member States.

2. Andorra joined the Council of Europe on 10 November 1994 and signed the European Charter of Local Self-Government (ETS No. 122, "the Charter") on 27 October 2010. It ratified it on 23 March 2011, and it came into force in the country on 1 July 2011. The Declaration contained in the instrument of ratification deposited by Andorra on 23 March 2011 states as follows: "in accordance with Article 12, paragraph 2, of the Charter, the Principality of Andorra declares itself bound by the following Articles and paragraphs: Article 2; Article 3: paragraphs 1 and 2; Article 4: paragraphs 1, 2, 3, 4, 5 and 6; Article 5; Article 6: paragraphs 1 and 2; Article 7: paragraphs 1, 2 and 3; Article 8: paragraphs 1, 2 and 3; Article 9: paragraphs 1, 3, 4, 6 and 7; Article 10: paragraphs 1, 2 and 3; Article 11." Consequently, Andorra is not bound by Article 9.2 on commensurate financial resources, Article 9.5 on financial equalisation or Article 9.8 on access to the national capital market. Andorra has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS n° 207).

3. The Monitoring Committee appointed Jean-Paul Bastin, Belgium (L, EPP/CCE) and Christine Chevalley, Switzerland (L, ILDG) as rapporteurs and charged them with drawing up and submitting a report on local democracy in Andorra to the Congress.

4. The delegation visited Andorra on 19 and 20 September 2023 to examine the situation of local democracy in the light of the Charter. The delegation was assisted by Professor André Roux, who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress Secretariat.

5. During the visit, the Congress delegation met representatives of authorities at all territorial levels along with experts, mayors, municipal councillors and representatives of government, ministries and other institutions. The detailed programme of the visit is appended to this report.

6. The rapporteurs wish to thank the Permanent Representation of Andorra to the Council of Europe and all the people they met on these visits for their readiness to assist the delegation and for the information which they kindly supplied.

7. Pursuant to Article 88.3 of the Rules and Procedures of the Congress, the preliminary draft report was sent to all the people the delegation met for comment and any adjustment or correction required (a phase referred to hereinafter as the "consultation procedure"). This report is based on the comments received, which were considered by the co-rapporteurs before it was submitted to the Monitoring Committee for approval.

2. DOMESTIC AND INTERNATIONAL NORMATIVE FRAMEWORK

8. Of the small European states which are not members of the EU (along with Liechtenstein, San Marino, Vatican City and the Principality of Monaco), the Principality of Andorra is the largest (468 km²) and the most populated (83 990 inhabitants in 2023). The Principality of Andorra's origins date back to feudal times: the Valleys of Andorra were then a fiefdom of the Count of Urgell, who became the Bishop of Urgell in the 12th century. During the second half of the 13th century, the conflict between the Bishop of Urgell and the Count of Foix for territorial dominance of the Valleys of Andorra culminated in the signature of two agreements in 1278 and 1288, setting up a co-seigniorial system in Andorra. Until 1993, it was these two agreements, the "Pareatges", which defined Andorra's political system as a co-principality, run by the Bishop of Urgell and the Count of Foix (succeeded initially by the King of Navarre, then the King of France, then later the President of the Republic of France).

2.1 Local administrative system (Constitution and ordinary legislation, reforms)

Constitutional and legislative bases

9. The Principality of Andorra is a decentralised state, and the reason for this is that the Andorran State was originally established in the form of a “federation” of six parishes (*parròquies*), which existed before the state was founded. As reflected in their name, parishes were originally religious subdivisions, which became administrative and political subdivisions over time. The managing bodies of the parishes, which were called *Comuns*, possessed powers which were gradually transferred to the first Parliament, the *Consell de la Terra*, which was made up on an equal basis of representatives of each *Comú*. Between 11 February 1419, when it was established, and the end of the 19th century, the *Consell de la Terra* comprised the current and outgoing mayors (*Cònsol Major*) and deputy mayors (*Cònsol menor*) of each of Andorra's six parishes. In 1866, this body was replaced by the *Consell General*, which comprised four representatives of each parish.

10. The first and only Constitution of Andorra to date was adopted on 2 February 1993 by the *Consell General*, meeting as a constituent assembly, then put to a referendum on 14 March 1993, in which it was approved by 74% of the voters. It came into force on the day of its publication in the Andorran Official Gazette, the *Butlletí Oficial*, on 4 May 1993.

11. The 1993 Constitution defines Andorra as “a democratic and social independent State” (Article 1.1). It proclaims that “sovereignty is vested in the Andorran people, who exercise it through the different means of participation and by way of the institutions established in this Constitution” (Article 1.3) and that “the political system of Andorra is that of a parliamentary Co-principality” (Article 1.4). The two co-princes serve as the joint and undivided Head of State (Article 43). Their powers are mostly honorary.

12. Andorra's political system is closest to a parliamentary democracy. Executive power is assigned for a four-year term to the government. It is made up of the Head of Government (*Cap de Govern*), who is elected by the *Consell General* and appointed by the Co-princes, and the ministers, who are appointed and dismissed by the Head of Government. The government conducts Andorra's national and international policy, administers the state and exercises regulatory powers (Article 72). It can also initiate legislation, as can the *Consell General* (Parliament), three municipalities acting together, or a tenth of the voters on the national electoral roll (Article 58). The government as a whole is politically answerable to the *Consell General*.

13. The *Consell General*, which has 28 members elected for four years, exercises legislative power, approves the budget and oversees the government's political activities (Article 50).

14. Judicial power is organised in accordance with the *Llei qualificada* [Qualified Law] on Justice of 3 September 1993. It is exercised by the *Batlles* (judges), the *Tribunal de Batlles* (first instance court), the *Tribunal de Corts* (criminal court) and the *Tribunal Superior de la Justícia* (High Court of Justice), and by the presidents of each of these courts (Article 87). The judicial system is divided into three spheres, the civil, the criminal and the administrative. The Constitution also provides for a Constitutional Court, which is regarded as the ultimate interpreter of the Constitution.

Local government structure and organisation

15. Article 1.5 of the Constitution recognises the existence of parishes (*parròquies*) as Andorra's traditional territorial divisions. “Andorra is composed of the Parishes of Canillo, Encamp, Ordino, la Massana, Andorra la Vella, Sant Julià de Lòria and Escaldes-Engordany”. Their number increased to seven with the creation in 1978 of Escaldes-Engordany, which was separated from Andorra la Vella because of the city's growing population. The most populous parish is Andorra la Vella with 22 440 inhabitants in 2019, followed by Escaldes-Engordany with 14 599, Encamp with 11 688, La Massana with 10 174, Sant Julià de Lòria with 9 375, Canillo with 5 902 and Ordino with 4 942 inhabitants. The total surface area of the Principality of Andorra is 468 km², which is divided up between the parishes as follows: Canillo: 121 km² - Encamp: 74 km² - Ordino: 89 km² - La Massana: 65 km² - Andorra la Vella: 12 km² - Sant Julià de Lòria: 60 km² - Escaldes-Engordany: 47 km².

16. Some parishes are subdivided into smaller territorial units. This is the case with Ordino, la Massana and Sant Julià de Lòria, which have *Quarts* (quarters), while Canillo is divided into 10 *Veïnats* (neighbourhoods). These subdivisions mostly coincide with villages. Historically, *Quarts* had their own administrative bodies, recognised by Article 84 of the Constitution, under which legislation took account of habits and customs when determining the powers of *Quarts* and *Veïnats* and their relationships with parishes. Now though *Quarts* and *Veïnats* have a purely symbolic role.

17. The Andorran Constitution also contains a Title VI entitled “Territorial organisation”, which provides for a dual level of government and administration, one of a general nature, covering the entire country and its citizens, and the other of a local nature, covering each of the parishes. Article 79.1 defines the *Comuns* as “representative and administrative bodies of the parishes”. They are self-governing public authorities with legal personality and the power to enact local norms, subject to the law, in the form of orders, regulations and decrees. Within the area of their jurisdiction and subject to the Constitution, the law and tradition, they function according to the principle of self-government, recognised and guaranteed by the Constitution. Article 79.2 provides that “the *Comuns* represent the interests of the parishes, approve and implement the municipal budget, devise and implement their public policies within the bounds of their territory and manage and administer all parish property, whether they are municipal, public, private or heritage items”. Article 79.3 provides that “their ruling bodies are democratically elected”.

18. Each *Comú* sets the size of its council according to its population. The number of elected members may range from 10 to 14 councillors. All council members are elected by universal suffrage for a four-year term in a multi-member constituency from a closed list. Half of the seats are assigned to the party which received the most votes. The other half is assigned in proportion to the number of votes obtained by each party, including the one which won the election. This system makes it possible to ensure that the party which comes first in the election has an absolute majority but that all political trends are represented.

19. A *Cònsol major* (mayor) and a *Cònsol menor* (deputy mayor) are elected from among the councillors (Article 73 of the Qualified Law on the electoral system and referendums) for a four-year term which may be interrupted by a motion of no confidence approved by an absolute majority of the council. Regulatory power lies with the council while the mayor and the deputy mayor exercise executive functions. All the *Comuns* have a *Junta de govern* (Governing Council), consisting of members appointed and dismissed by the council at the request of the mayor. Unlike the councillors, the mayor and the deputy mayor may not sit for more than two consecutive terms.

20. The Order of 29 December 2011, which replaced the Regulation on the functioning of *Comuns* of December 1995, lays down the rules on the organisation and functioning of local authorities. It defines and clarifies the executive role of the mayor and, by delegation, that of the deputy mayor and the function of the *Junta de govern*. It makes provision for direct democratic participation by citizens. The rights and duties of councillors are described, particularly with regard to the communication of documents. The notion of municipal political groups is clarified, and their rights are recognised. At the same time, initial regulations on the general criteria applicable when setting the pay of councillors and mayors are introduced, it being understood that a law will have to be adopted, which has not been done as yet, to standardise the criteria for the payment of councillors and mayors more generally, along with all public functions. Other matters are also covered by this order, such as the internal organisation of the functioning of committees, which may be standing or ad hoc committees, and the powers which the *Junta de govern* may delegate. Lastly, the order establishes the right of association of *Comuns*, as required by the European Charter of Local Self-Government, the goal being to provide a legal framework for meetings of mayors, which have been held regularly since time immemorial, and for the participation of *Comuns* in local organisations with international scope in the terms prescribed by the law.

21. One of the ways in which the constitutional autonomy of the parishes is guaranteed is in the composition of the Andorran Parliament, the *Consell General*. Article 50 of the Constitution states explicitly that the *Consell General* “embodies the mixed and apportioned representation of the national population and of the seven parishes”. Although the principality did not opt for a bicameral parliament, the parishes are directly represented in the *Consell General*, as it is provided in Article 52 of the Constitution that half of its members are elected in equal number by each of the seven parishes and the other half at national level. Each parish therefore has two representatives in Parliament.

22. The rules on the composition of the *Consell General* have major consequences. Firstly, under Article 106 of the Constitution, amendments to the Constitution must be adopted by a two-thirds majority, and this gives parish representatives a real right of veto. In addition, some Qualified Laws (*Lleis Qualificades*) require an absolute majority of the *Consell General* members elected in the parishes to be approved (Article 57.3 of the Constitution); this is the case with the Qualified Law on the electoral system and referendums (which also sets out the procedures for elections in the parishes and their form of government) and the Qualified Laws on the powers of *Comuns* and the transfers of resources to which they are entitled.

Powers

23. Under Article 80 of the Constitution, the powers of the *Comuns* are established by a *Llei Qualificada*. They include the following matters:

- a. population census;
- b. drawing up electoral rolls; participation in the organisation and conduct of elections according to the procedures prescribed by law;
- c. popular consultation processes;
- d. commerce, industry and professional activities;
- e. setting parish boundaries;
- f. private property and public property of the *Comuns*;
- g. natural resources;
- h. land registers;
- i. town planning;
- j. public thoroughfares;
- k. culture, sport and social activities;
- l. municipal public services.

24. With due regard for state prerogatives, this Qualified Law establishes the powers which are granted to the *Comuns* for them to exercise their functions in the economic and fiscal sphere. These relate in particular to the exploitation of natural resources and the related revenue, taxes and fees for municipal services, administrative licences, establishment of commercial, industrial and professional activities, and real estate. State powers could now also be transferred by law to the parishes, which had not been the case until the adoption of this law.

25. The Qualified Law on the powers of *Comuns* was adopted on 4 November 1993. It was last amended by a qualified law of 20 October 2017. To allow the participation of all the stakeholders and reach the broadest possible consensus, this law was prepared by a tripartite commission made up of representatives of parliamentary groups, the Government and the parishes, the goal being to improve the system while remaining within the limits set by the Constitution.

26. The new law sets out Andorran local authorities' powers in more detailed manner than the previous one. Municipalities have various competences in the fields of census, urban planning and spatial planning. Municipalities also have competence for the promotion of culture and the provision of public services in different sectors. The detailed list of the competences of Andorran municipalities can be found in Article 4 of the above-mentioned qualified law.

27. Jurisdictional disputes (conflicts) between the State and the *Comuns* are settled by the Constitutional Court (Article 82). It should be noted that a Constitutional Court judgment of 14 March 2018 (in case 2017-1-L) partly allowed a claim of unconstitutionality against the Qualified Law on transfers to the *Comuns* of 20 October 2017 and declared several of its provisions unconstitutional. Following this decision, a new law amending the Law of 20 October 2017 was adopted on 18 October 2018.

Finances

28. The financial autonomy of the parishes is enshrined in Article 81 of the Constitution: "In order to uphold the economic potential of the *Comuns*, a qualified law shall establish what funds will be transferred from the general budget to the *Comuns*, guaranteeing that a part of these will be shared

equally between the parishes and another part will be shared in proportion to their population, their surface area and other features”.

29. Under Article 7 of the Qualified Law on the power of *Comuns* of November 1993, amended by the Qualified Law of 20 October 2017, “the financial and fiscal power of the *Comuns* derives from the fundamental fiscal power of the state. However, without prejudice to the necessary co-operation with the state, the powers assigned to the *Comuns* by this law pursuant to Article 80.2 of the Constitution shall be exercised according to the principle of self-government”.

30. The Qualified Law on transfers to the *Comuns* was adopted on 4 December 1993 and has been amended several times since, the last times by laws of 20 October 2017 and 18 October 2018. The Law of 18 October 2018 was made necessary by a decision of the Constitutional Court of 18 March 2018 which declared some provisions of the 2017 law unconstitutional, particularly those which referred to parts of the sustainable investment policy and the related commitments made, and those relating to so-called sustainable redistribution resources.

31. These reforms were the result of a long consultation between the Government and the parishes, which met regularly from 2010 onwards to promote the necessary changes to guarantee that state finances were sustainable, and services could be offered to citizens. The process of designing the new system for the allocation of resources to the *Comuns* was carried out at the same time as a redefinition of powers and there was therefore a clear link between the two laws which derived from constitutional principles relating to local self-government.

32. The Law of 20 October 2017 preserves the unconditional nature of the destination of the transfers received by the *Comuns*. Transfers are resources which the *Comuns* can allocate freely with no other limitations than those prescribed by the law, specifically the Law of 16 December 2021 on municipal finances and the Law of 27 November 2014 on sustainable public finances and budgetary and fiscal stability. Bearing in mind that the *Comuns* are free to use the amounts they receive as they wish, the law removed the supervisory powers which the Law of 1993 assigned to the Government and the *Consell General*, and the power to suspend transfers.

33. This law sets the overall amount of transfers at €55 000 000, a sum which must be increased or decreased every year in line with the rate of change of gross domestic product over the preceding two financial years.

34. The new parameters for calculating and distributing transfers to *Comuns* are substantially different. The 1993 Law set three distribution criteria: 50% was to be distributed equally between the seven parishes, 35% according to the number of inhabitants in each parish and 15% according to their size. The 2017 Law changed this, re-organising the distribution of funds, and introducing a new criterion based on “environmental, social and economic investment”. From that point, funds were distributed as follows: 24.8% distributed equally between all the parishes; 20.8% according to the number of inhabitants; 16.8% according to size; 12.8% on the basis of the inhabitants’ age; 5.6% according to the number of overnight stays in tourist accommodation, 6.6% according to environmental, social and economic investment (to be determined by regulation), 6.6% according to the provisions of municipal land registers and the distribution of secondary water inflows into the wastewater network, and 6.6% for solidarity criteria in inverse proportion to the number of businesses and according to the tax base of the taxpayers concerned per parish.

35. In response to a claim of unconstitutionality brought by six members of parliament, the Constitutional Court found, in a decision of 7 June 1994, that the principle of free administration of *Comuns* was dependent on the effectiveness of the mechanism for the transfer of state budget funds to the *Comuns*. It held that the mechanism provided for by the law, whereby the regulatory authority was the body referred to when defining “sustainable investments in the environmental social and economic sphere”, was a system which failed to meet constitutional requirements, distorting the traditional idea of the “implementation” of constitutional provisions, which was supposed, in the instant case, to be a matter for the legislative authority rather than the regulatory one. Furthermore, with regard to the “sustainable investment” indicator, the Constitutional Court found that the proportionality requirement set by Article 80 of the Constitution (under which the variable share of the transfer of state budget funds to parishes must be proportionate to “their populations, surface areas and other features”) had not been respected.

36. Article 8 of the Law of 20 October 2017, as amended in 2018, specifies how financial transfers are to be apportioned between the *Comuns* pursuant to Article 81 of the Constitution: “The total amount to be paid to the *Comuns* shall be divided up according to the following appropriations and categories:

- a. 38% to be divided equally among the *Comuns*;
- b. 21% to be divided among the *Comuns* in proportion to their populations;
- c. 16% to be divided among the *Comuns* in proportion to the parish surface area;
- d. 12.75% to be divided among the *Comuns* in proportion to the total of their inhabitants who are children and elderly persons;
- e. 5.5% to reflect tourist numbers, divided among the *Comuns* in proportion to the number of overnight stays in tourist accommodation;
- f. 6.75% divided up to reflect solidarity concerns and features specific to certain *Comuns*”.

37. Parishes also raise their own taxes in accordance with Article 80.2 of the Constitution, which divides this power between the municipalities and the state. This article provides that, subject to state prerogatives, a qualified law must establish which powers are granted to the local authorities for the performance of their functions in the economic and fiscal sphere. These include the exploitation of natural resources and the related revenue, taxes and duties for municipal services, administrative licences, establishment of commercial, industrial and professional activities, and real estate.

38. The local authorities in each parish are authorised to raise general taxes and to establish, administer and levy additional taxes. The Qualified Law on the powers of *Comuns* of 4 November 1993, as amended in 2017, authorises local authorities to raise the following taxes:

- a. the traditional *foc i lloc* (housing) taxes on primary residences;
- b. built and non-built property tax;
- c. tax on rental income;
- d. tax on the establishment of commercial, economic and professional activities;
- e. construction tax.

39. Under the law, parishes may be granted the right to establish and administer other taxes and take a share of taxes raised at state level. The *Comuns* also have the power to establish and administer fees for the private or special use of municipal public spaces and for the exercise of administrative functions and provision of services related to them. In addition to their own tax revenues and what is provided for in the Law on transfers, *Comuns* are granted a share of the tax on vehicle ownership, which is levied by the state.

40. Law 10/2003 on municipal finances (*Llei de les finances comunals*) establishes a framework enabling *Comuns* to set up their own taxes and harmonise their fiscal set-up to make them financially autonomous. It has been amended repeatedly since its enactment, particularly by Law 6/2005 of 21 February amending Article 14 of the General Law on public finances and Article 63 of Law 10/2003 of 27 June on municipal finances; Law 14/2007 of 20 September, amending Law 10/2003 of 27 June on municipal finances and; Law 32/2012 of 22 November, amending Law 10/2003 of 27 June on municipal finances. Lastly, the Law of 16 December 2021 on municipal finances sets out in great detail how the budgetary and financial autonomy of the *Comuns* is organised.

41. Under Article 3 of the Law of 16 December 2021, municipal finances are made up of the following revenues:

- a. Public-law tax revenue:
 - taxes
 - special contributions
 - municipal taxes
 - taxes shared with the state
 - surcharges and interest for late payment
 - tax penalties
- b. Public-law non-tax revenue:
 - transfers
 - public tariffs

- loans
 - non-tax penalties
 - income from the compulsory transfer of land
- c. Private-law revenue:
- monetary revenue and proceeds from municipal assets
 - other private-law revenue, including the incorporation of assets or rights acquired through inheritance, bequests, donations, or any other private legal title.

42. Article 6 of the Law on municipal finances of 16 December 2021 grants full fiscal authority to the *Comuns* which results in the adoption of municipal tax regulations. The *Comuns* establish, regulate and apply taxes in accordance with the Constitution, the Qualified Law on the powers of *Comuns*, the Law establishing the bases of the tax system, the Law on municipal finances and other provisions with the force of law.

43. Under the provisions of Qualified Law 19/2017 on transfers to *Comuns*, to ensure that they are financially able to carry out their functions, *Comuns* receive transfers from the general state budget. They are granted a share of the revenues from vehicle taxes under arrangements provided for by the Qualified Law on the powers of *Comuns* and the Law on vehicle ownership tax.

44. Under Article 46 of the Law on municipal finances of 16 December 2021, *Comuns* may set up public tariffs (fees):

- for the provision of the following services: (a) nursery schools; (b) activities for children and adults; (c) rental or purchase of letter boxes, waste bins and recycling bins; (d) funeral services, cremation and other community funeral services; (e) *Eixivern*; (f) the purchase of products in general; (g) charges for single or multi-storey car parks with access control equipment, which are not defined as a tax.

- for the provision of the following administrative services: (a) purchase of publications on administrative procedures; (b) purchase of administrative documentation in general; (c) other advice services.

45. As a result, taxes and duties are not managed in a uniform manner in all the parishes and *Comuns* can even decide not to apply certain local taxes.

46. Law 32/2014 of 27 November 2014 on sustainable public finances and budgetary and fiscal stability (« *sostenibilitat de les finances públiques i d'estabilitat pressupostària i fiscal* ») introduced the principles of budgetary viability with a view to balancing budgets throughout the public sector, including local government. Law 36/2021 of 16 December 2021 on municipal finances includes an obligation to draw up, approve and implement a consolidated annual budget, taking account of the requirements of the law and the need to adjust the annual budget to the general budget framework for the period of the council's term.

47. The Law of 16 December 2021 on municipal finances also limits the entitlement of *Comuns* to take out loans (Article 56). The total amount of long-term borrowing may not exceed twice the average total receipts recorded in the budgets for the three preceding calendar years, not including the total yield from borrowing operations and revenue from the sales of assets. The total amount of short-term loans (advances from financial institutions to cover unpaid taxes and public tariffs, and credit granted to fill temporary cash deficits) may not exceed 40% of the average total receipts recorded in the budgets for the three preceding calendar years. Where the debt ceiling is exceeded or highly liable to be exceeded, the *Comuns* are required to draw up and approve a budget balancing plan taking the form described in the Law on sustainable public finances and budgetary and fiscal stability.

Budgetary control

48. Budgetary control takes several forms: compliance audits, economic audits, financial audits, efficiency reviews and political supervision; their field of application is set by Articles 94 to 100 of the Law on municipal finances. Persons entrusted with the function of auditor and appointed to conduct audits and efficiency reviews carry out their duties fully independently. Political supervision is exercised by the Plenary Council of the *Comuns* on the execution of the municipal budget and compliance with budgetary rules. Monitoring of legality and economic expediency and financial control are carried out by

the Municipal Inspectorate, which is also charged with managing the *Comuns*' administrative accounts and with research, reporting and advisory tasks. The Municipal Inspectorate is institutionally attached to the finance committee and its institutional structure is decided on by the Plenary Council of the *Comuns* with the prior agreement of the councillor in charge of finances. The head of the Municipal Inspectorate is the municipal inspector while the councillor in charge of finances is freely appointed and dismissed by the municipal council on a proposal by the mayors.

Co-operation between central and local government and between the *Comuns*

49. Co-operation between central government and the *Comuns* and between the *Comuns* themselves was covered by a Law of 20 December 2017. The need for co-operation, which exists in the systems of government based on multiple local entities is intense in Andorra bearing in mind its small size, both geographically and in terms of its population. The need for effective public policy, which is required under Article 72.3 to be aimed at satisfying general interests, and for efficient use of public resources of all kinds oblige the state to co-operate in its pursuit of the general aims which must form the basis for all public action.

50. Such co-operation has also been found to be a requirement by the Constitutional Court, which, in a decision of 8 June 2009 (on Case 2008-1-CC), stated that "all powers must be exercised in accordance with the principle of institutional loyalty ... meaning that they must be exercised with a desire not only not to prevent but also to enable, or even to promote, the exercise of the powers of other public bodies". All these public powers, all these political institutions, whether at parish or state level, are bound by this fundamental duty of solidarity, which requires them to pool their efforts and work together for the common good and hence co-operate with one another to facilitate the proper exercise of the functions and responsibilities assigned to them.

51. The Law of 20 December 2017 sets up the paths and procedures through which the general principles of institutional loyalty and co-operation can be put into practice, bearing in mind Andorra's specific circumstances. The law begins by setting out the principle of institutional loyalty and co-operation, as expressed in general terms by the Constitutional Court, and applies it to a series of obligations on which relations between central government and the parishes must be based. The implication is that when taking action, the various authorities must take other authorities' legitimate interests into account, that such action must not hamper the legitimate exercise of powers held by others and that authorities must work together actively so that other authorities can perform their functions efficiently and effectively (Article 1).

52. Central government and the *Comuns* must provide each other with the mutual assistance they need to carry out their respective functions (Article 4). Requests for assistance should be addressed on the one side, to the Head of Government and ministers and on the other, to mayors.

53. Requests for assistance may be refused for one of the following reasons: (a) the requesting authority does not have jurisdiction in the area; (b) the authority to which the request has been made does not have the power to carry it out; (c) the recipient authority does not have sufficient means to carry out the request; d) to carry out the request would seriously undermine the interests of the recipient authority. Refusals must be accompanied by reasons and be issued within two months of receiving the request. Requests are considered to have been accepted if there is no answer after two months.

54. The costs generated by the assistance requested are covered by the requesting authority. Public authorities may draw up scales of fees for assistance measures and rules on the reimbursement and compensation of assistance costs.

55. To ensure co-operation between the *Comuns* and other local entities and to enable resources to be optimised, provision is also made to pool services. Therefore, *Comuns* and other local bodies can create intermunicipal Communities (*Mancomunitats*) to provide and implement services and activities jointly. Communities have their own legal personality and when developing and executing their own functions, they have the same powers as *Comuns* and other local bodies (Article 5).

56. When setting up a Community, the following stages must be followed: Firstly, the initiative must be approved by the *Comuns* and the governing bodies of the local bodies which wish to be involved. Then the Community's statutes must be approved and the agreement setting up the Community must be

signed by the mayors of the *Comuns* and the representatives of the member local corporations. Lastly, the agreement enters into force on the day of its publication in the Andorran Official Gazette (Article 6).

57. The *Comuns* may assign their own staff to the Community and to Community services (Article 11). In exceptional circumstances and for tasks which call for special qualifications and cannot be performed by an official or an employee of a *Comú*, the Community Council may take on its own staff, subject to a mandatory prior report presented by the Community executive outlining the economic and functional need for such recruitment, while respecting the criteria of public disclosure and fair competition.

58. Management tasks, which are also regulated by the Law of 2017 (Article 12), may also be shared to optimise service provision and the execution of public tasks. Central government and the *Comuns* may, for technical reasons or reasons of effectiveness or efficiency, assign the material execution of activities, functions and services falling within their remit to a body or entity of another authority. Such assignments have no effect on the attribution of responsibility and do not imply the delegation of the task. Acts which, when carrying out assigned tasks, affect the rights of third parties must be decided on by the competent body or at least ascribed to that body. Assigned tasks are formalised by an agreement between the authorities concerned.

59. One of the main means of strengthening co-operation between central government, the *Comuns* and other public authorities, and between the *Comuns* themselves is co-operation agreements on the performance of tasks of common interest within their jurisdiction. The Law of December 2017 lays down rules on the scope, the procedure, the content, the effects and the monitoring of such agreements with a view to giving these instruments a sound basis.

60. Agreements must be approved by the Government, the municipal councils concerned, and the management and administration bodies of any other authorities involved. They must be signed by the Head of Government or the minister in charge of the sector, the mayors of the *Comuns* concerned or their delegated councillors, and the body representing any other authority. Agreements must be duly registered by each of the signatory authorities and published in the Andorran Official Gazette within one month following their signature.

61. Agreements are binding on the signatories, whose obligations can be enforced in the administrative courts. The signature of an agreement does not alter the assignment of powers and does not imply that the participating authorities are relinquishing their powers. The validity of agreements is reviewed by the administrative courts, albeit subject to the jurisdiction of the Constitutional Court. Central government, the *Comuns* and other authorities which have signed the agreement are jointly responsible to third parties. Their actions may be appealed in the administrative or ordinary courts under the Administrative Code (Article 16).

62. Lastly, the Law of 20 December 2017 (Articles 17 and 18) establishes the general principle of mobility of the staff of public authorities, and after prior consultation of the Government, of the Advisory Committee referred to in Article 12 of the Law on the civil service, as a collegiate body for civil service consultation and participation. It provides for the scenarios and conditions in which this principle must be implemented, with corresponding safeguards for the persons concerned. The aim of the law is to extend the principle of mobility which already applies to central government officials to the *Comuns* and all other authorities. This is a key means of optimising the allocation of staff to various tasks and public services and thus significantly improving the efficiency of the public sector. More specifically, the Law of 30 January 2023 regulates the status of municipal officers in charge of traffic.

2.2 Status of the capital city

63. Under Article 2.3 of the Constitution, Andorra la Vella is the capital of the state. It has been the main settlement of Andorra since 1278, when the King of France and the Bishop of Urgell concluded an agreement on joint suzerainty. The capital, Andorra la Vella, is the largest town in the country with a population of 22 500 (or over 40 000 if the parish of Escaldes-Engordany and its outlying villages are included). It lies at an altitude of 1 013 metres, making it Europe's highest capital.

64. As the country's nerve centre, Andorra la Vella houses most of its services (health, education) and institutions, including the Government. It is the political and economic capital and until 1978, it also included the district of Escaldes-Engordany, which has since been a separate parish. In fact, Andorra

la Vella is now Andorra's smallest parish in terms of surface area but has the largest population. It does not have special status.

65. During the monitoring visit, the Congress delegation was once again made aware by the Mayor of Andorra la Vella that the capital would have to be given special autonomy following Congress Recommendation 415 (2018) on "Local democracy in Andorra". One of the aims of such a measure was to ensure that the costs linked to the infrastructure in the capital, which were used by all Andorran citizens, would be taken into account when calculating financial transfers.

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

66. Andorra ratified the European Charter of Local Self-Government on 23 March 2011. Under Article 3, paragraph 4, of the Constitution, "international treaties and agreements form part of the Andorran legal system from the moment of their publication in the Andorran Official Gazette and may not be amended or appealed by law". Conventions therefore take precedence over domestic law and are directly enforceable in Andorran courts. It is regrettable that the Charter is not mentioned in the rare decisions given by the Constitutional Court on local self-government. However, express reference to the Charter is made in the explanatory memorandum to the Order of 29 December 2011 on the organisation and functioning of the *Comuns*, in that it establishes local authorities' right to associate.

2.4 Previous Congress reports and recommendations

67. The previous monitoring visit took place in 2017 and Recommendation 415 (2018)³ was adopted on 28 March 2018. The Committee of Ministers was requested to invite the Andorran authorities:

- a. *to formalise in law the mechanism of consultation of local authorities by the central authorities which would further safeguard the right of local authorities to be consulted on all matters that concern them directly;*
- b. *to grant the city of Andorra la Vella a special status, on the basis of Congress Recommendation 219 (2007), establishing different legal arrangements to take into account the particular situation of the Capital city compared to other municipalities;*
- c. *consider ratifying paragraphs 2 and 5 of Article 9, which are de facto applied in Andorra;*
- d. *to pursue the reform efforts with regard to competences and financial resources of local authorities on the basis of the relevant principles of the Charter;*
- e. *to consider signing and ratifying the additional protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).*

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

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

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

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

68. Under Article 2 of the Charter, the principle of local self-government must be recognised in domestic legislation, and where practicable at the highest level in the country's hierarchy of norms.

69. In accordance with a long tradition of local self-government which is deeply rooted in the history of the Principality of Andorra, this principle is recognised in Article 79.1 of the Constitution, which provides that "the *Comuns*, as bodies representing and administering the parishes, are public authorities with

³ Discussion at the Chamber of local authorities and adoption by the Congress on 28 March 2018, 2nd sitting (see document CG34(2018)14, explanatory memorandum) Rapporteurs: Ms Gaye DOĞANOĞLU, Turkey (L, EPP/CCE) and Mr Zdenek BROŽ, Czech Republic (L, ECR).

legal personality and the power to enact local regulations, subject to the law, in the form of orders, regulations and decrees. Within the area of their jurisdiction and subject to the Constitution, the law and tradition, they function according to the principle of self-government, recognised and guaranteed by the Constitution”.

70. Under Article 1 of the Qualified Law on the powers of *Comuns* of 4 November 1993, “parishes are political and administrative entities which make up the territorial structure of the State of Andorra and take part in the preparation of national policy through constitutionally established procedures and institutions. Their interests are expressed, managed and protected by the *Comuns* in accordance with the principle of self-government (*autogovern*)”.

71. Article 7 of the Qualified Law of 4 November 1993, as amended by the Law of 20 October 2017, provides for its part that “the financial and fiscal power of the *Comuns* derives from the fundamental fiscal power of the state. However, without prejudice to the necessary co-operation with the state, the powers assigned to the *Comuns* by this law pursuant to Article 80.2 of the Constitution shall be exercised according to the principle of self-government”.

72. The rapporteurs therefore consider that the system currently in force in Andorra fully meets the requirements of Article 2 of the Charter.

3.2 Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

3.2.1. Article 3.1

73. The aim of Article 3.1, of the Charter is to guarantee that local authorities have the right and the full ability to regulate and manage a substantial share of public affairs under their own responsibility.

74. In Andorra, the Qualified Law on the powers of *Comuns* of 4 November 1993, as amended most recently by the Law of 20 October 2017, gives a detailed list of the powers of the *Comuns*, which appear to be very broad in scope (cf. above § 26).

75. One particular area in which the state still has jurisdiction is in education, which is usually a local government responsibility in other countries but is managed by the state in Andorra because of its small size. On the other hand, the Law of 11 May 1995 on childcare facilities (*Llei de guarderies infantils*) assigns responsibility for nursery schools to the *Comuns*.

76. Under Article 79.1 of the Constitution, local authorities have “the power to enact local regulations, subject to the law, in the form of orders, regulations and decrees. Within the area of their jurisdiction and subject to the Constitution, the law and tradition, they function according to the principle of self-government, recognised and guaranteed by the Constitution”.

77. Andorra’s *Comuns* have a broad range of responsibilities, making it possible for them to set up practical local policies to serve and benefit citizens. During meetings between the Congress delegation and the local authorities, the latter did not call for any extension of their powers.

78. In view of the extent of powers devolved to the *Comuns*, the rapporteurs consider that the system currently in force in Andorra meets the requirements of Article 3.1 of the Charter.

3.2.2. Article 3.2

79. Article 3.2 describes the key democratic principle underpinning the Charter. By declaring that the right of self-government must be exercised by democratically constituted authorities, it confirms that local self-government does not solely involve the transfer of powers and responsibilities from central to local authorities but also requires local government to transmit and reflect, directly or indirectly, the will of the local population.

80. The right to local self-government in Andorra is exercised by elected bodies called *Comuns*, which are described in Article 79.1 of the Constitution as “bodies representing and administering the parishes”. Each *Comú* sets the size of its council according to its population. The number of elected members may range from 10 to 14 councillors. All council members are elected by universal suffrage for a four-year term in accordance with Article 79.3 of the Constitution.

81. Election is by a proportional representation list system adjusted to produce a majority. Half of the seats are assigned to the party with the largest number of votes. The other half is assigned in proportion to the number of votes obtained by each party, including the one which won the election. This system guarantees that the party which comes first in the election has an absolute majority but also that minority lists are represented.

82. Under Article 16 of the (consolidated) Qualified Law of 12 December 2022 on the electoral system and referendums, lists of candidates for general elections and municipal elections must be balanced between women and men so that at least 40% of the candidates are from the under-represented sex. When there are fewer than five seats to be filled, the proportion of women and men must seek the greatest numerical balance possible. The result is that women are well represented on local councils (numbering 3 out of 12 councillors in Encamp, 3 out of 10 in Ordino, 5 out of 12 in la Massana, 5 out of 12 in Escaldes-Engordany and reaching parity (6 out of 12) in Andorra la Vella and San Julia de Loria).

83. Election turnout varies from *Comú* to *Comú* but is higher in the less populated *Comuns*. For instance, turnout at the 2019 municipal elections was 49% in Andorra la Vella and la Massana and 70% in Canillo.

84. A *Cònsol major* (mayor) and a *Cònsol menor* (deputy mayor) are elected from among the councillors (Article 73 of the Qualified Law on the electoral system and referendums) for a four-year term which may be interrupted by a motion of no confidence approved by an absolute majority of the council. Regulatory power lies with the council while the mayor and the deputy mayor exercise executive functions. All the *Comuns* have a *Junta de govern* (Governing Council), consisting of members appointed and dismissed by the council at the request of the mayor. Unlike the councillors, the mayor and the deputy mayor may not sit for more than two consecutive terms.

85. Following the 2019 elections, three women were elected as mayors and four as deputy mayors.

86. The rapporteurs consider that the system currently in force in Andorra meets the requirements of Article 3.2 of the Charter.

3.3. Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

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

3.3.1. Article 4.1

87. Under Article 4.1 of the Charter, local authorities' basic powers must be prescribed by the Constitution or the law for the purposes of both "clarity" and "legal certainty", as indicated in the contemporary commentary on the Charter.⁴

88. Article 79.2 of the Constitution provides that "the *Comuns* represent the interests of the parishes, approve and implement the municipal budget, devise and implement their public policies within the bounds of their territory and manage and administer all parish property, whether they are municipal, public, private or heritage items".

89. Article 80 of the Constitution gives a non-exhaustive list of the *Comuns*' powers:

(a) population census; (b) drawing up electoral rolls; participation in the organisation and conduct of elections according to the procedures prescribed by law; (c) popular consultation processes; (d) commerce, industry and professional activities; (e) setting parish boundaries; (f) private property and public property of the *Comuns*; (g) natural resources; (h) land registers; (i) town planning; (j) public thoroughfares; (k) culture, sport and social activities; (l) municipal public services.

90. The Qualified Law (*Llei Qualificada*) on the powers of *Comuns* of 4 November 1993, last amended by the Qualified Law of 20 October 2017, implements the Constitution. It goes beyond the list in Article 80 of the Constitution, describing the *Comuns*' powers in more detail. With due regard for state prerogatives, this Qualified Law establishes the powers which are granted to the *Comuns* for them to exercise their functions in the economic and fiscal sphere. These relate in particular to the exploitation of natural resources and the related revenue, taxes and fees for municipal services, administrative licences, establishment of commercial, industrial and professional activities, and real estate. State powers could now also be transferred by law to the parishes, which had not been the case until the adoption of this law.

91. The rapporteurs consider that the system currently in force in Andorra meets the requirements of Article 4.1 of the Charter.

3.3.2. Article 4.2

92. Article 4.2 decrees that local authorities must have the right to exercise their initiative on matters not explicitly excluded from their competence by law. It also says that they must have 'full discretion to

⁴ 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, paragraph 49, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>

exercise their initiative', and hence not be subject to any restrictions which might arise from management, fiscal or budgeting rules that require a sound legal basis for spending.

93. Under the Qualified Law on the powers of *Comuns* of 4 November 1993, powers neither assigned nor delegated to the *Comuns* lie with the state (Article 3.3). The list of powers devolved to the *Comuns* by the Law of 2017 amending the Law on the powers of *Comuns* is considerably longer than the one drawn up in 1993 and covers the main areas of municipal activity. In addition, Article 4.16 of the Law of 1993 amended in 2017 assigns powers to the *Comuns* for "the organisation of any activity and the provision of other public services designed to fulfil the needs and interests of the parish community". This resembles a general competence clause and at the least, enables *Comuns* to intervene in areas which are not expressly included on the list of powers falling within their remit.

94. Furthermore, the Congress delegation was told about projects run jointly by the Government and the *Comuns*, particularly in the areas of culture and sport (assistance for artists, organisation of festivals, etc.). The Government and the *Comuns* also worked closely together to combat the effects of the Covid-19 pandemic.

95. At the various meetings held during the monitoring visit, none of the local authority representatives raised any issues with regard to the discretion they are afforded.

96. Consequently, the rapporteurs consider that the system currently in force in Andorra meets the requirements of Article 4.2 of the Charter.

3.3.3. Article 4.3

97. This article underpins the principle of subsidiarity, which aims to ensure that decisions are made at the most appropriate level. The Charter requires public responsibilities to be exercised as close to the citizens as possible. This principle is considered by the contemporary commentary to be "vitally important for the protection of local authorities against trends towards upscaling and re-centralisation that threaten to render local self-government meaningless".⁵

98. The principle of subsidiarity laid down in Article 4.3 of the Charter must be interpreted with due regard for the country's size, which means that it can only have limited significance in Andorra. Moreover, under the Law of 20 October 2017, which was drawn up in consultation with the *Comuns*, local powers and responsibilities are assigned to the *Comuns*, and they do not currently harbour any desires to be assigned further powers. As stated in the Qualified Law on the power of *Comuns* of 4 November 1993, powers which have been neither assigned nor delegated to the *Comuns* lie with the state (Article 3.3).

99. The rapporteurs consider that the division of powers between the state and the *Comuns* applies the principle of subsidiarity and that the system currently in place in Andorra meets the requirements of Article 4.3 of the Charter.

3.3.4. Article 4.4

100. Compliance with Article 4.4 requires limitations on local government powers to be exceptional and be based on objective reasons and interpreted narrowly. This provision also discourages the overlapping of responsibilities between levels of government.

101. It should be noted firstly that when exercising their powers, the *Comuns* have autonomous regulatory authority to draw up and apply norms to manage and supervise public finances and taxation.

102. There is legislation which allows the state to encroach on the *Comuns*' sphere of competence in specific circumstances. For instance, Article 4 of the Law of 1993, as amended in 2017, on the powers of *Comuns* provides that they must transfer municipal land and property which are to be used for a project of national interest or a sectoral plan to the Government free of charge.

⁵ Contemporary commentary, paragraph 63.

103. Furthermore, although the *Comuns* are in principle responsible for the construction, maintenance and improvement of all secondary roads, the Government must see to the maintenance of all the secondary roads listed in a Government Order of 25 July 2007 designating secondary roads, including roundabouts but not including any landscape or decorative features installed by the *Comuns*. The result is that in practice, the maintenance of embankments is the responsibility of the *Comuns* while that of roadside walls is that of the Government. In the event that secondary roads are very seriously damaged by incidents caused by natural hazards, the Government is required to carry out the necessary work for traffic to resume safely. Some infrastructure work (bypasses for example) may be financed jointly by the Government and *Comuns*. For instance, the la Massana bypass was financed by €25 million from the Government and €5 million from the *Comuns*.

104. Lastly, it should be pointed out that *Comuns*' powers in the area of town planning and land use (such as issuing building licences) must be compatible with the General Law on regional and town planning of 17 November 2000 (as amended in 2018), which has limited the autonomy of local authorities to some degree where it comes to enacting norms in this area, particularly where the aim of national plans is to establish or build services or infrastructure of general interest.

105. A major issue at the moment is spatial planning and the continuation of construction activities because of the large increase in Andorra's population in recent years. There are fewer and fewer areas in the country which are suitable for construction. This stems from the fact that 90% of Andorra's territory belongs to public authorities and only 10% can be built on. A moratorium on foreign investment in real estate has been adopted recently. To meet this challenge, a law adopted in 2022 provides that *Comuns* must carry out a detailed impact study to assess their ability to cope with an increase in their population whether in terms of water resources, sanitation or public services (schools, roads, hospitals, housing, etc.), the aim being to determine the maximum population that each parish can accommodate. A new urban development plan will be adopted in the light of the results of these studies.

106. These problems are no reason, however, to find that the powers assigned to local authorities are not full and exclusive. During their meetings with the Congress delegation and in their written contributions, the Andorran local authorities considered that the division of powers between the various tiers of government were satisfactory and clear.

107. Consequently, the rapporteurs consider that the system currently in force in Andorra meets the requirements of Article 4.4 of the Charter.

3.3.5. Article 4.5

108. Article 4.5 deals with delegated powers and requires local authorities to be able to exercise them freely. Its aim is to protect local authorities as decision makers and ensure that insofar as possible, local authorities have discretion to adapt the exercise of their delegated powers to local conditions. Such discretion ensures that they are not merely acting as agents of higher-level authorities.

109. This provision does not raise any particular problem in Andorra insofar as the *Comuns* have not yet received any delegation of powers from the state. During the visit by the Congress delegation, no comment was made on this issue.

110. Consequently, the rapporteurs consider that Andorra complies with Article 4.4 of the Charter.

3.3.6. Article 4.6

111. Through Article 4.6, the Charter introduces a procedural requirement for timely and appropriate consultation of local authorities. This implies that local authorities should be able to obtain full information on proposals, decisions and policies that concern them directly, that they should have the opportunity to feed into the policy-making process before decisions and policies become legally binding and that they should have the time and ability to formulate and present their perspective. As the contemporary commentary asserts, this principle aims to ensure that local stakeholders can genuinely participate in decision-making by entities with power to define the rights of local authorities.⁶ In using

⁶ Contemporary commentary, paragraph 79

the wording “due time”, the Charter seeks to ensure that the form and timing of consultations are such that it is possible for local authorities to influence the decision-making process.

112. Andorra has a prevailing culture, deeply rooted in its history, of consultation and close dialogue between the Government and the local authorities. This is facilitated by the country's small dimensions, which allow for informal meetings and consultations. As a result, the reforms in recent years of the powers of the *Comuns* and their financial resources were the subject of prior consultations. The latest Qualified Law on the powers of *Comuns* of 20 October 2017 was prepared by a tripartite commission made up of representatives of parliamentary groups, the Government and the *Comuns* designed to enable all the stakeholders to be involved and the broadest possible consensus to be sought. The qualified laws on financial transfers (of 4 November 1993, 20 October 2017 and 18 October 2018) were the result of lengthy talks between the Government and the *Comuns*, which met from 2010 onwards with the goal of promoting the necessary changes to guarantee the sustainability of state finances and the provision of services to citizens. An “institutional” agreement between the Government and the *Comuns* was concluded on 28 April 2014 and served as the basis for the subsequent legislation on the powers and finances of the *Comuns*.

113. There is also regular consultation and dialogue between the two representatives of each parish with seats in the *Consell General* and the municipal authorities. Informal meetings and discussions are also held, and these are generally seen in a positive light by the *Comuns*, as reported in our meetings with representatives of the country's local authorities. It should be noted, however, that in his meeting with the Congress delegation, the Mayor of Andorra la Vella expressed his desire for these discussions to be put on an institutional footing.

114. The co-operation between central government (the state) and the *Comuns* formed the subject of a law of 20 December 2017, which sets up the paths and procedures through which the general principles of institutional loyalty and co-operation can be put into practice while bearing in mind Andorra's specific circumstances. The implication is that when taking action, the various authorities must take other authorities' legitimate interests into account, that such action must not hamper the legitimate exercise of powers held by others and that authorities must work together actively so that other authorities can perform their functions efficiently and effectively (Article 1). By virtue of the same principles of loyalty and co-operation and the need for public policy to be efficient and effective, central government and the *Comuns* must provide one another with the information that is available to them and necessary for them to perform their functions properly (Article 3). Lastly, central government and the *Comuns* must provide each other with the mutual assistance they need to carry out their respective functions (Article 4).

115. During his meeting with the Congress delegation, the Minister for Institutional Relations, Education and Universities expressed his desire for a general law to be adopted to institutionalise the various forms of discussion and consultation which already exist in practice. The main difficulty if any such consultation or discussion body were set up would be to provide for the balanced representation of parishes, reflecting their population.

116. Lastly, it should be pointed out that the seven *Comuns* of Andorra have a joint right of legislative initiative. Under Article 58.2 of the Constitution, bills may be tabled in the *Consell General* by three *Comuns* acting together. It should also be said that all the bills that have ever been tabled by *Comuns* were adopted by the *Consell General*.

117. Consequently, the rapporteurs consider that local authorities are consulted in due time and in an appropriate way on matters concerning them directly and hence that the requirements of Article 4.6 are met.

3.4. Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

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

118. Article 5 of the Charter lays down procedural rules for changes in local authority boundaries. The geographical limits of local authorities are in principle most frequently a matter decided at national

level. Hence, local authorities have neither any right to make such changes themselves, nor are in any position to veto such proposals. This applies to minor adjustments as well as extensive and comprehensive territorial reforms, such as amalgamations of local authorities. Nevertheless, when boundary changes are considered, the affected local communities should be consulted. At the least, this should include the local authorities that are most concerned, but it may also take the form of a local referendum.

119. Consultation must take place in good time, before a final decision on the matter is made. Consultation in accordance with the Charter does not rule out obligatory mergers or boundary changes, provided that the procedures are prescribed by law.

120. Under Article 79 of the Constitution, the *Comuns* are the representative and administrative bodies of the parishes, whose existence is recognised in Article 1.5. "Andorra is composed of the Parishes of Canillo, Encamp, Ordino, la Massana, Andorra la Vella, Sant Julià de Lòria and Escaldes-Engordany". Their number increased to seven with the creation, by a Decree of the Co-princes of 14 June 1978, of Escaldes-Engordany, which was separated from the parish of Andorra la Vella in response to a 30-year-old demand from the local people to be given their own *Comú*.

121. Changes to local authorities' boundaries may be made on the basis of agreements between *Comuns*, final court rulings or international treaties signed by the Principality of Andorra which apply by extension to the *Comuns*.

122. As the number and name of the parishes is expressly referred to in the Constitution, any merger of the parishes would require a revision of the Constitution in accordance with the procedure provided for in Article 106, which calls for a national referendum: "revisions of the Constitution shall be adopted by the *Consell General* by a majority of two-thirds of its members. The proposal shall then be submitted immediately to ratification by referendum".

123. The *Comuns* have frequently referred boundary disputes to the Constitutional Court, particularly in connection with regional development plans and the declaration of the Valley of Madriu-Perafita-Claror as a cultural heritage site, over a period from 2006 to 2008.

124. Consequently, the rapporteurs consider that the requirements of Article 5 of the Charter are met.

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

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

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

3.5.1. Article 6.1

125. The aim of Article 6.1 is to safeguard local self-government by ensuring that local authorities can put in place administrative structures and arrangements appropriate to the needs of their citizens and which enable them to provide a full range of public services. The contemporary commentary states that the power of local entities to organise their affairs should be exercised with due respect for the generally accepted principles of effective and efficient governance while meeting collective needs and expectations.⁷

126. The Qualified Law on the powers of *Comuns* of 1993, as amended in 2017, grants *Comuns* the power to establish their own internal organisation and functioning, in accordance with the Constitution, general laws and customs and traditions (Art. 4.14). In 1995 the *Comuns* had already adopted common rules on their functioning (*Reglament de funcionament dels Comuns*). To update these rules, all the

⁷ Contemporary commentary, paragraph 100.

Comuns adopted the Order of 29 December 2011 on their organisation and functioning. This clarifies and strengthens the role of the mayor and, through delegation, the deputy mayor, and gives more detail about the functions of the governing council of the *Comú*, the *Junta de govern*. It also deals with the internal organisation and functioning of committees, which may be standing or ad hoc committees, and the powers that can be delegated by the *Junta de govern*, which is the cornerstone of the entire structure. A regulation on the Secretary General was retained. The order also refers to the applicable legislation in areas which affect the functioning and the organisation of the *Comuns* but, because of their characteristics or their scope, are already covered by other legislation such as the number of councillors in each *Comú*. The order also states that it is for each *Comú* to approve its own rules of procedure, which may clarify and complement the provisions of the order.

127. Consequently, the rapporteurs consider that Andorra complies with Article 6.1 of the Charter.

3.5.2. Article 6.2

128. To carry out their functions, local authorities depend on qualified and skilled staff. Article 6.2 points out that the conditions of service of local government employees should be sufficiently attractive for such staff to be recruited and retained. The contemporary commentary emphasises that local government should have the freedom to determine the conditions of service of their own employees, although the specific national context of public-sector employment has to be taken into account. Local authority employees should also be entitled to training opportunities, remuneration and career opportunities similar to employees at other levels of government.⁸

129. The Law of 17 January 2019 on the civil service lays down rules which also cover local government officials. Some *Comuns* would like more flexibility so as to have more discretion over the management of staff. The Order of 29 December 2011 on the organisation and functioning of the *Comuns* provides that the Secretary General of the *Comú* is freely appointed and dismissed by the municipal council on the proposal of the mayor. His/her term of office expires at the latest at the same time as that of the council though this does not preclude the possibility of the same person being appointed again. If the person appointed is a public official or a government employee, he/she is placed on leave during his/her term of office. The grounds of incompatibility or ineligibility found in electoral legislation also apply to the Secretary General.

130. Andorran local authorities have autonomous powers to recruit skilled staff based on their merit and abilities following an open recruitment procedure. Salary costs amount to about one third of municipal budgets. During the monitoring visit, the Congress delegation was told by representatives of the *Comuns* that they sometimes had difficulty in attracting and retaining highly qualified staff (lawyers, financial experts, architects, etc.), on account of the pay gap between the public and private sectors and the lack of rented accommodation on offer.

131. The delegation considers that the requirements of Article 6.2 of the Charter are met in Andorra.

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

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

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

⁸ Contemporary commentary, paragraph 106.

3.6.1. Article 7.1

132. Article 7.1 of the Charter seeks to ensure that citizens are free to serve as elected representatives and are not prevented from holding political office owing to financial or material considerations.⁹ This paragraph is therefore closely linked to paragraph 2 of the same article, which deals with financial compensation. Local authorities are also required to provide all elected officials with the facilities, equipment and technical support needed to carry out their tasks, irrespective of the officials' political affiliation. Training is another important aspect for ensuring that local representatives perform their duties efficiently.

133. The meetings held by the Congress delegation with local elected representatives confirmed that they had not encountered any significant obstacles in carrying out their functions and that they considered the resources available to them to be satisfactory.

134. In order to ensure the "free exercise" of their functions, local elected representatives must also be protected by law against threats from social media and against violations of their privacy. Although such legal protection exists, there has not yet been an opportunity to apply it in practice. The monitoring delegation was told that elected representatives were under a great deal of pressure, especially on social media, and that this had sparked a debate about the professionalisation of politics in the country.

135. The free exercise of their functions also implies that local elected representatives have a recognised right to information and freedom of expression. In this respect, the Order of 29 December 2011 on the organisation and functioning of the *Comuns* (Articles 28 and 29) provides that councillors have the right to express their opinion on all matters on the agenda, without prejudice to the mayor's power to chair debates. They are entitled to receive adequate and comprehensive information on matters on the agenda of council meetings. Councillors may also request additional information and documentation on any matter of public interest.

136. Consequently, the rapporteurs consider that the situation in the country complies with Article 7.1 of the Charter.

3.6.2. Article 7.2

137. Article 7.2 of the Charter aims to ensure that local elected representatives receive "appropriate financial compensation" so as to avoid the conditions of office preventing, limiting or even excluding potential local candidates from standing for office because of financial considerations. This provision is also intended to ensure that elected representatives receive adequate remuneration and allowances so that they do not suffer financial loss as a result of their public role.

138. Article 30 of the Order of 29 December 2011 on the organisation and functioning of the *Comuns* lays down the general rules for determining the remuneration of councillors and mayors. These officials are entitled to a monthly payment that is set by the municipal council when it approves the municipal budget. Remuneration is based on the workload of each councillor and the complexity of the tasks assigned. Chairs of committees also receive a special allowance. Due to the full-time nature of the post, mayors and deputy mayors are paid more than other councillors. In practice, the monthly payment varies from €4 000 to €6 000 depending on the *Comú* (for example, in Encamp mayors are paid €5 500 while councillors receive €1 500 per month). It is therefore up to each *Comú* to determine the financial remuneration of its elected representatives at the beginning of each term of office, and the amount set by the municipal budget appears to be appropriate. It was noted that in some *Comuns*, mayors also chair the boards of local companies (e.g. ski resorts) on an unpaid basis.

139. The rapporteurs therefore consider that the requirements of Article 7.2 of the Charter are met in Andorra.

3.6.3. Article 7.3

140. This paragraph focuses on functions and activities that may be incompatible with the holding of the office of municipal councillor. It deals with the compatibility of holding a representative position at the

⁹ [Contemporary commentary, paragraph 107.](#)

local level with other activities, whether public or private, and states that the “functions” and “activities” that cannot be made compatible with the holding of a local position once the candidate has been elected are to be determined by statute or fundamental legal principles. The contemporary commentary stresses that restrictions on holding elected office should be as limited as possible.¹⁰ It notes that the purpose of this paragraph is to discourage the holding of more than one political office.¹¹

141. In Andorra, the rules on incompatibility and ineligibility are laid down in Articles 17, 18 and 19 of the *Llei qualificada del règim electoral i del referèndum* (Qualified Law on the electoral system and referendums). It provides that the following are disqualified from holding public office: judges of the Constitutional Court; members of the High Council of Justice; bailiffs, judges and members of the Public Prosecution Service; and members of the Electoral Council. These grounds for disqualification are also grounds for incompatibility. Persons who have been sentenced to imprisonment by a final judgment are also disqualified for the duration of their sentence. In addition, the exercise of public functions by civil servants in active service, as well as persons in a paid employment relationship with the *Comú*, is incompatible with the exercise of any elective office in the *Comú* for which they work. Finally, it is not possible to stand for election to both the General Council and the Municipal Council if the elections are held on the same day.

142. In the light of the current situation in Andorra, the rapporteurs consider that the requirements of Article 7.3 of the Charter are met.

3.7. Article 8 – Administrative supervision of local authorities’ activities

Article 8 – Administrative supervision of local authorities’ activities

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

3.7.1. Article 8.1

143. Article 8 of the Charter outlines how administrative supervision of local government should be carried out. In the contemporary commentary, supervision refers to “any form of intervention in the decision-making process of a local entity by which a higher administrative level explicitly or tacitly approves, clears, agrees, suspends or annuls a proposal or a final decision, rule or plan approved by a local entity”.¹² Administrative supervision can be “a priori” or “ex post”. Article 8, paragraph 1, underlines that such supervision must comply with the principle of legality, that is that all administrative supervision must be made according to law without any room for higher authorities to interfere on an ad hoc basis. It also means that supervisory authorities must strictly comply with the procedures established by law.

144. Article 82.2 of the Andorran Constitution provides that “[t]he acts of the *Comuns* shall be directly enforced through the means established by law. Against such acts administrative and jurisdictional appeals may be lodged with the purpose of controlling their conformity with the legal system”. A similar provision is included in Articles 5 and 6 of the Qualified Law on the powers of *Comuns*. Only the ordinary courts, the Constitutional Court and the Court of Auditors, which are independent bodies, have the power to review municipal decisions. In particular, the Constitutional Court rules on disputes “arising from the interpretation or exercise of jurisdiction between the general bodies of the State and the *Comuns*” (Article 82.1 of the Constitution).

¹⁰ [Contemporary commentary, paragraph 120.](#)

¹¹ [Contemporary commentary, paragraph 122.](#)

¹² [Contemporary commentary, paragraph 125.](#)

145. The rapporteurs are therefore of the opinion that Andorra fully complies with Article 8.1 of the Charter.

3.7.2. Article 8.2

146. Article 8.2, of the Charter sets out the principles and parameters of administrative supervision which may consist of checks on legality or checks on expediency. The provision expresses a general preference for checks on legality over checks on expediency. The latter (checks on expediency) may only be used for delegated tasks.¹³

147. In Andorra, there is no review of expediency or political supervision by the Government over the exercise of local powers, but only checks on legality. As was pointed out during the Congress delegation's visit, the relationship between the Government and the *Comuns* is not hierarchical. The Government has no control over the activities of the parishes, and no comments were made to the Congress delegation in this regard.

148. In addition, the State has not delegated any powers to the *Comuns*, which means that there are no checks on expediency.

149. The rapporteurs therefore conclude that Andorra fully complies with Article 8.2 of the Charter.

3.7.3. Article 8.3

150. This provision of the Charter enshrines the principle of proportionality in the administrative supervision of local authorities' activities. The intervention of the supervisory authority should be proportionate to the importance of the interests it seeks to protect and recourse to disproportionate means must be avoided. The supervisory body should intervene only to the extent necessary, taking into account the relevance of the public interest at stake or the seriousness of the legal violation allegedly committed by the local authority. Minimal action (warnings, requests, negotiations) must first be considered before resorting to more drastic measures, such as annulling or suspending a decision, plan or project adopted at local level.

151. In their discussions with the Congress delegation, the representatives of the *Comuns* did not raise any objections to such supervision. In practice, the main audit of the activities of the *Comuns* is carried out by the Court of Auditors, which is organically attached to the *Consell General* and is an independent technical body that is responsible, in particular, for carrying out financial audits of each *Comú* to ensure that its activities are in order and that they comply with the rules of public administration and the law (compliance audit).

152. The audit of municipal budgetary acts provided for by the Law on municipal finances is mainly an internal audit carried out by a body called the Municipal Inspectorate, headed by a municipal inspector. It comprises several aspects:

- A compliance audit, which covers all the acts, documents and files of the *Comú* and of any public company in which it has an interest that may have an impact on municipal finances.
- An economic audit, the main objective of which is to determine, both qualitatively and quantitatively, the possible impact of certain expenditure on municipal finances and on the normal execution of the municipal budget.
- A financial audit, which consists of auditing the economic and financial operation of public companies in which the local authority has a shareholding, as well as private entities that receive subsidies, loans, guarantees and other assistance from the municipal budget.
- An efficiency review, which consists of periodically verifying the degree of compliance with the objectives of the programmes included in the budget for the previous financial year, analysing operating costs and performance, and assessing the usefulness of the municipal services, works and acquisitions.

153. Finally, the *Comuns* exercise political control over the implementation of the municipal budget and compliance with budgetary rules.

¹³ [Contemporary commentary, paragraph 132.](#)

154. The rapporteurs consider that the requirements of Article 8.3 of the Charter are fully met in Andorra.

3.8 Article 9 – Financial resources of local authorities

Article 9 – Financial resources of local authorities

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

The Principality of Andorra has not ratified Article 9, paragraph 2; Article 9, paragraph 5; or Article 9, paragraph 8, of the Charter.

3.8.1 Article 9.1

155. Article 9.1 of the Charter establishes the right of local authorities to have their own resources and the freedom to spend them according to their own judgment. Accordingly, states are expected to ensure that local authorities have the legal, budgetary and fiscal capacity to make use of these rights and implement their policies.

156. The principles relating to the financial resources of the Andorran *Comuns* are laid down directly in the Constitution (Articles 80.2 and 81) and are implemented by law. The financial resources of the *Comuns* consist of their own taxes, taxes shared with the Government and transfers from the general budget. Since 2005, the *Comuns* have been free to decide on the use of the transferred funds, giving them greater spending autonomy. They also receive a share of the revenue from the tax on vehicle ownership collected by the State. Local authorities therefore levy their own taxes, in accordance with Article 80.2 of the Constitution, which stipulates that with due regard for State prerogatives, a qualified law establishes the powers which are granted to the *Comuns* for them to exercise their functions in the economic and fiscal sphere. These include the exploitation of natural resources and the related revenue, taxes and fees for municipal services, administrative licences, establishment of commercial, industrial and professional activities, and real estate. In addition to transfers from the State, the *Comuns* therefore have their own resources: Article 6 of the Law of 16 December 2021 on municipal finances recognises that the *Comuns* have full fiscal authority, allowing them to introduce their own taxes.

157. It should also be noted that the *Comuns* have a low level of indebtedness, with most of their budgets in surplus. The Law of 16 December 2021 on municipal finances stipulates that the total amount of long-term borrowing operations may not exceed twice the average total receipts recorded in the budgets for the three preceding calendar years, not including the total yield from borrowing operations and revenue from the sales of assets. However, the level of municipal debt, which was between 120 and 150% in

2014-2015, fell to between 50% and 70% in 2020, before rising slightly in 2021, while remaining under 100%, well below the legal limit.

158. During the monitoring visit and the various discussions with the local authorities, the latter considered their financial resources to be sufficient. They are also completely free to use them as they wish.

159. The rapporteurs therefore consider that the requirements of Article 9.1 of the Charter are met in Andorra.

3.8.2. Article 9.2

Paragraph not ratified

160. Article 9.2 of the Charter establishes the “principle of commensurability” of local authorities’ financial resources. This means that the resources available to local authorities should be sufficient and commensurate with their functions and tasks. Revenues and mandatory tasks of local authorities should be balanced to ensure that the financial resources available to those authorities are adequate in relation to the tasks assigned to them by law. According to the commensurability principle, any new task assigned or transferred to local authorities must be accompanied by the corresponding funding or source of income to cover the extra expenditure. The principle of commensurability also entails evaluating whether there is an appropriate relationship between the financial resources available to a local authority and the tasks it performs. Consequently, the cost of local services should be regularly checked and updated, as the costs estimated when a function is transferred may differ from those incurred in the actual delivery of services and the development of a service.¹⁴

161. It is clear from the discussions between the Congress delegation and the municipal leaders that the recent reforms on powers and financial transfers have provided the *Comuns* with sufficient financial resources to exercise their powers in good conditions. However, the Comú of Canillo considers that the maintenance of the secondary roads for which it is responsible accounts for a large part of its expenditure, as it has the largest road network in the country. It therefore believes that it should have greater financial resources to cover these costs.

162. In general, the rapporteurs consider that there are no serious obstacles to the ratification of Article 9.2 of the Charter.

3.8.3. Article 9.3

163. Article 9.3 of the Charter focuses on the need for local authorities to derive at least part of their financial resources from local taxes of which, within the limits of statute, they have the power to determine the rate. The power to levy local taxes is seen as an essential prerequisite for local financial autonomy. The Charter does not state that a local authority’s own resources must contain a uniform proportion of local taxes, but it does make it mandatory for “at least” part of them to derive from local taxes and charges.

164. Article 6 of the Qualified Law on municipal finances recognises that the *Comuns* have full fiscal authority, which is reflected in the right to adopt municipal tax rules, which may vary from one parish to the next. *Comuns* introduce, regulate and apply taxes in accordance with the Constitution, the Law on the powers of Comuns, the Law establishing the bases of the tax system, the Law on municipal finances and other provisions with legal force.

165. Article 3 of the Law of 16 December 2021 on municipal finances states that municipal resources include taxes, municipal taxes, taxes shared with the State, income from property, loans, royalties and financial transfers from the Government. Under the Qualified Law on the powers of *Comuns*, municipal taxes include: a) the traditional *foc i lloc* [housing] tax on primary residences; b) property tax; c) tax on rental income; d) tax on the establishment of commercial, economic and professional activities; and e) construction tax.

¹⁴ [Contemporary commentary, paragraph 151.](#)

166. The resources over which the *Comuns* have real power of decision and which they collect directly (i.e. local taxes and fees) represent a significant proportion of their total resources. In 2021, own resources amounted to €166 860 234 (56% of total resources), financial transfers (grants) to €51 879 658 (31% of total) and taxes shared with the Government to €13 456 465 (8% of total resources). However, the degree of financial autonomy varies, as the share of revenue generated by each *Comú* ranges from 39% (Canillo) to 75% (Andorra la Vella).

167. The rapporteurs consider that the requirements of Article 9.3 of the Charter are met in Andorra.

3.8.4. Article 9.4

168. The diversification of income sources is crucial if local authorities are to maintain their autonomy during fluctuations in economic cycles. At the same time, income sources should be diverse in nature to ensure local authorities' resilience to external economic factors. Article 9, paragraph 4, also emphasises that systems of local finance should be buoyant, i.e., "able to adapt to new circumstances, needs and macroeconomic scenarios and be sufficient to cover service delivery".

169. In addition to financial transfers from the State, the power of the *Comuns* to decide on fiscal matters allows them to introduce specific taxes when necessary: for example, a waste collection tax, a tax on cash dispensers and a street lighting tax in Andorra la Vella. Their resources therefore appear to be sufficiently diversified.

170. In recent years, some *Comuns* have seen a sharp increase in their resources, mainly due to the construction boom. This is particularly true of the parishes of Canillo and Encamp. It should be noted, however, that some local budgets are dependent on construction tax. While the property market has boomed in recent years, some local authorities told the Congress delegation of the difficulties that could arise in the near future from a slowdown or even decline in construction and property transactions. The reduction in the length of the ski season due to global warming is an important factor to consider, especially since ski resorts provide significant financial support to local authorities.

171. The rapporteurs therefore consider that Andorra complies with Article 9.4 of the Charter.

3.8.5. Article 9.5

Paragraph not ratified

172. Article 9.5 provides that systems of local self-government should include some kind of financial equalisation mechanism to offset the effects of the unequal distribution of potential sources of finance and of the financial burden they have to bear. Equalisation can be achieved either through transfers from central government or through redistribution between local authorities. However, the mechanism must not reduce the discretion that local authorities have in carrying out their responsibilities. Article 9.5 of the Charter also aims to ensure that local authorities have sufficient financial resources to cover not only the costs of their own functions and those delegated to them but also the costs of the political and administrative apparatus needed to carry out the tasks assigned to them.

173. The introduction of the principle of financial solidarity is one of the main features of Andorra's 2017 reform of financial transfers from central government. Article 8 of the Law of 20 October 2017, as amended in 2018, specifies how financial transfers are to be apportioned to the *Comuns* pursuant to Article 81 of the Constitution:

"The total amount to be paid to the *Comuns* shall be divided up according to the following appropriations and categories:

- a. 38% to be divided equally among the *Comuns*;
- b. 21% to be divided among the *Comuns* in proportion to their population;
- c. 16% to be divided among the *Comuns* in proportion to the parish surface area;
- d. 12.75% to be divided among the *Comuns* in proportion to the total of their inhabitants who are children and elderly persons;
- e. 5.5% to reflect tourist numbers, divided among the *Comuns* in proportion to the number of overnight stays in tourist accommodation;
- f. 6.75% divided up to reflect solidarity concerns and features specific to certain *Comuns*".

The methods used to calculate financial transfers are therefore tantamount to a form of equalisation, taking into account the specific situation of each *Comú*.

174. In his meeting with the Congress delegation, the mayor of Andorra la Vella expressed the wish that the costs borne by the capital in its role as the core *Comú* (e.g. music conservatory, swimming pool, athletics track, etc.) be taken into account in the calculation of transfers.

175. As a result, the rapporteurs note an overall balance in the country. Regarding the non-ratification of Article 9.5, they believe that there are no serious obstacles to the ratification of this provision since the reforms that have taken place since the Congress' previous report. Therefore, taking into consideration the specificities of the Andorran system, the rapporteurs encourage the national authorities to ratify this provision, which is *de facto* respected in the country's practice. In the meantime, the rapporteurs were informed, during the consultation procedure, that the Government would consider ratifying this provision in the near future.

3.8.6. Article 9.6

176. This article refers to the general principle of consultation as set out in Article 4.6, but Article 9.6 relates specifically to the system for allocating resources redistributed to local authorities. According to the contemporary commentary, consultation is required on the way in which redistributed resources are to be allocated to local authorities by other levels of government.¹⁵

177. The Law of 20 October 2017 (amended in 2018), which reformed the entire system of financial transfers to the local authorities (adapting it to their powers and responsibilities), was the subject of lengthy tripartite negotiations between the *Consell General*, the Government and the *Comuns*. The criteria for allocating transfers adopted at the end of the negotiations were sufficiently precise and detailed to avoid annual renegotiations. Local authorities can also challenge the way in which the financial transfers are calculated, in the first instance before the Minister of Finance and, if necessary, before the courts. In discussions with the monitoring delegation, local authority representatives were generally positive about the quality of the consultations on financial matters.

178. The rapporteurs conclude that Andorra complies with Article 9.6 of the Charter.

3.8.7. Article 9.7

179. This paragraph concerns grants to local authorities from higher levels of government. Where possible, grants should be unconditional, rather than earmarked for specific projects or purposes. Even where grants are used to fund services, local authorities should retain the basic freedom to exercise policy discretion within their own spheres of competence. The ratio of conditional (earmarked) to unconditional (general) grants is considered a relevant indicator to measure the financial autonomy of local authorities. Article 9, paragraph 7, seeks to strike a fair balance between conditional and unconditional grants, thereby reducing restrictions on a local authority's freedom to decide on its spending priorities. This provision also seeks to ensure that a grant for a specific purpose does not undermine a local authority's freedom to exercise discretion within its own sphere of competence.

180. The Law of 20 October 2017 on transfers establishes the unconditional nature of the financial transfers received by the *Comuns*, resources which they are free to use without any restrictions other than those established by the laws in force, in particular Law 32/2014 of 27 November 2014 on the sustainability of public finances and budgetary and fiscal stability. Since the *Comuns* should be free to decide on the use of these funds, the 2017 Law removes the powers of control and suspension of transfers that the previous law attributed to the Government and the *Consell General*.

181. The rapporteurs consider that Andorra complies with Article 9.7 of the Charter.

3.8.8. Article 9.8

Paragraph not ratified

¹⁵ [Contemporary commentary, paragraph 173.](#)

182. Article 9.8 refers to local authority access to the national capital market for the purpose of borrowing for capital investment. Such borrowing enables local authorities to finance important projects. Access to the capital markets is obviously affected by national fiscal policy and the governance of public debt. This provision therefore emphasises the limits of the law.

183. As already pointed out in the 2018 Congress report, the possibility of ratifying Article 9, paragraph 8, is more complicated for Andorra, as the country does not have a national capital market and the local authorities are not large enough to have access to the international financial market.

184. The rapporteurs consider that the requirements of Article 9 of the Charter are currently met in Andorra. With regard to the unratified provisions of Article 9, they consider that, in the light of the reforms introduced since the last Congress report, there are no serious obstacles to the ratification of paragraphs 2 and 5. They therefore encourage the Andorran authorities to ratify these provisions.

3.9. Article 10 – Local authorities’ right to associate

Article 10 – Local authorities’ right to associate

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

3.9.1. Article 10.1

185. Article 10.1 refers to forms of functional co-operation between local authorities, either to achieve greater efficiency through joint projects or to achieve greater effectiveness by carrying out tasks that are beyond the capacity of any single authority. Local authorities have a general right to co-operate with one another in order to deliver local services or discharge their responsibilities. This entitlement to co-operate with other local entities is supplemented by a more specific right, namely the right to form consortia, i.e., to create separate organisations and/or joint institutional structures.

186. Co-operation between parishes is a well-established practice in Andorra, which has recently been enshrined in a number of legislative acts. The Order of 29 December 2011 on the organisation and functioning of the *Comuns* establishes the right of local authorities to associate and, in its explanatory memorandum, expressly refers to the European Charter of Local Self-Government, which was “incorporated into the legal order of the Principality of Andorra and entered into force on 1 July 2011”.

187. The provisions of Chapter XII of the Order provide a legal framework for the meeting of parish mayors (*Reunió de cònsols*), which has been held at regular intervals (once a month or every two months) since time immemorial. The *Reunió de cònsols* is made up of the mayors and deputy mayors of each of the seven parishes of the Principality.

188. The 2011 Order provides that in exercising their powers, and in accordance with the legislation in force, local authorities are entitled to co-operate and form consortia with other authorities to carry out tasks of common interest. Examples of intermunicipal co-operation include forestry management, municipal traffic services, separate waste collection and a joint waste collection centre operated by the Comú of Encamp and the neighbouring Comú of Canillo.

189. Intermunicipal co-operation was also addressed by the Law of 20 December 2017. To ensure co-operation between the *Comuns* and other local entities and to enable resources to be optimised, provision is made to pool services. Therefore, *Comuns* and other local bodies can create intermunicipal Communities (*Mancomunitats*) to provide and implement services and activities jointly. Communities have their own legal personality and when developing and executing their own functions, they have the same powers as *Comuns* and other local bodies (Article 5).

190. One of the main means of strengthening co-operation between central government, the *Comuns* and other public authorities, and between the *Comuns* themselves is co-operation agreements on the performance of tasks of common interest within their jurisdiction. The Law of December 2017 lays down rules on the scope, the procedure, the content, the effects and the monitoring of such agreements with a view to giving these instruments a sound basis.

191. The rapporteurs therefore conclude that Andorra fully complies with Article 10.1 of the Charter.

3.9.2. Article 10.2

192. This provision deals with the promotion of common interests through formal organisations. It sets out the right of local authorities to belong both to a national association for the protection and promotion of their common interests and to international associations of local authorities. Such associations play a fundamental role in representing and defending the rights, powers and interests of local authorities and carry out many activities on their behalf.

193. The Order of 29 December 2011 on the organisation and functioning of the *Comuns* enshrines the right of local authorities “to join associations for the protection and promotion of their interests and to join international associations of local authorities” (Article 34). For example, the *Comuns* are members of the International Association of French-speaking Mayors (AIMF). There is also the *Reunió de cònsols*, which provides a forum for dialogue between the Andorran local authorities.

194. Therefore, Andorra fully complies with Article 10.2 of the Charter, the provisions of which are reproduced almost verbatim in Article 34 of the 2011 Order.

3.9.3. Article 10.3

195. Article 10.3 of the Charter concerns the co-operation of local authorities with their counterparts in other states and reinforces the right to engage in cross-border co-operation. This Charter provision sets out the right to engage in transnational or transborder co-operation, which is an important form of co-operation between local authorities.

196. Article 34 of the Order of 29 December 2011 on the organisation and functioning of the *Comuns* provides for the right of local authorities to co-operate with their counterparts in other states without having to seek any authorisation from the Government. The local authorities have signed many decentralised co-operation agreements, especially on cultural matters. The legal framework for cross-border intermunicipal co-operation in Andorra is provided by the agreement signed between the Government and the *Comuns* to set up the Andorran Organisation for Cross-Border Co-operation (AOCC). The aim of the AOCC is to establish a framework for cross-border co-operation involving Andorran national and local authorities, enabling them to sign agreements with regional authorities in France and in Spain and to become full members of the Working Community of the Pyrenees (CTP). The composition of the AOCC's governing and administrative bodies is laid down in its statutes. Its President (Minister of Foreign Affairs) and Vice-President (Chair of the *Reunió de cònsols*, a position that rotates between the mayors of the different *Comuns*) attend the CTP's plenary meeting every year. The local authorities have participated in several European cross-border co-operation projects as part of the Spain - France - Andorra cross-border co-operation programme (Interreg POCTEFA), and the Ministry of Foreign Affairs, which is responsible for cross-border co-operation, liaises with the local authorities to propose any such projects that may be of interest to them. For example, together with the government, the local authorities participate in the Working Community of the Pyrenees (CTP) with several French regions and Spanish autonomous communities. There are also cross-border co-operation projects involving one or more *Comuns*, for example the Pyrenees Three Nations Park, which includes the Alt Pirineu Nature Park (Spain), the Ariège Pyrenees Regional Nature Park (France), the Comapedrosa Nature Park (La Massana) and the Vall de Sorteny Nature Park (Ordino).

197. The rapporteurs therefore consider that the country complies with Article 10.3 of the Charter, the terms of which are set out in Article 34 of the 2011 Order.

3.10. Article 11 – Legal protection of local self-government

Article 11 – Legal protection of local self-government

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.

198. Article 11 of the Charter refers to an effective judicial remedy to ensure respect for local self-government. “Recourse to a judicial remedy” means access by a local authority to either a properly constituted court of law or an equivalent, independent, statutory body. This provision requires that local authorities have the right to invoke and defend in the courts the principles of local self-government. This is particularly important in the context of lawsuits in which the rights and powers of local government are challenged or curtailed, or in instances where those rights are endangered by higher levels of government.

199. In Andorra, in addition to the ordinary legal remedies, the *Comuns* are entitled to lodge an individual complaint directly with the Constitutional Court. According to Article 82.1 of the Constitution, “conflicts arising from the interpretation or exercise of jurisdiction between the general bodies of the State and the *Comuns* shall be settled by the Constitutional Court”. In practice, only about 15 appeals were lodged with the Constitutional Court between 1997 and 2023. To date, the *Comuns* have never invoked the European Charter of Local Self-Government to assert their rights.

200. If the acts, resolutions or legislative provisions of the *Consell General* or the Government interfere with the powers conferred by the Constitution on the *Comuns*, or if the *Comuns* exercise powers conferred on the *Consell General*, the Government or another *Comú*, the aggrieved party may bring a case of conflict of jurisdiction before the Constitutional Court (Article 69 of the Qualified Law on the Constitutional Court). Positive conflicts of jurisdiction between local authorities and the general organs of the state relate to the qualified laws governing the powers and financial responsibilities of the parishes, which must be considered in conjunction with the Constitution in order to determine where the disputed responsibility lies. A negative conflict of jurisdiction exists when the non-fulfilment of a duty by a general state body or a *Comú* prevents, hinders or prejudices another body in the fulfilment of its own duty, or violates the subjective rights of an individual.

201. According to its case law, the Constitutional Court may, in the context of a conflict of jurisdiction, only rule on the question of the delimitation of powers and not on the constitutionality - on grounds other than lack of jurisdiction - of the legislation in question (Judgment of 13 March 1998, case 1997-1-CC). The Constitutional Court has also ruled that the matters assigned to the *Comuns* by Article 80 of the Constitution (population census; drawing up electoral rolls; participation in the organisation and conduct of elections according to the procedures prescribed by law; popular consultation processes; commerce, industry and professional activities; setting parish boundaries; private property and public property of the *Comuns*; natural resources; land registers; town planning, public roads, culture, sports and social activities and municipal public services) constitute a list of minimum powers (Judgment of 12 May 1997, case 97-2-L), which cannot therefore be interpreted restrictively, but must be interpreted in the light both of their material context and of the general principle of co-ordination (Judgment of 9 May 2003, case 2003-1-CC).

202. Since the entry into force of the Charter (on 1 July 2011), the Constitutional Court of Andorra has received only one appeal concerning a conflict of jurisdiction. Case 2018-1-CC, brought by the *Comú* of Andorra la Vella, concerned the territorial boundaries established by the development plan of the *Comú* of Sant Julià de Lòria and was declared inadmissible on the grounds that it was a territorial dispute between two local authorities which should be decided by the civil courts. The Court therefore held, in accordance with Article 73 b) of the Qualified Law on the Constitutional Court, that the dispute “must be dealt with by other procedural means”, in this case by ordinary civil proceedings.

203. Laws and decrees may also be challenged as unconstitutional by three *Comuns* acting jointly within 30 days of their publication in the Official Gazette. The Constitutional Court must then rule within two months (Articles 83 and 99 of the Constitution). In all, eight complaints of unconstitutionality have been lodged by *Comuns*.

204. Lastly, under Article 102 of the Constitution, any *Comú* may, on an individual basis, lodge a complaint to protect its constitutional rights, known as a *recurs d'empara* (in particular, to “protect” its jurisdiction). Local authorities often file such constitutional complaints when they believe that the procedural guarantees to which they are entitled in proceedings against individuals and other *Comuns* have not been respected by the ordinary courts. The majority of *empara* cases therefore concern court decisions rather than government decisions. Since 2006, 17 constitutional complaints have been lodged, of which eight were inadmissible. Of the nine admissible appeals, six were upheld and three were dismissed.

205. In its Judgment of 25 May 2007 in case 2006-22 i 25-RE, the Constitutional Court ruled that “the *Comú d'Escaldes-Engordany* [was] fully entitled to bring an *empara* action in order to ensure the protection of the rights enshrined in Article 10 of the Constitution”, since “not only natural persons, but also legal persons are entitled to fundamental rights, including the right to effective judicial protection under Article 10 of the Constitution”. If a distinction is to be made between this right and its procedural safeguards, it follows that where, as in the case of Andorra, an *empara* remedy exists, those exercising these rights are entitled to seek their protection before the Constitutional Court by means of this remedy, which derives literally from Article 102 of the Constitution. Developments in comparative law, such as German law, could justify this argument. Consequently, by virtue of the legal personality of the *Comuns*, and of Article 2.2 of the Qualified Law on the powers of *Comuns* of 4 November 1993, their right to effective judicial protection must be affirmed and, therefore, their entitlement to bring an *empara* action before the Constitutional Court”. [...] “Comparative doctrine and case law have identified ‘specificities’ with regard to the effective judicial protection of public legal persons, and, in particular, of persons vested with powers. However, in the instant case, since the *Comú* has defended its rights before the various courts in the course of ordinary legal proceedings on an equal footing with the complainant, nothing can deprive it of the right to obtain a decision on its claim based on the law”.

206. Furthermore, Article 23 of the Law of 20 October 2017 on transfers to the *Comuns* provides for a specific remedy to contest the Government’s decision on the amount of the transfers allocated each year to the various *Comuns*. *Comuns* may file a complaint with the Government within one month of being notified of the payment by the Ministry of Finance. Once the complaint has been lodged, the Government forwards it to the other *Comuns*, who are also parties to the proceedings and have one month in which to submit their observations. The Government must respond to the complaint within two months of receiving the *Comuns*’ observations. The complaint is deemed to have been rejected if the Government has not issued an explicit response within three months of receiving it. One or more *Comuns* contesting the amount to be paid by the Ministry of Finance does not suspend the transfer or alter the amount of that payment, either for the *Comú* which filed the complaint or for any other *Comú*, unless the Government has issued an explicit response, which may also be appealed through the same procedure. The *Comú* that has contested the transfer then has one month to lodge an appeal on the Government’s decision to the courts, in accordance with the procedure laid down in administrative and tax jurisdiction law. The Finance Minister told the rapporteurs that several appeals had been lodged by *Comuns* on the basis of this legal provision. The most recent disagreement between the Government and the *Comuns* concerns issues related to financial transfers, in application of the Qualified Laws on powers (2017) and on financial transfers (2018). The *Comuns* brought an action on 24 February 2022 (through the ordinary administrative courts) to resolve a disagreement on the criteria for the disbursement of transfers for the 2017 financial year. This is primarily a matter of legal interpretation but has potential economic consequences for the local authorities concerned.

207. The rapporteurs therefore consider that Andorra fully complies with the requirements of Article 11 of the Charter.

4. OTHER MATTERS RELATED TO LOCAL SELF-GOVERNMENT

4.1. The role of the *Comuns* during the public health crisis

208. The Government’s public policy during the health crisis provided substantial emergency support to individuals and businesses, including direct grants and tax breaks to protect the Principality’s industrial fabric from the economic and social impact of Covid-19. The implementation of health and social protocols to combat the effects of Covid-19 represented the largest investment in public welfare in Andorra’s history. The economic consequences of the pandemic led to a high budget deficit and a

slowdown in economic growth. The lockdown and travel restrictions particularly affected tourism, an important source of income for the local authorities. The *Comú* of Canillo, for example, saw its revenues fall by more than 40% in 2020 and 2021.

209. Andorra tested all its inhabitants during the pandemic, a feat that was only possible thanks to the co-operation between the local authorities and the Government in terms of the organisation, staff and equipment needed to carry out the Covid-19 screening tests. In co-ordination with the Government (which provided the vaccines, equipment and health workers), the *Comuns* organised the first screening of the entire population. The Government and local authorities held daily meetings to co-ordinate the measures to be taken during the different phases of the pandemic: from the early stages, when it was decided to isolate the entire population at home, through to the gradual easing of restrictions. The *Comuns* were asked to contribute financially to initiatives to mitigate the effects of the pandemic. For example, the *Comuns*, and Canillo in particular, provided shelter and support, especially for foreign workers who had difficulty returning home when the pandemic struck. With the assistance of the Government and ski resort operators, plane tickets were subsidised to help those in need fly back to their countries of origin. The *Comuns* also contributed to the solidarity fund set up by the Government. The *Comú* of Encamp, for example, donated €1 500 000 to this fund, in addition to €800 000 in social benefits and various other subsidies paid out to its own residents.

4.2. The impact of the war in Ukraine on local authorities

210. Local authorities in Andorra have also had to deal with the impact of the war in Ukraine. According to data from the Ministry of Foreign Affairs, more than 350 refugees have arrived in Andorra since the conflict began. An interministerial task force has been set up to help Ukrainian families deal with administrative procedures, such as registering with local authorities and accessing social and healthcare services, as well as meeting their housing and basic needs. This support has also been extended to include schooling for minors, help in finding jobs and accommodation, and Catalan language courses for adults. All these actions are carried out in collaboration with the *Comuns*, which have accommodated refugees in hotels or flats owned by the parish and have accepted Ukrainian children in nursery and primary schools free of charge. In addition, the conflict in Ukraine has meant that income from Russian and Ukrainian tourists, who usually flock to Andorra for the ski season, has been reduced to zero.

4.3. Andorran local authorities and climate change

211. At various meetings, the monitoring delegation was told that climate change was one of the main challenges facing local authorities in Andorra. The effects of climate change are already having a noticeable impact on the finances of local authorities, to which tourism contributes significantly. For example, due to dwindling snow cover, *Comuns* with ski resorts are experiencing shorter and shorter seasons.

212. Andorra's local authorities have a role to play in mitigating the effects of climate change, within the framework of their autonomy. For example, the *Comú* of Canillo has launched several projects aimed at:

- Reducing dependence on seasonal snowfall by investing in tourism.
- Renovating the Palau de Gel by installing solar panels on the roof and improving thermal insulation.
- Installing a wind farm in Pic Maià in collaboration with Andorra's electricity operator, FEDA (national project).
- Installing a combined heat and power (CHP or "cogeneration") system in the villages of Soldeu, El Tarter and Ransol, thanks to an agreement between FEDA and the *Comú* of Canillo. Cogeneration systems are centralised systems that produce electricity and heat in a single cycle, which is then distributed via the network to the various buildings in these villages, with a substantial reduction in CO2 emissions into the atmosphere.
- Organising a district heating network in Canillo to supply public buildings in the village, using biomass from forest management.
- Promoting public transport on demand.

213. On the one hand, the Ministry of the Environment defines policies and strategies in the different areas related to the protection of the natural environment and the transition to renewable energies. On the other hand, the *Comuns*, within the limits of their powers, implement action plans to achieve the

objectives set at national level, particularly in the fields of town planning, waste management, water and the promotion of agriculture and livestock farming.

4.4. Signature of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority

214. The question remains as to whether Andorra will sign the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207). With regard to citizens' participation in the conduct of public affairs, it is important to note the adoption of the Law of 30 January 2023 on the popular legislative initiative mechanism at national level, which is provided for in Article 58 of the Constitution. The explanatory memorandum to this law stresses that citizen participation is a key element in the functioning of the democratic system and that, in order to enable direct involvement in public affairs, it is necessary to develop measures aimed at bringing institutions closer to the people, while encouraging and facilitating their participation in all matters that affect them. The law gives registered Andorran voters the right to submit a popular legislative initiative to the *Consell General*. This is done by putting forward a legislative proposal supported by a number of duly authenticated signatures equal to 10% of the registered voters. The popular legislative initiative mechanism may not be used for matters: a) relating to the State budget; b) relating to constitutional reform; c) relating to international treaties; or d) which contravene the Universal Declaration of Human Rights or other international treaties and agreements on human rights, or which seek to restrict or abolish the civil, political, economic, social or cultural rights enshrined therein.

215. At municipal level, the *Comuns* of Andorra have developed a range of information and consultation mechanisms (local community meetings, consultations with associations, etc.) and participatory bodies such as youth councils and councils of elders. The small size of the *Comuns* also facilitates direct contact between elected representatives and the general public. Public participation in local affairs is therefore well established in Andorra. Recently, mechanisms for involving citizens in decision-making on projects relating to public affairs at national or parish level have been established by Law 33/2021 of 2 December 2021 on transparency, access to public information and open government, and, in particular, by the Order of 31 May 2023, on citizen participation in regulatory and popular initiatives at municipal level. The 2021 Law aims to make public administration more transparent and to establish rules and guarantees for the public's right of access to information and public documents. The Order on citizen participation lays down the following principles:

- a. continuous dialogue between the local authorities and the citizens of the parish;
- b. public decision-making that takes into account the needs and preferences expressed by citizens; and
- c. the participation and contribution of citizens in defining public policies that concern them most, both in general and in specific sectors.

The municipal council will only consider and evaluate popular initiatives that are accompanied by the signatures of at least 10% of the voters on the municipal electoral roll. Once a popular legislative initiative has been received, the municipal council is responsible for setting the administrative process in motion.

216. The main concern expressed by the Andorran authorities regarding the ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) concerns the interpretation of Article 1, paragraph 4.1, which is seen as granting the right to vote to foreign residents. This concern is understandable, given the high proportion of foreigners in the country and the desire of Andorrans to protect their identity, traditions and uniqueness.

217. In the previous report on local democracy in Andorra, the rapporteurs drew attention to the wording of paragraph 4.1 of Article 1: "[e]ach Party shall recognise by law the right of nationals of the Party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside". The rapporteurs noted that the section on this point in the Explanatory Report to the Additional Protocol explicitly states that "the purpose of the current paragraph is to make clear that the Additional protocol does not oppose the granting of electoral rights by the Party to other persons, such as nationals not resident in the local authority or non-nationals. If the Party chooses to grant such a right, this provision requires it to do so by law. This paragraph does thus not provide for an individual electoral right of non-nationals of the Party. Under Council of Europe standards, this matter

is the subject of Part C of the Convention on the Participation of Foreigners in Public Life at Local Level". On the contrary, paragraph 4.2 of the Additional Protocol, which refers to foreign residents, leaves a broad margin of appreciation to the State on foreign residents' right of participation: "[t]he law shall also recognise the right of other persons to so participate where the Party, in accordance with its own constitutional order, so decides or where this accords with the Party's international legal obligations".

218. During their discussions with Andorran officials in September 2023, the rapporteurs, in order to allay any concerns in this regard, reiterated that the very terms of Article 1, paragraph 4, of the Protocol made the granting of the right to vote to foreign nationals entirely optional, and they therefore encouraged Andorra to sign the Additional Protocol.

5. CONCLUSIONS

219. Local self-government and local democracy are particularly well developed in Andorra, and part of the reason for this is the conditions in which the Principality was founded in the 13th century. It was established in the form of a "federation" of six parishes (increasing to seven in 1978). Historically therefore, these local entities (now administered by the *Comuns*) lie at the origins of the creation of the Andorran state. Even today, the parishes provide the framework for the Principality of Andorra. Article 1.5 of the Constitution of 1993 recognises the existence of parishes (*parròquies*) as Andorra's traditional territorial divisions. The Constitution also contains a Title VI entitled "Territorial organisation", which provides for a dual level of government and administration, one of a general nature, covering the entire country and its citizens, and the other of a local nature, covering each of the parishes. Bearing in mind the country's specific features, the level of local democracy may be considered to be highly satisfactory and overall, the requirements of the Charter seem to be met.

220. Andorra's municipal authorities (the *Comuns*) have a substantial degree of autonomy, which takes various forms:

- a. Normative autonomy: the *Comuns* are self-governing public authorities with legal personality and the power to enact local norms, subject to the law, in the form of orders, regulations and decrees. Within the area of their jurisdiction, they function according to the principle of self-government, recognised and guaranteed by the Constitution.
- b. Functional autonomy: the Qualified Law on the powers of *Comuns* of 4 November 1993 (as amended in 2017), gives a very detailed list of the *Comuns'* powers, which seem to be very broad in scope. As a result, they have the full ability to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- c. Organisational autonomy: The Qualified Law on the powers of *Comuns* grants *Comuns* the power to establish their own internal organisation and functioning, in accordance with the Constitution, general laws and customs and traditions (Art. 4.14). The Order of 29 December 2011 on the organisation and functioning of the *Comuns* outlined this autonomy in more detail.
- d. Financial and fiscal autonomy: the *Comuns* are granted financial autonomy under Article 81 of the Constitution. The Law of 16 December 2021 on municipal finances recognises that the *Comuns* have full fiscal authority, which is reflected in the right to adopt municipal tax rules. The resources over which the *Comuns* have real power of decision and which they collect directly (i.e. local taxes and fees) represent a significant proportion of their total resources. The Law of 20 October 2017 on financial transfers from the state takes the particular situation of each *Comun* into account and this amounts to a form of equalisation. It also establishes the unconditional nature of the destination of the financial transfers, meaning that the *Comuns* are free to use them as they wish.

221. Local self-government is safeguarded in several ways:

- a. The first safeguard derives from the composition of the Andorran Parliament, the *Consell General*. Article 50 of the Constitution states explicitly that the *Consell General* "embodies the mixed and apportioned representation of the national population and of the seven parishes". These are directly represented in the *Consell General*, as it is provided in Article 52 of the Constitution that half of this

body's members are elected in equal number by each of the seven parishes and the other half at national level. Each parish has two representatives in Parliament.

b. The *Comuns* also have a right of legislative initiative. Under Article 58 of the Constitution, bills may be tabled in the *Consell General* by three *Comuns* acting together. All the bills ever tabled by *Comuns* have been adopted by the *Consell General*.

c. In addition to bringing their case before the ordinary courts, the *Comuns* are entitled to lodge an individual complaint directly with the Constitutional Court if they consider that their interests or powers have been undermined.

d. In Andorra, there is no review of expediency or political supervision by the Government over the exercise of local powers, but only checks on legality. In practice, the main monitoring of the *Comuns'* decisions is carried out by the Court of Auditors, an independent technical body that is responsible, in particular, for carrying out financial audits of each *Comú* to ensure that its activities are in order and that they comply with the rules of public administration and the law (compliance audit).

e. Andorra has a prevailing culture, deeply rooted in its history, of consultation and close dialogue between the Government and the local authorities. This is facilitated by the country's small dimensions, which allow for informal meetings and consultations. Co-operation between the state and the *Comuns* was institutionalised by the Law of 20 December 2017, which establishes the procedures through which the general principles of institutional loyalty and co-operation can be put into practice while bearing in mind Andorra's specific circumstances. There is also regular consultation and dialogue between the two representatives of each parish with seats in the *Consell General* and the municipal authorities.

f. Co-operation between parishes is a firmly established practice in Andorra which has recently been given formal shape through several texts. The Order of 29 December 2011 on the organisation and functioning of *Comuns* enshrines their right to associate and expressly refers in its explanatory memorandum to the European Charter of Local Self-Government. Co-operation between *Comuns* was also the subject of a Law of 20 December 2017, which provides among other things for services to be pooled. For instance, *Comuns* and other local bodies can create intermunicipal Communities (*Mancomunitats*) to provide and implement services and activities jointly.

222. Recent reforms (in 2017, 2018 and 2021) affecting municipal powers and local finances have seen progress towards a more thorough application of the Charter provisions, which is in line with Recommendation 415 (2018), made by the Congress in its last report on local democracy in Andorra.

223. It would be advisable for the consultation and negotiation procedures between the state and the municipalities to be formalised in a legal text for all major decisions concerning them. It cannot be disputed that the Government engages in practice in an ongoing dialogue process with the *Comuns* and that decisions affecting them are the result of, at times, intense discussions. Formalising the mechanisms of consultation with the local authorities in a law would be an extra legal guarantee that they can make their viewpoints known on subjects affecting them directly.

224. The capital, Andorra la Vella, does not have any special status recognised in legislation, even though Article 2.3 of the Constitution states that it is the capital. In the light of Congress Recommendation 452 (2021) on the Status of Capital Cities, consideration could be given to taking the particular features of this *Comun* into account, particularly with regard to the methods for calculating financial transfers from the state.

225. Bearing in mind the reforms carried out in 2017, 2018 and 2021, the rapporteurs consider that there is no longer any serious obstacle to the ratification of paragraph 2 (on commensurate financial resources) and paragraph 5 (on financial equalisation) of Article 9 of the Charter. They therefore encourage the Andorran authorities to ratify these provisions. The obstacles to ratification of Article 9, paragraph 8, are more serious given that Andorra does not have a national capital market and the local authorities are not large enough to have access to the international financial market.

226. Lastly, the rapporteurs would encourage the Andorran authorities to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a

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local authority, since it cannot be interpreted to require states to take steps to grant the right to vote to foreign nationals.

APPENDIX - Programme of the Congress monitoring visit to Andorra

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

**Andorra la Vella, Ordino, Encamp, Canillo
(19-20 September 2023)**

PROGRAMME

Congress Delegation

Rapporteurs:

Mr Jean-Paul BASTIN

Rapporteur on local democracy
Chamber of Local Authorities, EPP/CCE¹⁶
Mayor of Malmédy (Belgium)

Ms Christine CHEVALLEY

Rapporteur on local democracy
Chamber of Local Authorities, ILDG¹
Mayor of Veytaux (Switzerland)

Congress secretariat:

Mr Guillaume LOISEAU

Co-secretary to the Monitoring Committee of the
Congress

Expert:

Mr André ROUX

Member of the Group of Independent Experts on
the European Charter of Local Self-Government of
the Congress (France)

Interpreters:

Ms Rosaura BARTUMEU CASSANY

Ms Mireia BAS BASLE

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

¹⁶ 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.

Tuesday 19 September 2023
Ordino and Andorra la Vella

NATIONAL DELEGATION OF ANDORRA TO THE CONGRESS:¹⁷

Mr Josep Angel MORTES PONS, Head of Delegation and Mayor of Ordino
Ms Rosa GILI CASALS, Deputy Head of Delegation and Mayor of Escaldes-Engordany
Mr Josep MAJORAL OBIOLS, Mayor of Sant Julia de Loria
Ms Eva SANSA JORDAN, Vice-Mayor of La Massana

Mr Isaac PEREZ MAS, Secretary of the National Delegation of Andorra to the Congress

GENERAL COUNCIL:

Mr Carles ENSEÑAT REIG, Síndic General
Ms Sandra CODINA TORT, Subsíndica General

Mr Cerni ESCALÉ CABRÉ, Councillor General
Ms Sílvia RIVA GONZÁLEZ, Councillor General
Mr Jordi CASADEVALL TOUSEIL, Councillor General
Mr Jordi JORDANA ROSELL, Councillor General
Ms Maria MARTISELLA GONZÁLEZ, Councillor General
Mr Marc MONTEAGUDO TORRES, Councillor General
Ms Carolina PUIG MONTES, Councillor General
Ms Judith SALAZAR ÁLVAREZ, Councillor General

Mr Josep HINOJOSA BESOLÍ, Secretary General
Ms Meritxell CARBO NOGUES, Legal advisor

PARISH OF ANDORRA LA VELLA:

Mr David ASTRIÉ PADILLA, Cònsol major
Mr Miquel CANTURRI, Cònsol menor
Ms Dolors CARMONA FILELLA, Municipal Councillor

COURT OF ACCOUNTS:

Mr Francesc D'ASSÍS PONS TOMÀS, President
Mr Carles SANSA TORM, Member

¹⁷ As of 29/06/2023

Wednesday 20 September 2023
Andorra la Vella, Encamp and Canillo

PARISH OF ENCAMP:

Ms Laura MAS BARRIONUEVO, Mayor
Ms Joan Miquel RASCAGNÈRES LLAGOSTERA, Vice-Mayor
Ms Esther VIDAL MILS, Municipal Councillor

PARISH OF CANILLO:

Mr Marc CASAL TOMÀS, Vice-Mayor

CONSTITUTIONAL COURT:

Mr Jean-Yves CAULLET, President
Ms Meritxell TOMÀS BALDRICH, Secretary General

GOVERNMENT:

Mr Ladislau BARÓ, Minister of Institutional Relations, Education and Universities
Ms Charlène VIGNAIS, Ministry of Foreign Affairs

MINISTRY OF FINANCE:

Mr Ramon LLADÓS BERNAUS, Minister
Ms Noèlia SOUQUE, Secretary of State for International Financial Affairs
Ms Charlène VIGNAIS, Ministry of Foreign Affairs

MINISTRY OF TERRITORY AND URBAN PLANNING:

Mr Raul FERRÉ BONET, Minister
Ms Cristina ANTELO, Director for Urban Planning
Ms Charlène VIGNAIS, Ministry of Foreign Affairs