

Webinar on consultation mechanisms between national and territorial authorities – Remote meeting, Morocco/Tunisia, 24 November 2020 - Introductory Session

Speech by Andreas KIEFER, Secretary General ad interim of the Congress

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Dear participants,

As Ms Helgesen said in her opening remarks, the right of local authorities to be consulted by other levels of government is a key principle of the European Charter of Local Self-Government.

Consultation is important for several reasons:

- it strengthens the democratic process and provides a forum for the definition of a shared vision of the challenges national and local authorities are confronted with and the opportunities at the local level to find the most appropriate solutions to them;
- consultation significantly improves the policy decisions improves the quality of decision-making; and
- It fosters better acceptance and ownership of policies affecting the local level and therefore leads to better implementation of the decisions, which lead to better results. And achieving good results in the interest of the people concerned is the principle of good governance.

Well-managed consultation helps to develop the democratic process at national, regional and local level. Good governance is reinforced when policies and decisions are enacted by all the levels concerned. Yes, in some countries it took a while until a change in the mindset took place and the traditional hierarchical top – down approach was replaced by a consultation culture of trust, guided by the will to find the best solution – and not defending “my solution” as the best and only one.

Consultation, indeed, it is the one cross-cutting principle that is relevant to all key provisions of the Charter and underpins all the other principles. The transversal nature of the principle of consultation is reflected in three articles of the European Charter of Local Self-Government:

Article 4.6 on the Scope of local self-government, provides that, I quote, “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”.

Article 5 of the Charter, on the Protection of local authority boundaries, stipulates that, I quote, “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”.

Finally, **Article 9 on the financial resources of local authorities** provides that “local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them”. Here again, there is an emphasis on “the appropriate manner” of consultations.

For us today, the core provision is the first one, Article 4.6, which includes these two all-important conditions, stipulating that consultations should be held “in due time” and “in an appropriate way”.

In “due time” means that local authorities should be given as much time as they need to examine government proposals and hold internal consultations before formulating an opinion; the form and timing of consultations must enable them to play a meaningful role in the decision-making process. We have to avoid situations where the right to be consulted is overridden on such pretexts as urgency and cost-saving – as it is, unfortunately, often the case and we have witnessed it again during the pandemic.

“In an appropriate way” means that consultations should be formal and held in a format agreed beforehand by both sides, in order to be productive and to have any legal value; there should be an agreed institutional setting for such consultations.

To ensure the application of these principles, it is best that they are anchored both in law and realised in practice. Both elements are important: some countries have long established traditions of consultation, but they are not grounded in law; it would be better if these countries could put in place the appropriate legal framework — so local authorities could be reassured, especially in the case of a change of political regime in the country concerned. On the other hand, some countries have the necessary legal framework but rarely carry out meaningful consultations in practice, which is not acceptable. Prof. Tania Groppi will present, more in details, the different types of consultation arrangements that exist in Europe.

This is why the Congress, in its recommendations following monitoring missions to most member states of the Council of Europe, has asked national authorities – both governments and parliaments - to develop more institutionalised and legally guaranteed consultation mechanisms with the representative association of municipalities, cities, provinces and regions. While acknowledging that the practice of informal consultations also exists in some member states, in the absence of institutionalised forms, the Congress stresses that a formalised consultation process, defined in the national law, provides for greater transparency and inclusion - and is in line with the letter and the spirit of the Charter.

Successful consultation mechanisms require the existence of a representative organisation that can negotiate with the government on behalf of local authorities – such as a national association. The Congress has always underlined the vital contribution that a unified national association of local authorities can make in discussions with the government and, where there are several representative associations, an effective coordination between them – across political party lines. The guiding ideology there is not a party programme but the objective needs of local self-government bodies and the women, men and children who live in them.

I would like to repeat that the obligation of consultation about policies and legislation should not apply only to national governments but to all actors whose decisions may concern local authorities.

Within the Council of Europe, the Parliamentary Assembly underlines the importance of consultations between parliaments and local authorities and fully supports the views of the Congress. The recommendation adopted by the Parliamentarians in the CoE calls for the rules of procedure of the relevant parliamentary committees to include specific provisions on holding consultation with local authorities, including a possibility to present written opinions on draft legislation. We all know very well that proposals presented by the government are being changed and amended in the parliamentary process. Therefore it is essential that this final phase of decision making is also covered by the consultation scheme.

You will hear more about this from the different experts this afternoon and I would like to thank all of them for their participation.

Ladies and Gentlemen,

This legal framework of the binding provisions of both the European Charter of Local Self-Government, as well as the “soft law” of recommendations on this issue underlines the central place of consultation in any system of democratic governance. Yet the lack of such consultation or shortcomings in the way that they are conducted remains one of the most frequent recurring problems identified by the Congress as part of its monitoring of the Charter.

The Congress has prepared two reports on recurring issues, based on assessments resulting from its monitoring and election observation activities, covering the periods 2010-2013 and 2014-2016. Both of these reports identify the lack of formal consultation mechanisms and procedures, or procedures that are recognized in law. The reports also reveal that many consultations are ineffective due to impossibly short deadlines, inadequate or insufficient use of existing mechanisms, and a lack of transparency during the process itself and that no information is given about the contributions to the consultation process by the different stakeholders and how they were taken into account or not.

In view of this unsatisfactory situation, in 2012 the Congress adopted a recommendation on the right of local authorities to be consulted, and in 2014 a Strategy on the right of local authorities to be consulted by other levels of government. The strategy includes a practical document to accompany national authorities in the organisation of consultation processes: the “Guidelines on the consultation of local authorities by higher levels of government” adopted in 2018.

These guidelines ensure that useful principles – which benefit both democracy and governance – are respected and applied. National governments need to abide by local democracy principles as well as also to consult local authorities.

I believe that those guidelines can and do serve as an effective tool for national and regional governments to organise consultations and build on experiences made across Europe with its huge variety of local and regional authorities. The fundamental principles, however, unite them!

The key points of the guidelines can be summarized as follows:

- first, the need for legal recognition of the right to be consulted – there should be a well-formulated legal framework at the national level, with the consultation process and stakeholders being defined in law;
- second, the need for a formal and adequate institutional setting, with local authorities having an institution to represent them and national authorities having institutions to coordinate their actions with local authorities.

The three important conditions here are laws, procedures and institutions. Consultation processes need to be defined and initiated, by legislative and governmental bodies, in a clear and transparent manner, preferably enshrined in the constitution, otherwise in laws or at least in rules of procedures of governments and parliaments. These should specify

- the format of such consultations,
- who is consulting who and for what purpose,
- the level of participation of the representatives of local authorities,
- the timeframe for consultations and
- the scope should cover all matters of interest for local authorities.

Both national and local authorities should have their own structures in order to communicate efficiently with each other. Given that most Council of Europe member states have a large number of local authorities, it is obvious that effective consultations cannot be carried out if local governments have no common platform to represent their common interests in their dialogue and negotiations with the central authorities. The existence of strong national associations of local authorities across political parties is therefore a precondition for successful consultations.

Local authorities should speak to national and regional governments, as far as possible, with a united voice. National legislation should recognise the role of national associations to be involved in consultations and to represent the interests of their members. In addition to the national legal framework, associations are encouraged to draw up a memorandum of understanding with national parliaments and line ministries, to function as a guideline that defines the details of consultation processes and the operational modalities of the application of the right to be consulted.

In countries where local authorities are represented by several associations, national governments should facilitate the establishment of a national system for consultation with local authorities and guarantee the representation of all associations in the consultative process. All levels of government should be represented in this national system of consultation. National associations should cooperate in order to define common positions on issues that affect them and to improve their ability to contribute to the development of national legislation and policies. It should be the duty of the associations to advocate the interests of local and regional authorities and to hold internal consultations with their members on subjects relevant to local and regional democracy.

The experience of the Congress monitoring activities shows that ineffective and uncoordinated local government associations weaken local democracy and do not achieve that the interests and needs of municipalities and cities are sufficiently reflected.

Of course, individual local authorities should not be deprived of the possibility to interact directly with the national government if their particular interests are at stake. The existence of national associations does not exclude the possibility for individual local governments to be consulted in a transparent way and in specific cases.

National governments also need to define and make clear which of their institution have the task of organising consultations. Ideally, this should be a line ministry responsible for local government and territorial administration, or, at the very least, the ministry of finance. Consultations can also be conducted at different levels: Among experts, senior civil servants but also at the highest levels, such as with the president of the state or/and prime minister with the presidents of the association(s). Of course, high level political consultations are to be welcomed! Consultative

meetings with the relevant line ministries are also needed to ensure practical results. Regulations at the level of the relevant line ministries should clearly stipulate the forms and procedures for the consultation of local authorities.

Another key actor in consultation is the national (and where appropriate the regional) legislative body. In national parliaments, issues related to local self-governance and regional policy are usually discussed in the relevant committees before they go to the session of parliament for adoption. The level of parliamentary committees is therefore the most appropriate one for organising consultations on legal initiatives that have a direct impact on local government. The rules of procedure of Parliamentary committee should therefore include specific provisions on the organisation of consultations with local authorities – that can be complemented by public hearings – identifying the subject of consultation, the procedures and time-frame, and the participants in this process.

These rules of procedure should not only allow local authorities and associations of local authorities to attend sessions of the committees, but also to have full access to all relevant documents, and to present written opinions on draft legislation. The rules should also include the possibility of involving experts from associations of local authorities in the preparation of draft laws that have an impact on their legal status, tasks and functions, and economic or financial situation.

Ladies and gentlemen,

What I just presented to you is the result of many years of monitoring activities of the Congress, of conferences, peer to peer exchanges among our members, discussions in the committees and the daily practice in our operational activities. They have already served in many countries as initiator for a process establishing a new culture of co-operation and consultation between national governments and parliaments and the representative associations of local authorities. Yes, besides changes in legislation this needs also a change in culture – on both sides!

Let me summarize the success factors for an effective consultation culture in the spirit of constructive multi-level governance:

- The promotion of institutionalised and systematic consultation of local authorities by higher levels of government through the formalisation of the consultation process in order to improve the quality and effectiveness of policies and legislation;
- Cooperating with national governments and parliaments with a view to introduce efficient and transparent forms and mechanisms of consultation
- Strengthen the capacities of national associations to be the unified voice of local authorities, their analytical competences and advocacy capacities
- Provide assistance to fragmented associations with the aim of including their views in the national consultation systems

I will leave you with these points in mind, hoping that they will fuel the discussions.

As always in political life, there are conditions for success. Congress-VicePresident Karl-Heinz Lambertz has formulated them as

- Wanting to do something is fine
- Then you need to be allowed to do it and finally

All depends on whether you are able to do it. So, after this workshop there is a lot of work to do in all the three sectors: For the national governments, for the national parliaments and for the associations of local and regional authorities. The Congress is on your side to accompany you on your way to find the most appropriate solution for you. There is no one size fits all approach – country specific solutions, based on ownership by all actors and inspired by the European Charter of Local Self-Government, are most promising.

I am also using this opportunity to tell you that both the Charter (ECLSG) and the guidelines on consultation which I have mentioned are available in electronic format, in their French, English and Arabic versions, in the chat. This Charter – having celebrated its 35th anniversary of opening for signature in October this year – is as relevant for local self-government as ever.

I very much hope that this workshop will contribute to the reinforcement of consultation in Morocco and Tunisia and I look forward to our discussions today.

Thank you for your attention.