The Congress
of Local and Regional Authorities

Chamber of Local Authorities

21st SESSION
CPL(21)2
28 September 2011

The European Charter of Local Self-Government in domestic law

Governance Committee
Rapporteur : Willy BORSUS, Belgium (L, ILDG[1])

Summary

The Congress proposes a package of measures to strengthen the reception of the European Charter of Local Self-Government in the domestic law of its member States.

The Monitoring Committee is asked to examine the reception of the Charter during its monitoring visits and to encourage judicial bodies to base their decisions on the Charter, or on the domestic law related to its reception, in cases relating to local democracy.

The Governance Committee is asked to draft guidelines on the current interpretation of the Charter, for use by monitoring, legislative and judicial bodies.

Associations of local authorities are asked to work with their national authorities to ensure that the Charter is made available in their national, regional and minority languages and to encourage local authorities to use it as a legal instrument for protecting local democracy.

[1] L: Chamber of Local Authorities/ R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: Group of the European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress
NR: Member not belonging to a political group of the Congress

DRAFT RESOLUTION[2]
[see Resolution 331 (2011) adopted on 20 October 2011]

1. Since its entry into force in 1988, the European Charter of Local Self-Government (hereinafter referred to as "the Charter") remains the only binding European legal instrument to lay down the principles of democratic local self-government. It is the guardian of the rights of local authorities in Europe, a landmark of European democratic development, setting out for the first time the principle of subsidiarity, namely that public responsibilities are best exercised by those authorities which are closest to the citizen.

2. The application of an international treaty such as the Charter in the domestic legal system of a State Party is known as "reception". Ratification of the Charter implies giving careful consideration to the way in which and the degree to which this reception is undertaken. In this respect, the Congress notes with satisfaction that the majority of states that have ratified in the last ten years have given direct application of the Charter to their legal systems.

3. The Charter now covers almost the entire European area. In this context the Congress welcomes its ratification by Andorra in March 2011, which brings the number of member States which have signed or ratified it to 45.

4. Convinced that the process of reception of the Charter into domestic legislation is of fundamental importance for the good functioning of local democracy in the States Parties, the Congress resolves to continue to promote the effectiveness of the Charter and to encourage its direct applicability in States Parties.

5. The monitoring of States Parties' compliance with the Charter has made it possible to conduct a constant evaluation of its interpretation and for a 'Charter culture' gradually to impose itself and has also contributed to improving the level of reception of the Charter in States Parties.

6. In order to contribute to the interpretation of the Charter and its direct application in member States, the Congress asks its Governance Committee to draft guidelines on the current interpretation of the provisions of the Charter, for use by legislative bodies, monitoring bodies and constitutional courts. These guidelines should take into account the findings of the reports assessing States Parties compliance with the Charter, in particular with regard to deriving a set of rights of local authorities, as well as the case-law of constitutional courts on the Charter, where this exists, with a view to assisting States Parties in implementing the Charter.

7. The Congress asks its Monitoring Committee:

a. to continue to strengthen and develop its monitoring of the Charter and to systematically examine the issue of the reception of the Charter during its country monitoring visits;

b. to raise awareness among the judicial bodies that monitoring delegations meet during their visits of the need to base their decisions on the Charter, or on the domestic law related to its reception, in cases relating to local democracy;

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[2] Preliminary draft resolution approved by the Governance Committee on 26 September 2011.

Members of the Committee :
B.-M. Lövgren (1st Vice-Chair), *V. Rogov* (3rd Vice-Chair), D. Barisic, N. Berlu *(alternate: C. Tascon-Mennetrier)*, *B. Biscoe*, W. Borsus, M. Chernishev *(alternate: V. Novikov)*, *M. Cohen*, B. Degani, A. Ü. Erzen, H. Feral, P. Filippou, G. Gerega, *M. Hegarty*, *I. Henttonen*, L. Iliescu, P. Karleskind, *I. Khalilov*, O. Kidik *(alternate: S. Tunali)*, E. Lindal, O. Luk'ianchenko, C. Mayar, M. Mahmutovic, C. Mauch, J. McCabe, *A. Mediratta*, J. Mend, A. Mimenov, *E. Mohr*, G. Neff, A. Nemcikova,*E. Yeritzyan (alternate)*, R. Nwelati, *F. Pellegrini*, J. Pulido Valente, G. Roger, S. Röhl, *B. Rope*, R. Ropero Mancera, M. Sabban, *C.-L. Schroeter*, *A. Sokolov (alternate)*, *N. Stepanovs*, D. Suica, S. Tobreluts, P. Van der Velden, *E. Verrengia.*

N.B.: The names of members who took part in the vote are in italics.

Secretariat of the Committee : T. Lisney and N. Howson.

c. to consider what concrete measures might be appropriate in the case of non-compliance of Congress recommendations of the implementation of the Charter in individual States.

8. The Congress invites associations of local authorities:

a. to monitor new legislation of local democracy in their countries with a view to its compliance with the Charter;

b. to ensure that local authorities are aware of their options of recourse to the courts, in cases of suspected non-compliance with the Charter, in order to request the application of the Charter's provisions where the relevant authorities have failed to apply it;

c. to maintain a regular dialogue with their national authorities with regard to improving the reception of the Charter into their domestic legal systems, with particular attention to the provisions which they have not accepted;

d. to report to the Congress on action taken with regard to 8.*a*, *b* and *c* above, as well as any positive measures taken with regard to the reception of the Charter in their domestic legal systems;

e. to work with their national authorities to ensure that the Charter is made available in their national, regional and minority languages, if this is not already the case, and that a copy of each translation is deposited with the Council of Europe Treaty Office for public access.

EXPLANATORY MEMORANDUM[3]

I. FOREWORD

1. The Congress of Local and Regional Authorities has, on several occasions, considered the incorporation of the European Charter of Local Self-Government (a Council of Europe treaty hereunder referred to as 'the Charter') into the domestic legal systems of ratifying states. The Rapporteur refers in particular to the Congress reports and recommendations of 1994[4] and 1998[5] and the European Committee on Local and Regional Democracy's (CDLR) report of 1995.[6]

2. Major changes have occurred over these last 13 years, making it necessary to return to this important subject.

3. As pointed out in the report on 20 years of the Charter[7] and at the Lisbon Conference in July 2005, the first significant change has been the growing success of the Charter. This success is due to monitoring procedures which first and foremost involve political monitoring of countries' commitment to comply in their own legislation with the principles of the Charter, and secondly involve legal oversight, namely direct evaluation of potential conflicts between the provisions of domestic law (and between states' acts and behaviour) and the principles of the Charter.

4. The monitoring process has made it possible to conduct a constant evaluation of interpretation of the Charter, and for a 'Charter culture' gradually to impose itself.

5. The 1998 report provided a basis for starting a new process of reflection, giving a comparative picture of 21 European countries. A number of major countries were not dealt with in that report, for they had not yet ratified the Charter. These included Belgium, France, Ireland, the Russian Federation, Switzerland, the United Kingdom and most of the countries of eastern and south-eastern Europe (23 in all).

[3] Prepared with the contribution of Mr. Francesco Merloni, Professor, University of Perugia, Italy.
[4] Congress Recommendation (1994) 2 and report CG (1)3 on monitoring the implementation of the European Charter of Local Self-government.
[5] "The incorporation of the European Charter of Local Self-Government in the legal system of ratifying countries and legal protection of local self-government", rapporteurs Mrs Doganoglu and Mr Lloyd.
[6] CDLR(1995)18rev: Report on monitoring the implementation of the European Charter of Local Self-government.
[7] Congress Recommendation (2005)195 and report CG (12) 6 Part II on the 20th anniversary of the European Charter of Local Self-Government.

6. This report aims to analyse the form of reception of the Charter in all Council of Europe member states that have signed and ratified it and to look again at the situation in the countries already examined in the 1998 report to see how the legal situation regarding the reception of an international treaty has evolved. In all the countries which have ratified the Charter, whether they did so a long time ago or recently, progress may have occurred due to political pressure exerted by the Council of Europe, in terms of both states' position vis-à-vis local self-government, at both political and legislative levels (through reception of the Charter, conferment on it of greater legal force and amendment of domestic legislation to bring it into line with the principles of the Charter), and their case-law (constitutional or ordinary).

7. A far-reaching change of perspective is envisaged, not only where the defence of local authorities is concerned (against the state and the regions which hold powers relating to the legal system of local self-government), but also in terms of recognition of the rights granted to citizens vis-à-vis local authorities, the consequence of which is the creation of judicial remedies.

8. As part of the current trend towards 'internationalisation of law', there are several ways in which the force of directly applicable rules is given to provisions (standards, legal or technical regulations) adopted by organisations both international, United Nations (UN), World Trade Organisation (WTO) and 'regional', European Union (EU). Also noteworthy is the adoption of charters of fundamental rights offering direct protection to citizens in their own country or internationally. These involve a 'transfer of sovereignty' by the countries concerned in specific fields.

9. In the aforementioned cases, conferment of the force of directly applicable domestic rules to rules of international law derives from the same configuration as the international agreements which underlie the creation of such directly applicable law. The UN, WTO and EU treaties allow certain shifts of legislative power from the national to the international level.

10. The Charter is an effective binding legal instrument, directly applicable in the countries which have ratified it. It can itself encourage its own reception in domestic law through the introduction of provisions enabling those of its provisions which are directly applicable to be clearly identified from the very moment when a country ratifies it, or through the drafting of a provision requiring a state which ratifies the text to transpose the Charter or to identify the provisions of the Charter which are directly applicable by a given time limit.

11. The judicial protection of local self-government (and of citizens' rights) remains closely linked to the question of reception, in respect of which some changes should be found in a number of countries.

12. Preparation of the present report has been done using a questionnaire addressed to the members of the Group of Independent Experts of the Congress, who are nationals of the Council of Europe member States which have signed and ratified the Charter. As university professors and specialists in local and regional self-government, they have a detailed knowledge of the legal systems of their countries and were solicited to provide the rapporteur with the greatest possible amount of information for the present report.

13. One of the main steps during the drafting of the questionnaire was the definition of 'reception'. The Charter, as an international convention, itself regulates the procedures whereby countries which sign and ratify the Charter undertake to 'consider themselves bound' or 'express their consent to be bound by the Charter'. These commitments do not yet constitute reception of the Charter in the domestic legal system.

14. In the present report, 'reception' refers to any process of conferring legal force on the European Charter of Local Self-Government in a country's domestic legal system so that the Charter becomes a source of domestic law that can be applied directly or indirectly by public authorities and courts, which grant rights to local authorities and citizens on the basis of this text.

15. The present report centres particularly on: 1. the reservations expressed by states in the instrument ratifying the Charter; 2. the various degrees of reception of the Charter; 3. the Charter's own contribution to its reception; and 4. the judicial protection of local self-government.

II. 'RESERVATIONS' EXPRESSED IN THE INSTRUMENT RATIFYING THE CHARTER

16. In a certain way, Article 12 of the Charter permits an optional implementation of parts of the Charter in those countries which have decided to ratify it, requiring each country to consider itself bound by at least 20 paragraphs of Part I of the Charter, of which at least 10 have to be selected from a list which appears in the same article. Each country may opt not to be bound by up to 10 provisions from the total of 30 paragraphs. This act of choice of the provisions that the country wishes to ratify is expressed in the form of a declaration that is made when the instrument of ratification is deposited by the country. In the context of this Report, 'reservation' refers to the fact of not having ratified a particular provision of the European Charter of Local Self-Government. Each country may express up to 10 reservations. This gives a potential total of 410 provisions which may be the object of reservations by the 41 countries.

17. In the questionnaire that was used to gather information for this report, the rapporteur underlines that specific attention was paid to the reservations expressed by each country when it ratified the Charter. The possibility of making reservations exists to enable as many Council of Europe member states as possible to sign and ratify it but also to take into consideration the diversity of legal systems and structures of local government in member states.

18. 22 countries have expressed no reservations at all, while 19 have made reservations. The total number of provisions subject to reservations is 83 of the potential total of 380 (i.e. 21.8%). From this perspective, this seems to show a high level of acceptance of the principles laid down in the Charter.

19. Where the perceived relationship between countries which have made reservations[8] and those which have not is concerned, the rapporteur considers that a more positive view should not necessarily be taken of those which have expressed none, and nor should these countries be considered to show greater acceptance of the Charter. The absence of reservations may reflect a lack of consideration of the Charter and the international obligations that it brings: a country may formally state that it agrees with the principles of the Charter while failing to make a full assessment of the legal consequences of ratification. Alternatively, the absence of reservations may be based on a feeling that the country's domestic legislation is fully in line with the Charter, whereas in reality there may be possible conflicts between domestic law and the text of the Charter.

20. In contrast, the expression of reservations by some of the countries which have done so may, rather than indicating a problem of acceptance of the principles of the Charter, indicate a highly positive attitude. The Charter is 'taken seriously', and the ratifying state, particularly in the event of full reception (i.e. the Charter becomes a source of domestic law that is directly applicable) has identified provisions of the Charter in respect of which it will not agree to amend its own legislation, and for which there is a risk of conflict between domestic law and the Charter.

21. Where changes in reservations over a period of time are concerned, only two things need to be said. The first is that there is some tendency to alter the declarations of reservations made at the time of ratification, which implies a change of mind about the reservations made and a reduction in the number of reservations (as in the case of Hungary and Latvia and, more recently, Malta).

22. Secondly, it is interesting to note that, over a ten-year period, since the Doganoglu/Lloyd report, the ratio between countries making reservations and those making none is virtually identical: 10 out of 20 countries in 1998 and 9 out of 20 during the period 1998-2009, i.e. 19 out of 40 in total.

23. The average number of reservations per paragraph of the Charter is 2.76. This average lies between two extremes, with some provisions having no reservations registered (Article 2; Article 3, paragraph 1; Article 4, paragraph 1; Article 7, paragraph 1), whereas those subject to the greatest number of reservations are Article 7, paragraph 2 (on financial compensation for expenses incurred in the exercise of the office of elected local representatives), with 12 reservations; Article 6, paragraph 2 (on the recruitment of local government staff), with seven reservations; and Article 9, paragraph 6 (on local authorities' right to be consulted), with six reservations.

[8] In the category of countries which have expressed reservations, there is a very wide range from countries which have made just one or two to those which have made widespread use of reservations: Turkey (nine reservations) and Liechtenstein (eight reservations).

24. It may be noted that the provisions of the Charter which are completely accepted contain more general principles and, according to the terminology adopted for the questionnaire, are ‘programmatic’ in nature, imposing only detailed obligations. Yet these are the provisions more readily accepted by all countries. In contrast, those provisions which are subject to the greatest numbers of reservations are those of a more operative and more binding nature (and easier to apply directly).

25. On the subject of reservations, it may be concluded that they generally seem to be made to a limited extent. However, the persistence over a period of time of such reservations gives food for thought. It is necessary to question the need for these countries to maintain their reservation(s), especially where they no longer have any reason to exist after domestic legislation has changed.

26. In more general terms, the question needs to be raised of the actual usefulness of the reservation, especially since the Charter allows a broad measure of usage of the reservation possibility (10 provisions out of 30, i.e. 33%, which seems too high). Particularly if a reservation relates to non-self-executing provisions which are a matter of principle. The Charter is, in principle, a corpus of rules which should be accepted in their entirety, without reservations, other than in quite specific cases (such as that of countries of small geographical size), which should be dealt with through negotiation between the Council of Europe and the signatory country.

III. RECEPTION OF THE CHARTER – THE VARIOUS DEGREES OF RECEPTION

27. The 1998 report on ‘The incorporation of the European Charter of Local Self-Government in the legal system of ratifying countries and legal protection of local self-government’ was based on a distinction between countries taking the ‘monistic’ and those taking the ‘dualistic’ approach, reflecting countries' attitudes to the reception of international treaties. According to this distinction, a ‘monistic’ country is considered to incorporate international treaties automatically into its domestic legal system and to give it the status of a source of domestic law, with direct application of its provisions. In the countries described as ‘dualistic’ reception always entails an act differing from ratification. An international treaty is thus introduced indirectly: reception is conferred on it by domestic law in so far as this reproduces the text of the treaty. Traditionally, dualistic countries refuse any direct application of international treaties.

28. The 1998 report qualified this distinction in several places by introducing exceptions and sub-classifications.

29. In this report, the Rapporteur proposes to attribute greater importance to the legal consequences of ratification of the Charter, paying particular attention to the conferment on the Charter of a legal force which is exclusively binding, and also the conferment on it of the status of a source of law directly applicable in the country's domestic system.

30. Direct application means two things, one being the obligation for the administrative authorities to apply the Charter, if need be, instead of a rule of domestic law which would be contrary to one or more provisions of the Charter; and the other being the recognition of rights which may be directly relied on in the courts which must guarantee to the respect of those rights (by refraining from applying in the cases concerned the domestic law which had been found to be at variance with the Charter, or by asking the responsible authorities, in most cases the Constitutional Court, to annul the domestic law provisions considered to be at variance with the Charter).

31. Automatic reception could therefore be envisaged which does not confer direct applicability on the Charter; on the other hand, there may be non-automatic reception which has the effect of giving the Charter direct application.

32. Clarification of the Charter's binding effects is necessary. The Charter was conceived as an instrument with binding effects, entailing commitments under international law (and not domestic law). Countries signing and ratifying the Charter undertake to abide by it in that they will not only refrain from future adoption of domestic law provisions at variance with the Charter, but also amend any provisions which conflict with the Charter.

33. The obligation is incumbent on signatory states vis-à-vis not only other states, but also the international organisation that promoted adoption of the treaty: the Council of Europe. In terms of international law, these obligations have legal force, the states parties to the Treaty and the Council of Europe being able to adopt all measures of international law to secure compliance with the Charter. Conversely, in domestic law, where the Charter has not been received or has been received only in a formal sense, without conferment of direct applicability, the commitments under international law have an essentially political force. However, since domestic law alone applies to local authorities, the existence of rules at variance with the Charter has no legal implications. That said, it is plain that the Charter continues to yield its binding effects (in international law): all the Charter's signatory and ratifying countries undertake to ensure consistency between the Charter and their domestic legislation. The significant distinctive feature nevertheless lies in the conferment of direct application on the Charter's provisions, further to the binding effects. The Congress, in Recommendation (1998) 39 explicitly recommended that all countries which have signed and ratified the Charter should make it directly applicable.

34. Through application of these concepts, a classification of the different degrees of reception can be based on two major categories: A (effects exclusively binding) and B (effects also direct) and a scale of four ascending levels of reception.

CATEGORY A: THE CHARTER HAS EXCLUSIVELY BINDING EFFECTS, ITS PROVISIONS ARE NOT DIRECTLY APPLICABLE

There are 20 countries in this category: Austria, Azerbaijan, Cyprus, Denmark, Finland, Georgia, Germany, Iceland, Ireland, Italy, Liechtenstein, Malta, Montenegro, the Netherlands, Norway, Romania, Slovakia, Sweden, Turkey and the United Kingdom.

Level 1: Absence of reception of the Charter

35. The Charter has been ratified, but ratification has no effect in the country's domestic legal system. The Charter remains an international treaty which is a source of obligations under international law, but the effect on domestic law is only potential and indirect, in so far as domestic law has been amended to adapt it to the Charter's provisions.

36. The authorities accountable for compliance with the Charter are those vested with legislative power (national or regional): legislative assemblies (and governments with power to propose laws).

37. The countries concerned are: Georgia, Iceland, Malta, Norway, Slovakia and the United Kingdom.

Level 2: Purely formal reception of the Charter

38. The Charter, by its ratification (automatic or through a separate act of ratification) has been received in the domestic legal system, but the effects of reception remain exclusively binding. Reception is of a formal nature, as the Charter is not considered to be a source of directly applicable law. There are countries where the Charter's reception gives it the status which that country grants to international treaties, sometimes one higher than ordinary law, but still without this having effects whereby the Charter's provisions apply directly.

39. The countries concerned are Austria, Azerbaijan, Cyprus[9], Denmark[10], Finland, Germany[11], Ireland, Italy,[12] Liechtenstein,[13] Montenegro, Netherlands,[14] Romania, Sweden and Turkey.

[9] The Charter has such vague provisions as to prevent direct application

[10] Denmark, as a dualistic country, has ratified the Charter, but this has no effect in the country's domestic law. Denmark's expert has doubts as to whether Denmark should be classified among level 1 countries.

[11] Ratification in Germany is complicated because of the responsibilities of the individual federal states (*Länder*). The Charter was ratified through a law of the Federation (*Bund*) in a field which is a *Land* responsibility: the legal system for local authorities. This gives rise to doubts about the constitutional legitimacy of this method of reception of the Charter. Notwithstanding this, the reception of the Charter may give to its provisions effects which are not exclusively binding, but also direct.

[12] A possible development is mentioned (without tangible applications): following the constitutional reform in 2001, the national and regional laws must be in accordance with international treaties. The treaties rank higher than ordinary law. The courts may ask the Constitutional Court to proclaim the unconstitutionality of a law at variance with the Charter. It would not become possible to rely on the Charter in the courts, but the Charter could acquire the status of a source of domestic law, at least as a parameter for determining the constitutionality of an ordinary law at variance with its provisions.

40. Most of these are 'dualistic' countries, which, invoking state sovereignty, do not countenance an international treaty's becoming a source of domestic law without going through a specific act of reception. It is the will of parliament that determines whether, and to what extent, the provisions of an international treaty may become domestic law. Only the latter is directly applicable. For a country of this kind, however, direct reception of international treaties such as the European Convention on Human Rights is not unknown (but that is an exception linked with the protection of fundamental human rights; the right to local self-government is not regarded as a fundamental right). The countries in this category which are members of the European Union are not unaccustomed to direct application, not only of the Treaties but also of certain (self-executing) prescriptive acts adopted by the European Union. Here there is a far greater limitation of sovereignty than is constituted by giving the Charter direct application.

41. Besides the 'dualistic' motivation, there is in most cases another as regards the exclusively binding effects of the Charter: the conviction that the legislation in force, both constitutional and ordinary, was fully in line with the Charter at the time of ratification and remains so at the present time. This stance has to be considered correct in most countries where the situation of local democracy was, at the time of ratification, and still remains fully in conformity with the Charter. However, this stance is sometimes presumptive, as the Charter has certainly moved on since 1985. In the recommendations adopted by the Council of Europe following monitoring visits or general reports, the principles of the Charter have evolved, been better interpreted and been fleshed out. There may therefore be domestic law provisions in some countries that cease to be in line with the Charter and would require adaptive legislation to meet the Charter commitments. In such cases, direct application of the Charter would make the system of adaptation more accommodating and flexible (unless it is desired to preserve parliament's exclusive function in the making of domestic law) and would enable local authorities to contribute to the protection of local self-government through referral to courts of justice.

42. The third motivation for keeping the effects of ratification exclusively binding is linked with the content of the Charter, all or most of the provisions of which have programmatic value in terms of principles. The Congress[15] has already identified certain provisions of the Charter which have self-executing content (Article 3, paragraph 2; Article 4, paragraphs 5 and 6; Article 5; Article 7, paragraphs 1 and 3; Article 8; Article 10 and Article 11). Other provisions have been identified as operative through the action of interpretation of the Charter which took place during the monitoring visits (in the recommendations adopted in particular); lastly, the Rapporteur considers that, in future, the Charter could be improved through, for example, the adoption of one or more additional protocols, which could add further self-executing provisions to the Charter.

CATEGORY B: THE CHARTER IS DIRECTLY APPLICABLE

There are 21 countries in this category: Armenia, Belgium, Bulgaria, Croatia, the Czech Republic, Estonia, France, Greece, Hungary, Latvia, Lithuania, Luxembourg, Poland, Portugal, the Russian Federation, Serbia, Slovenia, Spain, Switzerland, 'the former Yugoslav Republic of Macedonia' and Ukraine (to which Germany might be added if reception of the Charter is considered to have been achieved through the federal law).

43. The Charter has been ratified and received in the country's domestic legal system. The Charter as an international treaty always has the binding effects of adaptation of the country's domestic law to it. In addition to the binding international effects there is the conferment on the Charter of the status of a source of law of which the provisions are directly applicable.

44. Reception may occur automatically, with the Charter directly acquiring the status of a source of law, or non-automatically, with a source of domestic law giving the Charter the status of a source of directly applicable law, without amendment of its content.

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[13] The Charter contains only provisions of principle, without direct application.
[14] Country classed as 'monistic'. The Charter ranks above the Constitution, but this does not result in direct application.
[15] In Recommendation (1998) 39.

45. Direct application of the Charter may depend:

- on the rank assigned to international treaties generally, and specifically to the Charter, on the scale of sources of law
- on the programmatic or operative (self-executing) substance of the Charter's provisions

Level 1: Ranking on the scale of sources of law

1.1. *The Charter has the rank of ordinary law*

46 Reception may give the Charter (or the law embodying its reception) the rank of ordinary law. It may be placed on a completely equal footing, which entails the application of the orthodox rules on interpretation and the application of the laws in the event of conflict between provisions.

47. The countries concerned are Belgium and Bulgaria (the existence of direct application of the Charter seems to be asserted chiefly at an academic level). Some instances of resistance seem to exist, however. Germany may be considered to be in the same situation, if the view is taken that reception gives the Charter the status of a source of domestic law.

48. A variant is that the Charter receives a rank equivalent to ordinary law but, as an international treaty, is endowed with a particular 'passive resistance' in that the laws of the land (national or regional) following the date of the Charter's reception cannot alter it. This is a mere variant because, in the absence of clauses explicitly establishing prevalence, there is no change to the systems for resolving conflicts between incompatible provisions.

49. The country concerned is Hungary (reception is effected by a specific ordinary law; 'passive' resistance exists).

1.2. *The Charter ranks above ordinary law*

50. The Charter (or the law fully transposing the Charter's provisions) ranks above ordinary (national or regional) statute as a source of domestic law. Where this conflicts with it, the Charter's provisions are applicable (instead of the domestic provisions).

51. The following variants were mentioned:

a. The Charter, as a source of domestic law, has an equivalent rank to the Constitution (or to the constitutional statute). The countries concerned are the Czech Republic, Luxembourg and Ukraine. In the Czech Republic, the precedence of the Charter over domestic provisions does not entail a power of direct application of the Charter, but requires the prior annulment, by the Constitutional Court, of the conflicting domestic provision.

b. The Charter has a status equivalent to a formal source of domestic law ranking above ordinary law.

c. The Charter's provisions take precedence over domestic standards, on the basis of clauses establishing the precedence of international treaties, without formal assignment of the status of a higher-ranking source of law. The countries concerned are Armenia, Croatia,[16] Estonia, France, Greece, Latvia, Lithuania, Poland, Portugal, the Russian Federation, Serbia, Slovenia, Spain,[17] Switzerland and 'the former Yugoslav Republic of Macedonia.[18]

[16] The Charter ranks between the Constitution and all the laws, whether institutional or ordinary. The fact that the Charter overrides domestic provisions does not imply a power of direct application, but requires the prior annulment by the Constitutional Court of a conflicting domestic provision.

[17] The Charter ranks between the Constitution and all the laws, whether institutional or ordinary.

[18] Apparently a composite model with both binding and direct effects..

Level 2: Programmatic or operative (self-executing) substance of the Charter's provisions

52. In some countries only those provisions of the Charter containing self-executing stipulations are deemed directly applicable, when those with programmatic content remain incorporated into domestic law, but with exclusively binding force (obligations to amend, but not to repeal, provisions which conflict with the principles of the Charter: those provisions remain in force), or with the status of parameters for interpretation. The Charter is not directly applicable and does not supersede domestic law, but is considered to be one of the parameters used in judgments of the Constitutional Court or the ordinary courts relating to the validity of domestic law. The judges therefore take it into consideration when examining cases.

53. Conversely, in the other category B countries the Charter is given direct applicability, and any distinction between programmatic and operative provisions is avoided. Yet the distinction is not always clear when it comes to ascertaining whether or not the country concerned really has the resolve to give all Charter provisions direct application.

2.1. *No distinction*

54. The countries where no distinction is made among the provisions of the Charter are Armenia, Bulgaria, Croatia (all of the Charter's provisions are considered self-executing), the Czech Republic (all of the Charter's provisions are considered programmatic), Estonia, Germany, Greece, Hungary, Poland (all of the Charter's provisions are considered programmatic), the Russian Federation, Serbia, Slovenia, Spain (all of the Charter's provisions are considered programmatic), 'the former Yugoslav Republic of Macedonia' and Ukraine.

2.2. *Only the self-executing provisions are directly applicable*

55. The countries, in which the distinction is of legal importance, because only the self-executing provisions of the Charter are directly applicable, are Belgium, France and Switzerland.

56. When speaking of direct application, two different situations need to be distinguished from each other, constituting two distinct levels of reception of the Charter.

Level 3: The Charter is applicable, but cannot be relied on directly

57. The Charter's direct application in domestic law, at this stage, presupposes that all the administrative authorities enforcing the law must apply the Charter on the basis of the rules and restrictions already mentioned. This is a true legal obligation which chiefly binds the higher authorities (national and regional), whom it behoves to respect the autonomy of local authorities.

58. Since it is the basic level of direct application, this level concerns the 21 countries in category B (Armenia, Belgium, Bulgaria, Croatia, the Czech Republic, Estonia, France, Greece, Hungary, Latvia, Lithuania, Luxembourg, Poland, Portugal, the Russian Federation, Serbia, Slovenia, Spain, Switzerland, 'the former Yugoslav Republic of Macedonia' and Ukraine).

59. It is also necessary to include some countries which apply the provisions of the Charter, but indirectly: the Charter makes no provision for a remedy in the event that its provisions are breached, but is used as a parameter for interpretation when an application is made in respect of a violation of the principles of local self-government enshrined in the Constitution or in the law. This is so in Spain,[19] which constitutes an interesting case, as direct application of the Charter is maintained, while the Charter cannot be directly relied on in the courts, as well as in Poland[20] and Germany.

[19] The expert drew attention to those decisions of the Constitutional Court which use the provisions of the Charter as an indicator of a possible violation of the principles of local self-government.

[20] The courts in Poland can in principle apply the Charter directly, but this rarely occurs, as the provisions of the Charter are largely programmatic.

Level 4: The Charter is a source of recognition of rights which can be relied on in court

60. This is the highest level of reception. Direct application entails the recognition of rights which can be relied on in the courts.

61. Local authorities (and citizens who have an interest in taking legal action in defence of local self-government) are entitled to apply to the courts (civil or administrative, depending on the system) to request the direct application of the Charter's provisions in all cases where the authorities required to ensure the direct application of the Charter have failed to do so.

62. It is the courts which have the power (where it exists) to call for the intervention of the Constitutional Court in order to declare domestic provisions conflicting with the Charter inapplicable, as well as the power to grant immediate protection of local self-government by directly applying the Charter's provisions (and refusing application of the conflicting domestic provisions).

63. The right of remedy and the power of courts to declare domestic provisions inapplicable may depend on the programmatic or self-executing substance of the Charter's provisions. This reintroduces the classification adopted in section B. 2 of countries that make no distinction and countries that give the Charter direct applicability only in respect of the self-executing provisions.

64. The 11 countries which may be classified at this level are only those which have made express provision, as a possibility of direct application of the Charter, for the rights of local authorities laid down in the Charter to be relied upon as law in the courts: Belgium,[21] France,[22] Estonia, Greece, Hungary, Latvia,[23] Luxembourg, the Russian Federation,[24] Serbia,[25] Slovenia and Switzerland.[26]

IV. A FEW CONSIDERATIONS AS TO THE DEGREE OF RECEPTION OF THE CHARTER

65. If we wish to paint an initial picture based on the classification of the different degrees of reception of the Charter, we can deem the classification in itself to be a sound basis for information. Its information is highly 'simplified', with one country being described as level 2, and another as level 4, but at least this enables us to grasp some fundamental trends.

66. By definition, there can be no infallible classification, for there may in fact be countries presenting characteristics of more than one level. Taking as an example cases in which the Charter is used as a parameter for interpretation in judgments on the conformity of ordinary legislation with constitutional principle of local self-government (as is done in Germany and Italy), this situation cannot, in strictly legal terms, be classified in the category where the Charter is given the status of a source of directly applicable domestic law (category B). The principles of the Charter are applied indirectly, but this situation must nevertheless be considered better than those situations in which the Charter is not even referred to (and is little known).

67. Furthermore, the classification of a country in one of the two levels of category B (direct effects conferred on the Charter) does not mean that the Charter is effectively a source of law and that it constitutes a better means of protecting local self-government. In a number of cases, the possibility of direct application by the administrative authorities or the possibility of applying to a court may remain purely hypothetical, not actually taken advantage of through effective use of the newly acknowledged rights. This means that the classification of countries according to the four levels of reception of the Charter does not imply any value judgment about the quality of local and regional democracy: those countries which have adopted a system of reception of the Charter at a 'high' level are not, just because they have made the Charter directly applicable, more 'advanced' than the countries with a 'low' level of reception. In the latter, as already mentioned (see paragraph 48 above), the effective

[21] Only for the self-executing provisions of the Charter.

[22] Idem.

[23] The expert emphasises that there are some cases in which the Charter is directly applied by the Constitutional Court.

[24] The courts have power not to apply, in cases before them, the domestic provisions conflicting with the Charter, but also have a duty to ask the Federal Constitutional Court to verify the constitutionality of the provisions deemed inapplicable.

[25] Provision is made for direct application of the Charter by the courts, but this is mainly a formal provision. According to the expert, members of the judiciary are reluctant to apply international treaties directly.

[26] Only for the self-executing provisions of the Charter.

situation of local authorities' local democracy and self-government may be highly positive, and therefore in conformity with the Charter.

68. That said, we may point to certain underlying trends observed over the 13 years between the 1998 report and this report. Where the two major categories are concerned, the 1998 report considered 21 countries, of which 13 (62%) came into category A (absence of reception or purely formal reception), as compared to the eight (38%) which gave direct effects to the Charter (category B). The ratio is reversed in respect of the 20 'additional' countries, among which seven (35%) have to be placed in category A and 13 (65%) in category B. The updated overall picture, taking account of the fact that no country has in the meantime changed its system of reception of the Charter, shows a situation of equality, with 20 countries in category A and 21 in category B.

69. Where the four levels of reception are concerned, the figures for level 1 (absence of reception) rose from 2 of 21 countries (9.5%) to 6 of 41 (14.6%); for level 2 (purely formal reception) they rose from 11 of 21 (52.3%) to 14 of 41 (34.1%); for level 3 (direct effects, but incapable of being directly relied on) they rose from 4 of 21 (19%) to 10 of 41 (24.4%), and for level 4 (rights that can be relied on in court) they rose from 4 of 21 (19%) to 11 of 41 (26.8%). The most significant advance was in level 4.

70. The other general observation which can be noted concerns the 'stability' in each country of the legal system adopted for reception of the Charter, notwithstanding the increasing 'mobility' of sources of law in the context of the current globalisation process and the need for countries to adapt (especially regarding the recognition of sources of law directly applicable in the domestic system, and of international standards). This seems to show that each country opted for its own system in respect of the Charter on ratification, and has not considered it necessary to reconsider this subsequently.

V. THE CHARTER'S CONTRIBUTION TO ITS OWN RECEPTION

71. The wide variety of attitudes taken by the countries which have ratified the Charter to the reception of its provisions in their domestic legal systems may be explained by the legal nature of the Charter: it is an international treaty which, once ratified, obliges a country to adopt legislation in conformity with its provisions.

72. The conferment on the Charter of a legal force equivalent to that of a provision of domestic law, directly applicable to a greater or lesser degree, nevertheless depends on a decision based wholly on the arrangements made by each individual country for international treaties.

73. The present-day 'internationalisation of law' tendency to which attention was drawn in the foreword often encompasses the conferment on standards set at international level of the directly applicable legal force of domestic law. This legal effect depends on the configuration of the international agreements underlying the creation of this directly applicable law.

74. It is necessary to examine the political reaction that there might be in Council of Europe member States which are Parties to the Charter, if an additional protocol to the Charter to clarify its provisions would be proposed. This reaction is of course difficult to measure especially in the absence of such a text at present. However, the rapporteur proposed here to make an assessment, on the basis of legal systems in these States Parties, to see how their respective legal systems could accommodate the provisions of the Charter more accurately, especially in terms of reception.

75. There are several possible levels at which the legal force of the Charter might be strengthened:
i. the imposition of a larger number of the Charter's provisions by which signatory states must agree to be bound, while maintaining the binding nature of the Charter, or the setting of specific deadlines for bringing domestic legislation into conformity;
ii. the imposition of direct effects, but only for certain provisions of the Charter;
iii. the imposition of a number of direct effects in ascending order.

76. The Rapporteur underlines that, on this aspect of the questionnaire, the members of the Group of Independent Experts had quite differing views. Firstly, there was a contrast between the expert's personal reaction and his or her assessment of the attitude that the authorities of his or her country might take to such a prospect. At a strictly personal level, most of the experts were in favour of an increase in the legal force of the Charter. This was particularly the case of the countries of central and

eastern Europe (especially Armenia, Bulgaria, Croatia, Georgia, Montenegro, Slovenia and Ukraine), for these countries' accession to be Charter does not necessarily correspond to an effective capacity for the Charter to offer appropriate protection to the autonomy of their local self-government.

77. In contrast, when it came to their personal perception of how their authorities might react (particularly the national authorities,[27]) most of the replies were negative (Austria,[28] Azerbaijan, Belgium, Denmark, Germany,[29] Hungary,[30] Lithuania, Romania,[31] Spain, Sweden and Turkey), or openly hostile (see Ireland, Norway and the United Kingdom) to this possible development of the substance of the Charter.

78. These "cautious" positions seem to stem from two different situations. One is of those countries which have already gone a long way in the reception of the provisions of the Charter and dare not call into question what has been achieved, namely with respect to the legal nature of the Charter and its provisions. This is the case of Azerbaijan (where the Charter has been given the rank of a constitutional law), Belgium and Greece.

79. The other is that of the strongly 'dualistic' countries, which have not received the Charter into their domestic law or have done so purely formally, which points to a very state-based concept of sovereignty under which the legal arrangements applying to local authorities are amongst the 'fields reserved for national legislation': while consideration may be given to sharing international principles on this subject, especially in countries sure that their current legislation is in conformity with the Charter, it is regarded as unacceptable for an instrument of international law to lay down directly applicable principles or for a domestic law not to apply in an individual case.

80. In his research the Rapporteur noted that Finland and Iceland considered that it would be useful to strengthen the Charter; the expert from France (which has already given direct effect to the Charter) suggested improving the substance of the Charter, *inter alia* by adding standards purely of the nature of principles (or programmatic standards) and increasingly self-executing provisions, in order to overcome the difficulty of being required to apply directly standards which are too vague.

VI. JUDICIAL PROTECTION OF LOCAL SELF-GOVERNMENT

81. The issue of judicial protection arises in two separate ways. Firstly from the point of view of the 'domestic' protection of local self-government. Here it is a matter of verifying compliance with Article 11 of the Charter by means of 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'. Secondly, from the point of view of the protection of local self-government directly conferred by the Charter as an international treaty received into domestic law with the status of a source of law.

82. The question is to ascertain whether rights to exercise remedies exist and, if so, what effects this could have, without affecting the quality of each country's judicial system. On this question, it is obviously presumed that there is a separation of powers between the judiciary and the other state authorities.

83. The Rapporteur has also looked at the role of citizens in the defence of local self-government. The question is whether citizens, individually or collectively, can take legal action to uphold the principle of local self-government (and of their own local authority's autonomy). On this point, it seems that nearly all countries are very cautious about any form of 'popular action'. On the other hand, the question about citizens being entitled to remedies against their local government received a positive reply. In practice, the civil or administrative courts almost everywhere give full protection to the rights of citizens unlawfully affected by acts of the administration. The protection is more a matter of general supervision of the executive or the administration than of protection of local self-government.

[27] It is interesting to note that some favourable opinions have been expressed by associations of local authorities.

[28] An amendment to the constitution would be necessary.

[29] In Germany, where ratification of the Charter at federal level already throws up serious problems, a constitutional amendment would be needed in order to give the Charter direct effects.

[30] An amendment to the constitution would be necessary.

[31] Idem.

84. On the basis of this finding, the Rapporteur will focus on the following developments, concerning remedies available only to local authorities in defence of local self-government (in general and in the interest of a particular local authority).

1. 'Domestic' judicial protection

85. Article 11 of the Charter distinguishes between principles of self-government enshrined in the Constitution or in domestic legislation. The same distinction can be made, where domestic protection is concerned, in a separate consideration of the protection of constitutional standards and the protection of standards laid down in ordinary legislation.

1.1. *Judicial protection of the constitutional principles of local self-government*

86. Here the protection concerns verification of compatibility between the provisions of ordinary (or reinforced) law and the constitutional provisions, in order to eliminate any ordinary provisions which are unconstitutional or to render them inapplicable in specific cases.

87. Examination of the replies from the 40 countries shows that only 9 (Denmark, Finland, Greece, Iceland, Ireland, Norway, the Netherlands, Sweden and the United Kingdom) do not have a Constitutional Court. It needs to be pointed out that all the countries of central and eastern Europe, when they adopted a new democratic Constitution, set up a Constitutional Court which is empowered to declare ordinary laws unconstitutional and to annul them.

88. Of the 31 countries considered in this report which have a Constitutional Court, 29 allow local authorities direct access to the Court (the only exceptions are Georgia and Ukraine) in order to obtain a declaration that ordinary laws (or, if applicable, administrative acts by the state or regional institutions) considered to be at variance with the constitutional principles of local self-government are unconstitutional.

89. This access is direct (local authorities can apply directly to the Court) in 23 countries (Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Germany, Hungary, Latvia, Liechtenstein, Malta, Montenegro, Poland, the Russian Federation, Serbia, Slovakia, Slovenia, Spain, Switzerland, 'the former Yugoslav Republic of Macedonia' and Turkey), although restrictions exist in some countries, such as Belgium,[32] Bulgaria,[33] Estonia,[34] the Russian Federation,[35] Spain,[36] and Switzerland.[37]

90. Six countries (France, Italy, Lithuania, Luxembourg, Portugal, Romania) allow only indirect access to the Court. Local authorities as subjects of law having legal personality may apply to a court (see section 1.2 below) if the provision applied to a case is considered to be contrary to the constitutional principles of local self-government, and may raise the question of the constitutionality of a law. The Constitutional Court only rules on the merits if the court considers it to be admissible and refers it to the Constitutional Court.

91. Ten countries (Austria, Bulgaria, Croatia, Estonia, Germany, Hungary, Liechtenstein, Poland, Spain and Turkey) provide for both direct and indirect access.[38] There is no contradiction between the two systems. Indirect access encompasses the protection offered by direct access, which ordinarily has to be used by a set time limit. First there is direct legal action taken against the law itself; then, during practical application of the law, an indirect remedy pursued through the ordinary courts.

[32] Only in respect of compliance with the principle of autonomy in tax matters.

[33] Only in respect of questions regarding powers.

[34] Only in respect of laws which have not yet come into force.

[35] Direct application may be made 1. only after having exhausted all domestic remedies; 2. only if the authority's statute so provides; 3. only if it concerns questions of general interest (all local authorities are in the same position).

[36] Procedural limitations: the appeal must be brought by a minimum number of local authorities.

[37] In Switzerland, local authorities have the right to appeal only against cantonal laws, and not against federal laws or cantonal constitutions.

[38] In Austria, according to the expert, indirect application (through the ordinary courts) is access to the Constitutional Court, which remains exceptional.

92. In the great majority of the countries concerned, it may be concluded that there is appropriate protection of constitutional principles, especially in those countries which grant local authorities a direct right of access to the Constitutional Court.

93. Furthermore, the existence of a Constitutional Court vested with the aforementioned powers does not, in itself, entail full protection. A check should always be made as to Constitutional Courts' effective degree of independence, effective capacity to rule in favour of local self-government and against national law in judgments often deemed to be more 'political' than legal, and the effective willingness of local authorities to embark on a case which brings them into conflict with their state.

94. This conclusion does not necessarily imply that there is inadequate protection in the nine countries which have no Constitutional Court, where there is no possibility of direct repeal of provisions of ordinary legislation allegedly at variance with constitutional principles of local self-government.

95. In those countries, an examination was made of whether the ordinary courts have power to declare inapplicable to certain individual cases provisions of ordinary law deemed to be not in conformity with the Constitution, as a useful measure for the protection of local self-government, in the absence of power to annul the said disputed provisions.

96. In only five countries (Denmark, Finland, Greece, Iceland and Sweden) is there a clearly positive reply. The ordinary courts, in order to safeguard the rights of a local authority, may not only set aside administrative acts but also declare inapplicable any legislative provisions conflicting with the principles of local self-government 'enshrined in the Constitution'.

97. In Ireland a possible remedy exists, but in the abstract. Very seldom does a local authority challenge an act of a higher authority (or a national law) in court.

98. Another three countries are in particular situations. In Norway, the local authorities, as administrative authorities, do not have access to the courts. In the Netherlands, the Constitution precludes revision of parliament's laws by ordinary courts. In the United Kingdom, there being no formal constitution, the unconstitutionality of a law cannot be pleaded. Even so, the legal protection of local authorities is fairly complete.

1.2. *Judicial protection of the principles of local self-government laid down in domestic legislation*

99. Judicial protection of local authorities concerns the acts of higher, i.e. national or regional, authorities, acts of a regulatory nature which are contrary to the provisions safeguarding local self-government made in ordinary (national or regional) laws.

100. On the whole it can therefore be inferred that in 40 countries local authorities, as subjects of law, are able to exercise remedies before a court.

101. The sole exceptions to be pointed out concern the countries which gave an affirmative reply in respect of the principle but drew attention to the difficulty for local authorities in practice of taking action in the courts. This is true in Armenia and Georgia, where the difficulty is apparently due to the serious weakness of the local authorities. Iceland and Ireland, where the explanation is not weakness but a special tradition of relations with governmental authorities, are in the same position.

2. Judicial protection of the rights deriving directly from the Charter

102. In the paragraph on reception of the Charter, 11 countries were identified (Belgium, France, Estonia, Greece, Hungary, Latvia, Luxembourg, the Russian Federation, Serbia, Slovenia and Switzerland) where the Charter is not only directly applicable, but may also be directly relied on in the courts. In these countries, local authorities have access to the courts in order to ask for, inter alia, the inapplicability of domestic law provisions deemed to be at variance with the Charter.

103. It should be noted finally that four countries (Azerbaijan, Montenegro, Slovenia and 'the former Yugoslav Republic of Macedonia') give local authorities direct access to the Constitutional Court to raise questions of constitutionality and issues relating to the compliance of domestic law provisions with the Charter and other treaties. The apparent contradiction between this possibility and the degree of reception of the Charter in these four countries does not in fact exist: Azerbaijan and Montenegro

are classified at level 2 (formal reception of the Charter, without direct application), 'the former Yugoslav Republic of Macedonia' at level 3 (direct application, without the possibility of being directly relied on in court) and Slovenia at level 4 (the Charter can be directly relied on in court).

104. Direct access, as such, concerns only the possibility of verifying the compatibility of certain provisions of ordinary law with the Charter, under a procedure analogous to the one for verifying constitutionality. In these cases, the Charter is adopted as a parameter of legality, but is not of direct application, as in the cases in which the Charter is applied instead of the domestic law provision which conflicts with it. Here it is always the Constitutional Court that has the power to review and, if appropriate, to set aside the domestic law provision.

VII. CONCLUSIONS

105. If we look at the various systems for reception of the Charter in the domestic law of signatory and ratifying countries, we still find major differences: the countries concerned span four levels of reception, with no single system that can be described as prevalent. These differences affect reception of the Charter only as a legal instrument. The Rapporteur stresses that they imply no value judgment on the quality of local and regional democracy in the various countries examined in this report.

106. Looking at the trends and assessing the position of a large number of the countries examined for the first time (i.e. those not examined in the 1998 report), we find that the previous dominance of countries with a 'low' level of reception of the Charter (category A) has been fully counterbalanced by the rise in the number of countries giving the Charter increasing status as a source of domestic law that is directly applicable, countries with a 'high' level of reception, at least in formal terms (category B). Formally, at least, the Charter is directly applicable in the majority of the countries covered by this report (21 compared to 20).

107. When making this observation, nevertheless, account has to be taken of the great 'stability' of the systems within each country for reception of the Charter: the system adopted on ratification remains unchanged.

108. What is the explanation for the diversification of reception systems coinciding with an underlying movement towards the conferment of direct effects and with their stability?

109. The first reason is the general attitude in each country to the reception of international treaties. In this respect the distinction between 'dualistic' and 'monistic' countries is fundamental. A dualistic country takes a more reserved attitude to international treaties. But this is just a partial explanation, for there is no dualistic attitude preventing a state from agreeing, on ratification or subsequently, to confer direct application on the provisions of the Charter.

110. The second reason why so many countries give a 'low' level of reception to the Charter is the quite specific nature of the 'legal system of local self-government', which affects fundamental aspects of national sovereignty. It may be accepted that international standards require specific action in the economic sphere or in respect of citizens' fundamental rights, but internal territorial organisation remains a matter which lends itself very little to direct intervention in the form of solutions imposed internationally.

111. However, account needs to be taken of the fact that most of the countries which have ratified the Charter in the past 10 years have adopted a system of reception at a 'high' level making the provisions of the Charter directly applicable. This new wave marks a success for the Charter. The objectives of the Charter to establish and ensure the principles of local self-government, the monitoring activities and the dissemination of the values of the Charter, particularly by the Council of Europe, have favoured an evolution of systems of reception in member States towards an application which is (formally at least) direct.

112. Now that we have observed the fundamental trends, what lessons are to be learned? Should the view be taken that systems for reception of the Charter need to be made uniform, or would it be preferable to maintain the current situation in which there are differences? Would a uniform solution lead towards direct application of the Charter or would it be preferable to consolidate the situation of 1985 (the Charter as an international treaty which is a source of obligations for the state, particularly under international law, and with a high level of political content)?

113. It would be meaningful to require a uniform system for reception of the Charter only if the aim is to impose on all states which have signed and ratified the Charter a 'high' level of reception, giving it the status of a source of domestic law. A move towards uniformity at a 'low' level of reception would, for the countries which have already opted for a reception system at a 'high' level, needlessly complicate their domestic legal arrangements.

114. The advantages and drawbacks of moving towards a uniformly 'high' level of reception of the Charter nevertheless need to be considered. The main advantage would be more effective implementation of the principles of the Charter . Every local authority in Europe could request the courts to apply the Charter instead of a provision of domestic law allegedly at variance with its provisions, or to apply the Charter as 'a parameter for interpretation' of domestic law (applied and interpreted in the light of the Charter).

115. The drawbacks are by no means insignificant. This would oblige certain countries to take an attitude opposed to a 'high' level of reception (we should not forget the 'hostility' shown[39] or constitutional difficulties reported[40] by some countries in response to the prospect of a Charter which would require a higher level of reception), making it possible that they would not accede to a new Charter (or to additional protocols); and for another thing, the Charter might be directly applied, but in very diverse fashion: each court might make a different interpretation of the conformity of domestic law with the provisions of the Charter. Without a system ensuring conformity and without uniform interpretation everywhere, the Charter, instead of being a binding instrument that is a reference in its field, risks becoming a vague document that is applied in too diverse a fashion to provide effective protection for local self-government.

116. The alternative to trying to achieve a 'high' level of uniformity is to keep the situation in which differences exist as it is: the Charter, in itself, remains an instrument of international law which imposes certain obligations on states. But this does not prevent any country from giving direct, effects to it subsequently in its domestic law. In this respect the Council of Europe can encourage countries progressively to adopt a 'high' level of reception.

117. The main advantages are the Charter's flexibility and the possibility of maintaining a high and broad level of application of the principles enshrined in the Charter. Instead of imposing, through a new Charter, a 'high' level of reception, the Council of Europe accepts a varying situation. But it can still strive to persuade states gradually to change their form of reception.

118. The solution of accepting the variation that exists is not necessarily a purely 'wait-and-see' or conservative one. There are at least two major areas in which action may be planned to strengthen the Charter.

119. The first such action is promotion of the conferment on the Charter of direct effects (leaving countries free to decide on their degree of reception).

120. The second is a strengthening of the binding effects of the Charter, even where there is no direct application.

121. The promotion, without imposition, of a 'high' level of reception of the Charter coincides with the drafting of self-executing standards which lay down rights for local authorities. Operative standards lend themselves to the conferment of direct applicability through signatory and ratifying states' constitutional or ordinary legislation. Such direct applicability could be facilitated through the preparation, on the basis on monitoring reports and general reports, of a compendium of the

[39] Ireland, Norway, United Kingdom.

[40] Austria, Germany, Hungary, Romania.

decisions of judicial bodies of the States Parties to the Charter, judgments which refer explicitly to the text of the Charter for the purposes of interpretation.

122. Another question needs to be put: what kind of self-executing standards? If we are to overcome any hesitation in countries which are concerned to retain their sovereignty in respect of the territorial organisation of the state, we should focus on the drafting of self-executing standards recognising rights for local authorities, rather than imposing specific organisational solutions. According to this new perspective, organisational solutions would relate to such matters as the distribution of powers (the subsidiarity principle remains very open to political assessment) and the configuration of local authorities' internal organisational structure and of the instruments governing relations between higher authorities and local authorities (monitoring, participation, allocation of resources). This would enable a clearer definition to be given of a 'true' right to be exercised vis-à-vis a higher authority: right to a service (allocation of necessary resources, distribution of adequate information, in the light of the powers assigned), right to the absence of invasive behaviour (monitoring of expediency, power to dismiss, to dissolve, to act on the subordinate body's behalf on the basis of merit), right to positive behaviour (openness to participation, recognition of the right of debate). Where operative standards recognise rights, rather than imposing solutions in terms of structural organisation, there could be a change in the negative attitude of the countries which are currently against a directly applicable Charter.

123. A new perspective should entail a fairly far-reaching revision of the Charter, involving at least an increase in the rate of direct applicability of its provisions. It would be necessary, if not to replace the provisions on matters of principle (the programmatic standards), to incorporate them by adding to the Charter as it stands some self-executing provisions (adopted precisely to make its principles easier to apply).

124. A revision of this kind should involve the drafting of one or more additional protocols to the Charter. A Charter which is increasingly effective, in terms of both binding effects and direct effects, is a legal instrument worthy of an ongoing process of enrichment.

125. How can the Charter be strengthened as an international treaty with binding effects? It will not be possible here to do more than envisage some possible lines of action. The first is to make the obligations deriving from the Charter more stringent, for instance by setting time limits for fulfilling certain obligations to bring domestic legislation into line with the Charter: general obligations (for all countries) or particular ones (for a specific country, as specified in a recommendation).

126. The second is to tighten up monitoring procedures: even if the assessments of the Congress and the Council of Europe remain 'political', consideration could be given to making public the finding that legislation (or the administrative action of higher authorities) is not in line with the Charter; special monitoring of a country which has been the subject of an unfavourable monitoring report; temporary suspension of the credentials of a Congress member state's delegation.

127. The third is to improve the means of directly warning the Congress that are available to local authorities (or to citizens) in the event that the Charter is directly breached. This possibility already exists, and the Monitoring Committee of the Congress often receives complaints from one Council of Europe member state or another.

128. Reception also implies translating the text into the language of the State Party. The Congress Recommendation 2 (1994) invited member States to improve the visibility of the Charter and to facilitate its reception by translating it into their national languages. A number of member States have done so. The Council of Europe Treaty Office now has translations in 27 languages,[41] making it one of the most widely translated of the Council of Europe's treaties. However, there remain a number of national - and minority - languages for which no official translation of the Charter has yet been received by the Treaty Office.

[41] Albanian – Azeri – Bosnian – Bulgarian – Croatian – Czech – Dutch – Estonian – Finnish – Georgian – German – Greek – Hungarian – Italian – Latvian – Lithuanian – Moldovan – Norwegian – Polish – Romanian – Russian – Slovakian – Slovenian – Spanish – Swedish – Turkish – Ukrainian.

129. In 2011, the Secretary General of the Council of Europe conducted a thorough review of Council of Europe conventions, with a view to increasing their effectiveness, making them more visible and identifying key conventions. The Charter is identified as one of the key conventions. The Convention Review report notes that the large majority of the treaties are open for accession by non-member states and mentions the Charter as one of the treaties for which such accession might be encouraged.

130. The Congress work in monitoring the implementation of the Charter provides ample evidence of the importance of this treaty for securing and developing local democracy in the 45 countries covered by the Charter. The past ten years show that the Charter continues to increase in stature as an international treaty. However, the Congress believes that further measures are necessary for this momentum to be maintained.