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The right of local authorities to be consulted by other levels of government

Governance Committee
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Summary

The right of local authorities to be consulted, enshrined in the European Charter of Local Self-Government, is a core principle of local democracy. For consultation to be effective, it has to be translated into the policy and regulatory framework of each member state. A new Congress survey of consultation policy practices in member states shows that limited progress has been achieved in the seven years since the last survey. The draft recommendation advocates a thorough and comprehensive approach to consultation as a means of ensuring better policies and legislation and improving the quality of governance at all levels.

¹ L: Chamber of Local Authorities / R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a Political Group of the Congress
NPA: No political affiliation



The right of local authorities to be consulted by other levels of government

RESOLUTION 347 (2012)²

1. An important part of the work of local and regional authorities is to liaise and interact with other levels of government to ensure that their interests and the interests of their citizens are properly taken into account in the preparation of policies, decisions and legislation that affect them.

2. While the European Charter of Local Self Government (ETS No. 122) establishes the obligation for member States to consult local authorities, it is for the authorities in each member State to ensure that they have robust procedures and structures in place to enable them to carry out their role in the consultation and decision-making process, in line with the charter provisions and in the spirit of local autonomy.

3. National associations – where they exist – have a key role to play here in representing their local and regional authorities at central level. Where a member State has more than one national association, they should co-operate together as closely as possible, with the aim of identifying common positions on issues that concern them, in order to enhance their ability to influence other levels of government.

4. The Congress of Local and Regional Authorities of the Council of Europe therefore, referring to the European Charter of Local Self-Government and to its Recommendation 171 (2005) on consultation of local authorities:

a. calls on the local, intermediate and regional authorities of its member States to inform their national associations in good time of any issues where they believe the national association should act on their behalf with regard to consultation by other levels of government;

b. calls on national associations of local and regional authorities to:

i. lobby their national and, where appropriate, regional governments, where they do not yet apply the relevant articles of the European Charter of Local Self-Government, to review their commitments with a view to extending their implementation of the charter to cover all the articles concerning consultation;

ii. allocate the appropriate resources and establish structures and procedures to ensure effective representation of local and regional authorities in consultation procedures with other levels of government;

iii. ensure that they are regularly invited to review relevant legislative and policy initiatives by other levels of government;

iv. where several associations exist, make efforts to co-operate with each other, with a view to achieving common positions, in order to enhance their capacity to influence national, and if appropriate regional, policies;

v. where the right of local authorities to petition exists, ensure that they make good use of it to protect the interests of their members and their citizens;

² Debated and adopted on 18 October 2012 by the Congress, presented by I. Henttonen, Finland (L, ILDG) on behalf of B.-M. Lövgren, Sweden (L, ILDG); rapporteur.

vi. regularly exchange with each other good practice on consultation issues;

c. resolves to:

i. develop guidelines for national and regional authorities on the application of the relevant articles of the European Charter of Local Self-Government;

ii. stimulate the creation of national associations of regional authorities in member States, where such associations still do not exist;

d. asks its Governance Committee to:

i. appoint a thematic rapporteur for the monitoring and evaluation of the effectiveness of the consultation processes in member States in developing multilevel governance;

ii. present a strategy in 2013 to further strengthen the consultation processes between the different levels of government in order to improve the quality of the legislation and, thus, the local and regional policies, and the effectiveness of such consultation processes in the member States;

iii. present a report in 2016 on the progress made and describe the situation of the consultation processes in the member States;

e. asks its Monitoring Committee to ensure that its recommendations on the situation of local and regional democracy in member States consider the compliance of the internal law of the countries with Articles 4.6, 5 and 9.6 of the European Charter of Local Self-Government and its implementation, when it monitors the charter, in the light of the present recommendation and resolution.

The right of local authorities to be consulted by other levels of government

RECOMMENDATION 328 (2012)³

1. As laid down by Articles 4.6, 5 and 9.6 of the European Charter of Local Self Government (ETS No. 122), which 45 of the 47 Council of Europe member States have now ratified, the right of local authorities to be consulted constitutes one of the core principles of local democracy.

2. Local authorities should therefore be consulted and should have an active role in adopting the decisions on all matters that concern them – namely the implementation of policies or legislation directly affecting their legal status, tasks and functions and economic or financial situation – and in a manner and timing such that local authorities have a real opportunity to formulate and articulate their own views and proposals, in order to exercise influence on the decision-making process affecting them.

3. In the light of the Council of Europe Reference Framework for Regional Democracy, the Congress of Local and Regional Authorities of the Council of Europe, which represents both local and regional authorities in member States, proposes that the same rights of consultation be applied at the regional level.

4. Most of the measures set out in Congress Recommendation 171 (2005) on the consultation of local authorities: implementation of the European Charter of Local Self-Government (Articles 4.6, 5, 9.6 and 10) are still relevant and still need to be implemented, namely to enshrine the right of consultation in law, to develop consultation into negotiation, to recognise associations as partners in the consultation process, to set up permanent consultation bodies, to systematically consult on important issues and to evaluate the effectiveness of those consultations.

5. The Congress therefore refers to the above-mentioned provisions of the European Charter of Local Self-Government, its Recommendation 171(2005) referred to above and the Council of Europe Reference Framework for Regional Democracy, and recommends that, with regard to consultation of local and regional authorities by other levels of government on issues that concern them, the Committee of Ministers invite member States to ensure that:

a. all member States implement, at national, regional and local levels and, if necessary, elaborate or revise consultation processes that are clearly defined and transparent, preferably enshrined in law, otherwise in written agreements, in line with the criteria laid down in the relevant provisions of the European Charter of Local Self-Government, specifying the format of such consultations, the level of participation of representatives of local and regional authorities, the time frame for consultations and covering all matters of interest for local and regional authorities;

b. consultation of local and regional authorities is a required part of policy making and the legislative process, to enable them to express their interests and opinions in time for these to be taken into account in policy and legislative formulation;

c. it is made clear that all government ministries which formulate policies that have implications for local and regional government are obliged to consult with representatives of the authorities concerned;

³ Debated and adopted on 18 October 2012 by the Congress, presented by I. Henttonen, Finland (L, ILDG) on behalf of B.-M. Lövgren, Sweden (L, ILDG); rapporteur.

d. consultations are conducted in written form and also in person, with other levels of government making clear the participatory rights of local and regional representatives in the consultation process and the form of national and, where applicable, regional level representation in the consultation process also being clearly specified;

e. central and regional authorities provide proper clear and detailed information, in writing, about proposed policies, well before the consultations are due to take place, in order for those consulted to be well informed about the motives and objectives of each planned decision or policy;

f. strategically important decisions are based on careful analysis of the implications for self-governance as well as of the economic consequences for the local and regional level;

g. local and regional government expertise is involved in the process of drafting policies and legislation at an early stage, for example through participation in working groups to prepare new legislation;

h. local and regional authorities have a clearly defined right to petition if they believe that necessary consultations have not been properly conducted, and a right to redress if it is established that procedures were not properly followed;

i. consultations are regular and systematic, with the different possible forms of consultation (as mentioned in *d.* above), and the contexts in which they are used, being clearly specified;

j. member States which have not yet committed to implementing the relevant articles of the European Charter of Local Self-Government, review their commitments with a view to extending their implementation of the charter to cover all the articles concerning consultation;

k. the results of consultation exercises are made clear, namely through a detailed written explanation of the reasons for not retaining any proposals made, and these are published;

l. where national associations of regional authorities still do not exist, the creation of such associations be encouraged and stimulated, in order to provide national and, where applicable, regional authorities with appropriate representatives at local and regional level for the consultation processes.

The right of local authorities to be consulted by other levels of government

EXPLANATORY MEMORANDUM⁴

INTRODUCTION

1. In 2005 the Congress of Local and Regional Authorities adopted Recommendation 171 on consultation of local authorities: implementation of the European Charter of Local Self-Government. The objective of this recommendation and the related comparative report was to examine how Articles 4.6, 5 and 9.6 of the Charter were being implemented by member states. In 2011, the Governance Committee decided that it was time for this question to be reviewed once again, to examine how the situation has developed since the previous study.

2. The objective of this report is therefore to study the application of Articles 4.6, 5 and 9.6 of the Charter across Europe to see what problems exist, with a view to disseminating best practice and drafting a new recommendation. For this report, 27 country reports were sent by the members of the Group of Independent Experts on the European Charter of Local Self-Government to a questionnaire prepared by Professor Zoltán Szente about the situation in each member state of the Council of Europe. The Swedish Association of Local Authorities and Regions (SALAR) organised, in parallel, a survey among the national local government associations, gathering data from 24 countries. Combining the data from these two surveys, the report therefore draws on a total 35 country reports, providing a good basis to make a comparative review of the current situation of central-local government consultations.

3. This report begins by describing how the right of local authorities (or their associations) to be consulted is institutionalised by law, examining the formal recognition and legal framework of consultation. This first section also looks at several “regulatory regimes”, the main types of regulation, reviewing the subjects, the participants and the procedures of the consultation process.

4. The European Charter of Local Self-Government (hereafter referred to as “the Charter”) contains several articles on consultation between central and sub-national governments. These are of two kinds. While Article 4.6 entrenches the right of local authorities to be consulted in general terms, as a basic principle of local self-government, Articles 5 and 9.6 relate to special fields of consultation. Accordingly, Chapter II examines how local authorities are consulted about the changes of their boundaries, and Chapter III reviews the consultation mechanisms applied to financial matters.

5. In Chapter IV, the key issues and problems of the current situation are summarised, while the final chapter sets out some proposals and good practices for coping with them.

I. Institutionalised versus customary rights of local authorities to be consulted (Article 4.6. of the Charter)

a. The right to consultation in the Charter

6. According to Article 4.6, “Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.”

7. The Charter specifies that the “local authorities” which are concerned by a governmental action, have to be consulted. A local government is directly “concerned”, when the implementation of a government policy, or, in formal sense, of any legislation directly affects its legal status, tasks and functions (duties and powers), economic or financial situation.

⁴ Prepared with the contribution of Professor Zoltán Szente, University of Győr, Hungary. Adopted by the Governance Committee on 31 May 2012.

8. According to the practice and conventional wisdom, in those cases where a lot of local governments are concerned, local authorities can be represented by their legitimate associations. It follows from the text of the Charter, which specifies that consultation should be organised “in an appropriate way”, that local governments can arrange for a single unified representation, when many of them are concerned by a particular case.

9. Although the cited provision does not define the concept of consultation, having regard to the Charter’s basic function to establish and promote the rights of local authorities, consultation between the central and the local governments (or their associations) can be defined as a process by which the parties seek information, advice or opinion of each other about particular topics, and/or discuss them. From the point of view of local governments, the main functions of consultation are:

- to get relevant information on the decision-making process of central authorities affecting their interests;
- to provide opportunity for local authorities to express their views and opinions on the relevant statutory laws and regulations in all stages of the decision-making process;
- to make proposals, and submit claims or complaints to central and, where appropriate, regional government, with the latter’s obligation to respond to them.

In its weakest form, it consists of the legitimate expectation of local authorities to receive information about a plan or intention of the central government to take a measure or action.

10. The requirement of “appropriate way” is to be seen as a “rationality” principle of consultation, which obviously requires that consultation should take place in a way that provides real opportunity for local authorities to formulate and articulate their own views and proposals. Certainly, there is no guarantee that the central authorities, entitled to make law-making or policy decisions by law, will accept these opinions, but it is an inherent requirement that they have to take them into account, before taking any final decision.

11. The function of the “due time” clause of the Charter is to ensure that the manner and timing of consultation is such that local authorities have a real possibility to exercise influence on the decision-making process affecting them. As the explanatory memorandum of the Charter states, the right of local governments to consultation under certain conditions may be overridden, in particular in cases of urgency, but this is allowed only exceptionally. The Charter does not specify the length of “due time” in a normative and general way, because it depends on many circumstances in the member states. But the more that the matter concerned is specific, the easier this is to determine, having regard also to the local traditions and demands.

b. Legal recognition of the right to be consulted – general and special provisions

General recognition of local governments’ right to be consulted

12. In most countries, the right of local authorities to be consulted is in some way legally recognised, that is, it is laid down by law. Occasionally this right is expressed in the text of the constitution, as in Estonia, on the issue of changes of local government boundaries. In Austria, the constitutions of the nine *Länder* contain several provisions granting the municipalities of the right to be consulted. Some of them entitle municipalities or their *Land* associations to give a statement on *Land* legislative drafts if their interest is concerned.

13. The relevant parliamentary acts can be classified into two groups according to whether they generally recognise the local authorities’ rights for consultation, or provide consultation opportunities only in specific areas for them.

14. Where such a general recognition is laid down by law, it can also be made in various ways. In a number of countries, there are general laws which require a wide range of consultations in all law-making processes. This kind of regulation sometimes does not specify local authorities or their associations as those which are to be involved in the preparation process, but the general requirement of the law-making process provides for their participation, as for any other interested parties, or social partners of state authorities. On this basis, local government associations as interested parties may require to be consulted in all cases where local government matters are concerned. However it is

important to underline that there is a difference between the local authorities or their associations and other interested parties, since local authorities are democratically elected by the people.

15. In most cases, the principle of consultation is recognised more specifically in all local government matters, without specifying the particular issues in which local authorities are to be invited for consultation.

16. There are some examples when the relevant law declares the principle or importance of consultation, but does not regulate its substance or procedure. In some countries, this gap is filled by political agreements between the central authorities and municipal associations about the ways of cooperation. However, in order to achieve a process of good quality and transparency, further regulation of the procedure and the substance of the consultation process should be considered, where this is not already the case.

Special requirements of consultation

17. The other group of relevant laws prescribes consultations with local authorities only in special fields. In certain countries, such as Armenia or Ireland, a whole range of specific laws requires such consultations.

18. These two methods of regulation are not mutually exclusive: while in Austria, for example, a federal constitutional law provides some rights of consultation for associations of local authorities, some other laws prescribe that municipalities or their national/*Land* associations are to be consulted if the proposed regulations concern them.

19. The local authorities' right to be heard is sometimes recognised in the "soft law", namely in the rules of procedure of the Government or in the standing orders of the Parliament. Although the compliance of these rules is even more difficult than those of laid down by law, sometimes these provisions result in good practices and flexible frameworks for consultation.

Non-formalised central-local government consultations

20. There are only a few member states, in which the right of local authorities to be consulted in all matters their interests are concerned is not laid down by law. In Ireland or United Kingdom, for example, this right of local governments is recognized in practice than in specific laws. So the lack of formal recognition does not necessarily mean that there are no such consultations at all. In some countries, in spite of the absence of institutionalised forms of consultations, local governments are frequently consulted via informal channels. In Albania, for example, ministries often initiate informal negotiations with local government associations, asking their opinion on particular law- or policy-making issues. However, a formalised consultation process, expressed in the national law, provides for greater transparency and is in keeping with the spirit of the Charter.

21. In federal states, there is the important question concerning the level at which local government consultations are carried out. In Belgium, for example, such consultations take place only at state level, where the Flemish and Walloon associations participate in several advisory committees and councils, but are not consulted at federal level. In Germany, such consultations also take place at *Land* level, where the participatory rights of local government associations are guaranteed by some *Land* constitutions. Consequently, in these countries, the consultation processes are formalized mainly at regional, rather than federal level. On the other hand, in the Russian Federation, some federal institutions operate specialized consultative forums for local government associations, through which they have direct contacts with representative organisations of local authorities.

c. Subjects of consultations

22. Most frequently, local authorities are consulted in cases concerning changes to their territorial boundaries; it can be said that the requirement of prior consultation with the respective local authority is a general principle in Council of Europe member states. Besides that, financial issues, including the total amount of local government budget and of central grants, or any change of local taxation are the most usual topics of the consultations (see below Chapters II and III).

23. Consultations are often carried out in many other policy fields. Thus, in Estonia, specific laws provide for compulsory consultations between central government and local government associations not only about the state budget, debt management, but also in certain administrative procedures and regional planning⁵. In Greece, according to the Municipal Act, the affected municipalities have to be consulted by state authorities before issuing administrative regulations concerning environment protection, physical planning or individual decisions on investments and facilities in their area. Also in this country, the two national associations of local governments are consulted before new responsibilities are transferred to municipal or regional governments. In the Netherlands, the central authorities and the national associations of local and provincial governments conclude so-called “governance agreements” on the conditions for allocating competences in a broad variety of policy fields. Regional planning and development cases, including local or regional investments are also possible topics in many places. Sometimes, under certain conditions, local authorities are also topics consulted on EU matters. Thus, in Austria, local authorities have to be informed about all EU projects if they concern municipalities in their sphere of self-government, or are otherwise important to them.

24. It is to be noted that local investments and development projects frequently feature in individual administrative law cases. The position of local authorities in these cases sometimes is more powerful than in general issues, in particular when they enjoy the rights of the clients of administrative law, or their approval is needed from other reason. In fact, these cases fall outside of the consultation process, since local authorities generally have stronger rights.

d. Participants of consultations

25. With regard to the consultation mechanisms, there is an important question as to what is the required content of the consultative process, or, from the point of view of local governments, what specific rights or benefits of local authorities or their associations come from the general right of “consultation”.

26. Basically, local authorities are consulted over landmark decisions concerning them, which would have substantial long-term effects, such as the change of their boundaries. It is rare that the day-by-day legislation is discussed with them, even if this may affect local interests.

27. As mentioned above, local authorities are usually represented by their national or regional associations. In countries where many local governments exist, the articulation and channelling of local interests in this way is unavoidable.

28. In a number of member states, there is a single unified national association of local authorities. While this is usually the result of a natural development, in some countries the monopoly exercised by the national association of local authorities is established or is preferred by law. In Georgia, the organic law “on local self-governance” stipulates that central government agencies are obliged to organise consultations with local government associations that represent more than the half of all local authorities of the country. A similar precondition is prescribed by law in Latvia. In practice, this sort of regulation resulted in both countries in the establishment of a unified national association, grouping all municipalities. Although the large cities in Latvia have founded a specialised organisation for representing their particular interests, this association does not have the same status as the “official” one.

29. In some other countries, two or more associations represent local interests in the national decision-making process. They are usually organised according to types of local government, with separate associations being set up for municipalities and territorial (county, provincial, etc.) governments. In Hungary, the representation of municipalities is extremely fragmented, with seven different “national” associations in existence, although these vary significantly in capacity and membership.

⁵ Relevant laws are State Budget Act (1999), Financial Management of Local Government Unit Act (2010), Administrative Procedure Act (2001) and Planning Act (2002).

30. National or regional traditions, or real conflicts of interests between the great cities and rural areas may encourage the specialisation of local government associations. Different political affiliations can also contribute to the institutional separatism of these organisations. While political connections, by providing informal channels to lobbying for local interests, may bring some advantages for municipal associations, the close ties to political parties can carry risks for them, particularly where a strongly centralised party system exists. In member states with several local and regional associations it is advisable for the local and regional associations to take the responsibility to seek to coordinate their positions.

31. Sometimes the associations of local government officials also have a role in representing local interests, such as the Local Authority Members Association and the County and City Managers Association in Ireland, or the National Association of Chief Administrators in Hungary, but usually, they are consulted by central authorities only on very specific issues.

32. With regard to the other party in the consultations, central government is usually represented by a minister responsible for local government matters. Occasionally, having regard to their responsibility, other members of the government are also involved in the consultation process, such as the Minister of Finance when financial matters are discussed.

33. Consultations are often organised in the legislative process of the Parliament, at its committee stage. It is quite usual that the relevant parliamentary committees hold hearings with the participation of local government associations. Sometimes, as mentioned above, the participatory rights of the latter appear in parliamentary standing orders. However, since most bills are submitted by the Government to the legislature, the parliamentary bodies can easily assume that the necessary consultations had already been undertaken in the preparatory stage of the various bills. To increase transparency it is advisable that the views and opinions of the local authorities are documented and available in the background material to the Parliament.

e. The practice of consultations between central and local governments

34. The practice of member states varies significantly according to whether the procedure of consultations is formalized or not. There is an intermediate solution whereby these rules are determined by political agreement(s) between the central and local governments, or, in federal states, by the authorities of all government levels. The latter is the practice in Flanders, a region of Belgium, for example, where a general agreement was signed by representatives of all three tiers in 2003, while in some other countries, similar agreements can be seen as rules to implement the general recognition of the local governments' right to consultation, even if they lack legal force.

35. In some countries the negotiations are formalised, but informal practices and customs also play an important role. Frequently, procedural rules relate only to the institutional arrangements of consultation, rather than to the negotiation process itself.

36. The establishment of a joint consultative body of the central government and local government association(s) is quite widespread. Such bodies consist of both the representatives of the central authorities and local government associations, sometimes on a parity basis, when both sides delegate representatives in the same number. Where the consultative mechanism is organised on a tripartite basis, or has even more actors, the local government associations are represented in a proportional way.

37. It is common practice that national associations delegate experts to several advisory committees or working groups organised in the ministries in their field of activity, or in specific areas of local government policy (e.g. for finance, education, culture). Round table discussion is another practical method of consultation. In this way, the expertise and experience of local government associations can be channelled into the law-making process at an early stage, which increases the chance of influence.

38. The consultation process may provide for additional participatory rights. In the Netherlands, central authorities, at the request of the municipal and provincial councils, have to provide information or consultation opportunities for them about any issue affecting their interests. The responsible

minister is also obliged to consult with local authorities about draft legislation that requires municipal or provincial regulation.

39. There are several countries, like Latvia, where the procedural rules specify the phases and the timeline of the whole consultation process, which makes the procedure predictable for local authorities.

40. The participatory rights of local government associations may extend to the legislative process of the national parliament. In these cases the general rules of procedure of the relevant parliamentary bodies relate to these consultations, but sometimes, as in Georgia, for example, there is an agreement between the competent parliamentary committee and the national association of municipalities on the way of cooperation.

f. Effects of consultations

41. Even if the consultation process is carefully regulated in a country, there is no guarantee that local interests will prevail in the proposed legislation or policy decisions. This follows from the nature of consultation which represents a special kind of procedure, a framework for coordination, without any guarantee on an agreement being reached between the negotiating parties.

42. However, in some cases, the relevant law requires not only a formal consultation to be undertaken, but also some results from the coordination, which are necessary for the decision-making process.

43. Thus, the 1999 Estonian law on the state budget requires an agreement between the local government associations and the central government on the amount and allocation of the equalisation fund. In the absence of such an agreement, the Government may submit its own proposal to the Parliament, but it must present also the dissenting opinion of the local government associations.

44. In Austria, both national associations may demand that the “consultation committee”, which consists of representatives of all three government tiers (federation, *Länder*, and municipalities) discuss a draft, if its implementation would impose additional costs on the other tiers. If the consultation committee does not reach consensus or if its recommendations are not observed by the tier that is responsible for the draft, this tier will have to bear the additional costs itself. In this country, furthermore, the success of consultation might have some constitutional implications as well, since the Constitutional Court presumes the rationality of the Financial Equalization Act, adopted for four years, if it is based on a political agreement of the representatives of all the three levels (including municipal level) of government.

45. Consultations may also influence the law-making process in an indirect way, for example when the parliamentary bodies have to be informed about the results of the central-local consultations, or about the opinion of the national associations of local authorities. Thus in the Netherlands, when the Government submits a draft law to Parliament, it has to attach an explanatory report that sets out the consequences of these consultations, and the opinions of the affected local/provincial authorities. In Latvia the protocol of the negotiations is part of the annual budget package and is widely commented by mass media.

46. In theory, another legal effect may result from the omission of a compulsory consultation: this might lead to the invalidation of the decision that was made without the negotiations with the interested party. This possibility can increase the importance of the consultations as a necessary part of the decision-making process. However, it is doubtful whether a procedural error can lead to the annulment of the final action. Although in Hungary, for example, an administrative decision on a local investment can be annulled if the opinion or approval of the respective local government was not requested during the decision-making process, this can occur only in individual administrative cases, rather than in policy-making procedures.

II. Protecting local authority boundaries: prior consultation (Article 5 of the Charter)

47. Article 5 of the Charter contains a procedural safeguard of local government rights; it requires a consultation with the concerned local government(s) on any plan to change its boundaries still before any action would be made. This provision says that “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”.

48. This principle underlines the basic requirement that the affected municipalities must be notified about any proposal to change their boundaries. This relates to both cases when an individual municipality’s boundaries change, and when the whole local government system is transformed. The decision maker, before any final action, is obliged to ask the view of the local communities concerned. In other words, any change of local government boundary may take place only after seeking the opinion of the affected municipalities (or regional units).

49. It is essential that prior consultation be undertaken, as stipulated in the Charter, in any proposed change of the administrative boundaries of local authorities, including their merger or separation, even if it takes place not individually, but in the process of restructuring of the whole local government system.

50. The principle of prior consultation of the respective local governments about the change of their boundaries is generally recognised in the domestic legislation of member states. It is safeguarded by some national constitutions, and by the most relevant statutes. However, this recognition is absent in some countries, typically where such changes have not occurred in the last decades. The German situation is quite special because, in the absence of the legal condition of prior consultation, the Federal Constitutional Court has actually strengthened this requirement. The constitutional courts of the *Länder* have increased the level of protection, demanding important reasons of public interest as well as the implementation of a coherent concept as justification for the changing of boundaries.

51. In general, this kind of consultation is more deeply regulated than in other cases. In Estonia, for example, if the Government initiates any change in municipal boundaries, it must present its proposal, through the county governors to the appropriate local authorities no later than one year before the local elections. The respective local governments have no less than three months to submit their opinions on the blueprint to the Government. It is worth noting that in 2001, when the Government proposed a comprehensive territorial reform, the majority of the affected local authorities opposed the idea, which probably contributed to the plan being removed from the agenda.

52. In many countries, the principle of ‘prior consultation’ is implemented by a local referendum, having a consultative nature in all cases. It depends frequently on the decision of the local council, but in Armenia, the constitution prescribes a local referendum in all cases of merger or separation.

53. As usual, the results of the consultation are not binding for the decision makers. Nevertheless, when the change of the boundaries or the administrative status of a municipality takes place against the will of the overwhelming majority of the local population, the citizens can easily lose their trust in democratic institutions and processes. This situation can be illuminated by a Finnish case, where in 2007, the Sipoo, a neighbouring municipality of Helsinki, was transferred to the City of Helsinki, by decision of the Government, although the merger was opposed by a large majority (93 per cent voted against in a local referendum) of the local population, as well as the municipal council of Sipoo.

54. In some Council of Europe member states, the legislation makes a distinction between the merging or separation of local authorities, and other kinds of boundary changes. In light of the Charter’s requirements, such a differentiation does not pose any problem if prior consultation is provided for all these cases. Nevertheless, in a lot of countries the guarantee of prior consultation relates only to those cases when the boundary changes bring about a change of the administrative (or municipal) status of the respective local authority. Thus, while in Armenia, following the relevant principle of the Charter, the constitution requires a local referendum in the respective local communities before any change of their status (i.e. merger or separation), no statutory rules exist on any other change of local government boundaries.

55. The practice whereby central government consults only with the national associations of local authorities when the whole local government system is restructured, or a number of local authorities are merged into greater units, does not meet the requirements of the Charter, which requires consultation with all local communities concerned. This problem arose in Greece, when individual municipalities, affected by amalgamations, were able to present their views only informally and on an ad-hoc basis, since formal consultations were held only with the national associations. The Greek experience shows the need of a formalised consultation process, where the municipalities that are affected in a specific decision can express their views and the national authorities are given better information before the decision is made.

56. The issue of prior consultation does not arise in cases when the change of boundaries is initiated by the respective municipalities themselves. But a local referendum is a possible instrument to express local interests even in these cases.

57. However, in many countries the municipal boundaries rarely change, or no changes have taken place for a long time.

III. Consultations on finance (Article 9.6. of the Charter)

58. Article 9.6 of the Charter provides that “Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.”

59. This principle relates to a specific requirement of consultation. It is a specification of the general principle of consultation enshrined in Article 4.6. The essence of this provision is that whatever topics are submitted for discussion between the central and local authorities, the criteria for allocating resources to local authorities should be included in them. The term “redistributed resources” should be interpreted in a broad way, extending not only to the central grants allocated to local governments, but also the redistribution of tax revenues between the different levels of government.

60. The manner of financial consultations varies from country to country. Although there are some positive examples, where the central government discusses the whole system of local government finance with the national associations, regular coordination is usually held in specific issues, like the criteria of allocation of state grants, the changes of local taxation, or debt management of local authorities.

61. Financial consultations often take place in specialised organisational frameworks, such as in Finland, where three ministries and the Association of Finnish Local and Regional Authorities delegate their representatives in the same number to the advisory board which precedes these negotiations. In Albania, the representatives of local government associations are involved in the committees in charge of allocating central grants for large local government investments.

62. In some member states, where the relevant regulation provides for a general principle of central-local consultations in all cases in which local interests are concerned, no separate or special rules exist concerning financial or budgetary consultations with local authorities. Furthermore, where consultations take place without formal procedures, no legal provisions require national government to consult with local governments about changes of local finance, or the allocation of central grants.

63. On the other hand, if the manner of financial consultations is regulated, the procedural rules are usually similar to those of the general mechanisms described above in section I.

64. It is remarkable that, while in general, the effects of the world economic and financial crises have not favoured the effectiveness of the consultation process; they have provoked some occasional forms and institutions of central-local government consultation on finance. Thus, in Austria, the representatives of the federal, the regional (Länder) and the local governments concluded a ‘stability pact’ in 2011 according to which the federation and the Länder may not exceed a certain deficit, while the municipalities have to reach ‘balanced’ budgets. The two national associations of municipalities took part in the drafting of the stability pact, and without their consent the stability pact would not have been possible in the present form. However, some country studies, for example the Finnish or the Hungarian, reported a decline of financial consultations in recent years. It is important to underline that if consultations on finance do not exist this may lead to problems of underfunded decisions that in the end will affect the citizens and result in even more problems.

IV. Key issues and problems of central-local consultations

65. On the basis of a comparative analysis of the country reports, some general problems of central-local government consultation can be identified.

66. It was found that the lack of recognition of the right to consultation may bring local authorities and their associations into a difficult situation, because they will have no legal basis to claim regular consultation. Whereas some forms of consultation exist in all countries, coordination in these cases takes place incidentally, depending on the willingness of central authorities. It is a frequent complaint of municipal associations that the various central authorities have different attitudes, and while some of them make efforts to establish good relationships with local authorities, others do not recognise them as negotiating partners. This seems to be the case in Armenia in general, or in Azerbaijan in relation to the non-ratified Article 9.6 of the Charter. Virtually none of the relevant provisions of the Charter are implemented in these cases. In those member states that lack recognition of the right to consultation it would be appropriate to consider how this could be done.

67. Although in some countries informal or ad hoc patterns of consultation are practised rather than systematic dialogue, these practices can probably only be effective in member states which have a culture and tradition of such methods of contacts. However, the lack of legally institutionalised forms and channels of consultations can lead to the risk that the consultations are at the discretion of the national government. The higher the risk, the weaker the representative structure of local interests. If there is no formal and well-structured setting for central-local consultation, the voice of local authorities cannot be heard in the decision-making process.

68. At the same time, just a general legal declaration without specified rules for consultation mechanism is not favourable for local authorities, since it does not provide enforceable rights for them. Under such circumstances, consultation depends also on case-by-case decisions of central government. Thus, the lack of established consultation procedures brings about a vulnerable situation for local authorities or their associations.

69. It is also a risk that, where the consultation is declared only in abstract form, only the general strategies of central government are discussed with local government associations, instead of all relevant pieces of legislation that affect local interests. Certainly, if central authorities hold direct consultations only on comprehensive reforms, local authorities will be deprived of the opportunity for regular consultations. As some country reports claim, these consultations on national strategies or programmes often mean only formal contacts, which are not suitable forums for the real functions of consultation.

70. In some countries, another recurrent problem is that central government ignores the existing rules of consultation. The lack of implementation in these member states should be taken seriously. It may result in irredeemable situations, since the views of local communities cannot be taken into account once a decision has been taken. The experience of some countries is that the institutionalisation of the system of consultation does not necessarily ensure that local authorities will be heard by central authorities. In Hungary, for example, although a Government resolution regulated the system of the so-called national consultation, this does not function in practice. Similarly, in Croatia, although the principle of consultation of all interested parties in the law-making process is declared by a law and a government decree, in practice, local authorities are consulted only in cases of boundary changes and spatial planning. It is a recurring problem in many other countries as well that consultation functions only in certain areas, or is narrow in scope.

71. Even if consultations happen regularly, the criticism is often made that these negotiations are conducted in a merely formal way, without any real chance to consider the standpoint or opinions of the local authorities. In the spirit of the Charter, a real partnership must be based on trust. The local level cannot ignore the decisions made by the national level and the national level cannot ignore the views and opinions of the local level. As discussed above, it is of the essence of consultation as a process of exchange of information and views of the negotiating parties that the consultation process may lead, at most, to political undertakings and obligations based on an agreement between the central government and local government associations. Nevertheless, it is a recurrent objection that the consultation process is organised only because the law prescribes it.

72. In federal states, local government matters usually fall within the responsibility of the federated states, therefore, understandably, consultation mechanisms exist at regional (state) level. However, a number of federal laws may affect, at least indirectly, local and regional interests. But in some federal countries local government associations do not have any participatory rights, or have only occasional possibilities to be involved in the decision-making process. Their claim to be consulted can easily be refused on the grounds that local government policy-making belongs to the scope of competence of the federated states. This is the case in Belgium, for example, and to a lesser degree in Germany, whereas in Austria the local government associations have direct access to both the federal and Länder authorities.

73. A frequently mentioned problem is that local government associations are involved in the decision-making process only at a relatively late stage, when the results are difficult to change. In addition, national associations need sufficient time to establish the common or majority position of its members to be represented.

74. It is important to realise that the central authorities are not always responsible for the ineffectiveness of consultation mechanism. The low ability of local government units to express and articulate their interests, as well as the lack of adequate staff and capacity of the local government associations can also be reasons why the consultation system does not play its proper role in a country.

75. Another problem comes from the fragmentation of local government associations. Generally speaking, the more fragmented the system representing the interests of local authorities is, the harder it is to find common interests and take a unified position. In addition, the more associations exist, the easier it is to influence them politically and divide them, particularly where they have strong political affiliations.

76. As the general experience shows, the greater part of consultations is organised between central executive authorities and local government associations. Only in some member states do municipal associations have some rights to be heard in the legislative process of Parliament, but these are often based only on informal agreements or customs. In most countries, the representative organisations of local authorities do not have any participatory rights, or can influence the parliamentary law-making only in a very indirect way, for example, when the Government is obliged to submit the results of the consultations to the legislature. Under these circumstances, it might easily happen that some pieces of legislation escape the attention of local governments, for example, when the relevant laws are submitted as private bills. Although this used to happen only in a few countries, the practice has recently spread to other countries, such as Hungary, with the aim of speeding up the legislative process.

77. As to the specific requirement of consultation in boundary changes, only some national experts reported the omission of prior consultation with the respective local communities. It is a particular serious violation of the Charter's relevant rules, when the changes of the administrative boundaries modify also the legal/administrative status of the affected municipalities, since this may affect their very existence or autonomy (as in cases of mergers and divisions). Unfortunately, this seems to be the case in some member states, mainly in Azerbaijan, where the consolidation of the local government system (i.e. the reduction of municipalities) was implemented on a non-voluntary base, in contrast with the existing rules requiring the consent of the respective municipalities.

78. The related national regulations do not usually refer to the requirement of consultation on the comprehensive reform or restructuring of the whole local government system. This right of local authorities is probably taken granted without any specific rule and seems to be widely practiced, although there are some exceptions. For example, the Finnish expert reported that the planning process of restructuring of local authorities as having "taken place secretly", involving only the national political parties. In such a case, local authorities, or their associations, will be consulted only at a later process of the decision-making, which reduces their chances to influence the results of the developments.

79. In the field of local finance, the respect of the relevant article of the Charter is absent in Armenia, where, according to the country report, there is no legal guarantee for consultation with local authorities on financial matters, and such consultation is not carried out. If this is indeed the case, then Armenia is not complying with Article 9.6 of the Charter.

80. Azerbaijan and Belgium have yet to ratify Article 9.6 of the Charter. It seems that they have good reason for maintaining their reservation made when they signed the Charter, since, according to the relevant country reports, no formal consultations between central and local governments take place concerning financial issues.

81. In a number of countries the requirement of consultation on financial matters is self-evidently covered by the general recognition of local governments' right to be consulted, therefore separate legal provisions are not necessary to confirm this right. But in many other states, as mentioned above, this subject of consultation is specified, or even emphasised as being the most important issue in central-local government relations.

V. Conclusions

Developments since the former report

82. Generally speaking, it can be said that most of the recommendations of the previous report need to be repeated since, by and large, the same problems are present today as seven years ago. The legal recognition of the right of local authorities to be consulted in the domestic legal systems of member states is far from being complete or comprehensive.

83. Nevertheless, it has to be noted that some national experts and national associations have reported positive developments in the practice of consultation since the former Congress report. Thus, Croatia has lifted all the reservations that it made in 2008, including the Article 4.6 of the Charter. In other countries, central-local government consultations have become more regular, owing to the pressure to cooperate more effectively in face of the world economic crisis.

84. Despite the progress, some experts have reported a significant downturn with regard to consultation in their countries, notably in Finland and Hungary. It has been observed that, due to the negative effects of the global economic and financial crises, local interests, in particular the financial autonomy and capacity of local authorities have suffered serious damage in many countries in recent years.

85. There is little sign that central-local government consultation constitutes genuine political negotiation, as the 2005 report recommended. Where the consultation process is not enshrined by law, or where the central government ignores the existing rules on it, sometimes even the regularity of the negotiations cannot be guaranteed.

86. Although minor changes have taken place in some Caucasian countries, such as the establishment of a national association of local governments in Azerbaijan, local authorities need to have sufficient capacity to articulate and defend their interests, and central governments need to accept their associations as negotiating partners, in order to establish a really effective consultation mechanism.

87. Despite the invitation of the Congress to introduce particular legislative provisions with a general requirement to consult local authorities at the different legislative stages, this right of local governments is not recognised by some countries (e.g. Armenia), or is guaranteed only in certain areas (e.g. the United Kingdom), while some progress has been observed in some member states (e.g. Azerbaijan and Cyprus).