

LEX LOCALIS

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Local Self-Government in Europe

Editors:
Boštjan Brezovnik
Istvan Hoffman
Jarosław Kostrubiec



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February, 2021

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BOŠTJAN BREZOVNIK, ISTVÁN HOFFMAN & JAROSŁAW KOSTRUBIEC

Abstract The local governance and municipalities have always been an important system of the national administrative systems. Therefore, their analysis has had a long tradition in the European social sciences. The different regulations on the municipal administration have been compared by the books, but the approach has been changed by the evolvement of the administrative sciences: comparative local governance and the comparison of the different local socio-economic systems became recent topics of the monographs. 13 municipal systems are analysed by this book. Countries from all part of the European Union are observed by the chapters. The central element of our analysis are the standards defined by the Charter of Local Self-Government in Europe: the implementation of the Charter and the transformation and reforms of the last decades are analysed by them. However, just half of the municipal models of the EU Member States are examined by leading experts of the given countries, but the different faces of the similar trends can be observed by this book. The different ‘faces’ of centralisation and concentration can be seen. The book has a strong legal approach, but the analysis of the local governance is in focus of the book, therefore, it has a wider, social science approach, as well.

Keywords: • local self-government • European Charter of Local Self-Government • decentralisation • administrative systems • Europe

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Foreword

The local governance and municipalities have always been an important system of the national administrative systems. Therefore, their analysis has had a long tradition in the European social sciences. The different regulations on the municipal administration have been compared by the books, but the approach has been changed by the evolvement of the administrative sciences: comparative local governance and the comparison of the different local socio-economic systems became recent topics of the monographs.

The ‘Golden Age’ of the comparison begun during the late 80s, early 90s. The Iron Curtain fell, the Democratic Transition of the former socialist countries started. During these times, the traditional public administration transformed, as well. New paradigms evolved, and the decentralisation of the national administration was encouraged by one of the major theoretical (and even practical) frameworks of the late 80s, the New Public Management paradigm. The standards of the European local governance were codified by the European Charter of the Local Self-Government (hereinafter: Charter).

The second wave of analysis begun during the different enlargements of the EU. New countries accessed to the European integration, and the general analysis of the municipal systems of the 24, 25, 26, 27 and even 28 Member States of the EU became an important issue. The approach of the observation has been transformed: the analysis of the local governance has been major issue.

The economic crisis in 2008/2009 hit the European systems, as well. The municipal regulation and practice have been significantly influenced by the transformation of the welfare and public service models. Centralisation and concentration of the municipal systems became an important topic of the current literature, and the observation and analysis of these phenomena have been recent issues of the books and articles. However, the standards of the European municipal models were recognised by the Charter, the different countries gave different answers to the challenges of the last decades. Trends and similar reforms could be observed, but the intensity and extensity of the reforms have been diverged. The centralisation and concentration have had different ‘faces’: in the Nordic countries, the concentration of the local system was enhanced, and the municipal autonomy was under the attack of the central regulation on the standards of public services. The direct centralisation and nationalisation became an issue in Eastern Central, Southern and South-Eastern Europe. The COVID-19 pandemic hit again those systems, and the centralisation trends became more obvious.

13 municipal systems are analysed by this book. Countries from all part of the European Union are observed by the chapters. The central element of our analysis are the standards defined by the Charter: the implementation of the Charter and the transformation and

reforms of the last decades are analysed by them. However, just half of the municipal models of the EU Member States are examined by leading experts of the given countries, but the different faces of the similar trends can be observed by this book. The different ‘faces’ of centralisation and concentration can be seen. The book has a strong legal approach, but the analysis of the local governance is in focus of the book, therefore, it has a wider, social science approach, as well.

We wish to the Readers of this e-book to see the colourful picture of the ‘kaleidoscope’ of the European municipal systems, which shows different but still similar view of the transformation of the European systems.

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Local Self-Government in Belgium

KRISTOF STEYVERS, KOENRAAD DE CEUNINCK & TOM VERHELST

Abstract This chapter discusses local self-government in Belgium. After situating the two tier local government system in the historical development of the state, it subsequently addresses the legal foundation and the scope of local self-government. Then, the protection of local authority boundaries, the administrative structures and resources for their tasks, the conditions under which responsibilities at the local level are exercised and the administrative supervision of their activities enter the fray. The chapter continues with outlining the financial resources and transfer system and the right to associate for local authorities. It concludes by delineating the future challenges for the implementation of the European Charter of Local Self-Government in Belgium.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Belgium

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1 Introduction and history

Belgium is often situated within the Southern, Franco or Napoleonic state tradition of intergovernmental relations. It has a two tier local government system comprised of provinces (N = 10) and municipalities (N = 581). For this chapter we will focus on the municipal tier.

With regard to the status of Belgian local self-government, a distinction should be made between the era before and after 2002. From that year onwards and as a result of the ongoing federalization process of the country, the constitutive framework on local self-government became a competence of the regions. This means that the Flemish Region, the Walloon Region and the Brussels-Capital Region (to a lesser extent given its specific constitutional status) can set and alter the basic laws regulating the political and administrative organization of their municipalities (respectively N = 300, 262 and 19). Since then, the composition, organization, competences and functioning of local entities can differ between regions and subsequent legal frameworks have been established¹. The first two regions have indeed embarked upon (continuing debates on) local government reform of which some translate into differences in terms of local self-government. Brussels has largely kept the former Belgian framework for its local government. Since then, 'central' government means in fact the combination of its regional and federal component.

Three qualifications are needed however. First, the former Belgian Local Government Act (established in 1836, updated and consolidated in 1988) has served as a starting and reversion point for all regions implying that many similarities remain between them. Second, even before the regionalization of the constitutive framework steps had been taken to devolve aspects of local government regulation to Flanders, Wallonia and Brussels such as the functions concerning the supervision of local government (1980), the municipal fund (1988) and intermunicipal cooperation (1993). This implies that even before 2002, the regions had the possibility to reform these aspects. Third, some aspects of local government regulation have remained in the orbit of the federal government (such as the framework on local police, firefighting or the public social welfare center).

Given this (qualified) regionalization and the critical juncture it implies, we will compile this country report by starting from the conjoint Belgian patterns, making relevant differences between regions and/or throughout time explicit in discussing each dimension of the chapter.

The discussion of the different dimensions of the European Charter of Local Self-Government and associated interpretations are mainly based on the legal framework, a

¹ The legal frameworks hence referred to are: Nieuwe Gemeentewet (Belgium, 1988-2002); Gemeentedeceet (Flemish Region, since 2006) and Gemeentekiesdeceet (Flemish Region, since 2006), Code de la Démocratie Locale et de la Décentralisation (Walloon Region, since 2006). In Brussels (since 2003) some ordinances have modified aspects of the pre-2002 framework without replacing it with a consolidated regional counterpart.

secondary analysis of existing data and/or the literature (see references). For the dimension 'financial resources of local authorities and financial transfer system' additional primary data were put at our disposal by Belfius bank².

2 Constitution and legal foundation for local self-government

In Belgium, the right to local self-government is explicitly included in and protected by the constitution (art. 41 and 162). Belgian local government has an open set of tasks (i.e. place-bound residual competencies). Municipal councils have the general competence to autonomously determine issues of local interest. This provision should be read as a negative one however, implying that it upholds as long as no other level of government has assumed legal responsibility for the area under question (mainly through sectorial legislation, regulation or other authoritative policy-instruments). Also, even with regard to local self-government central (i.e. regional or federal) supervision applies. In practice, the scope of local tasks is thus co-determined by central government³.

The regions cannot alter this institutional safeguard (but have indeed impacted upon the actual substance of autonomy) and it has thus remained a constant throughout time (De Rynck & Wayenberg, 2010; De Becker, 2013).

3 Scope of local self-government

Regarding the scope of local self-government in, our evaluation should be seen in view of the previous dimension and against the backdrop of multilevel governance and the subsequent policy entanglement that characterizes Belgium. There is an evident (dynamic) equilibrium at the local level between self-government (full autonomy), co-governance (partial autonomy) and deconcentrated central government (no autonomy in merely executing assigned administrative tasks)⁴.

As a result of their general competence, municipalities have probed into many issues, fields and domains of public policy with a local character and interest. However, central government has equally deployed activities that often have a place-bound component (and where municipalities will subsequently exercise tasks that have been assigned to them by law) or aim to coordinate or standardize formerly local choices. In practice, this means that they co-determine the sphere of local action and municipalities often act as agents of the center with differing degrees of discretion. It also implies that with regard

² We are very grateful to Mrs. Anne-Leen Erauw (Senior Analyst Public Finance Research Belfius) in this respect.

³ Legal debate exists about whether there is a core of local autonomy central government cannot impinge upon. The making of the local budget (including the right for local taxation), the appointment of local officials, the management of local properties and partaking in legal proceedings are often considered as key-elements. However, it is often argued that the precise delineation of local autonomy is '*one of the mysteries of Belgian public law*' and no enumeration of local competencies exists up to today (De Becker, 2013).

⁴ The latter would include e.g. responsibility for public law and order, the management of civil administrative functions and the maintenance of population registers.

to most issues, municipalities usually have some but seldom all of the responsibilities (Plees, 2006; De Ceuninck, Steyvers, Valcke & Van Bever, 2010).

Therefore, our evaluation of the various functions mentioned represents a picture of partial responsibility by default. This overall assessment needs to be qualified according to the different policy domains under consideration (Wayenberg, De Rynck, Steyvers & Pilet, 2011). With regard to (primary) education, for instance, local government is indeed fully responsible for the construction/maintenance of school buildings and the employment/payment of teachers from the municipal sector. In addition, linguistic communities (one of the regional levels in Belgium) and third sector organizations (such as the Catholic Church) are also very active in primary education separate from the municipal sector. Hence, responsibility is shared between the so-called official (established by the public sector) and free (established by the non-profit sector) education⁵.

Belgian municipalities assume functions with regard to economic (and other) help to destitute people. This is mainly concerned with the provision of means-tested poverty relief support and associated services where the municipal sector takes the bulk of responsibility. The way in which this is organized represents a specificity for Belgium. For each municipality in the country there namely is a so-called *Public Center for Social Wellbeing (PCSW)*. This is a separately appointed public body with a legal entity responsible for providing constituents in need with assistance in services or support and managing specific caring establishments⁶. The regionalization of local government has affected this organizational form however as Flemish government imposed the integration of the PCSW into the municipality from 2019 onwards. As a result, municipalities became largely responsible for social policy. Municipalities have less responsibility with regard to social security/protection (e.g. none with regard to financial transfers such as pensions or child benefits) which is predominantly organized at the regional and/or the federal level (e.g. deconcentrated through field offices). They are however active in local social policy predominantly rendering them an enabling authority to gather relevant stakeholders and to try to develop shared objectives and frames of reference.

Municipal responsibilities for primary health services follow the sectorial logic of primary education and organizational logic of social assistance. Historically, many municipalities through their PCSWs disposed of their own clinics and/or health center with an associated staff. The municipal health sector was complemented (and often organizationally predominated) by similar initiatives from third sector organization

⁵ In many municipalities both primary education from the official as well as the free net are present. For historical reasons, Belgium highly values parents' free choice of schools in philosophical terms. Evidently, also the free net is highly regulated and subsidized by the state with an eye on education policy standards.

⁶ The PCSW has a council and an executive. It is not directly elected but installed after the first meeting of the municipal council. Its structure and functioning are highly similar to the multipurpose municipal government with a specific-purpose focus on designated aspects of social policy (including poverty relief). In Flanders and since the 2019 reform, the council of the PCSW and that of the municipality coincide.

(especially the Catholic Church) equally establishing facilities and employing doctors⁷. Due to scale-enlargement in the health sector (partly market-driven, partly government-imposed) municipalities lost ground in the health sector. If nowadays they are still running health facilities, these are mainly of the policlinic or day-clinic type whereas more specialized services are rendered in urban localities only (providing for the wider regional area in a more or less hierarchical regulatory arrangement).

For land use municipalities (and particularly the executive branch) are indeed largely responsible for administering building permits and zoning. It should be mentioned however that this domain is heavily regulated and supervised by central (i.e. regional) government⁸. Contrary to land use, municipalities do not take responsibility for the provision of public transport services.

Local government is only partly responsible for housing and town development. Particularly with regard to housing, the municipal sector in the stricter sense only plays a supplementary role next to social housing corporations of which some are inter-municipal however. Overall, the share of public housing is relatively limited in comparison to that held in private hands. Municipalities (particularly the mayor) have a few responsibilities in terms of public order related to housing (assessing livability, taxing vacancy, etc.). With the exception of the larger cities (in which urban development is a more substantial portfolio), municipal activities in terms of development mainly coincide with zoning on the one hand and public infrastructure on the other hand.

Local government is partly responsible for traffic and public order policing. A reform in 1998 integrated the formerly separated municipal police with the local brigades of the national gendarmerie. This so-called unified local police works under a centrally defined uniform framework and is complementary to its federal counterpart. Some argue this is a relative loss of local responsibility and discretion enhanced by the scale-enlargement in police zones (mostly comprised of more than one municipality) that followed suit (De

⁷ Municipalities are neither directly responsible for doctors' payment even if they work in a PCSW-clinic nor for additional medical costs. Doctors are organized in corporate associations agreeing on honorary fees for specific medical actions. Clinics/health centers will also have publicly regulated scales for particular additional medical services/provisions. The total of all medical costs is largely covered by an obliged public insurance against illness. Health insurance funds with a semi-public status administer policy in individual cases (e.g. it is obliged to be a member of one of these and they will pay back most of the remaining medical costs the patient still has to cover after the largest part already being assumed by the social security mechanism).

⁸ For example: municipalities have full responsibility for issuing permits only if they have a so-called emancipated status. This is rendered to them if they meet a number of requirements (such as disposing of an approved municipal spatial structure plan, a municipal functionary in charge of the built environment and acknowledged spatial registries). Nowadays, almost all municipalities do indeed have such a status. For their non-emancipated counterparts, the advice of a regional functionary for the built environment is necessary. In addition: the municipal spatial executive plan (as the binding framework for administering decisions on zoning) always is the specification of the regional spatial (executive) plan.

Rynck & Wayenberg, 2010)⁹. However, local government is still responsible for place-bound security including administrative and judicial policing tasks.

Finally, with regard to caring (kindergartens and services for the elderly or disabled) the logic of primary education and health applies. Within the municipal sector, local government has an extensive responsibility. However, third and sometimes also private sector actors (albeit highly regulated and/or extensively subsidized) offer similar services and provisions and compete with those in the hands of local government.

Overall, there are no important changes in function discernible due to regionalization that significantly affect this picture. Evidently, evolution over time can be determined with regard to specific (packages of) tasks. The most common pattern is one in which local government has gained in terms of the number of tasks in various domains accompanied by framework legislation (and an associated combination of financial incentives and specific supervision) from the federal or the regional level. Especially the latter has taken an activist stance (with more intervention through regulation, finances or objectives) increasing the interwoven character of most policy domains. In addition, regions do differ with regard to the per capita spending in important areas reflecting varying priorities in policy as expressed by expenditure¹⁰ (De Rynck & Wayenberg, 2010).

Given the wide nature of the policy domains discussed above, these tendencies are more a matter of degree¹¹. The standard setting thus remains one in which local government is at least partially involved in and responsible for the tasks mentioned usually in conjunction with its regional and/or federal counterpart.

Finally, the consultation of local authorities in the planning and decision-making processes at central level should explicitly be seen against the corporate conception of this element of local self-government in the Charter, i.e. the extent to which local government as an organized and associated interest has indirect access to and influence over its central counterpart. It should be assessed against a culture of political localism and in particular the common practice of dual mandate-holding as a specific means for particular local interest mediation (De Rynck & Wayenberg, 2010).

⁹ About 75% of all zones are comprised of more than one municipality. These zones have their own police council and executive where delegates from the constituent municipal entities determine policy. In zones comprised of one municipality the council and the mayor are maintaining sole responsibility.

¹⁰ In the Brussels-Capital Region, the regional level has assumed a number of functions related to land-use (e.g. environmental policy or urban planning). However, the municipalities in the region do still have some partial responsibility for this function. For a number of person-related competences, the applicable framework within Brussels differs (since these domains are within the realm of the linguistic-cultural communities). More general, differences between regions are more pronounced if we would consider alternative indicators such as public employment or the per capita spending on various policy domains. In Wallonia and Brussels the local sector is more public than in Flanders.

¹¹ One could argue that the list of tasks for which local government is 'partly responsible' has increased in most policy domains as has the part of the responsibility this refers to.

Traditionally, there were neither legal provisions nor standard procedures for structural negotiations between the local and central levels of government. Central government was not obliged to consult local government in preparing, making or implementing its policy. There was no formal mechanism of representation. Evidently, this did not preclude an extensive degree of actual interaction and the possibility for local government (associations) to influence central policy. This was largely dependent however on the openness of the center (and its willingness to adapt to local demands and interests) and/or the strategic capacity of local government (and its associations).

Particularly with regard to the latter, some changes can be discerned propelled by the process of regionalization and affecting Flanders in particular. The Association of Flemish Cities and Communes (as the regional offspring of a former Belgian counterpart) has become a more important player in intergovernmental relations. The organization has professionalized and its extensive staff now covers almost all policy domains whilst developing policy networks with relevant central actors (such as ministers, cabinets, administrative departments, parliamentary committees or parties). Next to rendering services and giving technical advice to its members, the association engages in proactive policy-making and lobbying towards central government. The association is (informally) acknowledged (particularly by regional government) as the corporate umbrella of local government (although internal differences exist according to municipal size or partisan affiliation) and more routinely involved in issues of central policy or decision-making that may affect the position of local government (a consultation phase with the appropriate corporate interests has become more accustomed). This does not imply any legal obligation for consultation or representation (left alone central government always follows the views of the organization)¹². Therefore, it could reasonably be argued that in Flanders the reach of influence from local government over national policy-making has extended to something more substantial. This holds in particular for the more technical or applied aspects of regulation and policy (to a lesser extent for the main principles where the center is less inclined to give in)¹³. This professionalization is less outspoken in Wallonia and Brussels and the respective associations have a more limited supportive role.

The type of corporate access the above refers to, should be seen against the backdrop of a strong and persistent culture of political localism referring to specific local interests and the political influence of particular local governments playing a substantial role in central government decisions. This is enhanced by the local anchorage of politicians at the central level. Decisions over the distribution of goods and services are often based on territorial

¹² Since 2007 Flanders has established the Flemish Advisory Council for Administrative Affairs. This is an independent advisory board of the regional government and parliament. Its role is to give advice on draft decrees in designated policy areas (where the Region is obliged to ask for this advice) or to do so on its own initiative. The council is dominated by expert members, but the local government association can also send its representatives. This could be considered as a soft version of formal representation and consultation of local government at the regional level. The previous government has abolished the council however.

¹³ It is perhaps a bit too bold to discern such a general increase as the amount of influence will differ according to the issue at stake.

affiliations of central and party political relations of local politicians. The latter have direct access to the center. The most common and sustained mechanism by which this is achieved is the holding of dual mandates. The bulk of all members of parliament (either regional or federal) conjointly occupy a mandate at the local level (either as a councillor, alderman or mayor). Alternatively, local mandate-holders will use their partisan network to connect with Brussels. This direct access is seen (and defended) as a means to influence central decision-making in favor of specific local interests. It gives local politicians leverage to intervene for their local government¹⁴. Regionalization has left the prevalence of this practice largely untouched. In Flanders, its potential effect is said to have diminished however (in conjunction with the relative increase of block grants and more contractual planning relationships and a neutral management style for routine programs) and more focused on regional grants for important local infrastructure and investment or the direct variant of the latter by the center in the local area. With regard to Wallonia and Brussels, political localism is seen as remaining predominant even in daily politics and regarding operational programs¹⁵.

4 Protection of local authority boundaries

Regarding the changes in local authority boundaries, Belgium shows a mixed picture. Back in the 1960s and 1970s forced municipal amalgamations reduced the number of Belgian local authorities drastically (De Ceuninck, 2009). This started in 1964, when the country still counted 2.663 local authorities. By 1972 that number was reduced to 2.359. The most drastic reform would however take place in 1976, when the total number of local authorities was further reduced to 589 by way of large scale compulsory amalgamations. This reform found its legal base in a 1971 parliamentary act that created the possibility to amalgamate all Belgian municipalities by way of a parliamentary vote. It was without doubt the most drastic reform that ever occurred at the local level. This reform was motivated by different elements. One was to make the local authorities financially healthy again. Also, the changing social environment of municipalities (e.g. increased mobility) was a reason for a larger scale on the local level, next to the need to create a better cooperation between central cities and neighboring suburban municipalities (to avoid the disadvantages of spillover effects). A final motive for this enlargement of the local scale was to increase the governing capacity of the local authorities. Also, they were promised extra competences after the reform, a promise that was never granted.

Although there were several good reasons for that reform, it will be remembered primarily by the way it was implemented. The reform was initiated by central government and left little or no room for a local contribution. The government wanted the reform to be

¹⁴ Some argue that this practice also and ultimately enhances loyalty to the center (i.e. parties and executives) to the extent that it will prevail over local interests in general.

¹⁵ It should be mentioned that the Walloon Parliament has recently formally limited dual mandate-holding. Only the fourth of members of parliament with most preference votes (on the regional candidate list they were elected on) of each party group can continue to conjointly hold an elected mandate at the local level.

implemented very quickly, in the belief that otherwise there would be hardly any mergers. A request to link referendums to those mergers was rejected by the government, who formulated a merger proposal for each municipality. The local authorities could only issue an advice on that proposal. Those advices were particularly contradictory, giving the government free rein to decide who would merge with whom. Only a direct access to the minister could ensure that certain mergers plans were subsequently amended. In this way a number of municipalities (N = 92) succeeded in not having to merge at all.

This top-down decision making resulted in a long lasting taboo on scale reforms in Belgium. Many local politicians felt themselves victim of higher party interests. It thus came as a surprise that the Flemish government, that took office in 2009, announced that it would stimulate voluntary mergers. This was part of an 'internal state reform' by which the Flemish government wanted to simplify the administrative landscape (Vlaamse Regering, 2011). The main goals were to empower the local government level and to reduce the provincial level as the current second tier of local government. The Flemish government saw a coordinating and guiding role for themselves as central government. In order to strengthen the local government level, voluntary amalgamations were stimulated by a combination of a financial bonus to the amalgamating municipalities and assured administrative support in the complex process of a merger. Flanders then counts 308 municipalities, of which about 79 do not have 10.000 inhabitants (VVSG, 2016). Encouraging voluntary mergers was seen as a way to strengthen the local level in order to transfer additional powers to it. It would also help the local authorities to better deal with future challenges. Despite the interest of some, not a single municipality took the step towards a voluntary amalgamation. There are several reasons for this. The measures came way too late in the local legislature, which meant that they were close to the local elections in 2012. In addition, many local decision-makers were unaware of the advantages of municipal mergers. That, combined with the limited political support, made the measure unpopular (De Ceuninck, Steyvers & Valcke, 2016).

The Flemish government that took office in 2014 showed continuity in the approach towards the local level compared with the previous legislative term (De Ceuninck, Valcke & Verhelst, 2018). The stimulation of voluntary amalgamations of municipalities was again a policy priority for the Flemish government. The measures developed in the previous legislative term were more elaborated in the form of a Flemish decree on voluntary amalgamations in 2016. The Flemish government created extra financial and political support for voluntary amalgamations, by means of a debt assumption by the Flemish government of EUR 500 per inhabitant and the possibility to appoint more deputy mayors in the two legislative periods after a merger. Finally, 15 Flemish municipalities decided to merge by January 1, 2019 into 7 new municipalities. The 15 municipalities involved invested a great deal in involving the population in these merger plans. In only one municipality a popular consultation was organized, but too few people showed up so that the results were not even counted.

Until now, the scale debate or the demand for municipal mergers, was not so fiercely and concretely on the political agenda in Wallonia or the Brussels region¹⁶.

5 Administrative structures and resources for the tasks of local authorities

The 1990s were a decade of hesitant administrative modernization for local government in Belgium of which some translated into more autonomy in terms of staff (e.g. more timely instruments and processes of human resources) and local structures (e.g. establishment of arms-length agencies, systems of budgeting and accounting). Especially since 1995 (when most of these modernizations were introduced), the autonomy in terms of staff and structure has increased substantially (e.g. in terms of hiring staff, fixing their salary – although this only applies for non-statutory employees, choosing the organizational structure, establishing legal entities and municipal enterprises) (Plees, 2006).

These ideas and tendencies have continued after regionalization (De Rynck & Wayenberg, 2010; Wayenberg, De Rynck, Steyvers & Pilet, 2011). The Flemish region has been most enthusiast about adopting organizational modernization practices diffused under the banner of New Public Management. This has been apparent in a number of measures: introducing strategic planning in municipal policy-making (and integrating it with the functional management domains as to link multiannual goals with financial and personnel commitments in the policy and management cycle), giving leading administrators more managerial leeway and stimulating them to cooperate by establishing a management team, providing different forms of agency to place parts of policy at arms-length of the municipality or more contractual employment (as opposed to statutory personnel with tenure and fixed working conditions). In Wallonia and Brussels change is limited to non-existent as compared to the former (modernized) Belgian framework. The primacy of politics and more hierarchical relations with administrators tend to prevail. Given the possibilities already allowed by the modernized Belgian framework (and at least the continuation thereafter) we designate a score of 2 for autonomy in staff and structure for the period since 2002¹⁷.

¹⁶ From time to time, there is a debate about the political fragmentation of the 19 Brussels municipalities however in relation to city-regional and/or metropolitan challenges allegedly insufficiently solved at the level of the Brussels Capital Region. This is compounded by the complex decision-making situation in the Brussels policy area where different and sometimes overlapping or intersecting institutions coexist.

¹⁷ As with most aspects of self-government, this should be read as the possibility to make a number of place-bound choices within clear limits of legal and regulatory central frameworks often accompanied by forms of supervision. E.g. in Flanders municipalities can choose to establish agencies but the procedure to do so is outlined in detail in the municipal decree, including an impetus to opt for forms that are close to the municipality first and only later and accompanied by an extensive motivation for more at-length variants.

6 Conditions under which responsibilities at local level are exercised

Belgium traditionally organized its local elections via a (semi-)open list system of proportional representation (Imperiali-method). The same system applied for all localities and was anchored in (municipal) electoral law. Only the members of the local council were directly elected (as enshrined in the constitution). Given its predominantly monist and parliamentary conception of legislative-executive relations a council of mayor and aldermen (CMA) was then subsequently elected among these councillors to act as a collegiate and collective executive of the municipality¹⁸. Formally, the nomination of this CMA had to be supported by a majority in the council (a form of investiture). Informally, this was the result of a process of majority formation often in the form of governing coalitions of political parties. The composition of the CMA (i.e. the number of mandates for or the distribution of specific portfolios to each party and selected individual mandate-holders) was often regarded as the capstone of this process.

Mayors have always occupied a specific position in this cycle. Historically, the mandate included a strong supra-local component and part of the associated task was to act as a representative of the center at the local level. As a consequence, and despite of the requirement to be elected as a councillor, the mayor was appointed by central government after nomination by the council (as part of that of the CMA). Gradually, the mandate of mayor has become more localized both in terms of selection as well as of functioning. With regard to the first, the attribution of the mayoral position is part of the governing formation process and an informal practice has emerged to nominate as mayor the candidate with most preference votes of the largest party in the coalition. The formal appointment survived however, in the bulk of all cases as the central rubber-stamp of a local choice. With regard to the latter, local tasks have become priority over central counterparts and mayors could definitely be seen as the first citizens of their municipality (assuming many local leadership roles). Given that the scores refer to the whole of the executive and the factual indirect election of the mayor it is felt safe to assess that the executive is elected by the municipal council.

Overall, the Belgian system described above has remained largely intact in the regionalized context after 2002 when in principle variegated organizational systems could be created (De Rynck & Wayenberg, 2010). Both the electoral system as well as the way in which the executive attains office remained constant and uniform for all municipalities, despite fierce debates on reform. In the Flemish Region, e.g. the latter concentrated on the direct election of the mayor or making the electoral system more proportional without effective consequences. In Flanders, preference votes have received relative more weight in determining who gets elected. And the council can elect its own president (instead of the default option of the mayor). Furthermore, the number of aldermen will be reduced with 1 in the next legislature. In the Walloon region, the existing informal mode of

¹⁸ The municipal council has the residual fullness of competence with the exception of a limited number of explicitly enumerated counterparts for the CMA. In the Flemish Region, the latter can be supplemented by powers delegated from the council to the executive (allowing for a more tailor-made municipal organization).

mayoral designation was formalized whilst at the same time adopting the possibility of a motion of censure against the executive (i.e. individually or collectively) in an attempt to strengthen the parliamentary nature of the system. Also, the Flemish region adopted a (limited and collective) constructive vote of no confidence as a means to empower the council vis-à-vis the executive board. A few minor modifications have thus occurred in some regions but not to subvert the path dependencies of the previous Belgian era.

In terms of the politicians' statute, the Belgian system is characterized by a sharp divide between local politicians holding an executive office (i.e. a position in the CMA) and non-executive councillors (Wayenberg et al., 2011). The social statute and reward of the mayors and aldermen was improved by Belgian government in 1999 and reconfirmed by the regions afterwards. This system includes, amongst others, earnings, holiday pay, expenses and a retirement fee. Non-executive councillors on the other hand still predominantly act as layman politicians who receive an attendance fee for council or committee meetings (and, potentially, some political leave, temporary replacement or – minimal – expenses, e.g. for training seminars, literature, transport)¹⁹.

The legal statute furthermore guarantees assistance for disabled councillors, municipal responsibility and assurance to cover civil liability of local politicians in office and defines the incompatibilities with local elective office in Belgium (e.g. magistrates, provincial governors, second-degree relatives, administrative personnel of the municipality). It also lists the instruments councillors dispose of to fulfil their mandate (e.g. interpellations, field visits to municipal institutions, copy right, consultation of policy documents, agenda-setting in and convening of the council, information from the municipal administration, etc.). No sharp regional divides are to be found in this respect²⁰.

7 Administrative supervision of local authorities' activities

The interpretation of the administrative supervision of local authorities' activities follows from the continuation of one typical feature of the Franco-model, i.e. the existence of extensive administrative supervision. Even when the extreme versions of the latter have been modified the tenet of central oversight and control over the local level has persisted over time and in the various regions (De Ceuninck, Steyvers, Valcke & Van Bever, 2010; De Becker, 2013).

Before the 1980s supervision was the exclusive privilege of national government. As a result of the state reform the regions gradually assumed that competence (even before a full federal system was in place). Throughout that period and until today, the provincial governor played a crucial role in supervision, acting as the place-bound representative of

¹⁹ These fees are defined by the municipal council within limits set by central government.

²⁰ The Flemish local government act however includes the possibility to financially support the political groups in the council.

the center²¹. The accustomed conception of supervision was twofold. Decisions of local government either needed preliminary approval by central government before they could be enacted (principle of visa) or these could be suspended and ultimately nullified should the center find them in contradiction with the law (principle of legality) or the general interest (principle of expedience). Supervision of legality and expedience have been enshrined in the country's constitution (art. 162). Expedience (the general interest) has long been interpreted in practice as giving the center the possibility to act both when local decisions ran counter central objectives as well as when they were perceived to fail the interests of the local community.

The constitutional foundation for supervision has remained unchanged, also after the regionalization of 2002. In the Walloon and Brussels-Capital regions, the traditional principles of supervision and their subsequent interpretation have largely sustained. Little structural change has occurred in this regard or is likely to emerge in the near future. Both preliminary approval as well as the possibility of suspension or nullification continue to be accepted routines in central-local relations and are often interpreted in a maximalist way. In Flanders, whilst upholding the (constitutional) principles, the interpretation has become less strict leading to an actual deregulation of supervision²². For one thing, the range of local decisions encompassed by preliminary approval has been greatly reduced. For another, in contemporary Flemish practice suspension and nullification will only be deployed after a formal complaint of an actor who sees his interests harmed by a particular local decision. In addition, the general interest is now interpreted as one that should transcend local government implying the principle of expedience can only apply when larger interests are potentially threatened (and not just that of the local community)²³.

8 Financial resources of local authorities and financial transfer system

The outlook of the financial structure of Belgian local self-government reflects the contingent nature of local fiscal autonomy. Local government can indeed independently tax its population. This is a constitutional prerogative of the municipal council (art. 170) in line with the idea of general competence (see 'constitution and legal foundation for

²¹ The regions first gained the responsibility for the actual daily supervision of their localities (1980) before acquiring the ability to effectively change its constitutive framework (1988). The governor now acts as a representative of the regional or the federal government (depending on which central level is constitutive for a particular decision).

²² This has been anchored in the municipal decree (i.e. the regional local government act) in use since 2006 (art. 249).

²³ It should be noted that this modernization largely concerns the so-called general supervision (with the regional agency competent for internal affairs in a coordinating role). Supervision over specific policy domains (resulting from the increasing entanglement between regional and local domains) follows more traditional principles and interpretations (often including detailed preliminary regulations and intermediate reporting obligations for local government). Moreover, it has long been uncoordinated. Flanders has recently adopted a decree aimed at reducing the planning burden for local government partly trying to impinge upon and reduce this specific supervision.

local self-government')²⁴. Depending on the type of tax local government can determine the base and the rate (for minor taxes) or only the latter (for major taxes). Often, central government imposes restrictions on local taxation. Nowadays taxes make up about half of all municipal income (Bafoil & Lefèvre, 2008; Dessoy, Erauw & Lafontaine, 2014)²⁵. From a comparative perspective, this level of fiscal discretion is relatively extensive. However, a closer and more specific look nuances.

The bulk of the local tax income (80% of all taxes or 40% of the total local income) namely comes from two major taxes that are in fact supplemental, i.e. grafted on a base and standardized rate set by another governmental level. Here, local government only has leeway to set the rates of the supplements²⁶.

The first is a form of income tax. More in particular it is a percentage local government can add to the general ex-ante taxation (corrected ex-post) of personal income gained from labor with standardized rates and bases set by the federal government (that is also responsible for its collection) for citizens who have their main abode on the territory of the municipality. Whilst municipalities are free to set their own supplemental value and sometimes use central bases and alleged associated pressures to shed unpopular elements of local choice, it also makes them dependent on the tax policy of their federal counterpart. If the latter decides e.g. to lower the standardized rates or alter the base, municipalities are obliged to increase their percentage supplemental income tax (SINT) if they are willing to derive the same level of income. In addition, this income tax is progressive as its standardized rates (disproportionately but within a fork) increase with the level of taxable income declared. This implies that the supplemented income derived from this tax is sensitive to the decisions in terms of demographic mobility of (a small group of well-waged) people.

The second is a form of property tax. In particular, it is a part (called *opcentiemen*) local government can add to the ex-ante taxation of immovable goods (i.e. houses and apartments) owned by citizens who have their main abode on the territory of the municipality. This is a mixed competence involving three levels of government. Whereas the standardized rate for this tax is set by the regional government (hence also collected by it) its base is categorized (so not progressive) upon a standardized measure of property value (*kadastraal inkomen*) determined by the federal government. Similar problems of local dependency thus occur with regards to this supplemental immovable tax (SIMT).

²⁴ The federal government can determine the range of local fiscal autonomy however, by prohibiting certain taxes to be levied.

²⁵ Between 2000 and 2012 local government taxes conjointly represented a bit more than 4 to a bit more than 5% of all government taxation income. With the latter representing about 45% of GDP, this implies that local government taxation consumed around 2,3% of GDP.

²⁶ These resources are considered as own-source tax revenue since they are surtaxes and not a fraction of tax receipts of supra-local levels (which would designate them as shared tax revenues).

The remainder of non-supplemental minor local taxes (20% of all taxes or 10% of the total local income) are more genuinely place-bound. Recent accounts for the Flemish region show that no less than 90 different varieties of such taxes could be discerned with a ditto divergence in terms of bases and rates (e.g. on public sanity, economic activity, equity or occupying the public domain). Recently, the three regions have embarked on an attempt to reduce the multiplication of local taxes as a means to induce place-bound economic growth. Although the particularities differ according to the regional arrangement, the main mechanism is similar: the financial losses invoked by the centrally stimulated abundance of certain local taxes and/or limiting and structuring other ones are compensated by regional government. It is clear that the price of this fiscal peace is a relative reduction of municipal autonomy.

With regard to the overall extent of independent local taxation power however, the traditional Belgian fiscal regime described above has clearly sustained after regionalization (De Rynck & Wayenberg, 2010).

Next to their own sources, transfers from central government are an important part of the revenue of local government. These transfers are either conditional or unconditional reflecting varying degrees of financial autonomy.

The way in which these transfers have been organized varies over time and/or between regions in Belgium, ranging from the dominance of conditional transfers to the dominance of unconditional grants. This variation is more due to incremental changes over time and/or gradual differences between areas than the result of a deliberative shift or substantial territorially variegated choice in central policy on financial transfers although some trends can be discerned. In the era where Belgium as a national (unitary and later on federal) state was responsible for local government, the financial transfer system comprised both conditional and unconditional transfers to an equal degree, although the share of unconditional financial grants was to be situated at the upper limit of the fork determined in the index (approximating 60% or surmounting it, as was the case in two years of the pre-2002 era). Since the regionalization in 2002, either a balance between both types of grants (Flanders) or a dominance of unconditional grants (Wallonia) can be discerned. However, again the variation between both regions is more a matter of degree (just below and above 60%) corresponding with (qualitatively) different categories in the index. Only in Brussels, conditional grants are clearly dominant (consistently above 60%).

Unconditional local (or block) granting by central government has been a feature of intergovernmental relations since the 19th century under the form of a so-called communal or municipal fund. This fund has come under the guidance of respective regional governments since 1988. Since then, each region had its own fund. All have kept the combination of two main goals: guaranteeing a stable growth path (according to the number and importance of the tasks required by central government) as well as providing financial equity (by redistributing resources to ensure solidarity). The sum received by

each municipality is not earmarked (i.e. reserving it for specific functions and/or requiring a particular approach, method or instrumentation) to maximize expenditure discretion.

Until 2002, the various regional regulations remained quite similar. They were predominantly based on categories of local government according to the number of inhabitants. For larger cities, a specific proportion of the fund was guaranteed while the distribution to their smaller municipal counterparts was mainly based on the principle of equity. In Flanders, a 2002 decree established a fixed growth path and integrated some earmarked funds into the general fund. Also, the criteria of fiscal equity and compensation for the alleged costs of functional spillover (mainly from central cities to their suburban environment) gained prominence. Lastly, a new fund for larger cities was created with open-ended goals to meet local priorities in contractual agreements with central government²⁷. It is felt that in Flanders, these changes have increased local discretion. At the same time and as mentioned, Flanders is the region that has displayed most regulatory activism often implying an executive role for local government in fulfilling centrally defined tasks in exchange for earmarked granting (De Rynck & Wayenberg, 2010). In Wallonia, a reform was adopted in 2008 including the determination of new criteria for the overall growth of the municipal fund and for its distribution. The implementation of the latter was spread in time with a transition period of more than 20 years (Dessoy, Erauw & Lafontaine, 2014).

Local sources have traditionally been an important part of municipal income. Around 80% of such sources are taxes (the bulk of which are two surtaxes on a regional and federal base complemented by strictly local counterparts) and retributions. The remainder is divided between fee revenues generated by user contributions to the costs of specific local services and provisions of the local authority and debt revenues as the recurrent financial receipts collected by municipalities. The latter is a mix of dividend payouts from energy inter-municipal companies (which was traditionally the most important but has lost prominence under the European liberalization of the market), municipal holding companies, interest or revenue generated by monetary investments and reimbursements from their parties of the borrowing costs linked to loans initially contracted by the municipalities (Bafail & Lefèvre, 2008).

Whereas own sources yielded over 50% of the municipal income for the pre-2002 era, in the Walloon Region these have been a bit below 50% throughout. Particularly during the last decade, the proportional share of own sources in local revenues has increased everywhere however (up to a bit more than 50% in Brussels and 60% in Flanders and Wallonia). This is largely due to the growing share of income derived from local taxes and retributions.

²⁷ The current Flemish government wishes to integrate this into the municipal fund however. In addition, there is an ongoing discussion on the criteria used for the distribution of this fund and the consequences for specific categories of municipalities (and those bordering between categories).

Borrowing is regarded a legitimate source of local income that does not need specific prior authorization by central government. However, it is subject to a number of restrictions.

This has been a long-standing tradition in Belgium. As a result of regionalization, some of the restrictions have been altered and the way in which this was the case differed between Flanders and Wallonia (Brussels has largely kept the existing framework). Ultimately, these alternations are not substantial enough to affect the score on the index. We start with the elements that have pertained over time and areas after which some more specific regional changes are discussed (Bafoil & Lefèvre, 2008; Dessoy, Erauw & Lafontaine, 2014).

Municipalities are free to borrow without needing higher levels of government giving them permission in advance: they thus have the a priori autonomy to attract loans for financing their activities²⁸.

Confining the scope to which the latter applies is a first restriction. Recourse to borrowing should be used to cover extraordinary expenditure such as investment or becoming a stakeholder in certain public companies or associations. This could be considered as a form of golden rule: ordinary expenditure should be financed by recurrent income. Municipalities should not borrow to cover prospective budget or current account deficits for ordinary services or provisions.

In the past, municipal financial assets had to be invested with national public credit institutions (there even was a special semi-public bank predominantly concerned with providing credit for local government). Nowadays, municipalities are free to choose their financial partner. However, they are accustomed to turn to one of the major banks active on the Belgian market. Given that municipalities are responsible for more than half of all investment expenditures in the public sector, there is extensive competition between these banks to attract them as clients (leading to low interests, although the financial crisis and the subsequent increase in banking regulation has made cheap borrowing less evident).

Since the late 1980s Belgian municipalities are obliged to submit a balanced budget. This has implied an implicit cap on individual borrowing (particularly given the investment-related nature of loans and the practice of a golden rule)²⁹.

In the Flemish region, recently a number of financial rules have changed impinging (indirectly) upon borrowing. Budgeting has become part of strategic multi-annual planning. Municipalities have to make up such a plan at the beginning of the legislature. The plan explicitly has to integrate policy goals with financial and personnel

²⁸ The deterioration of finances in some municipalities has made it necessary in the past to set up emergence loans. Here, supervisory authorities can take over financial charges or at least provide a guarantee. Local authorities are then obliged to respect a strict financial management plan.

²⁹ This financial balance is subject to the regime of general supervision (see administrative supervision).

commitments. This is part of a policy and management cycle (PMC) used as a comprehensive instrument for planning (preparing and budgeting), execution and control (oversight and evaluation). This has some specific (mainly indirect) consequences for the practice of borrowing. First, a new definition is used for balanced finances. On the one hand, there has to be an annual balance in the budget (reconfirming previous regulation). On the other hand, an additional structural balance is needed in the long term. Therefore, municipalities have to demonstrate their financial base expressed in a positive auto-finance margin at the end of their planning period. The calculation of this margin takes existing loans into account³⁰. The margin indicates that municipalities are capable to carry their present burden and have (at least partial) room for new (investment) expenditure without needing additional financing through borrowing. Second, in the PMC borrowing is no longer explicitly restricted to investment projects. A wider approach is possible in which loans can be used to cover broader treasury needs. The idea of specific purpose borrowing has thus been left but is compensated by the double balance municipalities have achieved.

Also in the Walloon region, regional regulation concerned with municipal budgets stress the importance of stabilizing the debt burden to avoid sudden financial deterioration. A specific regional agency is designated to help municipalities in financial trouble (and ultimately take over financial responsibility).

9 Local authorities' right to associate

As we have stated in the discussion of the scope of local self-government, the Belgian rationale of political localism is underpinned by a strong degree of access of the local level to central government. Next to the extensive personnel links between both government levels through party-political contacts and dual-office holding, the associations of local government play an important role in this regard. The three regional associations of local government were formally established in 1977 and originate from the federal umbrella (the Association of Belgian Cities and Communes) dating back to 1913. They represent the municipalities, PCSWs, police zones and some intermunicipal companies on their territory. The national umbrella still exists as a platform for information exchange and deliberation between the three regional entities, as well as a representative of Belgian cities and communes in international and European fora. In fact, the different Belgian local government associations are also member of the international and European umbrella of local government (i.e. UCLG – United Cities and Local Governments; and CEMR – Council of European Municipalities and Regions). As noted above, it is above all in Flanders that the association plays a systematic and proactive role in policy-making at the central level.

³⁰ It is calculated as the difference between the ordinary (exploitation) income and expenditure (without interests). From that amount, existing loan burdens (both capital as well as interest amortization) are subtracted. The result has to be 0 or more at the end of the planning period.

Furthermore, Belgian local government is characterized by a strong degree of inter-municipal cooperation in different forms across policy domains (e.g. land use, planning, utilities such as water, gas and electricity, finance, medical services, etc.). Much in line with the New Public Management discourse, this system is set to provide local services more efficiently on a larger scale and to engender public investments in key areas of public life. The legal basis of this system of inter-municipal cooperation was a Belgian act issued in 1986. This act regulated the legal statute and organisational set-up of the institutionalized cooperation between local authorities, as well as (non-institutionalized) contracts between local authorities. After the regionalization of local government, the three Belgian regions continued to provide a legal framework for the cooperation between local governments³¹.

10 Legal protection of local self -government

Our assessment of the legal protection of local self-government in Belgium is motivated by the existence of both constitutional as well as other legal means to assert local autonomy (De Becker, 2013). As explained above (see 'constitution and legal foundation for local self-government') the constitution provides and protects local self-government. In addition and given their legal personality, municipalities can make an appeal to the various components of the judicial system which could include matters of central-local relations. The most obvious would be the Council of State where recourse can be sought against allegedly irregular administrative acts (the Council can suspend or annul the latter when assessed as contradicting the legal rules in force). In theory, municipalities can also turn to the Constitutional Court (suspending or annulling federal or regional laws found contradicting the constitution) or other civic courts (but this is less common and will only seldom relate to issues of autonomy). The College of Mayor and Aldermen (the collegiate executive) legally represents the municipality in the different courts.

Just like the principle of local self-government should be seen against its negative definition and the practice of decentralization and deconcentration, the potential reach of judicial appeal should be weighed against the principles and the practices of administrative supervision (see 'administrative supervision of local authorities' activities') which give central government extensive leeway to limit local autonomy (especially since it also includes the expediency of local decisions).

11 Future challenges of the implementation of the European Charter of Local Self-Government in Belgian legislation

There are several challenges that the local authorities will have to deal with in the coming years. We do not intend to be exhaustive, but we list the most important challenges

³¹ The Brussels region retained the federal act and complemented this with ordinances regulating the administrative supervision and the acknowledgement of the cooperation agreement between the three regions regulating cross-regional inter-municipal cooperation. In the Walloon and Flanders region the inter-municipal cooperation is regulated in the general local government act.

pertinent to local self-government here below (see De Ceuninck, Steyvers & Valcke, 2016; De Ceuninck, Valcke & Verhelst, 2018).

Firstly, we assume that the scale debate, especially in Flanders, will also determine the local political agenda in the coming years. In Flanders, the encouragement of voluntary mergers has created a dynamic that is unlikely to stop after 2019, at the start of the next local administrative period. In any case, the current regional government further stimulates the voluntary merger of municipalities. At the federal level, there is also the scale debate concerning the police zones. The federal government is aiming for an enlargement of the current ones in the medium term.

A second challenge, specifically for Flanders, will be to streamline the social policy in the Flemish municipalities after the PCSW and the municipality are united. The municipal councils are responsible for the social policy within their municipality from 2019, where this was formerly assigned to a separate board. This will require a different reflex from those municipal councils, and by extension everyone who takes responsibility within a local authority.

A third point of attention remains the functioning of the municipal councils, which occasionally raises questions. Especially the council's scrutiny role is questioned more and more. This has several causes. For example, the number of municipal tasks has only increased over the years together with the complexity of these tasks. This ensures that council members have to invest more and more time in their mandate if they want to maintain the overview. This is in sharp contrast with the status of council members. The vast majority of municipal councillors in Flanders exercise their mandate part-time. Because of the limited remuneration council members receive for their work, it is impossible for them to carry out their work as a full-time job. This has also to be seen in the light of the evolution that the local executive has gone through in recent years. The colleges of mayor and aldermen have only become stronger (and often impinge upon the traditional policy determination role of the council often reducing the latter to mere policy affirmation or rejection). That makes it in no way easier to fill in the controlling role councillors have in a serious way. In Flanders, there were some instruments created in order to remedy that situation (own president for the council, a commission to overlook the inter-municipal partnerships and a 'structural non-management' procedure), but the question remains whether that is enough. In any case, a strong tendency of party governance is also likely to sustain. With partisan affiliations and interests as a first point of reference, the decisional fault lines in the municipalities continue to run along the majority versus opposition divide, rather than opposing the executive to the legislative. Notwithstanding the potential of preceding discussion behind the closed doors of the party group, the functioning of the council in public is often driven by the logic of party discipline.

A fourth and final challenge that we put forward here is the debate on how to will deal with inter-municipal cooperation in the future. In all three the Belgian regions, there have

been scandals in recent years about the internal working of inter-municipal structures. These have made it particularly clear that they must be more transparent and that the exchange of information between the local and the supra-local government level has to be improved in the near future.

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Local Self-Government in Bulgaria

MILENA HRISTOVA STEFANOVA

Abstract This paper presents the implementation of the principles of the European Charter of Local Self-Government in Bulgarian legislation after 1991. It briefly follows the historical development of local self-government, the introduction of democratic principles and norms in legislation, constitutional guarantees for local self-government, the sphere of competence of its bodies, protection of local authority boundaries, the structure and functions of local administration, financial sources for local activities, the relation between local and central authorities, local authorities' right to associate, as well as the challenges in front of the implementation of ECLSG principles in Bulgaria. This paper uses sources such as: The Constitution of Republic of Bulgaria, the major acts that regulate local level relations and introduce local self-government principles, conclusions and recommendations based on Council of Europe monitoring reports on Bulgaria, regarding the implementation of the ECLSG, as well as other publications of the author and other authors.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Bulgaria

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1 Introduction and history

The history of local self-government in Bulgaria is both interesting and controversial. The local self-government was first mentioned during the debates in the Constituent Assembly (1879) after the Russian-Turkish War 1877-1878 when a part of the present territory of Bulgaria was liberated from Ottoman rule and therefore building of an independent state began. The forementioned Constituent Assembly had the task to develop and adopt the famous Turnovo Constitution (its sessions were held in Veliko Turnovo which at that time was the capital of Bulgaria). During the debates, the opinion of the future Conservatives' representatives prevailed and they advocated for self-government and decentralization. Article 3 of Turnovo Constitution claimed that "Territory is administratively divided into counties, districts and municipalities". A specific law would have been drafted for the regulation of this administrative division on the principle of the self-government of municipalities. The legislation, following the direction of Turnovo Constitution, formed two models of administrative-territorial division as a basis for administrative decentralization and self-government. In the period 1880-1934 the first model including counties- districts- municipalities division was implemented with the legislation. The next model was formed with 1934 legislation and its subsequent amendments, establishing the proportion between provinces-districts-municipalities. (Ruseva, Zl.) In 1882, a Law on Municipalities and Urban Governance was adopted, regulating local level relations, as well as interrelations between local and central authorities. Municipalities were divided into urban and rural areas and their governance was assigned to a royal-decree-appointed mayor, assistant mayors and elected municipal council, and the control was exercised by the district governor and the Minister of Interior. The mayor was elected from among the municipal councilors and chaired both the sessions of the council and the municipal court. In 1886, two laws were adopted separately for urban and rural municipalities. The aim was to improve and expand local self-government. In 1922 a Law on Sofia Municipality was adopted. It introduced the urban decentralization of the capital. Sofia Municipality "had one central council, one central bureau, six district councils and six district bureaus. The Central Council consisted of 31 people, 28 of whom were appointed by the Minister of Interior among the members of the elected district councilors, and 18 were elected by the district councils. The mayor was appointed by a Royal decree, on proposal of the Council of Ministers, from among the elected district councilors.

Members of the Central Council elected the three mayors' assistants by secret ballot. The central governance of the Sofia municipality comprised a mayor and his elected assistants, the district ones - a mayor and two assistants. The members of the district council elected by secret ballot two members of the central council, as well as the mayor and their two assistants". The Sofia Municipality Decree was refined and expanded in 1926 and 1934. The adoption of the Urban Municipalities Decree in 1934 was a significant moment in the process of local self-government legislation change in Bulgaria. After 1934, a process of centralization started and it involved a delegation of powers from municipal councils to mayors who had dual nature - from one side they were State authority bodies and from

the other- local interests' advocates. Furthermore, for the first time citizens were given the right to ask for the establishment of a municipality and this request must have been supported by more than the half of the voters in the settlement which wanted to be established as a municipality. Special laws were adopted, regarding financial provisions of the activities in municipalities.

After 1939, mainly because of the World War II break out, there were no preconditions for developing local self- government in Bulgaria. After the end of the war, communist regime was established in the country and this basically eliminated local self-government. Its building and development started again after the collapse of the communist regime in 1989.

2 Constitution and legal foundation for local self-government

In 1989 late autumn, a Round Table was established in Bulgaria with the participation of existing and newly formed political parties, trade unions and public figures. The decisions of the Round table included Grand National Assembly convoking in order to draft a new Constitution, also an agreement to dismiss local authorities and to replace them with temporary municipal governments, as well as to work for introduction of local self-government. Grand National Assembly elections were held on June 10th, 1990. The new Constitution was adopted on July 12th, 1991. Its Article 2 recognizes local community's right of self- government. The local self-government is an integral and essential part of the state structure: "The Republic of Bulgaria shall be an unitary State with local self-government." The Grand National Assembly adopted a Law on Local Self-Government and Local Administration, as well as a Law on The Election of Members of Parliament, Municipal Councilors and Mayors, and in October 1991 the first elections took place.

There is a separate chapter in the Constitution regarding local self-government.

The territory of the Republic of Bulgaria shall be divided into municipalities and regions. Other administrative territorial units and bodies of self-government shall be establishable by law. The territorial division and the prerogatives of the capital city and the other major cities shall be established by law. A municipality shall be the basic administrative territorial unit at the level of which self-government shall be practiced. Citizens shall participate in the government of the municipality both through their elective bodies of local self-government and directly, through a referendum or a general meeting of the populace. Borders of a municipality shall be established following a referendum of the populace. A municipality is a legal entity. The right of municipalities to associate in order to solve common problems is recognized and constitutionally guaranteed. The local self-government body within the municipality is the municipal council elected directly by populace in direct, equal, secret and general elections for a term of four years. Elections rules are defined by The Electoral Code. The mayor shall be the executive power within the municipality and shall be elected for a term of four years either by populace or by municipal council in a manner established by law. However, since 1991 the election

legislation has determined direct election of mayors of municipalities with a majority in two rounds. The winner after the first round is the candidate who received more than 50 % of the votes cast. The first two candidates are eligible for the second round.

The municipality is entitled to its own property which is used to the interest of the territorial community. The budget of the municipality is autonomous, and since 2007, when an amendment to the Constitution was made, municipal councils acquired the right to determine the amount of local taxes and fees under conditions, by a procedure and within the frames, established by law. Permanent financial sources of the municipality are determined by law. The State supports normal functioning of the municipality through budget funds and other means.

Constitution of Republic of Bulgaria allows central bodies of State to have control over the legality of the acts of the local government bodies only when this is provided by law. Legality control is carried out by the regional governor.

A Municipal council shall be free to challenge before a court any act which infringes its rights and this might include a referral to the Constitutional Court when there is a competence dispute between them and the central executive bodies.

In 1991, a Law on Local Self-Government and Local Administration was adopted. It indicated the definition of local self-government and its sphere of influence, as well as municipal authorities, their powers, incompatibility with positions that can be occupied by authorities' members, local authorities' right to associate, and other basic principles of local self-government. This law has undergone numerous amendments since 1991, dictated by the development of local self-government and practice of its implementation.

Separate laws regulate fields such as financing activities of local authorities, the management and disposal of municipal property, assumption of municipal debt and the participation of citizens in local self-government. The Electoral Code regulates rules and procedures for electing citizen representatives in local authorities.

3 Scope of local self-government

The Law on Local Self-government and Local Administration gives a legal definition of the local self-government and outlines spheres of competence of local authorities. Understandably, the definition corresponds to the text of Art. 3 of The European Charter of Local Self- Government and confirms the right and actual opportunity of citizens and bodes elected by them to independently resolve on their own all issues of local importance but only those provided by law as their competence. The recognition of the general power of competence of municipal councils gives the chance for overcoming the suspicion that some matters of local importance are not provided as local authorities` competence- " the municipal council shall resolve other matters of local importance that do not fall within the exclusive competence of other bodies"

There is no explicit definition of "a matter of local importance" in Bulgarian legislation. Furthermore, there is no understanding of the idea that there are areas of shared responsibility between local and central authorities- there is a practice of delegating activities instead, which is controversial from theoretical point of view.

Local self-government shall be expressed in the right and actual opportunity for citizens and bodies elected by them to decide independently all issues of local importance which the law has empowered them to resolve in the spheres of:

1. municipal properties, municipal enterprises, municipal finances, taxes and fees, municipal administration
2. planning and development of the territory of the municipality and of the settlements therein;
3. education
4. health care
5. culture
6. public works and utilities
7. social welfare services
8. protection of the environment and rational use of the natural resources
9. maintenance and conservation of cultural, historical and architectural monuments
10. development of sports, recreation and tourism
11. disaster protection.

Citizens shall participate in the government of municipalities either through the bodies elected by them or directly by means of a referendum or a general assembly of the populace.

Legal definitions do not clarify which areas of these spheres of competence are municipal/local activities and which are not. Specific laws regulate numerous details but an ordinary citizen can hardly understand it.

Table: Distribution of responsibilities between local and central authorities in Bulgaria in 2016 by public governance sectors

Public governance sector	Governance and control	Financing	Ownership on assets	Human resources control
Education	C/L	C/L	C/L	C/L
Health care	C/L	C/L	C/L	C/L
Social services	C/L	C/L	C/L	C/L
Environment	C/L	C/L	C/L	C/L
Public works and utilities	L	C/L	L	L
Culture	C/L	C/L	C/L	C/L
Security	C/L	C/L	C/L	C/L
Agriculture	C/L	C/L	C/L	C/L

Public governance sector	Governance and control	Financing	Ownership on assests	Human resourses control
Transport				
Tourism	C/L	C/L	C/L	C/L
Public administration	C/L	C/L	C/L	C/L

Source: Stefanova, M. (2017)

All sectors of public governance in Bulgaria are shared responsibility between central and local authorities. The balance between powers and competencies of municipalities and other central authorities' institutions varies from one sector to another.

The highest extent of centralization can be found in the Security sector, while the Public works and utilities sector is entirely decentralized, except for the way its activity is financed. Centralized sectors include 'Education', 'Health care' and 'Social services', as a significant part of the activities that municipalities perform are delegated not local which retains the leading part of the central authorities. A specific model for the allocation of functions and activities can be found in the sectors of 'Agriculture', 'Tourism' and 'Transport'. First specificity is the fact that powers are allocated according to assets ownership. For example, forests are municipal and state owned, but in the sphere of tourism responsibility could be state, municipal and private. The situation in the "Transport" sector is similar. It is true that education, health care and culture have both municipal and state ownership, as well as private, but in these three sectors state control and decision-making is highly centralized. And whilst in education and health care sectors this situation could be explained by their crucial role in national security, understood in broad sense, it is incomprehensible in cultural sphere. (Stefanova, M;2017)

The European Charter for Local Self-Government also sets conditions for determining the scope of local self-government. Does the legal regulation in the Law on the Local Self-Government and Local Administration comply with these conditions? The main powers of the local self-government bodies are indeed defined in the Constitution of the Republic of Bulgaria, as well as on the legal level. There are also no obstacles to the granting of powers to meet specific objectives. From a legal point of view, there is no problem with the freedom of local authorities to take an initiative on any matter that is not excluded from their sphere of competence or which is within the sphere of competence of other bodies and that is guaranteed by the general competence of the municipal council. However, a serious problem is observed in the implementation of item 3 of Art. 4 of the Charter - "the performance of public duties should be entrusted to the authorities closest to the citizens. The assignment of duties to another authority must be consistent with the scale and nature of the task and the requirements of efficiency and economy." This condition is closely related to the stage of decentralization of government and Bulgaria is still a highly centralized state. The implementation of this condition from the Charter is reported as an issue in the Report on the Status of Local and Regional

Democracy in Bulgaria on the The Council of Europe Congress of Local and Regional Authorities (2011).

„70. According to the principle of subsidiarity laid down in the Charter, responsibilities must be allocated in accordance with the specific tasks of local authorities, not those that are delegated to them. The recognition of competences must be seen not in terms of transferring responsibility away from the centre towards the territorial entities, but in terms of verifying that each public function, from the lowest level of governance (that closest to citizens) upwards, is allocated judiciously.

71. Under the Bulgarian system, the large majority of functions performed by the local authorities, relating to areas of great importance for citizens (education, public health and welfare), are delegated tasks, while in most European countries the relevant tasks are specifically attributed to the local authorities.

72. The imbalance between specific and delegated functions has negative repercussions for certain key aspects of local self-government.

73. The first aspect concerns the financing of the municipalities. A delegation of tasks implies that the funding is based on a transfer of resources from the central government. The strengthening of the power to determine local taxes and fees – which is to be welcomed – will only concern the funding of “local functions”.

74. A second aspect concerns supervision. For delegated functions, more in-depth monitoring, including that of expediency, remains valid. As long as the municipalities are accustomed to most of their activities being subjected to extensive oversight, the system generates an unacceptable degree of subordination to the State which is not in conformity with the provisions of the Charter in this regard.“(Monitoring Committee, 2011)

These five points of the report contain conclusions but they also raise several questions, both scientific and practical.

First, we still don` t have a clear answer of what municipalities do and what their specific local activity is. Moreover, what the central authorities count on by delegating certain activities to them. This is likely to raise negative reactions in practitioners in municipalities who carry out their work on a daily basis but if they are asked to answer the question, they will find it difficult, as long as they don` t distinguish local from delegated activities. At present, Bulgarian legislation does not answer unequivocally to the question of what specific local activity, matter of local importance or a local problem is.

In order to meet the requirements of the European Charter of Local Self Government, we will probably have to move to building a model for allocation of competencies between levels of governance that does not decentralize or delegate. Furthermore, the allocation

of functions is justified by arguments that prove the need and reasonability of provision of competencies at the corresponding level.

The requirement of Art 4, point 3 of ECLSG that activities of great importance should be provided as competencies at governmental levels as close to citizens as possible is obviously not applied in the Bulgarian model, given the fact that activities carried out by municipalities in the spheres of education, health care and social issues are in fact delegated activities not specific local ones. Moreover, the activities carried out by municipalities are not that many which provokes further negative assessments.

Therefore, we are very close to the question whether there is a real self-government in Bulgaria. If the number of the delegated activities exceeds the specific local activities one, then what kind of self- government have we built?

Second, if there is any ambiguity regarding the understanding of spheres of competence, then who is responsible for what is happening and who is protecting citizens` rights in the process of public services provision? How are we going to assess whether local authorities work to protect public interest?

Third, the conclusions of Council of Europe Report show an alarming trend.

The effect of the imbalance between local and delegated activities, which is in favour of delegated, is that the environment in which local authorities work, generates daily financial dependence and subordination, as well as it keeps the ability of central authorities to control the work of local authorities, including where appropriate. So, where is the application of constitutional guarantee for non-interference as appropriate in the activity of local authorities, which is proclaimed by Art. 144 of the Constitution of Republic of Bulgaria? We do not even talk about control as appropriate, but just about legality control. Indeed, here is the control of the acts, not the enforcement activity. For delegated activities, local authorities do not make decisions. The executive authority only organizes the implementation of the activities.

These conclusions also meet some of the recommendations addressed to Bulgaria regarding the implementation of ECLSG, which will be the subject of next monitoring on Charter implementation in Bulgaria.

Local authorities in Bulgaria have legally regulated consultation mechanisms in the planning and decision-making process. However, legal regulations and practice differ significantly. Central authorities` obligation to advise local authorities on all matters related to them is guaranteed by law. The representative functions of local authorities in their dialogue with central authorities are carried out by the National Association of Municipalities in Republic of Bulgaria.

- (2) To protect their common interests, and to promote and develop local self-government, municipalities may form a national association and regional associations.
- (3) The National Association of Municipalities shall have the right to:
 1. Act as its members' legal representative before government agencies.
 2. Draft proposals for the amendment and improvement of local self-government regulations.
 3. Draft opinions and proposals respecting the section of the Draft National Budget on municipalities.

According to the Law on Normative Acts of Republic of Bulgaria, the central executive body that submits the bill is also obliged to obtain an opinion from NAMBR if the bill concerns municipalities. According to the Public Finance Act, mechanisms for allocating general equalizing subsidy and the target subsidy are coordinated with NAMBR. Standards for support of the delegated by state activities are developed together with NAMBR.

Bulgarian legislation makes provision for the participation of NAMBR representatives in various structures of central institutions with consultative functions for multiple public spheres in the process of policy making. According to Art. 37 of the Municipal Budgets Act, the Minister of Finance is obliged to consult with NAMBR representatives on the drafting of the state budget in its part regarding municipalities. In order to determine the state policy in the sphere of social assistance, the Social Assistance Act is established by a Social Assistance Council which is a public advisory body to the Ministry of Labor and Social Policy. It comprises representatives from various ministries, such as: the Ministry of Labor and Social Policy, the Ministry of Finance, the Ministry of Health, the Ministry of Education and Science, the Ministry of Regional Development and Public Works, as well as representatives from the National Association of Municipalities in the Republic of Bulgaria, representatives of the employers 'and employees' organizations represented at national level and representatives of non-profit charity and other humanitarian organizations working in the field of social assistance. The National Tourist Council was established by the Tourism Act which also includes a representative by NAMBR. According to the Regional Development Act, regional governors and a NAMBR representative participate in the Regional Development Council meetings in an advisory capacity. According to the Law on Small and Medium-sized enterprises, NAMBR has the right to propose two representatives in the established Consultative Council on promotion of SMEs who are approved by the Council of Ministers. Representatives of the Association are also involved in the process of developing child protection state policy, development of cultural policy, medicinal plants, disaster protection etc.

4 Protection of local authority boundaries

Local authority boundaries are constitutionally guaranteed by an explicit provision stipulating that a change can only take place after a consultation with the population. Rules and procedures for changing the boundaries of the municipalities are provided by

law. In this procedure, citizens` will plays a major role, as at least 25 percent of the electorate of one or a group of settlements that want to be established as a municipality must express this via subscription. If all conditions and requirements laid down in law are met, a local referendum must necessarily take place on the territory of the municipality, from which one or a group of settlements is to be separated in a new municipality. The rules and procedures for conducting a local referendum are laid down in a special law.

Administrative territorial units in Bulgaria are municipalities and regions. The right of local self-government is recognized only within the boundaries of municipalities. Composite administrative territorial units of the municipalities are the mayoralties and quarters in the cities with a population of over 300 000. At present, there are 28 regions and 265 municipalities in Republic of Bulgaria. The municipality consists of one or more neighbouring settlements. The requirements for establishment of a new municipality shall be:

- available population over a total of 6000 people in the settlements to be included in the municipality
- presence of a settlement - a traditional uniting centre with created social and technical infrastructure providing the servicing of the population
- inclusion of all neighbouring settlements for which there are not conditions for establishing an individual municipality or which cannot be acceded to another neighbouring municipality
- a maximal road and transport remoteness of the settlements from the centre of the municipality no more than 40 km.
- proven ability of financing the expenses of the newly created municipality by own resources amounting to no less than half of the average for the municipalities stipulated by the republican budget approved for the respective year

The requirements shall also be valid for the municipality from which settlements are separated.

In the cases when geographic, economic, communication, historic and other reasons make impossible the fulfilment of some of the requirements, the Council of Ministers may take a decision for establishment of a new municipality.

The order of establishing a municipality shall be:

- A request for establishment of a municipality by one or more settlements, expressed by a subscription of at least 25 percent of the electorate of these settlements to the respective municipal council. The request shall be accompanied by statements of the mayors of the settlements for the presence of the requirements
- The municipal council, within one month, shall establish the presence of the requirements for establishing a municipality and shall announce a motivated decision to be sent to the regional governor
- The regional governor, within one month, shall verify the lawfulness of the request and, if the requirements of the law have been met, shall propose to the municipal

council to take a decision for holding a general referendum in the settlements to form the new municipality, in compliance with the requirements

- The referendum shall be held under conditions and by an order determined by a law
- On a positive vote of the electorate the regional governor within two months, shall present a written report to the Council of Ministers
- The Council of Ministers shall adopt a decision upon a written statement of the Minister of Regional Development and Public Works
- The decision of the Council of Ministers for establishing a new municipality shall be sent to the President of the Republic of Bulgaria for approval

Initiative for establishing a new municipality shall have the respective municipal council, the regional governor or the Council of Ministers, in compliance with the procedure. In the cases when the results from the referendum in one or more settlements, make impossible the establishment of a new municipality, due to non-compliance with the requirement or some of the requirements of art. 8, para 1, the Council of Ministers may take a decision for its establishment, including these settlements within its boundaries under the following conditions:

- positive voters for establishment of the new municipality must have been more than half of the voters of all settlements where the referendum has taken place
- a positive statement of the regional governor
- a positive statement of the Minister of Regional Development and Public Work

The referendum is valid if not less than 40 per cent of citizens with electoral rights in the relevant municipality took part in it and more than half of the voters participating have answered “yes”. If the referendum is conducted simultaneously with elections of local self-government bodies, it is valid if more than half of the voters who participated in municipal council elections took part in it and more than half of them voted in favor of the referendum proposal.

5 Administrative structures and resources for the tasks of local authorities

The work of local authorities shall be supported by local administration. Municipal administration structure is determined by municipal council on a proposal of the mayor of the municipality. Within the structure of administration, a unit is formed to serve the work of the municipal council. The employees of this unit are appointed by the mayor of the municipality on a proposal of the chairman of the municipal council. Following the adoption of the Law on Administration and the Civil Servant Act in 1999, general principles of building the administration of the governmental bodies are transferred to the municipal administration. The municipal administration shall be organized in directorates, departments and sectors. Departments and sectors may be organized also as independent structural entities without being included in the structure of directorates or departments.

Regulations of the municipal administration shall be approved by the mayor of the municipality. It outlines not only the structure of the administration but also responsibilities of the individual units. According to Bulgarian legislation, civil servants (under official employment relationship) and persons under an employment relationship who do not have the status of civil servants may be appointed in the administration. Governing positions are held by civil servants.

An inspectorate directly subordinate to the mayor of the municipality shall be established in order to carry out control and inspection under the Law of Anti-Corruption and deprivation of illegally acquired property. When the number of the municipal administration is not sufficient for the establishment of an inspectorate, its functions shall be carried out by a committee of employees explicitly empowered by the mayor to carry out these functions.

The municipal administration may operate without being organized in structural entities.

The Municipal Council may establish services of the municipal administration in individual wards, mayoralities and settlements or parts thereof, and define their function.

The mayor of the municipality shall appoint a secretary of the municipality without a fixed term who must be a person with a Master's degree.

The secretary of the municipality shall organize and be responsible for:

1. the activity of the municipal administration, the working conditions of the employees and for the organisational – technical provision of their activity
2. the record services, the document circulation and the municipal archive
3. the activity of the units for civil registration and administrative servicing
4. announcement and promulgation of the acts of municipal council and of the mayor of municipality
5. the work with claims, appeals, notifications and proposals of the citizens and legal persons
6. organization and technical preparation and holding the elections and local referendums

The secretary of the municipality shall also perform other functions, assigned to them by the mayor of municipality, with a law or any other legal act.

The selection and appointment of the persons in the municipal administrations, their training, qualification and development are regulated by norms in the Civil Servants Act, for the persons under official employment relationship these are regulated by the Labor Code. Civil servants are appointed by a publicly announced competition.

The mayor of the municipality is entirely responsible for the municipal administration employees' training, qualifications upgrading and development.

6 Conditions under which responsibilities at local level are exercised

Municipal councils in Republic of Bulgaria are not permanently acting bodies. Any Bulgarian citizen who is over 18 years old and is not convicted of a premeditated common crime can be nominated for a municipal councilor. The electoral system is proportional and preferential, formed by a political party or a coalition of parties, allowing independent candidates or candidates nominated by initiative committees to participate in elections.

The Law on Local Self-Government and Local Administration introduces an obligation for the municipal administration and State authorities to support, when necessary, municipal councilors in exercising their powers.

For the time he is engaged, the Municipal Councilor is entitled to unpaid leave and his work as a municipal councilor is paid. The Municipal Councilor's employment shall not be terminated for the term of his mandate.

In 1994, Bulgaria signed the European Charter for Local Self-Government, with a particular opinion exactly under Art. 7 of the Charter and did not accept to pay for the work of municipal councilors. This was changed in 2003 when, through amendments to the Law on Local Self-Government and Local Administration, a procedure for determining the remuneration of municipal councilors was established. Bulgaria withdrew its reservations to Art. 7 of the Charter in 2012.

The remuneration amount shall be determined by a decision of the Municipal Council adopted by a majority of more than half of the total number of councillors. The remuneration is for their participation in sessions of the Municipal Council and its commissions.

The legislator set a framework for Municipal councilors monthly wage.

The total amount of the remuneration of a municipal councillor for one month may not exceed 70 percent of:

1. the gross salary of the chairman of the municipal council for the corresponding month – in the municipalities with population over 100 000.
2. the average gross salary of the municipal council for the corresponding month - in the municipalities with population below 100 000.

The remuneration does not include other payments that municipal councillors may receive for their participation in specialized bodies of the municipal council. The travelling and the other expenses, made by the municipal councillor in connection with his work in the council, shall be taken by the municipal budget.

The chairman of the municipal council also receives remuneration and its amount shall be determined by the municipal council depending on the working time. The amount of

the remuneration in case the chairman works under reduced hours shall be calculated pro rata to their duration, determined by the council of ministers.

The amount of the remuneration of the chairman of the municipal council may not exceed 90% of the amount of the remuneration of the mayor of the municipality.

The chairman of the municipal council shall have all rights under legal terms of employment, besides those contradicting or incompatible with his legal status. The chairman of the municipal council shall be entitled to:

- social security and additional social security under the terms and following the procedures laid down in the Code of Social Insurance and to health insurance according to the Health Insurance Act;
- leaves and compensation for unused paid annual leave, to supplementary benefits and other payments under the terms of the Labour Code

The mayor of the municipality, the mayor of the mayoralty and the mayor of the ward are permanently acting bodies of the executive power in the municipality. Any Bulgarian citizen who is over 18 years old and is not convicted of a premeditated common crime can be nominated for a mayor of a municipality, mayor of a mayoralty or a mayor of a ward. Mayors of municipalities, mayoralties and wards are directly elected by citizens for a term of four years. Candidates for mayors may be elected by parties, coalitions or initiative committees. During the term of office, mayors receive remuneration and enjoy all rights under the employment relationship. The amount of the mayors` remuneration shall be determined by a decision of the municipal council but within the limits specified in the Ordinance on the salaries of the state administration and according to the determined levels for the respective positions in the decree of the Council of Ministers. The decision of the municipal council shall also take into account the available funds in the wage fund of the municipality, which are State responsibility and are transferred to each municipality for the maintenance of the municipal administration according to the Law on the State budget.

Functions and activities incompatible with the performance of the functions of a municipal councillor, a mayor of a municipality, a mayor of a mayoralty, a mayor of a ward, as well as their deputies, are defined in the Law on Local Self-Government and Local Administration.

A Municipal Councillor shall not:

- be a member of managing, supervisory or control board, board of directors, controller, manager, procurator, commercial agent, trustee of bankruptcy or liquidator of commercial companies with municipal participation or a manager of municipal company
- occupy a position of a municipal councillor or a similar one in another EU member State

- be a sole proprietor, associate, and shareholder, member of managing, supervisory or control board of commercial companies that have contract with the municipality in which he is a municipal councilor, as well as commercial companies with municipal participation or municipal companies.
- work in the administration of the respective municipality
- be a member of the Parliament, minister, regional governor or mayor, deputy minister, deputy regional governor, deputy mayor or mayor of mayoralty

Municipal Councillors may represent the State on the management or supervisory bodies of any commercial corporations wherein the State holds an interest in the capital or of any legal entities established by a law, for which they shall not receive any remuneration.

The mayors of municipalities, wards and mayoralties, the deputy mayors of municipalities and wards and municipal secretaries shall not be engaged in any business activity within the meaning of the Commerce Act, serve as controllers, managers or procurators in commercial companies, be commercial agents, commercial representatives commercial brokers, trustees in bankruptcy, liquidators or participate in supervisory, managerial or control bodies of commercial companies and cooperatives for the duration of their term of office.

They shall not be members of the Parliament, ministers or regional governors, deputy ministers or deputy regional governors, or take up another position under a labor or employment relationship.

The powers of the mayors shall be terminated ahead of term in case of entry into force of an act ascertaining conflict of interest under the Law for Anti-Corruption and deprivation of illegally acquired property.

7 Administrative supervision of local authorities' activities

Administrative supervision of local authorities' activities is determined by the Constitution of Republic of Bulgaria, The Law on Local Self-Government and Local Administration, as well as by other laws. By recognizing the right to local self-government, the Constitution ensures that the only control over local authorities' activities is the legality control. The central state bodies and their local representatives carry out legality control on the local government bodies acts only when this is provided by law. The acts of the municipal councils and the mayor of municipality can be appealed before the respective administrative court, and the acts of the mayor of municipality can be appealed under administrative procedure before the regional governor, unless otherwise provided in law.

The first step of administrative supervision is between the mayor and the municipal council. The mayor has the power of one time veto over the decision of the Municipal Council. The mayor can contest both the lawfulness and the expedience of the decisions

of the Council. Upon reconsideration of the decision, the municipal council may confirm, amend or revoke it.

The municipal council can revoke administrative acts, issued by the mayor of municipality, which disagree with acts, adopted by the council, within 14 days after their acceptance. Within the same term, the council can dispute the unlawful administrative acts, issued by the mayor of municipality, before the respective administrative court.

The mayor of municipality can bring back for re-consideration unlawful or inappropriate acts of the municipal council or to dispute the unlawful acts before the respective administrative court and to claim suspension of implementation of general administrative acts and the application of sub-legislative normative acts. The brought back for re-consideration act along with the reasons for its bringing back shall be sent to the chairperson of the municipal council within 7 days after its receipt. The act, brought back for re-consideration, shall be adopted again with the majority, provided in a law, but not less than more than the half of the total number of the municipal councillors. The amended or re-adopted act of the municipal council can be disputed before the respected administrative court pursuant to the provisions of the Code of Administrative Procedure. To all matters concerning issuing, appealing and implementation of acts of municipal councils and mayors, not covered herein, the provisions of administrative procedure, set in a law, shall be applied.

The legality control by central executive authorities is carried out by Regional Governor, who is a deconcentrated body of central executive authorities on the territory of the region as administrative-territorial unit. Municipal councils shall send to the Regional Governor their acts within seven days, so that legality control shall be exercised. He/she may refer back illegal acts for new consideration by the Municipal Council or contest them before the respective administrative court. The contestation shall suspend the implementation of the individual and general administrative acts and the action of sub-legislative normative acts unless the court rules otherwise.

8 Financial resources of local authorities and financial transfer system

The matters of financing local authorities' activities are among the most important for the development of local self-government. They are directly related to the processes of decentralization of powers and resources for their implementation. The sufficiency of municipalities' own funds is directly related to the scope of their powers. In 1991, the Constitution of Republic of Bulgaria and the Law on Local Self-Government and Local Administration provided for the right of municipalities to separate budgets, which are tied to the Republican budget only through state transfers. The municipal budget is adopted by the municipal council at the suggestion of the mayor. The municipal council also controls the implementation of the budget and accepts the report on its implementation. The municipal budget is public and is controlled by local community in an order determined by the municipal council and the competent authorities designated by law.

Until the adoption of the Municipal Budgets Act in 1996, this procedure was established in a specific chapter in the Law on Local Self-Government and Local Administration. Since 2014, the Public Finance Act has been in place. According to its provisions, the municipal budget includes a revenue and expenditure component. The revenues of the municipalities are formed from a variety of sources:

- local taxes - as per conditions, procedures and ranges laid down by law;
- fees - as per conditions and procedures laid down by law;
- services and rights granted by the municipality
- disposal of municipal property
- fines and pecuniary sanctions;
- interest and penalties
- other proceeds
- aid and donations

Municipal budgets cover expenditure for activities delegated by the state and for local activities, such as:

- staff
- subsistence
- interest
- household benefits and compensations
- current subsidies
- capital expenditure

“Delegated by the state activities” are the public service provision activities to which the population should have equal access in accordance with current legislation and which are financed entirely or partially by the state budget through municipal budgets. The state finances the state-delegated municipalities with a general subsidy for these activities at the expense of the central budget as well as at the expense of the budgets of the primary budget spending units that implement the relevant policy areas. The total subsidy for financing the activities delegated by the state is determined on the basis of the financing standards and the natural indicators adopted by the Council of Ministers for the respective activity. By decision of the municipal council, the activities delegated by the state can be financed additionally with funds from the own revenues and from the equalizing subsidy of the municipalities.

Mechanisms for financial support to local government activities include different types of transfers from central to municipal budgets, the amount of which is determined by the State Budget Act after consultation with the National Association of Municipalities in Bulgaria. These transfers are:

- General subsidy for financing of delegated by state activities
- Local activities - general equalization subsidy and for winter maintenance and snow cleaning of municipal roads
- Target subsidy for capital expenditure

- Other target expenditures, including these for local activities
- Financial compensation from the state
- Interest free temporary loans

Municipalities have the freedom to finance the implementation of their policies and by temporarily using the funds available in the municipal budget for the current financing of the approved by the budget of the municipality expenses and other payments, provided that the timely financing of the activities delegated by the state in the defined amounts, as well as local activities, and the fiscal rules are respected.

Between 1991- 2007, the municipal councils could only determine the amount of local fees within the limits set by law. After Constitution amendments in 2007, municipal councils determine also the amount of local taxes, again within the limits set by law.

The types of sources of own revenues for local authorities are defined by the Public Finance Act, the Local Taxes and Fees Act, the Municipal Debt Act, the Municipal Property Act, the Concessions Act. Municipalities have access to national capital markets, and by the decision to adopt the municipal budget for the respective year the municipal council determines:

- the maximum amount of the new municipal debt;
- municipal guarantees that may be issued during the year;
- the maximum amount of municipal debt and municipal guarantees at the end of the budget year.

Local taxes in Bulgaria are:

- Real estate tax
- Succession tax
- Donation tax
- Tax on acquisition of property for consideration
- Transport vehicle tax
- License tax
- Tourist tax
- Taxi transportation of passengers tax

Local fees in Bulgaria are:

- household waste disposal
- retail markets, wholesale markets, fairs, sidewalks, squares and street roadways
- the usage of nurseries, kindergartens, specialized social services institutions, camps, dormitories, and other municipal social services usage;
- child food services in compulsory pre- school education outside of state funded
- technical services
- administrative services
- graveyard paces purchase

- for general support activities within the meaning of the Preschool and School Education Act, which are not financed by the state budget and are implemented by the centers for support of personal development.

Municipalities' own revenues are also those from sale, privatization or lease of municipal real estate. Privatization proceeds can only be spent on acquisition and overhaul of fixed assets, costs related to the privatization process, and repayment of used loans to finance social and technical infrastructure projects. Proceeds from the sale of municipal non-financial assets are spent solely on financing the construction, basic and ongoing repair of social and technical infrastructure and repayment of used loans to finance social and technical infrastructure projects and repayment of temporary non-interest-bearing loans.

The municipalities have a legal opportunity to develop their investment policy, provided that capital expenditures, other than those financed at the expense of the target subsidy for capital expenditures and other transfers from the state budget, can be made at the expense of municipal budget revenues, as well as by taking over the debt under the Municipal Debt Law, in compliance with the applicable fiscal rules and restrictions under the Public Finance Act.

In 2016, a procedure for supporting municipalities with financial difficulties has been regulated by law, whereby the State ensures the support of such municipalities to deal with financial obligations, but also monitors the law and order of public funds spending.

9 Local authorities' right to associate

The statute and structure of national and regional associations of local authorities comply with the specific legislation in each country. These are non-profit organizations that unite local government institutions, not specific individuals. Membership is voluntary and each body of local authorities has the right to decide whether or not to participate in such an association and, therefore, to appoint municipal representatives in it. Associations have their own statutes defining the objectives and tasks of the organization, mechanisms for their fulfilment, procedures for joining and removing members, their governing bodies and rules for managing the property and financial revenues of the association.

Regional and national associations of local authorities also play an extremely important role as a mediator in relations with other levels of public authority in the process of solving problems of mutual interest. Mediator's main purpose is to ensure cooperation between central and local authorities and the main direction of action is the legislation related to local governance and financing of municipal activities.

In 1991, the Law on Local Self-Government and Local Administration in Bulgaria recognized the right of municipalities to voluntary associate but did not regulate the cases in which municipal associations could play the role of mediator in relations with the central government and other international associations of a similar nature. Art. 9 then

said: "Administrative- territorial units may form voluntary associations to solve common problems and achieve goals of mutual interest". It was in 1995 when some substantial additions were made which, however, do not yet regulate to the necessary extent mechanisms and procedures for the interaction between central authorities and municipality associations.

"(2) To protect their common interests, and to promote and develop local self-government, municipalities may form a national association and regional associations

(3) The National Association of Municipalities shall have the right to:

1. Act as its members' legal representative before government agencies
2. Draft proposals for the amendment and improvement of local self-government regulations.
3. Draft opinions and proposals respecting the section of the Draft National Budget on municipalities.
4. Establish contacts and interaction with similar organisations in other countries, and become a member of international associations.
5. Perform any other functions under the law and its Articles of Association

(4) The rights under the foregoing paragraph may only be exercised if more than two-thirds of all the municipalities in the country are members of the Association."

The National Association of Municipalities in the Republic of Bulgaria was established in 1996 by 94 municipalities. Since mid-1997, more than two-thirds of municipalities have become members, allowing the Association to exercise legal powers as the only national representative body of local authorities. Since 1999, all municipalities in the country have been members of NAMRB.

Besides the National Association of Municipalities in the Republic of Bulgaria, there are regional associations as well as the Association of Bulgarian Cities and Regions, but they do not have a recognized national representation.

In 2006, the sphere of municipal cooperation was extended. Municipalities may cooperate with each other, with executive bodies, with legal or natural persons, and set up associations to achieve objectives of mutual interest and to entrust the performance of activities deriving from their powers. Cooperation may also take place between budget spenders on the budget of a municipality.

Municipal cooperation aims to:

- Improve the quality of provided services of mutual interest
- Achieve more efficient spending of financial and administrative resources of the municipality
- Optimize municipal expenses and improve the financial status of the municipality

- Standardize and optimize the work process by delivering economic benefits from economies of scale and/or division of labor
- Improve financial control and transparency; fulfilment of projects that contribute to overcoming significant problems at regional and local level

Main principles for the achievement of municipal cooperation are:

- Voluntary
- Mutual interest
- Active choice
- Flexibility and dynamism
- Transparency and responsibility

Municipal councils approve the cooperation agreement which determines the parties to the agreement, their rights and obligations, scope and subject of the agreement, share of the parties with financial means, ownership and / or other forms of participation in achieving the common goal, distribution of risks and responsibilities between the parties, guarantees for fulfillment the terms of the agreement and responsibility for not meeting these obligations, including penalties, duration of the agreement and its termination procedures, the aim of the cooperation and forms under which it is carried out:

- Fulfilment of a specific project or activity between two or more municipalities or between one or more municipalities and an executive body, as well as between budget spenders on the budget of one municipality
- Establishing a non-profit legal entities between municipalities
- Establishing a legal entites for profit between two or more municipalities
- Execution of a specific project or activity or for the establishment of a profit or non-profit legal entities between one or more municipalities and legal and/or natural persons

Areas where municipal cooperation can take place include the fulfilment of shared services and/ or activities - management of IT services, financial accounting and legal activities, human resources management, construction and / or management, and / or maintenance of:

1. Objects of technical infrastructure:
 - a) In urbanized areas: parking lots, garages, public transport sites, surveillance and security systems, street lighting systems, green areas, parks and gardens
 - b) car parks, garages, parks and gardens in separate land plots outside urbanized areas
2. objects of social infrastructure used for:
 - a) health care
 - b) education
 - c) culture
 - d) sport, recreation and tourism
 - e) social support

10 Legal protection of local self –government

Possibilities for judicial protection of the local self-government bodies in Bulgaria are fully regulated, both through the Constitution and legislation. The Constitution of the Republic of Bulgaria confirms the right of the municipal councils to challenge before a court any act or action which infringes its rights. They can also refer to the Constitutional Court when there is a competence dispute between them and the central executive bodies. All disputes over administrative acts are carried out within the framework of the administrative jurisdiction. According to the Administrative Procedure Code, parties in the administrative process can be the administrative body, the prosecutor, and any citizen or organization whose rights, freedoms, or legitimate interests are or would be affected by the administrative act or the court order or would emerge rights or obligations. Competence disputes between administrative bodies could also be settled by a ruling of the relevant administrative court and, if they are from different regions, by the Administrative court- Sofia

11 Future challenges of the implementation of the European Charter of Local Self-Government in Bulgarian legislation

Since Bulgaria is still a centralized state, a major issue for the development of local self-government is the lack of a legislative definition of "a matter of local significance". In this respect, as well as due to the radical change in the environment in which the local self-government bodies work today, it is imperative to develop and adopt an entirely new Local Self-Government Act. It should define "a matter of local significance" as well as establish a relationship between local and central government on the basis of the principle of subsidiarity. To some extent, this will give a chance for a more precise settlement of the areas of local competence because they need legal clarification and mechanisms through which decentralization of powers from central to local government is carried out and resources for their implementation. So far, two Strategies for Decentralization have been adopted in Bulgaria, which are documents of the Bulgarian government. The first Strategy (2006-2014) was adopted nearly under pressure in connection with the forthcoming membership/January 1st, 2007/ of Bulgaria in the European Union. Although it was updated in 2010, the implementation of the targets and measures was only half of the projected. The new Strategy for Decentralization (2015-2025) also does not foresee any substantial progress in the process of decentralization. If an Act defines the principles of decentralization in accordance with the requirements of Art. 4 of the European Charter of Local Self-Government to empower municipalities with the responsibility to implement public obligations that are fundamental to citizens and provide resources for their putting into action, we can expect the process of decentralization to be more guaranteed than it is today. The challenges in front of Bulgaria regarding the future implementation of the Charter are related to these processes and legislative decisions.

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Local Self-Government in Cyprus

GEORGE COUCOUNIS & NIKOLAS KOUKOUNIS

Abstract This national report assesses the compliance of the Republic of Cyprus with the principles of local self-government enshrined in the European Charter of Local Self-Government, as ratified by the Republic except for Article 7 paragraph 2. The degree of compliance with the Charter is deduced by examining the extent to which the existing Constitutional and legislative provisions in combination with law in practice achieve the aims that the Charter seeks to achieve. The report suggests that the Republic of Cyprus has gone a long way towards implementing most of the Articles of the Charter, but there are still serious implementation issues to be resolved, including the absence of clear recognition of the principle of self-government in the Constitution and the national legislation, as well as the large extent of Government involvement in the administration of local affairs. There are important developments regarding the reform of local self-government in Cyprus. In particular, three main bills have been approved by the Council of Ministers and submitted to the House of Representatives in order to become laws, namely “The Municipalities Law of 2020”, “The Communities (Amending) Law of 2020” and the “The District Self-Government Organizations Law of 2019”. The said laws will increase the responsibilities and powers of the local authorities, which will become financially and administratively independent from the Central Government and they will be able to pursue a real policy in the local community.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Cyprus

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1 Introduction and history

The history of Cyprus evidences the existence of an evolving form of local organization and administration. The institution of local government was initially heavily influenced by colonialism, subsequently affected by the presence of two communities and recently shaped into today's modern local self-governance after the accession of the Republic of Cyprus in the European Union. The endowment of autonomy at the local level throughout the years has been gradual and the pressure for further liberalization of the administration of Municipalities and Communities is currently higher than ever, with the Congress of Local and Regional Authorities of the Council of Europe calling the Government of Cyprus to restrict the supervision of local authorities solely to measures of *ex post* control of legality. Discussions and consultations for the reform of local self-government in Cyprus have been ongoing for years and albeit consensus not having been reached to date, the need for the concession of more powers to local authorities and the consolidation of decision-making powers at the local self-government level are undoubtedly central elements of the proposed reforms. The aforesaid discussions and consultations, following the recommendations of the Congress of Local and Regional Authorities of the Council of Europe, resulted to the preparation of three main bills, namely "The Municipalities Law of 2020", "The Communities (Amending) Law of 2020" and the "The District Self-Government Organizations Law of 2019", which are expected to become laws soon.

The initial foundations of local self-government have been set upon the conquest of the island of Cyprus by the Ptolemies in the 4th century BC. Before the Ptolemaic period, the island was divided in kingdoms, which the Ptolemies chose to abolish upon conquering Cyprus pursuant to establishing a unified administration system. Paphos was designated as the capital amongst the towns making up the kingdom. The Romans, who succeeded the Ptolemies, were unwilling to interfere with the established administration system and willfully continued the governance of the island by a General – Governor.

In light of the fact that the island's geographical location has always been considered as key for the rulers' empires, the various conquerors and colonialists that raided and ruled over the island throughout its history have heavily influenced its local administration system in order to adjust it to their needs in the wider region of the Mediterranean. During the Ottoman Period, i.e. 1571 A.D. – 1878 A.D., the island of Cyprus was considered as a province (*eyalet*) of the Ottoman Empire and it was annexed into the Empire in 1571. It was divided into the three *sanjaks*, i.e. administrative regions, of Famagusta, Kyrenia and Paphos, which were then sub-divided into several *kazas*. The *kazas* represented the areas which are today known as Larnaca (then Tuzia), Limassol, Episkopi, Kythrea, Paphos, Kouklia (then *Kukla*), Lefka, Morphou, Polis (*Hirsofu*), Famagusta, Kyrenia and Mesaoria (then *Mesariye*). Each *kaza* had its own *kadi/naib*, i.e. official.

The changes, trends and reforms in the Ottoman Empire affected the administration of Cyprus, which had to be adjusted accordingly. To this end, the island of Cyprus was downgraded to *sanjak*, i.e. considered of lesser importance as opposed to a key *eyalet*,

and then reverted to an *eyalet* again later on, with consequential changes in power over the island. Upon the placement of the island under the control of the head of the Ottoman Navy, the area was controlled by Ottoman officials called *mutesellim* and local *aghas* who acted as tax collectors. During that time, the Greek Cypriot community was administered by the Archbishop, as well as the Dragoman who was chosen by the Archbishop.

In 1878, the British took over the island and rendered it a British Colony. The island kept its colonial status until the country's independence in 1960. During their ruling, the British effected significant administrative changes in the local level through the enactment of primary and secondary legislation. Immediately upon assuming power over the island in 1878, the British passed the Administrative Divisions Law, Law IV/1879, through which the island was placed under the administration of the Governor, who assumed the power, authority and functions previously held and exercised by the officials of the Ottoman Empire (Criton Tornaritis, 1972). Provision was also made in the said law for the power of the British administration to define the geographical limits of *kazas* or districts through proclamations. The administration of districts was undertaken by Commissioners appointed by the Governor and the British chose to preserve the mukhtars in their administrative positions at that point in time.

The establishment of the first elected entities of local governance took place in 1882 through the enactment of the Municipal Councils Law, Law VI/1882, which made provisions for the establishment and function of elected councils. This piece of legislation was further supplemented in 1885 by the Law VIII/1885, which provided for the duties, rights and powers of the local authorities which were still under the control of the British (The Great Cypriot Encyclopedia, 1986).

In 1930, the British abolished the previous legislation regarding Municipal Councils and enacted the Municipal Corporations Law 26 of 1930, according to which the six towns of Cyprus were declared as urban municipalities and ten large villages were declared as rural municipalities. Each municipality constituted a legal entity and it was headed by a Mayor, a Deputy Mayor and the members of the Municipal Council. The right to vote and nominate themselves as candidates in Municipal elections was granted to all male citizens over the age of twenty-one years old who resided in the municipality for at least two years, whereas by virtue of the existence of two communities on the island, i.e. the Christian (Greek-Cypriot) and the Muslim (Turkish-Cypriot), separate electoral registers were formed for each Municipality. The number of members of Municipal Councils from each community was proportional to the analogy between the Christian and Muslim residents of each Municipality.

During the British Period, each village was administered by a *Mukhtar*, who was the chairman of the village authority, as well as by the *Azas*, who were the members of each village authority. Forty years after the abolition of the electoral system for the members of the village authorities through the Mukhtars Law XV/1981, the British passed the

Village Authorities Law of 1931, which provided for the appointment and duties of *Mukhtars* and *Azas* (Criton Tornaritis, 1972). It is noted that the institution of *Mukhtars* appears to have survived until today, but after the enactment of the current legislation regarding local self-governance, their roles, duties and powers are restricted to low level administrative tasks, whereas authority in villages (now Communities) has passed to Community Councils.

The 1930s also witnessed continuous changes, improvements and modernizations of the Municipal Corporations Law, as well as the enactment of the Public Health (Villages) Law, Cap.259, which established Village Health Commissions composed of the *Mukhtar* and the *Azas* of the village. These Commissions were dedicated to the preservation of good health and hygiene conditions in the villages where the Commissions were set up. In the 1950s, certain villages were declared “improvement areas” and Improvement Boards were assigned a series of duties aimed at the upkeep, cleaning and general preservation of public property and public space.

The year 1960 signified the end of the British Period and Cyprus became an independent Republic. In light of the presence of two communities on the island, i.e. the Greek-Cypriot community and the Turkish-Cypriot community, provisions were made in the Constitution of the Republic of Cyprus aimed at addressing the concerns of both communities, both at a national and a local administration level. Article 173 of the Constitution provided for the establishment of separate Municipal Councils in each of the five largest towns of the Republic, the members of which would be elected separately by the members of each of the two communities. Provision was made in the Constitution for the reconsideration of the continuation of such separation within four years from establishment. With regard to areas other than the municipalities of the five largest towns of the island, Article 175 of the Constitution provides that special arrangements may be made for the establishment of local authority organs. The number of members of such organs has to correspond to the proportion of each community’s members in the total population of the Republic.

Nevertheless, a series of events led to inter-communal conflicts in 1964 and subsequently the withdrawal of the members of the Turkish-Cypriot community from their participation in all local and central government bodies; such abstention continues to exist until today. In 1974, Turkey illegally invaded Cyprus and captured 37% of the Republic’s territory in blatant disrespect and violation of international law and human rights. Forty-six years later, occupation of nearly half the island continues and ongoing negotiations are held under the auspices of the United Nations pursuant to reaching an amicable resolution of the Cyprus problem, i.e. an international problem of illegal invasion and possession of a significant part of another member state of the United Nations. The consequences of the Turkish military invasion in Cyprus are evident until today, since a number of Municipalities and Communities are displaced, i.e. they maintain their legal status, but their mayors and councils have been displaced since 1974 and thereafter until

today, whereas other local authorities are not able to exercise their powers, functions and competencies over their entire geographical area of jurisdiction.

As a direct consequence of the withdrawal of the members of the Turkish-Cypriot community from the House of Representatives and the local administration, a series of constitutional, legal and operational challenges arose, which called for the application of effective redress in order to ensure the smooth operation of the Cyprus legal system. Consequently, the doctrine of necessity was invoked, legitimately giving the power to the Greek-Cypriot members of the House of Representatives to enact laws without the need for the participation of the Turkish-Cypriot members. The legality of the application of the said doctrine was challenged in the historic case of *The Attorney General of the Republic of Cyprus v. Mustafa Ibrahim* (1964) CLR 195, where the Supreme Court of Cyprus justified and upheld the necessity of the application and operation of the doctrine as a means of enabling the continuation of the operation of the Republic and the governance of the country despite the deadlock. By application of the doctrine of necessity at the local administration level, the Municipal Corporations Law, Cap.240 which made provisions for the operation, administration and competencies of the Municipalities, was re-enacted, whereas the Villages (Administration Improvement) Law, Cap.243 and the Village Authorities Law of 1931, Cap.244 continued to be in force. The Municipalities and Communities Laws, which are the main pieces of legislation regarding local self-government in Cyprus, were enacted in 1985 and 1999 respectively.

The Municipalities Law 111/1985 and the Communities Law 86(I)/1999 regulate the establishment, operation and functions of municipalities and communities, respectively. Municipalities and Communities are the two types of local authorities in the Republic of Cyprus. The Municipalities are larger in population than Communities, but the number of the former is significantly less than the latter. There are 39 (thirty-nine) Municipalities, of which the 9 (nine) are displaced since the Turkish invasion, and 492 (four hundred and ninety-two) Communities, of which the 142 (one hundred and forty-two) are displaced.

In 1988, the Republic of Cyprus ratified the European Charter of Local Self-Government by enacting the European Charter of Local Self-Government (Ratifying) Law of 1988, L.27/1988. The said law provided for the exception of Article 5 and Article 7 paragraph 2 from the ratification of the Charter. Nevertheless, the exception of Article 5 was later abolished in 1998 through the enactment of the European Charter of Local Self-Government (Abolishment of Exceptions) Law of 1988, having as a result for the Republic of Cyprus not consider itself bound by Article 7 paragraph 2 of the Charter today.

Undoubtedly, the institution of local self-government in Cyprus and its operation is not without its weaknesses and there is considerable room for improvement, as observed by the Group of Independent Experts on the European Charter of Local Self-Government in their monitoring reports and recommendations in 2005 and 2016. The need for reform

and modernization of local self-government in Cyprus is widely acknowledged by both, the local community in Cyprus and the Council of Europe.

To this end, discussion has been in progress for years for the modernization of local self-government in Cyprus. Successive Governments of the Republic of Cyprus invited experts to advise on the extent and ambit of the necessary amendments to the existing legislation, always taking into consideration the guidance and observations included in the monitoring reports prepared and approved by the Group of Independent Experts on the European Charter of Local Self-Government (hereinafter referred to as the “Group of Independent Experts”). The main theme of the proposed amendments has been the creation of Complexes of Municipalities and/or Communities for the execution of services, as well as the institutionalization of currently informally composed and operated complexes of Communities, pursuant to exploiting economies of scale, reducing the cost of providing such services especially by smaller Communities with less resources and enhance the co-operation between Communities and Municipalities for the better service of their residents. The outcome of these efforts for the reform of local self-government in Cyprus led the Council of Ministers on 14.7.2015 to approve the following bills: (a) “The District Complexes Law of 2015”, (b) “The Communities (Amending) Law of 2015 and (c) “The Municipalities (Amending) Law of 2015”. These bills, despite having been submitted to the House of Representatives, were not passed into laws.

This reform consultation process and discussions have been ongoing for years amongst all the local self-government key actors, including the Government, the Union of Municipalities, the Union of Communities and the political parties. The Group of Independent Experts is also informed of the ongoing process and it has been the subject matter of examination during the Group of Independent Experts’ delegation visit in Cyprus in April 2016, for the purposes of preparing the Congress’s last monitoring report on the compliance of Cyprus with the articles of the Charter. At the time of preparation of this report, the discussions for the reform and modernization of local self-government in Cyprus have progressed resulting to the submission of the bill named “The District Complexes Law of 2015” to the House of Representatives, which was thoroughly discussed and finally completed in 2019. The aforesaid bill, during the discussions in the Parliament, was renamed “The District Self-Government Organizations Law of 2019” and provides for the establishment and operation of one District Organization in each district, which will undertake the competences of the waterboards, the sewerage and drainage boards and the management of solid waste, at district level. Moreover, progress has been made due to the consultations made between all relevant actors, the Central Government, the Unions of Municipalities and Communities and the political Parties, leading to the formation of the new two bills for the reform of local self-government, namely “The Municipalities Law of 2020” and “The Communities (Amending) Law of 2020”. It is worth noting that the municipalities will be reduced from 30 to 17 or 19 in order to satisfy local needs. Regarding communities, 32 Local Service Complexes will be established and each community will become a member of a Local Service Complex.

The aim of the bill for the amendment of the Municipalities Law is to adopt a new model of operation and government of the municipalities, introducing the concept of administrative and financial autonomy and additional competences are transferred from the Central Government to the municipalities. The Central Government is excluded from intervening in the process of approving the structure of positions in the municipalities, the state grant is abolished and the municipalities are granted the revenues from the registration fees of the vehicles of private and public use. In addition, the Government intervention in the process of approving municipal budgets is minimized, transparency is enhanced by institutionalising control and accountability mechanisms and greater citizen participation in the decision-making process is encouraged. Municipalities will gradually become town planning authorities and the beach management is transferred to them; at a later stage, the responsibilities of the School Boards will be transferred to them, too.

As regards the bill for amending the basic Communities Law, it aims to the establishment and operation of Local Service Complexes for the provision of common services to the Communities participating in each Complex, which will be administered by Councils in their capacity as Legal Persons of Public Law, having the necessary competences and powers for the execution of these services to the benefit of the communities and their citizens. Moreover, there are provisions improving the right of information and participation of the citizens in the local affairs.

2 Constitution and legal foundation for local self-government

The European Charter of Local Self-Government (hereinafter referred to as the “Charter”) imposes the obligation on ratifying States to acknowledge the self-governance of local authorities by legislative act, and where possible, in the country’s constitution, pursuant to establishing a binding mechanism for the protection and maintenance of the autonomy of local authorities. More specifically, Article 2 of the Charter provides that the principle of local self-government shall be recognized in domestic legislation, and where practicable in the constitution. The Constitution of the Republic of Cyprus makes no explicit recognition of the principle of local self-government, but rather, general provisions are made mainly about the co-existence of the Greek and Turkish community at a local authority level. Elaborate provisions in respect of the operation and competences of Municipalities and Communities are made in the Municipalities and Communities Laws which regulate the existence, operation and functions of Municipalities and Communities in Cyprus. Nevertheless, neither the Constitution nor the said laws provide any constitutional or legislative safeguards for the principle of local self-government in Cyprus.

From the establishment of the Republic of Cyprus in 1960 and thereafter until today, the Constitution of the Republic of Cyprus has not made any reference to the term or principle of local self-government. Despite the theoretical appeal of the ability to amend Part XII of the Constitution to achieve the explicit adoption and acknowledgment of the principle of local self-government pursuant to complying fully with Article 2 of the Charter, no

such step has been taken by the House of Representatives to date. Constitutional amendments are rare and considering the consequences that such changes may have on the ongoing Cyprus problem, successive Governments have not shown willingness to bring forward any suggestions for such additions. The provisions of the Constitution related to the Turkish-Cypriot community have not been applied since the decision of the Turkish-Cypriot community to withdraw from all levels of administration and powers in the Republic of Cyprus, as well as in light of the subsequent Turkish military invasion.

Currently, Part XII of the Constitution makes reference to the institution of local authorities, the co-existence of the two communities at a local authority level, the collection of taxes, the provision of permits and the framework for the exercise of the local authorities' functions. More specifically, Article 173 of the Constitution was dedicated to the co-ordination of the two communities at a local authority level. It provides for the creation of separate municipalities by Turkish residents in the 5 (five) largest towns of the country, i.e. Nicosia, Limassol, Famagusta, Larnaca and Paphos, under the condition that the President and the Vice-President of the Republic may re-examine the continuation of existence of the separation of Municipalities within 4 (four) years from the commencement of validity of the Constitution. The aforesaid article provides that the local council of the Greek Municipality in each of the aforesaid towns is elected by the Greek residents of the town having the right to vote, and the council of the Turkish Municipality is elected by the Turkish residents of the said town. For co-operation purposes, Article 172 provides for the establishment of a co-ordination committee in each town, composed of two members from each separate Municipality, with the mandate of undertaking all activities which are required to be executed jointly by the two Municipalities, as well assuming responsibility for all matters for which co-operation is necessary.

Turning to the tax collection powers of local authorities, Article 174 of the Constitution provides for the power of local authorities to impose and collect a series of taxes, dues and charges. Under the said Article, Municipalities have the power to impose and collect charges and taxes for the use of municipal markets, slaughter houses and other municipal places, as well as entertainment charges and the dues for the provision of services jointly by both communities to non-residents. Furthermore, pursuant to Article 175 of the Constitution local authorities have the power to grant permits regarding immovable property and construction works within the geographical area of competence of the local authority upon the imposition and collection of the relevant charges. The Constitution further provides (Article 176) that each Municipality in the 5 (five) largest towns has town planning competence over its whole geographical area covered. Special bylaws may be enacted for the establishment of a town planning authority within the competence of each local authority, composed of 6 (six) Greek and 3 (three) Turkish Cypriots deciding on any issue by absolute majority.

In general, the municipalities in each of the aforesaid 5 (five) largest towns exercise their competences and performs all its functions within the geographical area determined by

agreement of the President and Vice-President of the Republic of Cyprus pursuant to Article 178 of the Constitution, whereas special provisions could be made under Article 179 of the Constitution for the establishment of local authority organs within the remaining areas of the Republic.

Drawing from the aforesaid provisions of the Constitution, the Municipalities Law and the Communities Law were enacted to enumerate in detail the functions and competences of the two types of local authorities in the Republic of Cyprus, i.e. Municipalities and Communities. Both laws are lengthy and detailed, since they constitute the main pieces of legislation regulating the local authorities' operations, being in this way essentially the main documents to study in respect of any matter related to local authorities in Cyprus. Without intending to embark in great detail as to the contents of the Municipalities and Communities Laws, since this is the subject matter of subsequent sections of this national report, it is noted in outline that the two pieces of legislation provide in general for the establishment of municipalities and communities, the organization of elections, the administration of the local authorities, the employment of local authority personnel, the ownership of movable and immovable property, the compilation and approval of annual budgets, the imposition and collection of taxes, charges and dues, as well as the list of functions and competences of the municipalities and communities.

Despite the length of the Municipalities and Communities Laws, they make no explicit reference or recognition of the term and principle of local self-government. To the contrary, the two pieces of legislation contain provisions which substantially compromise the aim of Article 2 of the Charter to establish legally binding safeguards of the autonomy of local authorities in Cyprus and afford the Government with extensive powers to regulate, intervene and supervise the administration of local affairs in Cyprus.

Considering the above, it is evident that compliance of the Republic of Cyprus with Article 2 of the European Charter of Local Self-Government is limited due to the absence of express recognition, acknowledgment and adherence to the principle of local self-government, as well as the legislative provisions endowing the Government with substantial powers of intervention in the administration of local affairs.

Furthermore, the ratification of the Charter in Cyprus law cannot be deemed as adequate recognition of the principle of local self-government for the purposes of Article 2 of the Charter, both because of its inferior force compared to the Constitution and the interpretation of its provisions given by the Supreme Court of Cyprus in key case law. The Constitution of Cyprus adopts the monistic theory of incorporation of international treaties, agreements and covenants into domestic law. According to Article 169 of the Constitution, any international treaty entered into with other States or Organizations regarding commercial issues, financial co-operation for issues including payments and credits, and *modus vivendi*, are entered into upon a decision of the Council of Ministers. The negotiation and signing of Conventions, covenants or international treaties is effected upon a decision of the Council of Ministers for this purpose, but such Conventions do not

come in force and consequently do not bind the Republic of Cyprus unless and until a ratifying law is enacted by the House of Representatives. From the date of their publication in the Official Gazette of the Republic, treaties, conventions and agreements have superior force over any domestic law, on the condition that these treaties, conventions and agreements are correspondingly applied by the other party too.

In Cyprus, a Convention has superior force over any prior or subsequent domestic law, except the Constitution, on the principle of *lex superior derogate inferiori*. Constitutional supremacy is respected and hence Conventions are of inferior force than the Constitution of Cyprus and they are subject to judicial review. In case of inconsistency between the provisions of the Constitution and a Convention, constitutional provisions prevail over the provisions of the Convention. In terms of application, Conventions have superiority and precedence in application over domestic legislation (except the Constitution) and retains its nature as part of international law without repealing any inconsistent domestic law.

There is only one Supreme Court judgment addressing the reception, applicability and application of the European Charter of Local Self-Government in Cyprus, namely the judgment of the Supreme Court in the case of *In re Antis Pantelides, personally and/or as a member of the Municipal Committee of Morphou and/or resident and electorate of Morphou and others v. Andrea Leantzi, Municipal Secretary of Morphou, and others* (1991) 3 JSC 273. The Applicants in the said case filed an administrative recourse against the decision of the Municipal Council of Morphou for the election of the President and Vice-President of the Municipality by the political parties participating in the Council for a transitional period until the election of the new members of the Municipal Council through elections. The elections for the members of the Municipal Council of Morphou were adjourned, along with the elections for all the Municipalities occupied by the Turkish military forces as per the relevant decision of the Council of Ministers. The relevant article of the Municipalities Law provided that in the event of adjournment, the President and the Vice-President of the Council would be designated by the political parties through their appointed representatives in the Council and both, the President and the Vice-President would exercise their competences on rotation.

After an unsuccessful attempt to form the Municipal Council as a body, the Municipal Secretary Mr Andreas Leantzis called a meeting of all the appointed representatives of the political parties participating in the Municipal Council, in which the participants elected the members who would act as President and Vice-President. The first Applicant participated in the meeting but abstained from voting, raising an objection as to the legitimacy of calling the meeting and reserving his rights. The Applicants challenged the aforesaid decision *inter alia* on the basis that the said decision contravened Article 3 of the Charter which provides *inter alia* for the election of the members of the Council by electorates through secret ballot.

The Supreme Court, acting as Administrative Court, dismissed the administrative recourse, stating that the challenged act did not constitute an enforceable administrative act that would otherwise be challengeable before the Supreme Court through a recourse. The action of the Municipal Secretary to call a meeting of the members of the Municipal Council was just a preparatory act, even though it was aimed at the issuance of an administrative act, namely the election of the President and Vice-President. The Supreme Court held that the Charter was not self-executing and hence, it does not have superior force over the domestic law. The fact that the Charter was ratified by domestic law does not by itself render it a self-executing Convention. From the wording and the content of the Charter, it is evident that it is not a self-executing Convention, since it does not have as its direct subject matter the acknowledgment and safeguarding of personal rights and freedoms. According to the case of *Malachtou v. Arnefti et al* (1987) 1 CLR 207 (FB), for a treaty to be applicable, it must be self-executing. Self-executing provisions of treaties, conventions and duly ratified international agreements confer rights and impose liabilities without the need to include their provisions into a separate enactment. A provision of a treaty is self-executing if the rights vested or the obligations imposed thereby are comprehensively defined to the extent of rendering them enforceable before a Court of law without further addition or modification, always taking into consideration the wording of the Convention. The Supreme Court held that this was not the case as regards the provisions of the Charter and its contents.

The aforesaid interpretation and the placement of the Charter at the bottom of the hierarchy of the Cyprus legal order does not allow its invocation for the establishment of effective safeguards of the principle of local self-government. Furthermore, the lack of express recognition of the principle in the Constitution, the absence of any such reference in the Municipalities and Communities Laws and the extensive involvement of the State in the administration of local affairs indicates non-compliance with the Charter. For this purpose, the Congress of Local and Regional Authorities of the Council of Europe (hereinafter referred to as the “Congress”) has expressed concern in its Recommendation 389 (2016) for the Local Democracy in Cyprus “*at the weakness and imprecision of the legislative basis for the powers and responsibilities of local authorities and for the conditions under which they are exercised, as well as the absence of constitutional safeguards for the principle of local self-government and the status of local authorities*”. Additionally, in the same Recommendation, the Congress invited the Cypriot authorities to “*ensure the direct applicability of the European Charter of Local Self-Government within the domestic legal system and, in particular, that the Charter be given due consideration in Court proceedings*”.

The said concerns can be entertained effectively by amending the text of the Constitution of the Republic of Cyprus, as well as the Municipalities and Communities Laws, in order to expressly recognize and acknowledge the principle of local self-government and limit the involvement of the Government in the affairs of local authorities. Such changes and amendments will provide additional safeguards for the operation and existence of the principle of local self-government. For this purpose, the Congress invited the Cypriot

authorities through its latest Recommendation 389 (2016) to “*provide clear recognition of the legislative and, if practicable, the constitutional status of local governments as well as the principle of self-government for all local authorities in order to strengthen their substantial role in regulating and administering local public affairs, and to regulate the legal standing of local councilors to allow them the free exercise of their functions*”.

3 Scope of local self-government

The extent of the competences of local authorities and the degree of autonomy which is necessary under the European Charter of Local Self-Government in order for the local authorities to perform their functions and execute their duties is prescribed in Article 4. In essence, Article 4 of the Charter seeks to endow local authorities with autonomy to exercise their powers and perform their duties without any limitation or undermining by the central Government, whereas they should be consulted timely and appropriately for any matter concerning them directly. Whilst Cyprus complies with most aspects of Article 4 of the Charter, concerns have been expressed as to the intervention of the central Government in the local affairs and the limited extent of functions that can be exercised fully and exclusively by Municipalities and Communities.

Before embarking into an assessment of the degree of compliance of the Republic of Cyprus with Article 4 of the European Charter of Local Self-Government, it is useful to outline the extent of the functions of the Municipalities and Communities in Cyprus. According to Articles 83 and 81 of the Municipalities and Communities Law respectively, the Municipalities and Communities enjoy the right and power to administer all the local affairs of the local authority within their geographical area of jurisdiction. This is also reflected in Articles 177 and 178 of the Constitution which state that each local authority exercises its competences and all its functions within its geographical area. All the powers given by law to the Municipalities and Communities are exercised by the Mayor and the councilors of the Municipal Council or the Chairman of the Community Council and its members, as applicable.

The functions and duties of Municipalities are outlined in Article 84 of the Municipalities Law and they include: the arrangement for the implementation of the provisions of the Town Planning and Housing Law and act as a Town Planning Authority, the provision for the construction, maintenance and operation of a municipal water supply, sewerage and drainage systems, the construction, maintenance, cleaning and lighting of roads, streets and bridges, the naming of streets, the provision for the hygiene and cleanliness of municipal streets and any other establishments where food and drink is sold within the area of the Municipality, the collection and processing of garbage and waste, the protection of the environment in the municipal area, the upkeep of municipal areas, their decoration and maintenance in good state, the establishment of cemeteries, the control and regulation of the practice of any profession in the municipality, the construction and operation of public restrooms and baths, the regulation of the maintenance, feeding and possession of animals and birds within the Municipality, the establishment, maintenance

and operation of rest homes, charitable institutions, slaughterhouses, theaters and the issuance of permits in accordance with the law. Furthermore, according to article 85 of the Municipalities Law, the Municipalities have the power to obtain loans upon obtaining the prior approval of the Council of Ministers, mortgage municipal property in exchange for the receipt of loans provided they obtain the approval of the Minister of Interior, acquire immovable property, establish municipal markets and a municipal radio station, create artisanship areas, establish and operate parks, gardens, courses, swimming pools, entertainment establishments and youth centers, plant trees across streets, regulate swimming in the sea, impose entertainment charges and hotel fees, promote intellectual activity and enter into contracts for the creation of public utility projects.

Similar powers and duties are enjoyed by Communities, since the structure and spirit of the Communities Law is based on the Municipalities Law. Additionally, according to the Communities Law, the Communities have the power to enter into contracts with other Communities for the joint execution of public utility projects and the joint provision of services that were previously provided by each local authority separately.

The involvement of the Government in the administration of the local affairs and the need for their approval prior to the execution of key operational tasks is apparent in the wording of the Municipalities and Communities Laws. First and foremost, the annual budget of the Municipalities and Communities, as well as the annual development budget, are both subject to the approval of the Council of Ministers. This requirement is included in both pieces of legislation regulating the operation of Municipalities and Communities. These budgets are also submitted to the District Officer and the Minister of Interior. According to the Municipalities and Communities Laws, in the event that the submitted budgets are not approved by the Council of Ministers but local authorities required liquidity for the continuation of the provision of their services to their residents, the Council of Ministers may authorize the payment of all such necessary expenses for a period of up to one month if they deem this fit upon an application by the Municipalities or Communities in need of such liquidity. If any Municipality or Community wishes to embark into any expenditure which is not included in the approved budget, this can only be done upon the approval of the Council of Ministers. The Municipalities and the Communities are annually subsidized through the provision of grants, which are suggested by the Council of Ministers and approved by the House of Representatives. The obligation of the State to provide such subsidies is included in the Municipalities and Communities Laws and the receipt of such grants constitutes a key income stream for the local authorities.

Apart from the aforesaid involvement of the Council of Ministers in the financial affairs of the local authorities, the State has a decisive role in the disposal of immovable property owned by local authorities. More specifically, the approval of the Council of Ministers is necessary for the sale or exchange of any immovable property belonging to the Municipalities or the Communities, the imposition of any encumbrances on the local authorities' immovable property, the leasing of the immovable property for a period exceeding ten years, the establishment or participation in companies for the development

or utilization of municipal immovable property and the entering into contracts with a duration of more than five years.

The control of the Council of Ministers also extends to the securing of funds by way of loans. According to the Municipalities and Communities Laws, the approval of the Council of Ministers is necessary for the receipt of any loans required for the engagement into any public utility project or the purchase of mechanical equipment and vehicles for public utility purposes. The Council of Ministers has the power to impose conditions on the provision of such loans, whereas the mortgage of any immovable property or the issuance of any bonds in exchange for the provision of any loan necessitates the prior approval of the Council of Ministers.

Furthermore, the Municipalities and Communities Laws provide for additional audit, oversight and intervention powers by the State: the financial affairs of the local authorities are under the Auditor General's scrutiny. The Auditor General of the Republic of Cyprus has the power to call any councilor or employee of the local authorities to provide him/her with any information, explanation, minutes, book, contract, bill, invoice or any other document that the Auditor General deems necessary for audit purposes.

It is evident from the above that the basic powers and responsibilities of local authorities in Cyprus, i.e. Municipalities and Communities, are prescribed statutorily in the Municipalities and Communities Laws. Simultaneously, the law provides for the existence or enactment of other laws related to the issue of the exercise of local authorities' competences, hence not preventing the attribution to local authorities of additional powers and responsibilities for specific purposes through the enactment of other laws. The above suggest that there is full compliance of the Republic of Cyprus with Article 4 paragraph 1 of the Charter, which states that the basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute and that the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law should not be prevented.

Article 4 paragraph 2 of the Charter provides that local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority. The provisions of the Municipalities and Communities Laws enumerate the functions that local authorities have the power to execute and for important issues, the prior approval of the Council of Ministers is required prior to the performance of such tasks, as mentioned herein above. Despite the matters for which approvals are required by the central Government, the Municipalities and Communities Laws allow local authorities to exercise full discretion in the execution of all the duties and powers which are in their sphere of jurisdiction, having as a result for the provisions of the Municipalities and Communities Laws to comply with Article 4 paragraph 2 of the Charter. Nevertheless, the letter of the law does not reflect the actual state of affairs; despite the aforesaid legislative provisions, the financial dependence of local authorities on the Government and the extensive involvement of the Government or Independent Bodies of the State in

the administration of the local affairs renders compliance with Article 4 paragraph 2 debatable in practice. This view seems to be shared by the Congress too, which refers to the existence of non-compliance problems in respect of the implementation of paragraph 2 of Article 4 of the Charter.

Article 4 paragraph 3 of the Charter enshrines the principle of subsidiarity, according to which public responsibilities have to be exercised, in preference, by those authorities which are the closest to the citizen and allocation of responsibilities by another authority should weight up the extent and nature of the task and the requirements of efficiency and autonomy. Compared to the local self-government systems of other Members States, the local authorities in the Republic of Cyprus are entrusted with a wide array of functions and responsibilities, ranging from standard functions such as providing for the hygiene and safety of its residents, to more important and substantive responsibilities, such as the provision for the construction of roads, sewerage and drainage systems, the issuance of permits and the collection of charges and local authority taxes. Hence, it is submitted that there is no violation of Article 4 paragraph 3 of the Republic of Cyprus and despite statutory and practical restrictions in the exercise of key functions, especially due to the financial dependence of the local authorities on Government grants, Cyprus complies with the principle of subsidiarity. Despite the above, it is noted that the Congress of Local and Regional Authorities of the Council of Europe has expressed concern in its Recommendation 389 (2016) at the *“fact that only minimal responsibilities are conferred by law on local authorities, and particularly the lack of genuine local government functions that can be exercised fully and extensively”*, simultaneously inviting the Cypriot authorities *inter alia* to *“assign substantial powers and responsibilities to local authorities so that they can exercise them fully and exclusively in practice and, in accordance with the principle of subsidiarity, and define the relevant tasks as genuine local government functions”*.

The aforesaid observation also relates to Article 4 paragraphs 4 & 5 of the Charter. Paragraph 4 of Article 4 provides that powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another central or regional authority, except as provided for by the law. Furthermore, Article 4 paragraph 5 provides that where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions. There is no provision in the Municipalities and Communities Laws preventing the fulfilment of the requirement of allowing local authorities discretion in adapting the exercise of their powers to local conditions as stated in Article 4 paragraph 5 of the Charter. To the contrary, Articles 83 and 81 of the Municipalities and Communities Law respectively explicitly enable the Municipalities and Communities to administer all local affairs at their own discretion within the letter of the law.

Nevertheless, as it is evident from the above, not all the powers provided to the local authorities are full and exclusive despite the ability of the local authorities to adapt the exercise of their powers to local conditions, since the approval and prior consent of the

Council of Ministers or the Government is necessary in order to receive loans, sell, rent, mortgage or dispose of immovable property, enter into contracts with duration of more than five years and compile annual budgets. Furthermore, some of the powers of local authorities, like the issuance of building permits, are delegated or strictly controlled by the Government and the Congress believes that most powers of local authorities in Cyprus are not exclusive and full. For this reason, in its last Monitoring Report, the Congress has invited the Cypriot authorities to relinquish the power of the Government to approve the budgets of all local authorities prior to their implementation and limit every kind of government supervision over local authorities to an *ex post* control of the legality of the administration and regulation of the Municipalities and Communities, simultaneously determining precisely which administrative authorities are empowered to exercise legal supervision over Municipalities.

Lastly, paragraph 6 of Article 4 of the Charter states that local authorities have to 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. Cyprus is indeed in compliance of this paragraph of the Charter. According to article 7B of the Municipalities Law, Municipalities have the right to be registered as regular members of the Union of Municipalities. The Union of Municipalities currently represents 39 (thirty-nine) members - Municipalities, including 9 (nine) displaced Municipalities. Likewise, Communities have the right to be registered as members of the Union of Communities pursuant to article 9A of the Communities Law and the said Union represents a total number of 492 (four hundred and ninety-two) Communities. Apart from enjoying statutory recognition, the two Unions are in practice consulted by the Government for matters which concern them, albeit the absence of an institutionalized and regular consultation system in place between the Unions and the Government. The practice of consulting the Unions of Municipalities and Communities for matters which concern them has been evident during the recent talks for the reform of local government in Cyprus, where both Unions have been invited on numerous occasions to express their views at the proposed bills. Furthermore, successive Governments have always endeavored to consult with individual Municipalities and Communities prior to taking any action that affects them and despite infrequent voices to the contrary, the views of the local authorities have almost always been taken into consideration during the decision-making process for any matter that concerns them. This has been indeed evident during the recent talks for the reform and modernization of local self-government in Cyprus. The statutory recognition of the Unions through a legislative amendment of the Municipalities and Communities Laws in 2009 and the engagement of these actors in practice, insofar as possible, in discussions for matters concerning local authorities renders the Republic of Cyprus compliant with Article 4 paragraph 6 of the European Charter of Local Self-Government.

4 Protection of local authority boundaries

The European Charter of Local Self-Government seeks to ensure that no change is effected in the boundaries of local authorities without prior consultation with their elected organs or a referendum amongst its residents. More specifically, Article 5 of the Charter provides that changes in local authority boundaries shall not be made without prior consultation with the local communities concerned, possibly by means of a referendum where this is permitted by statute. Albeit not requiring the organization of referendums, the Municipalities and Communities Laws do not allow changes to the boundaries of local authorities without prior consultation with the local authorities affected.

As regards municipalities, article 8 of the Municipalities Law provides that the Council of Ministers may redefine, amend, extend or limit the boundaries of a Municipality upon an application by the interested local authorities and after taking into consideration their views. The aforesaid article suggests that any change to the boundaries of a Municipality may only be effected upon an application of a Municipality and no such change may be made without prior consultation with its representative organs, i.e. the Mayor and the Municipal Councilors. Despite not requiring a referendum amongst the residents of a Municipality for this purpose, the aforesaid article of the Municipalities law ensures compliance with Article 5 of the Charter and provides adequate safeguards for the Municipalities' autonomy to be involved in any decision affecting its boundaries. To date, the Council of Ministers has reportedly issued 24 (twenty-four) orders for the amendment of municipal boundaries, 18 (eighteen) orders for the extension of municipal boundaries and 17 (seventeen) orders for the definition of municipal boundaries.

Similar provisions apply to Communities. Article 114(c) of the Communities Law provides that the Council of Ministers has the power to define or amend the boundaries of any town or community, to abolish any community and to provide for the establishment of any new community by issuing a relevant order upon taking into consideration both, the opinion of the interested local authorities and a report of the Minister of Interior prepared for this purpose. A copy of this report is also filed at the House of Representatives. No provision is made in the law for the organization of a referendum amongst the residents prior to the issuance of any of the aforesaid orders of the Council of Ministers; nevertheless, the aforesaid provision copes well and complies with the provisions of Article 5 of the European Charter of Local Self-Government. To date, the Council of Ministers has reportedly issued 18 (eighteen) orders for the redefinition or change of community boundaries.

Additionally, the merger of two Municipalities may only be effected upon a successful referendum undertaken amongst the residents of the Municipalities wishing to merge. Article 5 of the Municipalities Law provides that the Minister of Interior may call a referendum amongst the electorate of two Municipalities pursuant to examining the intention of the residents of two Municipalities to merge, provided that the Municipal Councils of the two Municipalities involved agree to the merger and an application is

filed for this purpose by a Municipal Council or the merger of two Municipalities is deemed appropriate by the Minister of Interior. A positive result in the referendum is a necessary pre-condition to the merger and this provides a safeguard to the autonomy of the local authorities involved.

Considering the above, it is evident that Article 5 is fully implemented by the Republic of Cyprus and sufficient safeguards are provided in the respective laws against interference of the Government with the boundaries of the local authorities without the residents' consent.

5 Administrative structures and resources for the tasks of local authorities

An essential element of the principle of local self-government is the liberty of the local authorities to determine their own administrative structures in order to adjust them to local needs and ensure effective management. An indisposable part of this element is the ability and power of the local authorities to decide on their own conditions of service pursuant to ensuring that high-quality staff is recruited and adequate training opportunities, remuneration and career prospects are provided to them. This goal is sought by Article 6 of the Charter. Under the Municipalities and Communities Laws, local authorities are at liberty to determine their administrative structures, but in practice the aims that such provisions pursue are compromised by the financial dependence of local authorities on Government grants due to the lack of own capacity to raise funds to execute their functions. The recent economic crisis led to the imposition of a moratorium in the employment of civil servants. These restrictions applied to local authority personnel too, having as a result for shortages of personnel to be caused in the sphere of local authority administration. This moratorium has been abolished.

Both, the Municipalities and Communities Laws provide that the supreme authority of Municipalities and Communities is the elected Municipal Council headed by the Mayor and the Community Council, respectively. The members of the Municipal and Community Councils cannot be part of the local authority's personnel and hence, they cannot perform administrative functions. Such functions are executed by the employees of the local authorities and workers, who are employed pursuant to and in accordance with the Municipalities and Communities Laws.

Commencing from Municipalities, the employment of personnel by the Municipalities is regulated by Municipalities Regulations which are issued pursuant to article 53 and 57 of the Municipalities Law. Under article 53 of the Municipalities Law, each Municipality has the power to compile, apply and publish in the Official Gazette of the Republic schemes of service for all the positions of the municipal service, whose number and salary scale for each position will be included in the annual budget of the Municipality. The procedure for the recruitment and selection of municipal employees, including their earnings, subsidies, adjustment of salaries, other benefits, the terms of exercising

disciplinary powers and any other relevant issue is regulated by the regulations which are issued upon securing the approval of the Council of Ministers

The Municipalities Law does not oblige the Councils to employ staff at specific positions but rather designates positions in the service of Municipalities that may be filled in their administrative hierarchy, given the liberty of the Municipal Councils to employ personnel at lower positions if necessary, provided that there is compliance with the provisions of the law. Regulations issued by the Municipalities upon securing the approval of the Council of Ministers may provide for the creation *inter alia* of the positions included in article 54(1)(a) of the Municipalities Law, i.e. the Municipal Secretary, the Municipal Engineer, the Municipal Treasurer, the Municipal Doctor, the Municipal Hygiene Inspector and the head of any other department of the Municipality. The Council has the statutory power to appoint personnel at the aforesaid positions, but also to appoint employees at lower positions pursuant to article 55(1) of the Municipalities Law and workers pursuant to article 5 of the said laws.

The particulars of employment of all Municipal employees are provided and regulated in the Municipal Regulations which are issued as above. For the sake of convenience and uniformity, most Municipalities choose to adopt the Regulations of the Municipality of Nicosia, i.e. the capital of Cyprus. Such Regulations make detailed provisions as to all aspects of employment, from recruitment to retirement and the imposition of disciplinary punishments. Service at the Municipalities may be permanent or temporary and all such positions are included in the Municipalities' annual budget. For each position of service, a scheme of service outlines the rights, obligations, responsibilities and duties of the person serving the Municipality from such position. Vacancies may be filled through the appointment of new employees, in which case the position is called a position of first appointment, or through the promotion of current employees in higher positions, in which case the position is called a position of promotion. The Regulations include provisions as to the qualifications required for the appointment or promotion to any position in the municipal service, as well as the procedure for selection to such positions and provisions regarding their benefits, retirement, training, leave, fundamental duties, right to be a member of trade unions, freedom of speech, conflicts of interest, political rights, civil liability for damages or losses and working hours. The Regulations also include a disciplinary code, the possible disciplinary punishments and how the disciplinary proceedings in the municipality shall be conducted when necessary. It is evident from the above that employment at the Municipalities is well regulated and employees enjoy adequate protections as employees of the Municipalities.

Provisions similar to the Municipalities Law in respect of the employment of employees are included in the Communities Laws, with essentially the only difference being that article 50(1) of the Communities Law makes reference to the position of the Community Secretary, rather than the aforesaid list of municipal employees provided in Article 54(1)(a) of the Municipalities Law. Article 49(2) enables the Communities to issue Regulations upon securing the prior approval of the Council of Ministers and to this end,

Community Regulations have been issued for individual Community Councils, which regulate the service of employees thereto.

Having said the above, it may be argued that both, Municipalities and Communities have the freedom and ability to determine their own internal administrative structures to a large extent, in compliance with Article 6 paragraph 1 of the European Charter of Local Self-Government. The Municipalities and Communities Laws do not limit the Municipalities and Communities respectively as to their administration structure and they don't impose any restrictions as to the employment of personnel. To the contrary, the local authorities have the ability to compile the schemes of service for their employees and in this way determine the rights, obligations, duties and responsibilities of their employees. Moreover, the aforesaid laws allow them to establish new departments and appoint personnel to head such new departments, which indicates that the current legislative provisions are not restrictive but rather allow flexibility to the local authorities. Apart from the above, the local authorities have the right to employ workers and personnel at their full discretion to fill in lower positions in accordance with the relevant articles of the law, the regulations issued pursuant to the law and of course their financial capacity. Through the aforesaid legislative and regulatory mechanisms, the local authorities in Cyprus are granted with the required legislative tools to manage and administer their local affairs effectively.

Nevertheless, it is noted that in practice local authorities, especially small communities, are unable to finance all their operations with their own means, making the provision of the annual State grant absolutely necessary for the performance of their functions. A number of small communities do not have the financial resources to employ personnel in order to undertake their functions, having as a result to rely entirely on the Government and the annual State grant in order to discharge their obligations. Furthermore, there are great differences amongst local authorities in respect of the number of employees working at their service, with some Communities not having any employees at all, whereas other Communities employing dozens of employees.

The insufficiency of financial resources has led the Congress to express concern at *“the inadequacy of resources available to local authorities for the exercise of their powers, which leads to a dependency on the State, in particular in the case of small communities [...] as well as the differences between the municipalities and communities with regard to their personnel and other technical resources”* (see Recommendation 389 (2016)). For this purpose, the Congress has invited the Cypriot authorities to *“provide adequate financial resources for local authorities which should be commensurate with their responsibilities and which they may dispose of freely within the framework of their powers”*.

Turning to Article 6 paragraph 2 of the Charter, which requires *inter alia* such conditions of service in local authorities to permit high-quality staff on the basis of merit and competence, adequate training opportunities, remuneration and career prospects, it may

be argued that the Republic of Cyprus seems to provide all the required legislative and regulatory means to comply with its provisions. Still, the effects of financial dependence of local authorities on State grants deprives the Republic from full implementation of Article 6 paragraph 2.

As regards the legislative and regulatory means of dealing with the provisions of Article 6 paragraph 2, it should be noted that the Municipalities and Communities are entities of public law, not private organizations. As such, they are obliged to follow transparent recruitment procedures and act in accordance with the principles of administrative law which are deeply embedded in the Cypriot legal system. These procedures are adequately described in the regulations which are issued under the relevant articles of the Municipalities and Communities Laws and they provide for the qualifications required of candidates for different positions in the administrative hierarchy of local authorities. The procedure for the recruitment of employees at the service of local authorities are designed to ensure that the best employees are selected from the pool of candidates applying for the vacant or available positions, whereas the decisions of the administrative organs of Municipalities and Communities are subject to the review of the Administrative Court of Cyprus. In the event that a candidate wishes to challenge any such decision, he/she has the right to file an administrative recourse at the Administrative Court, where his rights will be examined and the whole administrative file documenting the procedure up to the issuance of the relevant decision will be scrutinized. These procedures act as safeguards of the legality of local authorities' decisions and ensure that the recruitment process is based on merit, competence and the skill required for the available position. Empirically, the demand for vacant or available positions at the service of Municipalities and Communities is considerable, since local authority personnel is considered as akin to civil servants and enjoy similar benefits, remuneration and career prospects, as well as terms of service.

Furthermore, Municipal and Community employees are encouraged to attend educational seminars pursuant to improving their skills, hence being provided with the training opportunities required by Article 6 paragraph 2 of the Charter. This is reflected in the Municipal Regulations of most Municipalities, which provide that series of training courses and other facilities may be arranged pursuant to improving the skills of employees in the execution of their duties and the acquisition of the qualifications required to progress, whereas at some instances personnel may be asked to attend classes and sit examinations.

Nevertheless, concerns still seem to prevail in respect of administrative structures and resources for the execution of tasks of local authorities due to the financial dependency of local authorities (especially smaller or rural Communities) on the provision of the annual State grant, which essentially deprives the Republic of Cyprus from full implementation of Article 6 paragraph 2. Consequently, it may be argued that Cyprus respects Article 6 paragraph 1 but it is only partially complying with Article 6 paragraph 2 of the Charter.

6 Conditions under which responsibilities at local level are exercised

Municipalities and Communities are governed by Municipal and Community Councils respectively, which are composed of democratically elected Councilors in accordance with the relevant provisions of the Municipalities and Communities Laws. Article 7 of the Charter essentially provides that the conditions of office of the Councilors have to allow the free exercise of their functions and appropriate financial compensation for expenses or loss of earnings incurred while performing their duties. Furthermore, Article 7 states that statutory provisions have to specify the functions and activities which are incompatible with the holding of local elective office. Whilst the issue of incompatibility of functions and activities with the holding of local elective office is regulated by statute, the conditions under which responsibilities at local level are exercised are largely unregulated by statute or by regulations. Complaints are frequently voiced in respect of the lack of adequate financial compensation for Councilors, especially in rural or smaller Communities, whereas both, the Municipalities and Communities Laws do not contain any provisions for the regulation of the legal standing of the elected members of local councils.

Both Laws make general provisions as to the right of local councils to exercise the powers of Municipalities and Communities, as well as general provisions regarding the composition of the local councils, the term of each councilor, the right to be elected in local authority office, the incompetency to be elected in office and the incompatibility of certain persons with holding local elective office.

Article 11(1) of the Municipalities Law provides that each Municipality Council consists of the Mayor and Councilors, the number of which is not smaller than 8 (eight) and not larger than 26 (twenty-six). Provisions are also made in the same article for the gradual increase in the size of Municipal Councils depending on the size of the electorate of each Municipality. For example, in Municipalities where the electorate ranges between 11.000 (eleven thousand) and 13.500 (thirteen thousand and five hundred) people, the Municipalities Law provides that the Municipal Council must consist of 14 (fourteen) Councilors. Where the Municipality electorate is lower than 6.000 (six thousand) people, the Municipal Council must consist of 8 (eight) Councilors and where the Municipality electorate is larger than 26.000 (twenty-six thousand) persons, the Municipal Council must consist of 26 (twenty-six) Municipal Councilors. In the event that either a complex of villages, or a complex of improvement areas and a village, are declared a Municipality and the number of councilors provided in the Municipalities Law (to correspond with the size of the population) is not at least double the number of villages and improvement areas consisting the Municipality, the Council of Ministers has the power to determine the number of Councilors, so that such number equals or exceeds double the number of the said villages and improvement areas (article 11(2)(b) of the Municipalities Law).

The Municipalities Law also makes provisions for incompetency and incompatibility with holding a local elective office. Article 16(1)(a)-(c) of the Municipalities Law provides

that persons of unsound mind, non-reinstated bankrupts and persons who have been convicted for an offence of dishonesty or moral obscenity within five years prior to the announcement of candidates for office are not competent to be elected as Mayors or Councilors. Moreover, under Article 16(2) Ministers, Members of the House of Representatives, judges, civil servants, municipal employees, teachers working in the public sector, employees of organizations of public law, police officers or army officers, priests or persons having any contractual relationship with the Municipality for the provision of services or the carrying out of work can be candidates for the position of the Mayor or Councilors, but they cannot take office unless they resign from their position or office or unless they are discharged of their contractual obligations or debts, as applicable. In the event that one of the aforesaid situations of incompatibility arise during the five-year term of a Mayor or a Vice-Mayor or a Councilor, then the person affected ceases to act as Mayor or Vice-Mayor or Councilor, as applicable, and his position is vacated and filled in in accordance with the Law.

The aforesaid incompatibility provisions are complemented by the provisions of the Incompatibility to the Exercise of the Duties of Certain Officials of the Republic, of Certain Professionals and Other Related Activities Laws which were enacted in 2008, as subsequently amended. These laws apply *inter alia* to Mayors, Members of Municipal Councils, the Chairmen of Community Councils and the Members of Community Councils. They specify the categories of activities that are incompatible with the exercise of specific duties, impose an obligation to disclose conflicts of interest, provide for the establishment of an Examination of Conflicts of Interest Committee, they invalidate acts which constitute conflict of interest and enact criminal offences in case of refusal or failure to appear before the aforesaid Committee. According to article 3 of the aforesaid law, acts that are incompatible with holding the office of a Chairman or a Member of a local council are *inter alia* the provision of legal, audit, accounting, advisory or other services to the State or any entity of public law, being a member of the board of directors or a general manager of a company, partnership or joint venture to which a contract has been granted for the supply of a product or the carrying out of a project or the provision of any service, as well as the capacity of the member of the board of directors of a public company or a company which is engaged with press and media. Compliance with the aforesaid provisions is taken seriously and it is within the mandate of the Auditor General to examine whether such acts come within the ambit of incompatibility provided under the aforesaid laws when auditing the local authorities' affairs.

Turning to Communities, it is noted that provisions similar to the aforesaid provisions of the Municipalities Law regarding their composition also apply for Communities, albeit with small differences to cater for the smaller size, needs and circumstances of the Communities. Article 11 of the Communities Law provides that every Community Council consists of the Chairman of the Community and its Community Council Members. The composition of the Community Councils depends on the size of each Community' electorate. For Communities of up to 300 (three hundred) registered voters 4 (four) Community Council Members are elected, for Communities with electorate

ranging between 301 (three hundred and one) and 700 (seven hundred) voters 6 (six) Community Council Members are elected and for Communities of more than 700 (seven hundred) voters 8 (eight) Community Council Members are elected. Councils of displaced Communities consist of the Chairman of the Community Council, the Deputy Chairman and 3 (three) Community Council Members irrespective of the number of registered voters.

It may be deduced from the above that although elaborate provisions are included in the Cypriot legislation regarding incompatibility which evidently render the Republic of Cyprus fully compliant with paragraph 3 of Article 7 of the European Charter of Local Self-Government, still there seems to be no legislative guarantee for the conditions of the free exercise of the Councilor's functions.

There are no statutory provisions regarding the size of the financial compensation of Mayors and Municipal Councilors for the time devoted in the performance of their duties and the loss of earnings incurred by reason of the execution of their duties as members of local councils. Article 52(1) of the Municipalities Law provides in general that the Mayor and the Municipal Councilors may receive such annual allowance, compensation and other benefits as provided in the annual budget of the Municipality which is approved annually by the Council of Ministers. As such, the allowances of Mayors and Municipal Councilors vary. In 2010, an agreement was reached between the Union of Municipalities and the Government, according to which Mayors would receive a sum which constitutes a percentage of the salary of the Members of the House of Representatives, ranging from 40% to 100% depending on the size of each Municipality in terms of population. According to the Audit Report of the Auditor General for the year 2016, the annual compensation paid to the Mayors of Nicosia (capital), Limassol, Larnaca, Paphos and Strovolos that year ranged from €62.656 to €70.635, whereas the compensation paid to smaller Municipalities was lower, and the average compensation paid to Mayors of Municipalities in 2016 was calculated to €47.883,44. Out of the 39 (thirty-nine) Municipalities, only the Vice-Presidents of 6 (six) Municipalities receive special increased allowances compared to Municipal Councilors and drawn from the last Audit Report of the Auditor General, i.e. for the year 2016, the average compensation paid to Councilors in 2016 is calculated to €82.491,46 per Municipal Council. Based on the same findings, the compensation of each Municipal Councilor of the Municipality of Nicosia in 2016 was €9.490,56, i.e. €790,88 per month, for the Municipality of Limassol €8.201,28, i.e. €683,44 per month, for the Municipality of Larnaca €7.176, i.e. €598 per month, for the Municipality of Paphos €6.151, i.e. €512,58 per month, for the Municipality of Strovolos €9.330,38, i.e. €717,72 per month, for the Municipality of Lakatamia €8.137,046, i.e. €678,01 per month and for the Municipality of Famagusta €6.323,27, i.e. €526,94 per month, whereas Councilors in the remaining Municipalities have received lower compensation.

According to the General Terms of Approval of Annual Budgets of Municipalities, the allowances and compensation paid to Municipal Vice-Presidents and Municipal

Councilors cannot exceed 15% of the allowance and compensation received by their Mayor, but the Audit Report of the Auditor General for the Year 2016 suggests that there were instances (four instances) that the allowance of Municipal Vice-Presidents exceeded the aforesaid percentage.

It has to be noted that by reason of their election as members of Municipal or Community Councils (including Mayors and Chairmen of Community Councils), members of Municipal and Community Councils are also *ex officio* members of the respective Sewerage and Drainage Board of each town. In this capacity, they participate in Board and Committee meetings and they receive additional allowances and compensation for their participation. Such lump sum amounts are decided and determined by the Boards themselves and they range on average between €60 - €70 per meeting.

As regards allowances and compensation of Chairmen of Community Councils for the performance of their duties, Article 48(1) of the Communities Law provides that they are allowed to receive compensation in accordance with the Chairmen of Communities (Compensation) Law. The latter Law, which applies only to communities which are not located within the Municipal boundaries of any Municipality or any area which was rendered inaccessible by reason of the Turkish invasion, provides in general that the compensation of Chairmen of Communities is paid by the Government. The size of such compensation is determined by orders of the Council of Ministers, given the right of the Council of Ministers to pay compensation to Chairmen of Communities in special instances. To date, 6 (six) orders of the Council of Ministers have been issued for the regulation of the compensation received by Chairmen of Communities, the latest being the Order of the Council of Ministers which was published at the Official Gazette of the Republic on 14.12.2007. The said Order determines the monthly compensation of the Chairmen of Communities on the basis of the electorate's size in each Community. For the period commencing 1.1.2010 until 31.12.2010, the Order provides that for Communities with up to 300 (three hundred) voters, the Chairmen of the Communities were entitled to €300 per month, for communities with more than 301 (three hundred and one) but less than 600 (six hundred) voters the Chairmen of the Communities were entitled to €400 per month, for Communities with more than 601 (six hundred and one) but less than 1.000 (one thousand) voters Chairmen of the Communities were entitled to €500 and for Communities with more than 1.001 (one thousand and one) voters Chairmen of the Communities were entitled to €600 per month. The Order provides that from 1.1.2011 onwards, these sums would be increased proportionately in accordance with the provision of salary increases to the employees of the wider Civil Service. In light of the freezing of salary increases in the Civil Service in recent years, the compensation and allowance of Chairmen of Community Councils seems to have ranged from €400 to €800 per month depending on the population size of each Community.

Despite the aforesaid provisions for the payment of monthly allowances and compensation to Chairmen of Community Councils, there seems to be no legislative provision for the payment of monthly or annual allowances or compensation to

Community Councilors. The latest Audit Report of the Auditor General for the year 2016 indicated that there were instances where Community Councilors received compensation or allowance in exchange for the performance of their duties, but recommendations were put forward for the return of such money as unjustifiably paid.

The lack of legislative or regulatory provisions enumerating the rights, allowance, compensation and legal standing of members of local councils, especially Mayors, Municipal Councilors and Community Councilors, as well as the fact that Community Councilors are not entitled to any allowance or compensation whatsoever for the performance of their duties as mentioned above, compromises the implementation of Article 7 of the European Charter of Local Self-Government. While paragraph 3 of Article 7 is fully implemented, paragraph 1 is partially respected but paragraph 2 seems not to have been implemented. Despite practical arrangements being in place regulating the payment of allowances and compensation, Mayors, Municipal Councilors and Chairmen of Community Councils have on numerous occasions voiced their demands for the increase of their allowances, whereas Community Councilors demand payment of reasonable allowances and compensation for the performance of their duties. Such increases and the enactment of legislative provisions for the regulation of the issue of financial compensation may be argued to create a sense of security and have beneficial effects for the Municipalities and Communities, since it is likely to encourage more people to participate in local authority elections.

7 Administrative supervision of local authorities' activities

Article 8 of the European Charter of Local Self-Government seeks to achieve a balance between the autonomy of local authorities to manage their own affairs and the interest of the central Government to supervise their activities. For this purpose, Article 8 provides that any administrative supervision of local authorities may be exercised in accordance with such procedures and in such cases as are provided by the Constitution or by statute. Any administrative supervision of the local authorities' activities has to aim at ensuring that the local authorities comply with the law and the Constitution and it has to be exercised in such a way as to ensure that the intervention of the State is proportional to the importance of the interests which it is intended to protect. Cypriot local authorities are supervised by a handful of State and Independent actors, i.e. the District Officer, the Minister of Interior, the Auditor General and the Council of Ministers, whose approval is required for the execution of certain tasks mentioned in the Municipalities and Communities Laws. It has been argued in the past that the supervision over local authorities exceeded the spirit of Article 8 of the Charter and the Congress of Local and Regional Authorities of the Council of Europe has argued after its last monitoring visit at the Republic of Cyprus in 2016 that great influence is exercised on the day to day activities as well as on the strategic decisions of local councils, having as a result for the requirements of Article 8 not to be fulfilled.

Given the fact that the State subsidizes local authorities with annual grants, rightfully the State has the right to supervise the use of such funds, as well as undertake audits of local authorities, since they are managing public property and money. This task is delegated to the Auditor General, who undertakes annual audits and publishes annual audit reports pursuant to Article 116(4) of the Constitution. According to Article 115(2) of the Constitution of the Republic of Cyprus, the Audit Service of the Republic is an independent service which is not subjected to the authority of any Ministry of the Republic. The Auditor General undertakes audits in the name of the Republic in accordance with Article 116 of the Constitution for every payment or receipt of money, as well as all assets and liabilities of the Republic and he/she has the right to inspect all the relevant accounts, book, archives, statements and places where such documents are stored. The aforesaid power of the Auditor General is integrated in the Municipalities and Communities Laws, since the authority of the Auditor General extends to the audit and supervision of local authorities too.

The power of the Auditor General to undertake audits of the annual accounts of Municipalities is provided in article 81 of the Municipalities Law. According to the said article, after the end of each financial year, each Municipality has the obligation to prepare and submit to the Auditor General their annual accounts. Specific provision is made to the effect that the economic transactions of the Municipalities, their accounts and generally their financial administration are all audited by the Auditor General. Upon the audit of the annual Municipal accounts, the Auditor General sends them to the Municipality, the House of Representatives and the Minister of Interior, who arranges their publication at the Official Gazette of the Republic. Apart from the aforesaid general audit authority, the Auditor General does also have the power to call any member of the Municipal Council and any employee of the Municipality for the purpose of providing him/her with information, explanations, minutes, books, contracts, accounts, invoices or any other document which is required for the audit undertaken by the Auditor General (article 82 of the Municipalities Law). Failure or omission to provide any of the requested documents or information constitutes a criminal offence punishable with a fine. Similar provisions are included in the Communities Law, articles 71 and 72, with the addition that displaced communities with income of less than €5.000 per year do not file annual accounts to the Ministers of Finance and Interior in accordance with the internationally recognized accounting principles but rather, they file annual accounts to the District Officer for the purposes of assuring the information included therein. Thereafter, the District Officer communicates them to the Auditor General for his/her observations.

The aforesaid supervision of the Auditor General constitutes an *ex-post* measure of supervision within the ambit of Article 8 of the European Charter of Local Self-Government which is indeed proportional to the importance of the interests which it is intended to protect given that the local authorities collect and manage public money. Nevertheless, administrative supervision of local authorities is not restricted solely to *ex-post* checks but rather extends to *a priori* measures of financial supervision which are not in compliance with the provisions of Article 8 of the European Charter of Local Self-

Government. Specifically, Municipalities and Communities have the obligation to submit their annual budgets for approval to the Council of Ministers prior to their implementation and key decisions, actions and activities may only be implemented upon securing the prior approval of the Council of Ministers or the District Officer, as applicable.

Article 65 of the Municipalities Law provides that the annual regular budget of income and expenditure, as well as the development budget of the Municipality are prepared in accordance with the provisions of the Municipalities Law and they are submitted to the Municipal Council and the Council of Ministers for approval prior to the 31st of October of the year prior to the commencement of the year to which they refer. The aforesaid budgets are prepared by the Administrative Committee of the Municipality (article 66(1) of the Municipalities Law), which is composed of the Mayor and Municipal Councilors, and upon being approved by the Municipal Council, they are sent to the Minister of Interior and the District Officer. Subsequently, the Minister of Interior submits them to the Council of Ministers together with his recommendations and observations for approval.

In the event that the annual regular Municipal budget or the annual development budget of any Municipality is not approved by the Council of Ministers until the commencement of the year to which they refer, the Council of Ministers may authorize the undertaking of municipal expenditure for a period not exceeding one month each time and in any event not exceeding two months in total, provided that the Council of Ministers deems this appropriate for the continuation of the services provided in the budget (article 66(2) of the Municipalities Law). Such authorized expenditure may not exceed the corresponding expenditure approved in the previous budget.

After the 31st of May and pursuant to Article 66(4) of the Municipalities Law, the Council of Ministers may approve expenditures made by the Municipal Council in excess of the approved fund for an approved purpose included in the annual budget if this is necessary for the continuation of the provision of the approved services or for the smooth and unobstructed operation of the Municipality, provided that such an expenditure shall not exceed 10% of the approved fund.

The obligation to submit budgets for approval is also born by Community Councils and it is included in the Communities Law. Article 64(3) of the Communities Law states that the annual budget of the Community Council is submitted to the District Officer for approval until the 30th of November of the year which precedes the financial year to which it refers, and the District Officer examines the legality of the budget within a month from its submission from the Community Council. The Community Council may spend a sum of money which does not exceed the 20% of the fund for the expenditure which was included in the budget and approved, provided that this additional sum is saved from any other or from other funds which were approved in the same budget. The District Officer may reject the budget only if it contradicts the provisions of the Communities Law, whereas upon approval by the District Officer, a copy of the approved budget of the

Community is sent to the Auditor General of the Republic pursuant to article 65 of the Communities Law. Thereafter, it is the duty of the Chairman of the Community Council to provide for the execution of the decisions of the Community Council, as well as to arrange for the expenditure required for the execution of the decisions to be in accordance with the approved budget (see article 43 of the Communities Law).

Further to the above and as mentioned in previous sections of this report, Municipalities and Communities have further limitations and restrictions when it comes to the power to obtain loans, secure mortgages over municipal property in exchange for the receipt of loans, acquire immovable property, establish local market areas and radio stations, create artisanship areas, establish and operate of parks, gardens, courses, swimming pools, entertainment establishments and youth centers, plant trees across streets, issue swimming regulations, impose entertainment charges and hotel fees, promote intellectual activity and sign contracts for the creation of public utility projects. All of the aforesaid activities and actions of key importance require the prior approval of the Government, which is indeed another form of proactive administrative supervision of local councils.

The aforesaid forms of administrative supervision, in combination with complaints regarding the exertion of influence by the Government over local councils has caused the reaction of the Congress of Local and Regional Authorities of the Council of Europe during its delegation last monitoring visit in Cyprus in 2016. The Congress is of the opinion that the requirement of the prior consent or approval of the Government for the undertaking of important activities and the implementation of key decisions, as well as the reported influence of the central Government over local authorities is such that exceeds the legal control over local governments' acts provided under Article 8 of the European Charter of Local Self-Government. Consequently, the Republic of Cyprus is not in compliance with the provisions of Article 8 of the Charter.

In its Recommendation 389 (2016) for the local democracy in Cyprus, the Congress expressed concern at “the importance of government supervision over the exercise of the regulatory powers of local authorities and over the personnel, administrative and budgetary resources, and the current lack of clarity concerning the administrative authorities entitled to exercise such supervision over municipalities”. In light of this concern, the Congress suggested that the Republic of Cyprus should “*provide adequate financial resources for local authorities, which would be commensurate with their responsibilities and which they may dispose of freely within the framework of their powers*”, as well as “*limit every kind of government supervision over local governments to an ex post control of the legality of the administration and regulation of the municipalities and communities, and relinquish the power of government to approve the budgets of all local authorities prior to their implementation*”.

8 Financial resources of local authorities and financial transfer system

An essential component of the principle of local self-government is the ability of local authorities to manage and dispose freely of their financial resources. The principle of financial autonomy is enshrined in Article 9 of the European Charter of Local Self-Government, which provides *inter alia* that local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers. Such financial resources have to be commensurate with the responsibilities assigned to them by law, as well as of sufficiently diversified and buoyant nature to enable the local authorities to cover the expenses necessary to perform their duties. At least part of them shall derive from local taxes and charges imposed by the local authorities at the rate chosen by them and the grants provided to them by the Government must not be earmarked for the financing of specific projects, whilst borrowing must be available to them through access to the national capital market. Furthermore, financial equalization procedures have to be present in order to provide for financially weaker local authorities and ensure equality in the distribution of Government grants. Whilst Cyprus seems to cope well with some parts of Article 9 of the Charter and despite local councils having different streams of financial resources available to fund their operations, still the existence of legal and practical limitations deprives the Republic of Cyprus the full implementation of the Article 9 of the Charter and the State needs to take steps in order establish a method of calculating the allocation of central government grants to local authorities, as well as remove legal impediments to the free disposal of their financial resources.

The financial resources of local authorities derive from the so-called “own resources”, namely fees and duties, taxes and local property tax income, as well as State grants. Commencing from the latter, the national legislation imposes the obligation on the State to subsidize the local authorities’ budget of expected inflows and outflows. With regard to Municipalities, article 67 of the Municipalities Law provides that the budget of expected inflows and outflows of the Municipalities is annually subsidized through the provision of grants suggested by the Council of Ministers and approved by the House of Representatives, whereas under article 68 of the same Law, the Municipal Treasury is composed *inter alia* of the State grant. Likewise, Article 65 of the Communities Law provides that the Community Treasury is composed *inter alia* of grants provided by the State.

The size of the State grant and the methodology for the calculation of such grants is not determined by the respective Laws or any regulations; rather, it is determined annually by the House of Representatives during the House’s deliberations for the approval of the annual National Budget. As regards the size of the annual State grant provided to the Communities, this is determined on the basis of various parameters such as population and altitude, whereas displaced Community Councils are provided with an annual State grant of €1.000 for the purposes of covering their operational and other expenses. The absence of any determined or statutory methodology for the calculation of the size of the

annual State grant provided to local councils has as a result for the size of the grant to vary both, amongst different local authorities and for the same local authority in different years.

Based on the contents of the annual National Budgets in recent years, it is evident that the size of the annual grant provided to local authorities has decreased relatively to the past decade, whereas the percentage of the annual State grant provided to local authorities in comparison to the total revenues of the local authorities has ceased to be the majority; local authorities' "own financial resources" seem to constitute the majority of the local authorities' budgets in general. Nevertheless, the local government expenditure as a percentage of the Gross Domestic Product has been maintained at very low levels, i.e. at about 1,5% approximately.

As mentioned above, apart from the annual State grant, the local authorities' financial resources are made up of their own income generation streams. Firstly, local authorities have the power to impose a local immovable property tax, which is separate and additional to the Immovable Property Tax which used to be imposed by the State and collected by the Government until 2016 (abolished as from the 1st of January 2017). The proceeds from the imposition of the local immovable property tax are not considerable and according to the Ministry of Finance, they are calculated to about 1% approximately of the total income of the local councils.

As regards municipalities, the imposition of the municipal immovable property tax by municipalities is regulated by articles 73 to 79 of the Municipalities Law. According to article 74 of the Municipalities Law, the Municipal Council imposes an annual tax at a rate not exceeding 0,24‰ of the value of each piece of immovable property in respect of all the immovable property which is located within the geographical area of the Municipality in which the Council exercises its jurisdiction, whereas the value of each piece of immovable property is taken from the last General Valuation which is undertaken by the Republic through the Land Registry and all the proceeds from the collection of such local tax are deposited in the municipal treasury. The law provides (article 75 of the Municipalities Law) that no municipal immovable property tax is imposed or collected on cemeteries, churches, mosques, hospitals, listed buildings, ancient monuments, property held in trust for any public school, properties used by charitable institutions, property belonging to the Republic or to any Municipality or to any sports club, State or public property. The local immovable property tax is payable by the registered owner of same, as recorded in the books of the competent District Land Registry. In 2017, by an amendment of article 74 of the Municipalities Law, the mode of imposition of the municipal immovable property tax changed; instead of the power of the Municipal Councils to impose a uniform tax of 1,5‰ of the value of the property per annum, the aforesaid law was amended so that the Municipal Councils were enabled to impose local immovable property tax at a rate of up to 0,24‰ of the value of the property per annum. Evidently, the size of the tax imposed was lowered significantly, but each Municipal

Council was afforded with the discretion to determine the rate of the municipal immovable property tax imposed upon its residents.

Similar provisions apply to communities and the relevant statutory provisions are provided in articles 74 to 80 of the Communities Law, albeit with some differences compared to the relevant provisions of the Municipalities Law. More specifically, article 75 of the Communities Law provides that the community immovable property tax may not exceed the rate of 10% of the value of the property per annum, whereas the minimum amount of tax payable per immovable property cannot be lower than €1,71 per annum. Upon determination of the rate of the community immovable property tax, the amount of payable tax is calculated by the Director of Lands and Surveys pursuant to article 76 of the Communities Law. Furthermore, article 78 of the Communities Law provides that where the community immovable property tax cannot be collected by the registered owner of the immovable property, it can be collected with the same way by its legal occupier.

Apart from the imposition of local immovable property tax, the local authorities also impose duties on persons and entities for the exercise of professional activities. As regards Municipalities, article 103 of the Municipalities Law provides that nobody has the right to maintain within the geographical area of the Municipality any building or place or premise in which any business, industry, trade, profession or undertaking is performed, except if he/she has previously obtained a relevant permit from the Municipal Council. For the purpose of securing the said permit, the Municipality has the right to impose duties in accordance with the Seventh Table of the Municipalities Law, whereas a separate annual duty is imposed on legal entities, i.e. companies and partnerships, for the exercise of any business, industry, work, trade, undertaking or profession within the municipal boundaries. The provisions of the Municipalities Law dealing with the size of such duty are formulated as maximum allowed lump sum amounts which each Municipal Council may impose. Communities also have the right to impose such duties in accordance with articles 85 to 91 of the Communities Law, but the duties payable for the same purpose are significantly lower compared to Municipalities.

Additionally, Municipalities impose refuse collection taxes pursuant to article 84(z) and Table Six of the Municipalities Law, as well as entertainment tax pursuant to articles 85 and 87 of the Municipalities Law, the latter constituting a lump sum amount imposed on persons engaging in business in the entertainment industry for every admission ticket sold and the tax is payable by the person purchasing the ticket as part of the ticket's price. Each Municipality is left with the power to issue regulations governing the imposition and collection of the entertainment tax.

Furthermore, Municipalities and Communities impose lodging tax on hotels and other tourist establishments for the stay of every person over the age of 10, which may not exceed the sum mentioned in the respective Laws. These sums range from 18 cents per

person per night to 60 cents per person per night depending on the type of accommodation and standard of the hotel.

Moreover, the financial resources of local authorities extend to the payment of fines and other administrative charges, including and without limitation to the collection of fees payable for the submission of applications for town planning and building permits and parking fines, as well as the proceeds from the use of municipal property and the establishment or participation in private companies for the provision of services to the public. Sewerage and drainage fees, i.e. fees for the use or entitlement to use the sewerage and drainage system of each local authority having such systems, are charged by separate entities, namely the Sewerage and Drainage Boards. These Boards are organizations of public law themselves, but their boards consist of local councilors and their (i.e. Boards) obligations are guaranteed by the Government.

The above suggest that local authorities in Cyprus enjoy a degree of financial autonomy. They have the ability to impose taxes, fees, charges and duties which make up the majority of their expected inflows, and they receive State grants that they may use in order to cover the expenditure required to perform the operations permitted by law. Nevertheless, existing limitations indicate that there is no full compliance with Article 9 of the European Charter of Local Self-Government. Firstly, the requirement of prior approval of the local authorities' budget by the Council of Ministers and the House of Representatives, as discussed in previous sections of this report, is incompatible with paragraph 1 of Article 9 of the European Charter of Local Self-Government, which provides *inter alia* that local authorities must have the liberty to dispose of their financial resources as they wish within the framework of their powers. The fact that local authorities receive and collect public money is an understandable consideration; still, the fact that the members of the local council are democratically elected by the residents of their respective local communities endows them with the legitimacy to take themselves decisions regarding the management of the local council's financials. Furthermore, the Congress observed in its Recommendation 389 (2016) on the Local Democracy in Cyprus that local authorities do not have adequate financial resources to exercise their powers, leading to a dependency of local authorities and especially small communities, on the State.

Concerns about the exertion of increased influence over local authorities when preparing or approving their annual budgets is another factor counting in favor of providing further liberty to local councils to manage their financial resources, provided that such financial administration is prudent and compliant with the principles of good governance. Furthermore, the lack of specific methods for the calculation of the amount of State grant that each local council shall receive per year does not allow them to plan effectively, especially in light of the size of the State grant's proportion in the local council's expected annual inflows. No investigation into the needs of each local authority precedes the allocation of the annual State grant to local authorities, but rather the yardstick seems to

be solely the amount of the State grant provided the previous year. As a result, there are no means to examine whether paragraph 2 of Article 9 of the Charter is observed.

As the law stands today, provision is made for the annual subsidization of the local councils' budgets but it does not provide or establish a mechanism for the consultation of the local authorities prior to deciding as to the size of the annual State grant which is provided to the local authorities. The lack of any provisions in the Municipalities and Communities Laws for this purpose indicates the absence of legal safeguards of the principle of prior consultation enshrined in paragraph 6 of Article 9 of the Charter.

Despite the above, paragraph 3 of Article 9 of the Charter is fully implemented, since indeed part of the financial resources of local authorities derive from local taxes and charges of which the local councils have the power to determine their rate.

Paragraphs 4 and 5 of Article of the Charter are not implemented. On the one hand, there are no equalization provisions in either the Municipalities or the Communities Laws and hence there are no systems in place to counterbalance financial discrepancies amongst local authorities or impose the obligation on wealthier local councils to provide financial assistance to smaller communities. Hence, there is no means of ensuring the same standard of public services to the residents of all local authorities, leading to a conclusion of non-compliance with paragraph 5 of Article 9 of the Charter. As regards the provisions of paragraph 4 of the Article 9, the aforesaid system of financial resource management does not seem to allow a flexible structure that could enable local councils to increase their revenues in case of financial difficulties, especially in light of the caps imposed on the imposition of taxes and duties, as well as the fact that a lot of local councils experience financial difficulties but they do not seem to have the means to overcome them with ease.

Turning to paragraph 7 of Article 9, compliance with the provisions of this paragraph is debatable given that most development projects are financed by the Government and that such funding is included in the approved annual budgets. Lastly, Cyprus seems to comply to some extent with paragraph 8 of Article, since the local councils do have the power to receive loans; nevertheless, such loans may only be obtained upon securing the Council of Ministers' prior approval.

9 Local authorities' right to associate

Article 10 of the European Charter of Local Self-Government seeks to afford local authorities with the right to co-operate with other local authorities and both, domestic and international associations of local authorities in order to perform their duties and promote their common interests. The Republic of Cyprus fully respects this requirement of the Charter through the Municipalities and Communities Laws which provide for the creation and operation of the Unions of Municipalities and Communities respectively. In practice, the two Unions co-operate and they jointly protect and promote the interests of local authorities in Cyprus by representing the Cypriot local authorities in consultations and

meetings with the representatives of the Government, the House of Representatives and the State in general. The local authorities are also represented abroad and initiatives are in place which encourage local authorities to exchange views, perform visits and participate in joint meetings directed at addressing and discussing issues of common interest.

According to the Municipalities and Communities Law, all municipalities and communities which are created pursuant to the said Laws may be registered as regular members of the Union of Municipalities of Cyprus and the Union of Communities of Cyprus, respectively. These local authorities have the right to participate through their representatives in the Unions' operations along with the existing regular members of the Unions. The purposes of the Unions are enumerated in the aforesaid Laws and they include the operation of the Unions as collective organs representing the local authorities at a national and international level pursuant to the promotion and the protection of their interests and pursuits, the provision of assistance to local authorities for the promotion of local self-government, the undertaking of research and the study of issues relating to municipal self-government and the collection of information regarding these issues, as well as the formulation of their views concerning draft bills affecting local authorities and activities regarding public self-government. Both Unions are considered as clubs in accordance with the Clubs and Charitable Institutions Law of Cyprus.

Apart from the above, the Communities Law also provides for the co-operation amongst Communities through the creation of Complexes. More specifically, article 7 of the Communities Law provides that the Minister of Interior is obliged to declare two or more neighborly communities as a Complex of Communities upon their application. The wish of communities to establish complexes is expressed through a referendum ordered by the Minister of Interior and undertaken amongst the registered electorate of the Communities involved, pursuant to examining whether or not they wish to form a Complex. In the event of a community which does not have registered electorates, the Council of Ministers may, at its discretion, decide the participation of a community in a Complex if the circumstances and generally the public interest necessitate it. Upon the undertaking of a referendum as mentioned above, a second referendum may only take place after the lapse of 4 (four) years from the date that the previous referendum took place.

The Communities Law also makes provisions for the withdrawal of a Community from a Complex, as well as the abolition of a Complex. The withdrawal of a Community from a Complex consisting of more than two Communities is possible by an order of the Council of Ministers, issued in the event that the two thirds of the electorate of a Community participating in the Complex vote in favor of the withdrawal of their Community from the Complex (article 9 of the Communities Law). If the Community does not have any registered electorate, the Council of Ministers may decide the withdrawal of the Community from the Complex on the Community's behalf. Likewise, a Complex is abolished upon an order of the Council of Ministers if two thirds of the registered

electorates of a Community vote in favour of the abolishment of the Complex at a referendum (article 9 of the Communities Law).

According to a feasibility study prepared by PwC for the purposes of the ongoing discussions for the modernization of local self-government in Cyprus, there seem to be 70 (seventy) formed Complexes of Communities, formed for different purposes (PwC, *Results of techno-economical study regarding the operation of Service Complexes*, 2018). The purpose of the formation of Complexes is the joining of forces in the provision of services to the residents and both, the formation and operation of Complexes is mostly unofficial. The aforesaid study reports 45 (forty-five) Complexes formed by 245 (two hundred and forty-five) Communities for the purpose of providing refuse collection to their residents, 13 (thirteen) Complexes formed by 36 (thirty six) Communities for the purpose of providing office services, 4 (four) Complexes formed by 17 (seventeen) Communities for the purpose of establishing a common sewerage system, 5 (five) Complexes formed by 14 (fourteen) Communities for the provision of common handymen, 1 (one) Complex formed by eight Communities for the purpose of extinguishing mice, 1 (one) Complex formed by five Communities for the purpose of transferring water and 1 (one) Complex formed by two Communities for the purpose of establishing a common Community Council House.

In light of the above, the right of local authorities to associate, as provided in Article 10 of the European Charter of Local Self-Government, is implemented and fully respected in the Republic of Cyprus. The Unions of Municipalities and Communities constitute competent lobbies directed towards the promotion of the interests of Cypriot local authorities in Cyprus and abroad. Apart from the association of the local authorities at a Union level, Communities have taken the initiative to co-operate for the provision of services to their residents, achieving in this way in practice the aim that paragraph 1 of Article 10 seeks to achieve, even informally. The ongoing discussions for the reform of local self-government include the formal recognition of Complexes and the creation of new Complexes pursuant to utilizing economies of scale and better serving the public, while at the same time making more efficient utilization of resources.

10 Legal protection of local self-government

Article 11 of the European Charter of Local Self-Government provides that local authorities must have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government in the constitution or domestic legislation. The provisions of Article 11 refer to a possible intervention of the central Government in the performance of functions which are located within the ambit of the local authorities' jurisdiction, as well as the acts of the Government or the State which contravene the principles of local self-government enshrined in the constitution or the legislation.

Since local authorities are legal entities in the eyes of the law pursuant to the provisions of the Municipalities and Communities Laws, they also enjoy the constitutional protection against illegal or improper acts of the State. Actionable administrative acts of the Government or any Governmental or independent body may be challenged pursuant to Article 146 of the Constitution of the Republic of Cyprus through the filing of a recourse at the Administrative Court within 75 (seventy-five) days from the publication of the said act or decision, or in the event that no publication took place, within 75 (seventy-five) from the date that the said act or decision came to the attention of the person or entity affected by it.

Article 146 of the Constitution provides that the Administrative Court has exclusive jurisdiction to decide at first instance on any recourse filed against a decision, act or omission of any body, authority or person performing an executive or administrative function by reason of being contrary to the provisions of the Constitution or the law or made in excess or abuse of power. The Administrative Court may ratify the said decision, act or omission, declare it as null and void, or amend the act or decision in issue provided that it regards a tax issue or an international protection procedure in accordance with the law of the European Union. The judgment of the Administrative Court on a recourse, or the judgment of the Supreme Court on an appeal of the judgment of the Administrative Court, binds all Courts, bodies or authorities in the Republic and the organs, authorities or persons affected by it have the obligation to comply. The Court issuing a final decision over an administrative matter has the right to examine whether or not there has been active compliance with the judgment and in the event of non-compliance to impose penalties, whereas any person incurring damage by reason of any act or decision held null and void by the Administrative Court may file an action against the issuing authority and claim damages/compensation for his/her loss.

The existence of Article 146 of the Constitution and its application on local authorities affords the latter with a remedy against illegal acts of the central Government or acts which are not in accordance with the principles of Administrative law, as provided in the General Principles of Administrative Law. There were instances in the past that local councils filed recourses against the decisions of the Government or independent authorities, making in this way use of the constitutional remedies provided by Article 146.

Nevertheless, it has to be noted that the failure of the Constitution and the legislation to provide for the explicit endorsement of the principle of local self-government or the free exercise of the local councils' powers does not afford local authorities with full protection under Article 146. The existence of detailed provisions for this purpose in the Constitution or any piece of legislation would enhance the protection of the local authorities since it would render any usurpation of the local councils' functions illegal and prohibit the Government from interfering with the principle of local self-government.

The current legal status of the European Charter of Local Self-Government in the Cyprus legal system does not afford local authorities with adequate remedies against

Governmental intervention in the local authorities' affairs. As mentioned above, in the case of *In re Pantelides* (above) the Supreme Court of Cyprus interpreted the European Charter of Local Self-Government as a non-self-executing act, leading to the inability of the local authorities to invoke the Charter for the establishment, protection and pursuance of effective safeguards to the principle of local self-government.

In light of the above, it may be argued that the Republic of Cyprus copes well with Article 11 of the European Charter of Local Self-Government, albeit with room for further implementation through the recognition of the principle of local self-government in the Constitution or the Municipalities and Communities Laws.

11 Proposed reform of local self-government in Cyprus

According to the Explanatory Note of the Ministry of Interior issued on 12 March 2020 with regard to the bill "The Municipalities Law of 2020", the Ministry of Interior in the context of ongoing consultation with the Union of Cyprus Municipalities (UCN), set up a group of technocrats and appointed an external expert to carry out a study which analysed the population, geographical and economic criteria and indicators and suggested various merger scenarios. The study showed that there is a large number of municipalities with limited financial and administrative autonomy, as well as that the viability of most municipalities is based solely on the state grant.

Based on the results of the study, a series of individual meetings of the Minister of Interior with the Executive Committee of the UCN took place. The Ministry, adopting at the same time the recommendations of the Congress of Local and Regional Authorities of the Council of Europe, made significant variations of the existing legislation, adopting several of the UCN recommendations, so that the municipalities will become financially autonomous, administratively independent, but also viable. Therefore, a new text of the Municipalities Law was prepared with a view to its overall modernization, which secured the unanimous support of the General Assembly of the UCN. Apart from introducing administrative autonomy, the new municipalities will have increased competences and powers, will be financially independent from the Central Government which will only exercise control over the legality of their actions.

The reform will regulate a new system in which the municipalities will have increased responsibilities and will be able to pursue a substantial policy through their administrative and financial independence from the Central Government. In other words, they will become real local governments, as set out in the European Charter of Local Self-Government. A new model of municipal governance by the mayor is also introduced, who will be elected in a single election and will be the head of municipal services; the deputy mayor and the councillors will be elected by the voters of each municipal unit. In the bill, there is a provision for the first election of the municipal councils to take place in 2024, simultaneously with the elections for the Members of the European Parliament (there is a similar provision in the bill regarding the Communities (Amending) Law of

2020). During the transitional period, the bill provides for the establishment and operation of councils for the management of common affairs, which will contribute to the smooth transition to the new operating framework. With this arrangement, election costs will be reduced, since the municipal and community elections will be held at the same time with the elections for the Members of the European Parliament.

Moreover, according to the said Explanatory Note of the Ministry of Interior with regard to the bill “The Communities (Amending) Law of 2020”, it is stated that following the submission of the amending bill in 2015, there have been some suggestions/comments by the Union of Cyprus Communities (UCC), which, among others, proposed the conducting of a study for the creation of local complexes in the communities, with reference to the financial parameters. The Ministry of Interior adopted the suggestion of UCC and agreed to fund the said study, which was assigned by UCC to PwC. This study was completed and delivered in April 2018 and apart from the proposed complexes in each district, it indicated the services that the complexes would be able to provide. The Ministry of Interior, adopting the suggestions of the study but also those of UCC, restructured the Communities (Amending) Law bill of 2015, incorporating provisions for the establishment and operation of 32 Local Service Complexes.

The aforesaid new bill also provides that the revenue budget of each community will be subsidised annually with a grant by the Republic to be proposed by the Council of Ministers and approved by the House of Representatives. Within this framework and for the financial support of the communities, but also of the Local Service Complexes which will be established, the Ministry of Interior intends to submit a proposal to the Council of Ministers in due course so that the annual state grant to the communities to be increased in line with the increase in the revenues of the municipalities from the transfer to them of the road tax and in proportion with the population of the communities.

It is noted that the Congress of Local and Regional Authorities of the Council of Europe was consulted as to whether the merging of municipalities and communities without holding referendums for the creation of the new municipalities is legal and whether this is in line with article 5 of the European Charter of Local Self-Government. According to their reply dated 7.2.2020, it appears that the actions of the Ministry of Interior are fully in line with the provisions of the European Charter of Local Self-Government.

12 Future challenges of the implementation of the European Charter of Local Self-Government in Cypriot legislation

It is evident from the above that albeit its challenges and the existence of considerable room for improvement, the local self-government system in the Republic of Cyprus is generally coping well with the requirements of the European Charter of Local Self-Government, especially when compared to other local democracies of similar size in the European Union. The main challenges of the implementation of the Charter revolve around the need to afford the local authorities in Cyprus with greater autonomy, confer to

them more meaningful responsibilities and enhance the availability of local authorities' resources for the exercise of their powers, whilst a resolution of the Cyprus problem will certainly pose new challenges for the implementation of the Charter in the Cypriot legislation in the future.

As regards the status of local authorities in Cyprus, the very absence of express recognition, acknowledgment and protection of the principle of local self-government in the Constitution or any other piece of national legislation is indicative of the challenges currently faced by Municipalities and Communities. In practice, local authorities in Cyprus are not fully self-governed; rather, they are operating under the direct and considerable authority and supervision of the central Government, who has the power to take key decisions in the life and processes of the local authorities. More specifically, the local authorities are obliged to submit their annual budgets for approval prior to the determination and distribution of the annual State grant. This legislative requirement compromises the goal of autonomy that the Charter purports to achieve, since the annual budgets are required to be submitted for prior approval rather than just for reporting/information purposes. Arguably, this requirement is not unreasonable given the fact that the local authorities receive an annual State grant, which covers the greatest part of the local authorities' financial needs for the year. Hence, the administration of money collected from the public may be argued to necessitate such *ex-ante* control. Nevertheless, such money is directed towards the service of the residents of Municipalities and Communities, and consequently they return back to the taxpayer's service, either directly or indirectly. The very essence of local democracy is to trust and allow discretion to local officeholders elected by the public to administer public money in accordance with what they feel is best for their local community. If such expenditure is contingent to the prior approval of the State, then the aim of local self-government is essentially compromised, especially in light of the absence of express methodology for the calculation of the size of the annual State grant distributed to each local authority. The relinquishment of the power of the State to pre-approve the local authorities' budgets, the endowment of local authorities with greater flexibility in the administration of their financial affairs and the restriction of State supervision to *ex-post* controls of legality of the administration rather than *ex-ante* prerequisite are indeed both, a legal and political future challenge of the implementation of the Charter in Cypriot legislation.

Related to the above is also the need to empower local authorities to build up significant fund-raising capacity and earn all the financial resources necessary to perform their functions without depending entirely on the annual State grant. Empowering local authorities with the ability to secure a great part of all the financial resources that are necessary in order to execute their functions and perform their responsibilities is key to the enhancement of the local authorities' autonomy and the full implementation of the European Charter of Local Self-Government.

Such a goal may be achieved by endowing local authorities with greater responsibilities and genuine local government functions, including the collection of taxes which are

currently paid to the Government instead to the local authorities, as well as the consolidation of services in the local authority level for the minimization of expenses and the utilization of economies of scale. The assignment of substantial powers and responsibilities to local authorities so that they can exercise them fully and exclusively in practice and in accordance with the principle of subsidiarity will undoubtedly shift control of the local affairs away from the central Government and towards the local communities, through sustaining relevant amendments in the Municipalities and Communities Laws. The discussion for the reform of local self-government which has been ongoing in recent years has touched upon the devolution of more powers and more meaningful responsibilities to local authorities at some limited extent but the deliberations amongst all actors involved have not been fruitful to date. The reform of the local self-government system in Cyprus and the grant of more functions, responsibilities and powers to the local authorities is itself a challenge and the conclusion of this endeavor is a development to be welcomed especially by Communities which do not have the necessary financial resources, administrative personnel and capacity to discharge their responsibilities and execute their functions.

Furthermore, it should be noted that a significant sociolegal challenge faced by the Republic and the society in general is the lack of public interest in participating in the regulation of local affairs, especially by competent persons who wish to contribute to their Municipalities and Communities. Such trust and interest may be recovered and regained through the employment of appropriate legislative measures, including the determination and increase of the remuneration and compensation of local councilors for the execution of their duties. At present, the Republic of Cyprus has still not ratified Article 7 paragraph 2 of the Charter which requires the Member States ratifying the Charter to allow for appropriate financial compensation for expenses incurred in the exercise of the office in question, as well as appropriate compensation for loss of earnings or remuneration for work done and corresponding social welfare protection. The regulation of the aforesaid issue by legislative means will evidently lead to the removal of the last exception to the ratification of the Charter by the Republic of Cyprus.

Lastly, a successful conclusion in the future of the ongoing talks for the resolution of the Cyprus problem will undoubtedly inhere new challenges to local democracy and the implementation of the provisions of the Charter, since new legislative provisions will need to be employed in order to cater for the new *status quo* and ensure legal and practical implementation of the European Charter of Local Self-Government across the whole island.

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Local Self-Government in Czech Republic

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Abstract In this chapter, the authors conducted an analysis of how the principles set forth in the European Charter of Local Self-Government reflect in the Czech national legislation. First they outlined the historical development of the self-governance and state-administration, so that they could later focus on the regulation in force today. In so doing, they also pointed out several areas, in which the incorporation of the Charter into the Czech legal order could be still improved: constitution and legal foundation for local self-government, distinction between the state-administration and self-administration, local taxes, etc. In spite of all these challenges and imperfections of the complex incorporation of the Charter into the Czech legal order, it shall be emphasized that as for the self-governance at the general level, the legal order of the Czech Republic is a complex legal order of a modern state that follows the rule of law.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Czech Republic

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1 Introduction and history

The system of self-administration based on the original territory of historical lands, which had been established in the Habsburg monarchy, was also used by the legislation of the newly established Czechoslovakian Republic (the Art. 3 of the Act of the National Czechoslovakian Committee no. 11/1918 Sb.¹, on Establishing an Independent Czechoslovakian State). This system had its ground on the so-called Stadion's constitution of 1848. The natural development of the democratic self-administration was, however, stopped during the era of the so-called Second republic (1938-1939); it did not exist even during the occupation of the Bohemia and Moravia by the German Reich (1939 – 1945). Based on the constitutional decree issued by the President in exile no. 18 of December 12, 1944, the original system of the local self-administration from the pre-war times was not re-established, but there was gradually established a system of national committees, presented as people's administration which was inspired by the Soviet system. Similar situation was in the other countries of the Soviet bloc. The name "national committee" derived from the association of the Czech-Slavs political parties of 1916, which had been transformed into the National Czechoslovakian Committee. This body took over the state power in the newly established Czechoslovakia. The self-administering nature of the national committees was later gradually limited and after 1948, the committees represented the local state administration, rather than being self-governance bodies. Although the national committees were officially established as an elected body i, it was governed by the principle of so-called democratic centralism which subordinated local administration to the hierarchy of the instances of national committees. Aside from that the other core principle was the leading position of the Communist party, which meant that any important decisions of the national committees had to correspond with the official Communist party stance.

After the so-called Velvet revolution of 1989, new foundation for public self-administration, i.e. professional, local and interest self-administration. The reform of state administration, which was a part of the process of restoring democratic society, was not just a return to the traditional system of public administration of the pre-war Czechoslovakia, but it created a new modern system. A system that drew from the functioning of public administration in the Western democracies. Namely Austria was great inspiration for Czechoslovakia. Public administration in Austria has come from the similar cultural environment and following the restoration of the Austrian statehood and denazification (*Entnazifizierung*), the Austrian public administration has not faced any totalitarian deformation pressures. The gradual creation of modern democratic public administration in Czechoslovakia started in 1990 by means of the constitutional Act no. 294/1990 Sb., which had amended the then in force Constitution of the Czechoslovakian socialist republic originally from 1960 and the constitutional act on the federalization of Czechoslovakia of 1968. This amending constitutional act abolished the system of national committees as concentrated bodies of local state administration that had been in

¹ Sb. is a Czech shortcut for the Collection of Laws of the Czech Republic.

place for the preceding 45 years. Simultaneously, the constitutional act served as foundation for creation and formation of local self-governing (self-administering) units. Municipalities have now been considered the core units in self-governing association of citizen. These units have been capable of entering into legal relationships and have been able to own property. This step re-established the existence of so-called 'municipality property'.

Following the passage of the abovementioned constitutional act, the Czech Republic, as one of the two previous members of the Czechoslovakian federation, took further steps to embody the changes into its legal order. In 1990, the Act no. 367/1990 Sb., Municipalities Act (municipal system), was passed and in November 1990 entered into force. The municipalities and towns, in which previously the municipal or town national committees had existed, were now considered to be municipalities under this act. It was typical for the legislation of 1990s that its purpose was often to rectify the political, economic and moral grievances that the previous regime had caused. Hand in hand with returning the historical assets the municipalities had originally owned, there emerged a number of small independent municipalities – there were usually municipalities that had been – often against the will of their residents – merged in 1970s. Though this helped to repair some of the historical grievances, there has emerged a so-called 'atomization' that remains till today; according to the data released by the Czech statistical office in 2017, there are 6,258 municipalities in which 10,578,820 citizens live (Czech Statistical Office 2018a). The smallest Czech municipality (village) is Vysoká Lhota, in which there lived only 15 residents as of January 1, 2017. As for the largest cities, we should mention Brno with 377,973 residents (Czech Statistical Office 2018b). In the capital city of Prague, there were 1,280,508 residents registered as of the beginning of 2017. Prague, however, has a specific status and it is subject of regulation by a special act.

With respect to the historical experience, it is very unlikely that any administrative merges of small municipalities into larger units would take place against the will of the residents of the municipalities. The existing regulation of the Municipalities Act (the Art. 21(1)), as amended by the Act no. 128/2000 Sb., at least prevented further dividing into smaller municipalities. Any municipality to exist by separation from a large unit shall have less than 1,000 residents.

The establishment of the core level of local self-administration in 1990 was still influenced by the former system of national committees and it was shaped with the help of the residents. Of course, the state could not create new municipalities without looking back at the former system of municipalities. The last time the state established a municipality was in 1955, when the new miners' city of Havířov was built. The decision to start building this city was based just on will of the state and party's leaders. Now, new municipalities may come to existence or may cease to exist either by merging the existing units or by division (separation). The respective laws, however, presume that there need to be 'will of the residents' expressed in referendum.

Under the existing legislation, each municipality is a part of a higher self-governing unit. The Czech constitution sets forth that such a higher self-governing unit is a region. As for the constitutional grounds of local self-administration, the original text of the Constitution of 1993 recognised also lands or regions as the so-called higher territorial self-administering units. The restoration of the historical lands (Bohemia, Moravia and Silesia) within the Czech Republic was a very hot topic in the early 1990s. The discussion also covered the self-administering status of the particular lands; some even proposed that the extent of self-administration of the lands should be similar the one that the Austrian lands have. In 1990, the Federal assembly (the Parliament of the Czechoslovakian federation in 1969 – 1992) issued declaration of illegality of cancelation of the Moravian-Silesian land, which had taken place in 1949. The efforts to alter the Czechoslovakian federation consisting of two states, i.e. the Czech Republic and the Slovak Republic, which came into existence in 1969 in the form dictated by the Communist party when Gustav Husák's personal influence was on the rise, to a federation consisting of more subject, i.e. three (Bohemia, Moravia – Silesia, Slovakia) or four (plus the city of Prague) had not, mainly due to the opponents from Slovakia, been accepted. After the collapse of Czechoslovakia, in the era of growing centralism, the idea of restoration of the lands within the Czech Republic was getting weaker. This kind of centralism also manifested itself in the continuously postponed realization of higher territorial self-administration.

In 1997, the Constitutional Act no. 347/1997 Sb. was passed. This act, having amended the Czech Constitution mainly by excluding the possibility that lands would have their own self-administration, stated that regions be higher territorial self-governing unit. The unit 'region' (in Czech: *kraj*) had existed even then, but only as an administrative unit based on the act of 1960, which has remained in force until today, but it, however, did not correspond with the notion of region, as a self-administering unit. The structure of 1960 introduced the following three units – municipality, district and region. The Constitution of the Czech Republic recognizes self-governance only in two units, i.e. municipality and region. The constitutional act of 1997 recognized the territory of the self-administering regions differently from the regions deriving from the law of 1960. The number of regions and their territory were set without direct participation of citizens, i.e. not 'according to their will', as it was with municipalities, but rather 'according to the will of the government' approved by the constitutional majority in the Parliament. It is interesting that the number of regions, as set in 1997, is higher than what it was under the law of 1960. It can be said that the 1997 act brought the borders of the regions back to the regional arrangement of 1949. Both laws, i.e. the one of 1949 and 1997, did not however respect the historical borders of the lands nor the natural territories of the regions as they developed since the Middle Ages. The region of Vysočina is typical example of this approach. This region consists of districts that were pulled out from three original regions of 1960, surrounding both sides of the land border between Bohemia and Moravia. The regions are not balanced even from the economic perspective, as their size, number of residents and their economic potential is rather significantly different. The Constitutional act of 1997 introduced only formal establishment of the self-administering units. In reality, the regional self-administration was not implemented till the year of 2000, when

the Regions Act was passed. The territory of the particular regions was set with the help of the districts of 1960, but in the districts there was no self-administration established. Consequently, the district offices, which had been temporarily established after the district and regional national committees were abolished, were abolished. The new regions were not accepted with great excitement. Some municipalities asked to be made part of a different region, mainly due to their geographical or economic ties to the original regional city (employment, schools, health care, transportation). Some districts did not identify themselves with the names they had been given. As a result of this, there were certain changes introduced by the Constitutional Act no. 176/2001 Sb.

Regions were built upon similar principles as the municipalities. Hence their status and the structure of their bodies are similar. In both these units of self-administration, their bodies perform services belonging to exercise of self-administration and, aside from that, they are granted to carry out state administration and act on behalf of the state in some areas. This approach thus distinguishes services belonging to independent scope of authority (self-administration) and transferred authority (state administration).

The capital city of Prague has traditionally had a specific status. The abovementioned Municipalities Act and the Regions Act do not apply to the city of Prague. The capital is regulated by the Act on the Capital City of Prague (Act no. 131/2000 Sb.), as it was in the past. In the times of the state law changes in 1968, with the efforts to underline the importance of the second largest city in the then Czechoslovakia, as a significant industrial centre, a place in which international fairs take place and which is considered to be a traditional cultural and political centre of Moravia, there was passed by the Czechoslovakian parliament - National Assembly, the Act on the City of Brno (Act no. 175/1968). This act, however, due to the growing centralization, was abolished during the process of so-called normalization in 1971. No such act was later passed, not even after 1989.

2 Constitution and legal foundation for local self-government

The Art. 2 of the European Charter of Local Self-Government presumes that “*the principle of local self-government shall be recognized in domestic legislation, and where practicable (preferably) in the constitution.*” The constitutional-level regulation of local self-government spans from the core legal grounds of division of power, to setting of the relationship between the individual and the state power (the right to self-government). It also outlines the goals and values by which the modern state is bound (self-government traditions). The legal norms should then adequately express the application of the principles of decentralization, autonomy and subsidiarity, incl. the division of power between municipalities and regions (Průcha 2011: 32). We especially agree with Průcha that local self-government might be considered as the fourth power in state,² besides the legislative, executive and judicial powers. According to the structure of the Czech

² Comp. Belgian Constitution of 1831 (Průcha 2011: 32).

Constitution, there are 2 more areas of public authorities that – from a certain perspective – might be seen as “powers”: the fifth power might be the bank power, and the sixth the control power.

Generally, the right of autonomous local units to self-government is guaranteed by the Art. 8 of the Czech Constitution (Act no. 1/1993 Sb., The Constitution of the Czech Republic, as amended). Specifically, the principles of the local (territorial) self-government are set forth in Chapter 7 of the Constitution – the provision is rather strict. The Art. 99 states that “*The Czech Republic is subdivided into municipalities, which are the basic territorial self-governing units, and into regions, which are the higher territorial self-governing units.*” In 1992, before the independent Czech Republic was established and during the process of preparation of the Constitution, it was unclear what the system of local self-government at the regional level would look like. It was possible to follow a “land” principle,” as there are 3 historical lands in the Czech Republic: Czechia, Moravia, and Silesia. Finally, the idea of having regions prevailed and was later realized by means of the Constitutional Act no. 347/1997 on Creation of Higher Local Self-Governing Units. This constitutional act established 14 regions. The borders of these regions, however, do not correspond to the historical borders of lands, nor to any previous territorial units. The regions are regulated in the Act no. 129/2000 Sb., on Regions, as amended, and the municipalities by the Act no. 128/2000 Sb., on Municipalities, as amended. The regulation thereof is rather very complex and very detail-oriented, especially taking into account an extremely high number of municipalities in the Czech Republic (almost 6,300).

The Art. 100 of the Constitution is not very systematic. It states that “(1) *Local self-governing units are territorial communities of citizens with the right to self-government. A statute (an act) shall specify the cases when they shall be administrative districts. (2) Municipalities shall always form part of a higher self-governing unit. (3) Higher self-governing units may be created or dissolved only by a constitutional act.*” It is important that this article introduces a definition of the local self-governing units (as a local community of citizens) and at the same time it gives the right to self-government to these units. The narrow definition of the local self-governing units is broadened in the Municipalities Act (Art. 1 and 2) and the Regions Act (Art. 1). It is laid down in these provisions that a municipality and a region are the basic local self-governing communities of citizens; they are public law corporations; they are entitled to own property and they manage their own budgets. Aside from all that they are capable of entering into legal relationships on their own behalf and on their bear own responsibility, etc. The Czech local self-governing units are built in the form of the so-called mixed model: the Constitution foresees that the state may also transfer the performance of the state administration to the local self-government and that therefore their territory can serve as a basis for defining the districts for the performance of the state administration. According to the Regions Act, a region is an administrative district in the exercise of state administration. As for municipalities, the problem is more complicated, as a large number of municipalities in the Czech Republic are not able to carry out state administration

effectively at the level of each municipality. Therefore, the Czech legislation sticks to a model in which some municipalities carry out state administration on the territory of other municipalities; their administrative district also covers the territory of these municipalities.

The principle that every municipality shall always form part of a higher self-governing unit is not fully stuck to as for the capital city of Prague: Prague has its own specific status regulated by the Act on the Capital City of Prague; Prague is not divided into separate municipalities, but into city districts.

The number of regions can change (increase or decrease) only by means of a constitutional act. This legislative requirement was realized by the Constitutional Act on Creation of Higher Local Self-Governing Units. This act established 13 regions and the city of Prague as a capital city. Unlike the changes in the number of regions, the area of the territory of the regions can be changed by regular acts (e.g. Act no. 387/2004 Sb.).

The same problem of inconsistency in the Art. 100 applies to the Art. 101 of the Czech Constitution: “(1) *Municipality shall be independently administered by its council. (2) Higher self-governing units shall be independently administered by its council. (3) Local self-governing units are public law corporations which may own property and manage their affairs on the basis of their own budget. (4) The state may intervene in the affairs of local self-governing units only if such is required for the protection of law and only in the manner provided for by the act.*” The Constitution deals only with the councils (municipal and regional), while all the other bodies (municipal council board, mayor, treasurer, regional council board, governor, etc.) are regulated only by the acts. The right to own property and to manage the affairs on the basis of own budget will be analyzed later and more detailed in the chapter on financial resources; at the moment, it should be mentioned that there is no definition or specification of sources of the property or the budget incomes. The relation between the State and the local self-governing units is quite weak and the Constitution leaves the self-government in the hands of the legislature. The constitutional limits of the state's interference to the performance, but also to the establishment of self-government, are very small (Rychetský at al. 2015). The deficiency of constitutional regulation derives from the court decisions. However, these court decisions are not very stable.

The Art. 102 of the Constitution follows the regulation in the previous article on the councils, stating the basic rules of elections and electoral terms: “(1) *Members of councils shall be elected by secret ballot on the basis of a universal, equal, and direct right to vote. (2) Councils shall have a four-year electoral term. The circumstances under which new elections for councils shall be called prior to the expiration of an electoral term shall be designated by the act.*”

The Art. 103 of the Czech Constitution is no longer a part of the legal order. It had laid down that the regional council had the right to name a higher self-governing unit to its

regional council. But the members of the Parliament were wanted to avoid frequent changes of the title based on political will that they preferred to withdraw this right of the council.

The Art. 104 deals again with the (municipal and regional) councils. It states that “(1) *The powers of councils shall be provided for only by the act. (2) Municipal council shall have jurisdiction in matters of self-government, to the extent such matters are not entrusted by the act to the council of higher self-governing unit. (3) Councils may, within the limits of their jurisdiction, issue generally binding ordinances.*” The limitation that the powers of councils shall be provided for only by the act means that it is only the Parliament (i.e. legislative power) and not the Government, the Prime Minister, ministries, etc. (i.e. executive power) that can define areas to be managed by the self-government. However, the Constitution does not give us any guide to define the powers of councils. This role is rather played by the Constitutional Court. There are some issues falling within the area of financial law, in this respect, e.g. a question whether the municipalities can regulate places where video lottery terminals cannot be operated by their generally binding ordinances: the Constitutional Court stated without any doubts that this is the power of the municipal councils (CZ: Constitutional Court, Pl. ÚS 6/13; Radvan, 2017: 532-534). The principle stated in the second paragraph reflects the fact that there are no hierarchical relations between the municipalities as basic local self-governing units and the regions as higher local self-governing units. Their competencies are in no way overlapping, but passing (Rychetský at al. 2015).

The issue of generally binding ordinances has been quite problematic, especially because the competence of the councils is determined by means of the “regular” acts, i.e. not directly by the Constitution. In other words, the power to legislate is under the protection of the Constitution, while the content of this power is governed by the “mere” acts. (Rychetský at al. 2015). The Art. 10 of the Municipalities Act defines 4 areas to be regulated by municipal generally binding ordinances:

1. Ensuring local public order (municipalities may determine which activities may be exercised only at places and at times specified by generally binding ordinance or may provide that certain public areas in the municipality are prohibited from such activities);
2. Organizing, conducting and ending of sports and cultural activities to ensure public order;
3. Ensuring the cleanliness of streets and other public areas, protecting the environment, green areas and other public greenery, and using of community facilities serving the needs of the public;
4. Other areas only if they were empowered to regulate them by a special law.

During the first year of the existence of the Czech Republic, the Constitutional Court ruled (CZ: Constitutional Court, Pl. ÚS 5/93) that a municipality may issue generally binding ordinance containing the legal obligations only on the basis and within the limits of the act and that the municipality is entitled to issue a generally binding ordinance which

contains legal obligations only in the case of explicit legal authorization. In 2006 this, in our opinion unconstitutional interpretation of the Constitution, was changed (CZ: Constitutional Court, Pl. ÚS 45/06): the Constitutional Court acknowledged the generally binding ordinance the nature of the original norms, the creation of which are the municipalities empowered directly at the level of the Constitution and they do not require any other explicit authorization by law. However, there is one problematic aspect that still remains: is that really the Art. 10 of the Municipalities Act that limits the areas in the municipal life to be regulated by local bylaw, or shall we accept the bylaws issued to regulate whatever belonging to the self-governing competence of the municipality, as stated in the Art. 104(3) of the Constitution? The Constitutional Court insists on the first approach, while we prefer the second one.

The final article of the Czech Constitution dealing with the self-government is the Art. 105: “*The exercise of state administration may be delegated to self-governing bodies only if such is provided for by the act.*” In fact, this article follows the Art. 100(1) in fine, and was explained above as so-called mixed model.

As it is obvious from the text above, the Czech Republic is a specific country with its extremely high number of small municipalities. In many of them, it is really difficult to ensure the self-government because of personal reasons and lack of competences. Using the mixed model of state administration and local self-government (the state transfers the performance of the state administration to the local self-government units), with the combination of small municipalities, the legislator had to approach a model in which some municipalities carry out state administration on the territory of other municipalities.

The system of the Constitution of the Czech Republic and its articles concerning local self-government are unclear and often confusing. It is too brief and the Constitutional Court has to deal with many of the problematic issues as the Constitution itself does not give any answer. Still, there is no need for any amendment to the Constitution in this area, as we believe that any changes in the Constitution shall only be made if extremely necessary.

3 The scope of local self-government

Art. 4 of the European Charter on Local Self-Government introduces the core framework of local self-government. The section 1 of this article states that the basic powers and responsibilities of local self-administration authorities are to be recognized either by constitution or statute. In the Czech Republic, the powers of local administration are recognized by the Czech Constitution, in its Chapter 7 (the Arts. 99-105). By not including these provisions under the chapter regulating the executive power (the Chapter 3), the drafters of the constitution wanted to emphasize the relative autonomy of self-administration, as an independent authority, from state administration. The constitution recognizes two categories of local self-administration, i.e. municipalities and regions. These two are understood as territorial self-administering units. The constitution outlines

these self-administering units as territorial association of citizens which has a right to self-administration (the Art. 100 (1)). Under the Constitution, the bodies of self-administering units may be also granted by the legislative branch the right to carry out state administration. The constitutional guarantees of self-administration materialized namely in one of the constitutional principles setting the relationship between the state and the self-administration. According to this principle, the state may only interfere with the activities of the territorial self-administering units if it is required so by the law, and only within the limits set by the law (the Art. 101(4)). Aside from the constitutional protection, the Art. 4(2) of the Charter is also embodied in the Constitutional Act on Creation of Higher Local Self-Governing Units. This act, however, only names which particular regions are established and it, aside from amending the Constitution, deprived the possibility of establishing particular lands (as territorial units). Aside from that it removed the power from the higher self-administering unit to decide on its name. It did not introduce any further competences of the region. This act actually reflected the constitutional principle that the regions may only be established or abolished by means of a constitutional act. Hence, the detailed powers and competences of the municipalities and regions can be set by the statutes. The issues of self-administration may “only” be regulated by the constitutional act, regular statutes and other laws issued based on a special empowerment set forth in a statute. As for the transferred authority, the bodies of the municipality or of the region represent the state power and have to observe also government decisions and directives of the central administrative offices published in the Bulletin of the government for the bodies of the regions and municipalities. Next, they have to act in compliance with other measures issued by the bodies of public administration adapted during the review of the transferred authority. This principle is not included in the Constitution, but it is recognized by all the tree core acts regulating self-governance, i.e. in the Municipalities Act, the Regions Act and the Act on the Capital City of Prague.

In general, the independent powers of the municipalities cover the activities that are in the interest of the municipality and its residents. These activities do not represent exercise of the state power, but target the issues of self-administration. Some of these powers are carried out by the higher unit, i.e. by the regions (the Art. 5(1) of the Municipalities Act). As for the independent powers of regions, they mainly cover the issues in the interest of the region and its residents. These independent powers do not represent the state administration (the Art. 14(1) of the Regions Act). The territorial self-governance is of subsidiary nature. The local self-governance is in charge to carry out public administration always if not stated otherwise by the law. This complies with the Art. 4(3) of the Charter, as public administration is primarily carried out by those bodies of public self-governance which have the closest ties with the citizen. This approach also supports the existence of small municipalities, as communities with strong ties which are able to administer their issues with the best knowledge of its residents and with respect to the abilities of the municipality (Mrkývka 2000: 160).

The independent powers of municipalities generally cover the following:

- Finance, management and development;
- Establishment of entities or organizational units ensuring fulfilment the tasks of the municipality;
- Territorial changes within a municipality;
- Cooperation among municipalities and establishment of voluntary associations of municipalities;
- Granting of honorary citizenships and prizes;
- Issues of public order, health care, education, social services, transportation and others.

It is important to keep in mind that the role of self-governance is often limited to the question of establishment of an institution or carrying out of a certain service – further exercise is under the supervision or within the regime of state administration.

The same applies to the regions which, however, cannot interfere with the powers of the municipalities. Although a region is considered to be a higher self-governing unit, it does not mean that it would be in a superior position towards the municipalities. It has certain self-governing competences also in the area of health care, education, social services and transportation, namely connected with establishing, abolishing and funding institutions that are to render services for the residents of the region. Others are connected with exercise of state administration.

The transferred authority, i.e. exercise of state administration in the municipalities and regions deals with two problems. When the tree-level system of the national committees (municipality – district – region) was abolished, there was no new three-level parallel introduced, in the same time. Since the self-governing municipalities had been introduced in 1990, it took ten years before the self-governing regions were established. There was no concentrated body of state administration established at the level of districts; only temporarily, there were the district offices. The issue is twofold, on the one side, there are municipalities of different sizes, on the other side, there are regions too big to be able to fulfil the principle embodied in the Charter, Art. 4(3), i.e. to have close ties with the residents. These regions, however, when compared with the regions of 1960 and the with the lands illegally abolished 1949, are so small that they had to associate in cooperation associations (NUTS II) in order to be able to use the funds from the EU funds. The Czech Republic has not introduced a system of concentrated bodies of local state administration which would be independent from the territorial self-administration bodies. Thus the municipalities and regions carry out agenda – by means of their bodies – which overlaps both the independent powers (self-governance) and transferred authority (state administration). This approach led to creation of the following categories of municipalities:

- a) Municipalities carrying out state administration only in the basic extent, i.e. Only within their territory;

- b) Municipalities with a so-called authorised (designated) municipal office (the art. 64);
- c) Municipalities with extended competences of a municipal office (the Art. 66).

Classification of the municipalities according to the letter b) and c) is regulated by a special law.³ The scope of their territorial competence is determined by Ministry of Interior by means of an ordinance. The towns which used to had a district office or in the years 1961 – 1990 the district national committee and the towns in which there had been the district national committee till 1960 (so-called small districts) are now considered to be the municipalities with extended competences of a municipal office. Nevertheless, when setting the scopes of territorial competences, the original borders of the districts were not followed. These district offices thus carry out state administration agenda for themselves and for the municipalities that were put by Ministry of Interiors into their territory. This solution is, however, not flawless. The problem is that even the exercise of state administration by the municipal offices is influenced by self-administration. This self-administration, as a part of self-governance is typically carried out by the elected bodies which arose from election in which the residents voted. If, however, the scope of competences touches other municipalities, the residents thereof do not participate – by voting – in personal composition of the office.

There are 205 municipalities with extended competences of a municipal office. In 2003, when the district office were abolished, these municipalities took over most of their competencies and only a smart part of them were granted to the regions offices. The Municipalities Act only lays down general issues of transferred authority, as most of this authority/power is regulated by special public administration laws. The transferred authority (state administration) carried out by the municipalities with extended competences cover, for instance:

- The evidence of the citizens;
- Issuance of the ID cards (citizens' ID cards, passports);
- Administration of road transportation, issuance of driving licences, register of vehicles and certificate of technical compliance;
- Social security and social protection of children;
- Forest administration, administration of hunting and fishery;
- Water administration;
- Waste management;
- Environmental protection;
- Trade licence administration.

The same applies to the so-called municipalities with an authorised municipal office. This category of the municipalities, which often have a status of a town, carry out state

³ The Act no. 314/2002 Sb., on determination of the municipalities with an authorised municipal office and of the municipalities with extended scope of authority.

administration in certain areas (such as building office, register office) for other municipalities.

When carrying out state administration, the municipalities are the offices of the first instance, regardless of which category of municipalities they fall into. The second instance in the state administration issues is typically the region office.

The regions and their region offices carry out state administration within the extent set forth in the Regions Act and other relating special laws. It has the competences that were not granted to municipalities or any special bodies of state administration (environmental protection, financial administration, customs administration, etc.), or if it does not fall within the competences carried out directly by the central office of state administration (ministries, etc.).

The municipalities, the capital of Prague and the regions can regulate the exercise of state administration within its competence by means of a decree if they were empowered to such a regulation by the law. Thus, the Czech Republic does not adhere to the principle embodied in the Art. 4(5) of the Charter and it stated that, under the Art. 12(1), it does not consider itself bound by this principle. The other sections of the Art. 4 are present in the Czech legal order. The autonomy of municipalities and regions when self-governing themselves and protection of responsibility of state administration in a so-called transferred authorities is granted by the constitutional order and regular statutes.

4 Protection of local authority boundaries

“Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.”, reads the Art. 5 of the European Charter of Local Self-Government. Well, as it is obvious from the text below, this principle is not fully respected in the Czech Republic.

The Art. 100(3) of the Czech Constitution limits the number of regions stating that the *“Higher self-governing units may be created or dissolved only by a constitutional act.”* The Constitutional Act on Creation of Higher Local Self-Governing Units established 13 regions and next to them the capital city of Prague. The borders of the regions were defined by the areas of the existing (state administrative) districts. This Constitutional Act defines the seats of each region; in fact, the title of the region was using its seat. In 2001, 4 regions changed their title (by the amendment to the Constitutional Act) to reflect the area of the region and not the seat.

Unlike the changes in the number of regions, their seats and titles, the delimitation of the territory of the regions can be changed by regular acts. This happened only once in the history of the independent Czech Republic: in 2004 by the Act no. 387/2004 Sb.:

- 25 municipalities were taken from the territory of the Vysočina Region and added to the territory of the South Moravian Region;
- 3 municipalities were taken from the territory of the Moravian-Silesian Region and added to the territory of the Olomouc Region.

There were 28 municipalities in which approximately 11,500 inhabitants live. All changes were based on the needs of the citizens declared by the resolutions of the municipal councils (only Vysočina Region disagreed). From a physical point of view, the basic criterion was the ride for work and services, transport accessibility and territorial slope (Government of the Czech Republic, 2004).

The second changes in the regional boundaries were effective since 2016, but these changes were rather technical, based on the changes in the military areas. The Act no. 15/2015 Sb. cancelled 1 military area at all and changed the borders of several others. As a result of this, there were 4 changes between 7 regions. Practically, these changes were based on the changes of the municipal borders (the former military area in one region became a part of the municipality in the second region). The criterion as the ride for work and services, transport accessibility and territorial slope were used, too (Government of the Czech Republic, 2015).

The Municipalities Act presumes that every part of the territory of the Czech Republic is a part of the territory of some municipality and at the territory of the municipality there is at least one cadastral territory. Two or more neighboring municipalities may merge, or one municipality may join the neighboring one, based on the contract. The contract must be based on the decisions of the municipal councils. Such a decision must be officially published for the period of 30 days; during this period, the citizens have right to submit a proposal for a local referendum.

A new municipality can be established by separating a part of the municipality, or by changing or canceling a military area (see above). As the existing problems of small municipalities were mentioned several times, there are quite a strict rules for a new separated municipality:

- To be neighboring with at least 2 municipalities or 1 municipality and 1 foreign state;
- To create a coherent territorial unit;
- To have at least 1,000 inhabitants (EU citizens, not only Czech citizens – based on the decision CZ: Constitutional Court, IV. ÚS 1403/09);
- To accept the creation of a new municipality by a local referendum.

A contract how to split the property must be made in advance. In case it is impossible to have such a contract, the law states substitute rules.

All the other changes of the municipal boundaries must be based on the contract between the municipalities, consulted with the cadastral office and announced to the Ministry of Finance, Czech Cadastral Office, local cadastral office and financial (tax) office.

5 Administrative structures and resources needed for the tasks of local authorities

From the two paragraphs of the Art. 6 of Charter, the Czech Republic considers itself to be bound only by the section 1. The municipalities and regions are able to set their own internal structure of administration and may adapt them to the local needs so that effective management is ensured.

Each municipality has a set of its bodies: local government, municipal board, mayor and municipal office. Their powers and the manner in which they are established or called to an office are set forth by a law (the Chapter IV of the Municipalities Act). Nevertheless, in the small municipalities, the municipal board is not established and the competences thereof are carried out by the mayor and municipal government (the Art. 99(3) of the Municipalities Act). This applies to the municipalities that have less than 500 residents. The number of the members of the local government is between 5 – 15. According to the financial ability, the local government may decide that its member shall hold its office as so-called “released member”. It means that he or she would be temporarily release from the job and be paid for holding the office, i.e. for being a member of the local government.

The Municipalities Act states that local government shall establish several committees, as the so-called initiative and control bodies (the Art. 117 ae seq. of the Municipalities Act). The local government has a duty to establish financial and controlling committee (the Art. 117(2) of the Municipalities Act). The financial committee shall review how the municipality handles its property and financial sources. Aside from that, it carries out other tasks which were assigned to it by the municipality. As the Municipalities Act does not expressly set forth which committee shall prepare the draft budget of the municipality for the municipal board and for the local government, the financial committee may be assigned this task, i.e. to prepare the draft budget. The law states that the controlling committee has to check whether the decisions of the local government and the municipal board are fulfilled. Aside from that this committee also checks whether the other committees observe laws. The controlling committee may be also assigned other tasks.

If there are at least ten per cent of residents of a municipality who registered as non-Czech nationals and if an association representing the interests of a national minority requests so, the local government shall establish a committee for the national minorities. At least one half of the members of the members of the board should be the nationals of the national minority, if possible (the Art. 117(3) of the Municipalities Act). Municipalities may also establish other committees. The committees are entitled to present its opinions and proposals to the local government.

Another committee recognized by the Municipalities Act is a settlement committee (the Art. 120 of the Municipalities Act). This committee may be established by the local government only for a part of a municipality; for instance, only for part of the municipality that used to be an independent before or if such a part has some other specifics. Settlements were a traditional part of self-administration and were abolished during the World War II by the government decree no. 265/1941 Sb., which abolishes the settlements in the meaning of municipal arrangement. They have never been restored as an independent association of citizens. The settlement committee represents at least a hint of such restoration. The settlement committee (sometimes also called 'local committee') is entitled to present opinions concerning the development of the part of the municipality and budget of the municipality to the local government, municipal board or to the other committees. Aside from this, it can present its view on the comments and incentives sent by the municipality residents. As opposed to the other committees, the chairman of the committee does not have to be a member of the local government.

The municipal board is an executive body. It may establish committees, as its initiative and counselling bodies (the Art. 122 of the Municipalities Act). The law may state that committees may be in charge of the abovementioned transferred authority (state administration). Such a committee shall be established by the mayor after discussion with the director of the regional office. The chairman of such a committee has to meet the requirements placed on an official engaged in state administration in municipalities. The scope of activities of the municipal board in which the committees may be engaged may be very wide. There are, for instance, economic, property, cultural, sport developing, information society developing, transportation and other committees.⁴ The objective of the committees, the number of their members and its composition depend mainly on the municipal board and are based on the particular circumstances in the board.

Large cities and towns of special importance may be subdivided into town districts or quarters so that the administration thereof is able to meet the needs of the residents most effectively. This option has been given to 25 cities which the law calls 'statutory cities' (the Art. 4 of the Municipalities Act). If the local governments of these cities decide for such a division, they shall approve a statute in which they define the division, the relationship of the sections to the city and possible transfer of the powers of the city to the bodies of the respective districts. The composition of these bodies copies the composition of a municipality. The town districts or quarters may establish their own committees according to their needs. There is no real difference between the town districts and city quarters, their name may be based on the historical tradition of the town.

The capital city of Prague has, under the Act on the Capital City of Prague, similar structure of the bodies, as it is in the statutory cities. Hence it is divided into town districts. The relationship between the city of Prague and its districts is mainly regulated by the Act on the Capital City of Prague and by the statute approved by the local government of

⁴ For instance, see Brno 2018.

Prague. The Act on the Capital City of Prague, other relative special laws and the statute are grounded on the very special circumstances that influence the functioning of the capital city, which is very close to a region, as a higher unit of territorial self-administration.

As for the regions, the Regions Act recognizes similar bodies as those assigned to the municipalities, i.e. local government, board, regional president and regional office (the Chapter IV of the Municipalities Act). Aside from them, if stated by the law, there may be other special bodies established (the Art. 65 of the Regions Act).

The local government is obliged to establish a financial committee and controlling committee having similar functions and objective as the committees of the local government of the municipalities (the Art. 76-80 of the Regions Act). Next, it also has to establish a committee for bringing up, education and employment. This committee is supposed to consider the demographic development with respect to the development of the nets of the schools and the educational facilities and present its opinions on these issues. It may present its recommendations for improvement in the area of education, subsidies in the area of youths, physical education and sport. Aside from that it considers the report on achievements in the given areas and may be assigned other tasks (the Art. 78(6) of the Regions Act).

The local government can establish other committees according to its needs. The conditions for setting the committees are set forth by the law.

The municipal board can also establish its commissions. Establishment of such commissions depends on the needs and competences of the board. There may be, for instance, energetic commission, commission on transportation and local planning, investment or property commission, legislative, organizational commissions, commissions for the European funds, for culture and heritage administration, for inter-regional relationships, and many others (South Moravian Region 2018).

The Czech Republic obviously adheres to the principle set forth in the Art. 6(1) of the Charter. Aside from the obligatory bodies prescribed by the law, the municipalities and regions can establish their own internal administrative structures and adjust them to their local needs. The setting of general rules for establishing own committees and commission and for appointing persons to them thus guarantees the needed level of the management thereof.

Despite the fact that the Czech Republic excluded the legal effect of the Art. 6(2) of the Charter, the conditions for carrying out the administrative supervision over the activity of the municipal and regional offices and the self-governance responsibility of the municipalities and regions in the given scopes of authority comply with the unbinding principles. This practice may be deduced namely from the manner in which the officers (office employees) are hired and also from the conditions laid down in the Act on Officers

of Territorial Self-Administration Units (The Act no. 312/2002 Sb., as amended). This act regulates the employing and education of officers of the territorial self-administration units. It also introduces the conditions the municipalities and districts have to meet when applying this act. The conditions concerning the officers of the city of Prague and its districts are laid down in the Act on the Capital City of Prague.

6 Conditions under which responsibilities at local level are exercised

In its explanatory report of 15 October 1985, the Council of Europe explained that the Charter commits the parties to applying basic rules guaranteeing the political, administrative and financial independence of local authorities (Council of Europe, 1985). The Czech Republic considers itself bound by the Art. 7(1 and 3). The Art. 7(1) sets forth that *“the conditions of office of local elected representatives shall provide for free exercise of their functions”* and the section 3 reads: *“Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.”* The Czech Republic does not consider itself bound by the Art. 7(2), which ensures appropriate financial compensation for expenses incurred in the exercise of the office. Below, we will first outline the general purpose of these two sections so that we could later show how this objective reflects itself in the Czech legal order.

According to the interpretation introduced by the Council of Europe, the purpose of the Art. 7(1) is ensuring that elected representatives may not be prevented by the action of a third party from carrying out their functions. The purpose of the Art. 7(3) is to provide that disqualification from the holding of local elective office should only be based on objective legal criteria and not on ad hoc decisions. According to the Council of Europe, this normally means that cases of incompatibility will be laid down by statute or by non-written legal principles (Council of Europe, 1985).

The conditions of office of local elected representatives were laid down mainly in the Municipalities Act, Regions Act and the Act on the Capital City of Prague. Aside from that, there is general – most fundamental – protection of the rights mentioned in the Art. 7 of the Charter, in the Charter on the Fundamental Rights and Freedoms, which is a part of the constitutional order, i.e. part of the Czech constitution in broad sense.⁵

As for the Municipalities Act, it applies to the local authorities of municipalities. In general, any resident of the municipality older than 18 may run for the office, i.e. to become a member of the local (municipal) government. The election to the local governments itself is regulated by a special law – the Act no. 152/1994 Sb., on elections to local governments. A person elected becomes a member of the local government as at

⁵ The Czech legal theory distinguishes between the Constitution in the narrow sense (*sensu stricto*) and the constitution in the broad sense (*sensu largo*). The former refers only to the official Constitution, i.e. the Constitutional Act no. 1/1993 Sb., whereas the latter refers to the entire constitutional order, i.e. all the constitutional laws including the Charter on the Fundamental Rights and Freedoms.

the day of election. In light of the Art. 7 of the Charter, the Arts. 69 and 70 of the Municipalities Act are important – they state that any member of the local government holds his or her office personally and shall not be obliged to follow any orders. A member of the local government cannot be deprived of any rights arising from his or her employment as a result of being elected and holding the office.

As for the financial remuneration, the Municipalities Act recognizes two options: (i) members of the local government who were “freed” from their employment so that they could fulfil the duties connected with holding the office and (ii) those who were not “freed” in such a way. The former shall obtain remuneration from the municipality, whereas the latter shall only be compensated by their employer for the time they spend working for the municipality; such a cost incurred by the employer shall be later compensated by the municipality. The Municipalities Act also sets forth the basic rules for calculating the compensation and remuneration. The “freed” member of the municipal board has a right to have five-week long vacation.

Similar regulation may be found in the Regions Act. Under the Art. 32 of the Regions Act, any member of the local government shall not be deprived of any rights arising from his or her employment as a result of having been elected and holding the office. The issue of remuneration/compensation for being a member of the local government is almost identical to the regulation described above with respect to the Municipalities Act. Even in this case, the law distinguishes between members “freed” from their employment duties and those who were not “freed” and go to their job regularly. The Regions Act, however, does not contain a clause that a member of the local government shall not be bound by any orders, as it is expressly stated in the Municipalities Act.

The Act on the Capital City of Prague contains very similar provisions regarding the issue in question. This Act, identically with the Municipalities Act, contains a provision stating that any member of the local government holds his or her office personally and shall not be obliged to follow any orders (Art. 51). As for remuneration, the provisions are almost identical to the regulation described above with respect to the Municipalities Act and the Regions Act. Even here, the distinguishing between “freed” members and those “not freed” from their employment is in place with similar solution as described above.

At the constitutional level, the principles set forth in the Art. 7(1 and 3) of the Charter, may be found in the Charter on the Fundamental Human Rights and Freedoms. The Art. 17 ensures freedom of speech and right to obtain information. Thus, the free exercise of the office may be derived also from these rights and freedoms. The Art. 21 of the Charter on the Fundamental Human Rights and Freedoms states that all citizens shall have an equal access to offices, i.e. any shall have a right to run for an office, for instance in local government. The observance of these rights and freedoms is reviewed mainly by the Constitutional court.

Thus, we may conclude that the principles set forth in the Art. 7 of the Charter, by which the Czech Republic considers itself to be bound (i.e. the section 1 and 3) are properly embodied in the Czech legal order and are subject to judicial review.

7 Administrative supervision of local authorities' activities

As for the Art. 8 of Charter, the Czech Republic considers itself bound by all the sections of that article. The principle anchored by the section one, i.e. the requirement that “*any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.*” The Arts. 8(2 and 3) state: “*Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.*” and “*Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.*”

As for the purpose of this article, the Council of Europe explained that the “*provisions are above all relevant to the philosophy of supervision normally associated with the contrôle de tutelle which have long been the tradition in a number of countries. They thus concern such practices as requirements of prior authorisation to act or of confirmation for acts to take effect, power to annul a local authority's decisions, accounting controls, etc.*” (Council of Europe, 1985). The idea connected with the first section of this article is that “*there should be an adequate legislative basis for supervision and thus rules out ad hoc supervisory procedures*” (Council of Europe, 1985). In general, the drafters of the Charter drew inspiration from the principle of proportionality, whereby the controlling authority, in exercising its prerogatives, is obliged to use the method which affects local autonomy the least whilst at the same time achieving the desired result (Council of Europe, 1985).

In the Czech legal order, this provision is fully implemented in several laws, both by the constitutional laws and by the “regular” statutes. As for the constitutional protection, the Constitution of the Czech Republic states that the state may only interfere with the issues of the self-governing units if it is necessary for protection of laws (statutes) and only in a manner stated by a statute. Here, we should emphasize that the term “statute” used in the provision shall be understood as a normative act of certain “legal power”. In the Czech Republic, the normative acts form a system in which the strongest are the constitutional acts, followed by the “regular” acts. The least power is assigned to a minister’s ordinances or governments decrees. This core provision thus means that, for instance, the executive power (including the government or the president) are not allowed to infringe by their ordinances or decrees into the self-governing units’ issues without being empowered to

do so by either a statute or an constitutional act, i.e. by a normative act adapted by a legislature.

More particular manifestation of the principles embodied in the Art. 8 of the Charter may be found in the following statutes. Due to the two-fold powers of the self-governing units in the Czech Republic, i.e. carrying out of the powers that were transferred upon them by the state (state administration) and exercise of the powers assigned to them directly by law within the framework of self-governance (self-administration), the Municipalities Act has two areas dealing with the supervision. In the Arts. 123 and 124 and in the Art. 129a, there are provisions concerning self-administration, whereas the Arts. 125 and 129b concern the exercise of state administration and the supervision thereof. As for the provisions on self-administration, they provide the procedural steps to be taken by revoking a municipal ordinance which did not comply with the legal order; Ministry of Interior shall inform the municipality that its municipal ordinance is in such a breach and if not corrections are made within 60 days, the ministry may deprive the ordinance of its legal effects. If, however, the municipal ordinance was breaching the fundamental human rights, the legal effects of the municipal ordinance might be deprive without due delay, i.e. without the need to ask the respective municipality to correct it. Similar rules apply to any other decisions taken by the bodies of the municipality; they may also be revoked by the Ministry (normally after giving the municipality time to fix them, or without due delay if the decisions interfere with the fundamental rights). As for the exercise of state-administration, there are similar rules. The difference is, nevertheless, that the body having the power to deprive the municipal ordinances of legal effects has the higher body of state administration, i.e. mainly the regional office.

Very similar regulation may be found in the Regions Act. The issues concerning supervision of self-administration are regulated by the Arts. 81, 82 and 87, whereas the supervision of exercise of state-administration is regulated by the Arts. 83, 84 and 88. As for the city of Prague, these issues are similarly regulated in the Act on the Capital City of Prague; this act outlines the powers the ministry has when supervising the unit.

To summon, the supervising authority may usually interfere and deprive the ordinance (or a decision) issued by the unit of local self-governance, only if the unit was properly informed about a non-compliance with the legal order and after the unit was given time to fix it by itself (usually 60 days). Only then the supervising authority may intervene. If, however, the fundamental rights are endangered, then the steps by the supervising authority may be taken without having to undue delay.

8 Financial resources of local authorities and financial transfer system

The Art. 9 of the European Charter of Local Self-Government presents some principles of economic independence of local self-government units granting financial resources of local authorities. The Art. 9(1) states that “*local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may*

dispose freely within the framework of their powers.” Czech local self-government units have right to have their own financial resources, as indirectly expressed in the Art. 101(3) of the Constitution: “*Local self-governing units are public law corporations which may own property and manage their affairs on the basis of their own budget.*” There are additional legal acts expressing the principle of own financial resources, like Small Budgetary Rules (Act no. 250/2000 Sb., Budgetary Rules on Local Budgets), Municipalities Act, or Regions Act.

The construction of the local budget and the management of the funds of this budget are governed by a special act (Art. 44 of the Municipalities Act, Art. 22 of the Regions Act). This special act is the Act on Small Budgetary Rules. Its Art. 4 defines the budget of a territorial self-governing unit as a financial plan governing the financing of the activity of a territorial self-governing unit. The financial year is the same as the calendar year. The budget is usually compiled as balanced.

The revenues of the local budget are mainly incomes from own property and property rights, incomes from own economic activities, incomes from the economic activities of legal persons established by the municipality,⁶ incomes from own administrative activities (administrative charges, selected fines and levies), incomes from local charges (in case of municipalities only), tax revenues or shares in them (according to the Act no. 243/2000 Sb., on Budgetary Designation of Taxes, as amended), subsidies from the state budget and from state funds, subsidies from the regional budget, received cash donations and contributions, etc.

The Czech legal order complies with the principle expressed in the Art. 9(2) of the Charter stating that “*Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.*”

This rule should be observed constantly, regardless of any changes in the legislation. Perhaps that is why there are frequent views tension between the state and local authorities when the other side points to the increase in power without adequate financial compensation. However, this principle must be observed: if there is the growing number of tasks and thus the responsibility of municipalities and regions to accomplish these tasks, there must be an increase of the financial resources. The crucial thing is who and when decides these issues: they are politicians who usually change these tasks and resources at the time of budget approval by amending individual legal acts. Then there is another question: who and how is liable for misuse of these resources? (Marková, 2005:3; Radvan, 2016: 71).

The Czech Republic when ratifying the European Charter of Local Self-Government made the notification, that the Czech Republic does not consider itself bound by

⁶ Contributory organizations, organizational units, and companies under the Act in Business Corporations, institutes, school legal entities, public research institutions, special monetary funds (Kozieł, 2016).

provisions of the Art. 9(3) stating that “*Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.*”. There is no legal definition of local taxes in the Czech Republic. Radvan was dealing with these issues in his previous texts (Radvan, 2016: 72-74) concluding that there is no doubt that the municipality must be able to assess some local taxes, however, that their right will be limited by law with regard to the Art. 11(5) of the Charter of Fundamental Rights and Freedoms. In this case, it is more a political question as to whether and in what form and to what extent the municipalities will receive options to assess and / or collect local taxes. Radvan created his own definition, that the local tax is a financial levy, determined to municipal budget that can be influenced (talking about tax base, tax rates or one of the correction elements) by the municipality. It is not crucial whether the taxpayer obtains from the municipality any consideration or if it is a regular or a single levy – local taxes include the tax in the strict sense, so the fees (charges).

Local taxes are condition sine qua non for the economic autonomy of local self-government. Even though the Czech Republic announced that it does not consider itself bound by this provision, there are several local taxes in the Czech Republic. The most important one is the immovable property tax (Act no. 338/1992 Sb.). Even though this tax is not administered by the municipality itself, it has several possibilities to influence the revenue: there are three possibilities of exemptions (exemption of property attached by natural disaster, exemption of agricultural lands, and exemption of property as an investment incentive), and three possibilities to apply or change coefficients that can influence the tax rate (location rent, municipal coefficient and local coefficient) (Radvan, 2016: 74).

The Local Charges Act (Act. no. 565/1990 Sb.) provides for the power of municipalities to assess local charges by means of issuing their ordinances (bylaws). Such ordinances must specify the conditions for levying, the charge rate, the charge maturity and possible exemptions, if any. The ordinances may not exceed the limits defined by the Local Charges Act (such as, for example, the absolute charge rate and the types of charges permitted). Presently, the municipalities in the Czech Republic have the opportunity to levy only the following local charges (the list is complete, i.e. municipalities are not allowed to levy any other charges):

1. Dog charge;
2. Charge for spa and recreation stay;
3. Charge for using public places;
4. Charge on entrance;
5. Charge for housing capacity;
6. Charge on communal waste;
7. Charge for permission to enter selected places by motor vehicle;
8. Charge on appreciation of building land (Radvan, 2016: 75-76).

According to the above mentioned definition, there is no local tax at the regional level in the Czech Republic.

Concerning the diversified financial systems mentioned in the Art. 9(4) of the Charter (*“The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.”*) it should be noted that the diversity of potential incomes of the municipalities and regions is maintained and this principle is respected by the Czech Republic. In the Small Budgetary Rules, there is a list of the income sources, other sources of funding may be provided through the National Fund (fund allocating money from EU), or various forms of irrecoverable incomes (grants, loans, and the issue of municipal bonds). However, we can hardly speak about flexibility in the Czech Republic.

With regard to the principle of diversified financial systems, it is possible to talk about fiscal federalism within the budgetary system, where there are at least two levels of decision-making. Fiscal federalism reflects organization of the state, while creating the appropriate level of public budgets – the state budget, regional budgets and municipal budgets. Process, where the powers are transferred from the center (from the state) to lower territorial units, incl. appropriate resources and decision-making on their using, is known as fiscal decentralization. Central level ensures adequate resources to fulfil a certain standard of public services (for example, through vested taxes, shares of taxes, subsidies, etc.), while a lower level, which should have a better knowledge of the local situation, decides on the specific conditions of the services. In this context, in some cases, there is also the transfer of the taxation powers, i.e. a lower administrative level can levy their own taxes or impose a premium surcharge on central taxes and provide a large number of public goods and services (Šíroký, 2008: 205-206; Radvan, 2016: 76-77).

Key legal act determining the tax revenue is the Act on Budgetary Designation of Taxes. This act tries to spread the tax revenue so that the state budget and the budgets of local self-government units would be balanced. This requirement is achieved by widespread portfolio of shared taxes, which means that the share of municipalities and regions to progressive taxes as well as digressive taxes is guaranteed (Pařízková, 2005: 109).

Act on Budget Destination of Taxes, by its nature, regulates a system of vested taxes and shared taxes. The whole revenue of vested taxes is the income of municipal and regional budgets: the immovable property tax revenues are the income of municipal budget, the corporate income tax paid by municipality is the income of municipal budget, and the corporate income tax paid by region is the income of regional budget. The revenue from shared taxes (value added tax, personal income tax, and corporate income tax except taxes paid by municipality or region) is distributed among the different public budgets in the legal circumstances. Act on Budget Destination of Taxes regulates the determination only of a certain taxes (VAT, excise taxes, income taxes, immovable property tax and road tax); in other cases (tax on acquisition of immovable property) the revenue is the income of the state budget or municipal budgets (local charges, etc.) according to the individual act. Tax revenues of the regional budgets according to the Act on Budget Destination of

Taxes are share of value added tax, share of personal income tax, and share of corporate income tax. Tax revenues of the municipal budgets according to the Act on Budget Destination of Taxes are immovable property tax revenue (the beneficiary is the municipality, where the property is situated, share of value added tax, share of personal income tax, and share of corporate income tax. Other tax incomes of the municipalities according to the ordinance of the Ministry of Finance no. 323/2002 Sb., Budget Mix Ordinance, as amended, are local charges, resources gained by administrative activities, etc. (Radvan, 2016: 77-79).

The principle of protection of financially weaker local authorities is described in the Art. 9(5) of the Charter: *“The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.”*

The problem is the differentiation of territorial units of the richer and poorer, which is the case of the many causes of whether affected (support for the construction leading to higher property tax revenue, their own economic activity), or not affected (setting the allocation of proceeds of centrally collected taxes) by the municipalities. Marková (2005: 5) refers to the balancing of conflicting principles of deserving and of solidarity when the latter is aimed at balancing the gap between poor and rich regions. Personally, we have to agree that the Czech Republic made the notification that it does not consider itself bound by this provision. The reason is the total number of municipalities in the Czech Republic; this number is almost 6,300 and it is the second highest number in the European Union (the first is France). There are too many small municipalities with the number of inhabitants not exceeding 1,000 people, there is even one village with only two inhabitants. Well, the economic pressure to force municipalities to merge could be the solution to decrease the number of municipalities in the Czech Republic. And of course large municipalities are offering more service to (not only their) inhabitants. On the other hand, the political solutions during the last ten years are very often opposite and small municipalities are receiving more from shared taxes at the expense of the largest four cities (Radvan, 2016: 79).

There is the same reason (too many municipalities in the Czech Republic) the Czech Republic made the notification that it does not consider itself bound by the provision dealing with consultations with local authorities in the Art. 9(6) of the Charter (*“Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.”*). To be honest, the debate is undoubtedly kept, and recently more and more views and needs of municipalities are taken into account.

The last two principles from the Art. 9 are fully respected in the Czech Republic. The rule on grants not earmarked for specific projects (*“As far as possible, grants to local*

authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.”) does not forbid subsidies in individual cases, but tries to minimize them in proportion to non-specific ones. The access to capital market (“*For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.*”) is guaranteed, too. Grants, loans and bond issue are one of the possible sources of local self-government incomes (Janovec, 2016: 144). To all these possibilities, however, municipalities have approached with caution, because in all property relations the municipality acts in its own name, on its account, and above with its responsibility (Radvan, 2016: 80).

9 Local authorities' right to associate

Based on the Municipalities Act (Arts. 49-53), the municipalities may become members of the voluntary union of municipalities in order to protect and to promote their common interests. The union of municipalities is a legal entity registered in the register of unions of municipalities kept at the regional office competent according to the seat of the union of municipalities. To set the union of municipalities, the municipalities should sign a contract and the statute. The most common interests to create a union of municipalities are education, social and health issues, culture, fire protection, public transportation system, municipal property management, public order, or environmental issues incl. municipal waste management, water supply, and sewage treatment.

The statute should include the members of the union of municipalities, its name, seat, and the object of its activity, the bodies of the union of municipalities (incl. the way their establishment, their competence and the method of their decision-making), the property put into the union, sources of revenues, rights and obligations of member municipalities, the method of distribution of profits and the share of members in the settlement of the loss, conditions for joining and leaving the union, and the content and scope of the control of the union of municipalities by the municipalities that have formed the union. At least the two-thirds majority of the votes of the member municipalities is required for the amendment of the statute.

Small Budgetary Rules presume the same rules for the municipal budget and the budget of the voluntary union of municipalities, i.e. each voluntary union of municipalities has its own budget.

Municipalities may cooperate with other municipalities and with municipalities of other states and be members of international associations of territorial self-governing units. Unions of municipalities can cooperate with unions of municipalities in other states. The regions can cooperate with other regions and municipalities and with the territorial self-governing units of other states and be a member of their international associations. There are two associations of municipalities with nationwide scope: Union of Towns and Municipalities of the Czech Republic and the Association of Local Self-Governments of

the Czech Republic. Regions have their own Association of Regions of the Czech Republic.

10 Legal protection of local self-government

The principle laid down in the Art. 11 of the Charter reads: “*Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.*” The interpretation by the Council of Europe brings more clarity as to the a judicial remedy; the remedy means the possibility of a local authority to have an access to either a properly constituted court of law, or to an equivalent, independent, statutory body having the power to rule. The Czech Republic considers itself to be bound by this provision of the Charter. This principle is fully embodied in the Czech legal order.

It is again important to distinguish between the exercise of state-administration and the self-administration. In general, the municipalities, regions and the city of Prague are legal entities. They are recognized by the law (Municipalities Act, Regions Act, the Act on the Capital City of Prague). These legal entities are considered to be so-called public entities. In other words, the broad term of legal entities (legal persons) covers both private legal entities (such as corporations) and public legal entities (such as the territorial or other units). They enter into legal relationships and protect their rights before the court. The Czech Civil Proceedings Code (the Art 21b of the Act no. 99/1963 Sb.) sets forth that if a territorial unit is a party to court proceedings, it shall be represented by the one who is entitled to act on behalf of such a unit. For specification of such a person, we need to have a look into the respective laws, i.e. Municipalities Act, Regions Act or the Act on the Capital City of Prague. In most cases, the mayor will empower an attorney to represent the territorial unit before the court.

The territorial units can be a party to two basic types of proceedings. First, they may be a party to the proceedings in which they try to protect their rights against private entities or individuals. For instance, they can sue a contractor that he or she did not deliver as it was agreed in a contract for work. Secondly, they may be a party to a dispute with other territorial unit. This is typical within its exercise of self-governing powers. If there is any other either private or public entity encroaching on their rights connected with their self-governance, they are entitled to have a court of law to hear their case.

Majority of these cases fall within the scope of the Court Administrative Proceedings Code (the Act no. 150/2002 Sb.). In this code, there are outlined all kinds of proceeding to which a territorial unit may be a party. These proceedings span from competence disputes to disputes over division of the property of the territorial unit if divided into more units.

In general, within the framework of the exercise of self-governance, the territorial units have right to protect the self-governing rights assigned to them by law and the property

that belongs to them before the independent court of law, as a regular parties. Hence, the principles laid down in the Art. 11 of the Charter seem to be adhered to in a sufficient manner.

11 Future challenges of the implementation of the European Charter of Local Self-Government in the Czech Republic

The European Charter of Local Self-Government is considered to be an important piece of legislation (*sensu largo*) in the Czech Republic. Despite the fact that the Czech Republic does not consider itself bound by some of the provisions of the Charter, the Charter has served as the grounds for the national regulation of the territorial units and for definition of their status. The core principles as laid down in the Charter were incorporated into the Czech legal order. The reservations made by the Czech Republic are mainly based on certain historical traditions connected with self-governance and with how the municipalities and regions functioned in the first years after the restoration of self-governance in the 1990s. It is however, important to underline, that although the Czech Republic made some **reservations** (it does not consider itself bound e.g. by the art. 4(5), 6(2), 7(2) and 9(3,5,6)), the Charter's principles set forth in these – for the Czech Republic unbinding provisions – are more or less incorporated in the Czech legal order anyway. Hence, as for the protection of the values and principles of the Charter as a whole, we consider the Czech Republic to be complying. Nevertheless, we found several areas which might be understood as challenging and we outlined them below.

Concerning the **constitution and legal foundation for local self-government**, it must be taken into account that the Czech Republic is a specific country with its extremely high number of small municipalities. In many of them, it is really difficult to ensure the self-government because of personal reasons and lack of competences. Using the mixed model of state administration and local self-government (the state transfers the performance of the state administration to the local self-government units), with the combination of small municipalities, the legislator had to approach a model in which some municipalities carry out state administration on the territory of other municipalities. The system of the Constitution of the Czech Republic and its articles concerning local self-government could be seen as unclear and often confusing. Generally, the Czech Constitution is quite brief and the same applies to its parts dealing with the local self-government. As the Czech Constitutional Court stated, *“The Czech constitutional standard of local self-government is supplemented and enriched by a standard which arises from the international obligations of the Czech Republic, namely from the Charter of Local Self-Government.”* (CZ: Constitutional Court, Pl. ÚS 34/02) Many issues must be regulated in the regular acts and the Constitutional Court has to deal with many of the problematic issues as the Constitution itself does not give any answer. Still, there is no need for any amendment to the Constitution in this area, as we believe that any changes in the Constitution shall only be made if extremely necessary.

All courts, incl. the Constitutional Court must take into account that the principles expressed by the Charter are not self-executing; local self-government units cannot invoke these principles before national courts or before the European judicial authorities. These result were published by the Constitutional Court (CZ: Constitutional Court, Pl. ÚS 34/02) and in the scientific literature (Valachová, Liška, 2016: 220). The Charter does not have a priority over the laws within the meaning of Art. 10 of the Czech Constitution, and it must be interpreted in the sense of Art. 1(2) of the Constitution providing “*The Czech Republic shall observe its obligations resulting from international law.*” (Czudek, Kranecová, 2016: 27).

Dealing with the **protection of local authority boundaries**, especially one issue must be mentioned: the effort of parts of municipalities to become an independent municipality. As the existing problems of small municipalities were mentioned several times, there are quite a strict rules for a new separated municipality, especially to have at least 1,000 inhabitants. The Constitutional Court stated that these inhabitants might be EU citizens in general, not only Czech citizens (CZ: Constitutional Court, IV. ÚS 1403/09). But there are many existing municipalities of the population lower than 1,000 in the Czech Republic. Is not it discriminative to set the limit for new ones? The Constitutional Court stated it is not with several arguments, especially that it is necessary the local self-government fulfils all tasks effectively (CZ: Constitutional Court, IV. ÚS 1403/09).

The fact that the **distinction between the state-administration and self-administration** was not carried out in a strict manner is a problem. Both, the self-governance and the state administration powers are, to certain extent, conducted by the territorial units. The large municipalities were assigned the tasks of state-administration which they have to carry out for the residents of smaller municipalities. The crucial issue connected with this is that the exercise of the state administration is conducted by the officials elected by the residents of the larger municipalities. It means that the residents of the smaller municipalities have no power to influence it. For this concerns the exercise of state administration, it seems to be appropriate to establish a new concentrated body of state-administration for this task. The activity of such a concentrated body would be controlled by the government and adjusted with respect to the needs of the respective municipalities upon consultation with their representatives. This approach may draw from the experience of the former district offices which were a body of state-administration.

The issues of **financial resources of local authorities** and the economic autonomy of local self-government units are not really seriously considered in the Czech Republic (Kozieł, 2016). Especially in the context of the fact that the Czech Republic in ratifying the European Charter of Local Self-Government made the notification, that the Czech Republic does not consider itself bound by provisions of Arts. 9(3), 9(5) and 9(6). We believe it is quite reasonable that principles of protection of financially weaker local authorities and consultations with local authorities are not fully respected, because of a very high number of small municipalities. On the other hand, the principle of local taxes

is one of the most important principle and local taxes are condition sine qua non for right functioning of local self-government.

Example of further development in this area could be Slovakia. Local charges were simply renamed on local taxes and property tax was added to the group of local taxes. The fact that property tax is in group of local taxes means primarily the fulfilment of the principles of economic autonomy: municipalities are entitled not only to decide on the amount of the tax itself but also on the introduction of the tax. A similar change, connected with other amendments of the property tax (especially tax rates, may be tax base), if it was made in the Czech Republic, would mean a fulfilment of one of the four basic characteristics of real local self-government – economic independence (economic autonomy) of the municipalities. It must show not only in deciding on the expenditures of local self-government, but also in deciding on its incomes. Unfortunately, there were no essential legislative changes in this area between the years 2009 and 2018.

Czech local authorities have enough **rights to associate**, both at the national and the international level. The issue to be solved is partially connected with the Art. 4(6) of the Charter. The only mandatory consultation in the planning and decision-making process for all matters which concerns local authorities directly is included in the Legislative Rules of the Government in the preparation of legislation. Art. 5(1) of these Rules provides that if the bill refers to independent or delegated competences of the municipalities, it is submitted for comments to the association of municipalities with nationwide scope. Many times the proposals submitted by the nationwide associations (Union of Towns and Municipalities of the Czech Republic and the Association of Local Self-Governments of the Czech Republic) are opposed. Moreover, the Legislative Rules of the Government were approved as a resolution and not as a generally binding regulation. Legislative Rules must be observed only in the case of government bills (bills prepared by the departments – ministries). As regard other legislative's initiatives, consultations are not mandatory even at the level of nationwide associations. (Czudek, Kranecová, 2016: 28-29)

In spite of all these challenges and – we might say imperfections of the complex incorporation of the Charter into the Czech legal order, it shall be emphasized that as for the self-governance at the general level, the legal order of the Czech Republic is a complex legal order of a modern state that follows the rule of law (Rechtsstaat).

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Local Self-Government in Estonia

SULEV LÄÄNE, SULEV MÄELTSEMEES & VALLO OLLE

Abstract The restoration of local self-government, initially at two levels, began in Estonia in 1989. Since 1993, the local self-government has been a single-level system comprising of cities and rural municipalities. There were about 250. The need to carry out an administrative-territorial reform was discussed for years; meanwhile, several voluntary mergers took place. However, a national reform was completed only in the autumn of 2017. The Constitution of Estonia, specifically Articles 154-160 are very much in keeping with the principles of the European Charter of Local Self-Government, although the Charter was ratified two years after the Constitution was adopted in 1992. The Charter is of great importance in legislation and in case law. The biggest problems relate to the funding of local government, which has been highlighted by CLRAE in its monitoring reports. From the point of view of local governments' economic autonomy, the very low share of local taxes in local budgets is a significant shortcoming. At the initiative of researchers focusing on local self-government issues at universities, a think tank POLIS was set up.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Estonia

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1 Introduction and History

The Republic of Estonia (Eesti Vabariik) is a state in northern Europe. Estonia declared independence 24 February 1918, after having been part of the Russian Empire since 1710. In 1940-1991, Estonia was occupied by the Soviet Union (1940-1941, 1944-1991) and Nazi Germany (1941-1944). Independence was restored 20 August 1991 and Estonia joined the European Union 1 May 2004. Estonia is a parliamentary republic.

Estonia's first Constitution was adopted by the Constituent Assembly 15 June 1920^a. The second Constitution was adopted 24 January 1934^b, and was in force until the third Constitution was enacted 1 January 1938^c. It remained in force de facto until 16 June 1940 when the Soviet Union occupied Estonia and de jure until 28 June 1992 when the fourth and current Constitution of the Estonian Republic was adopted by referendum^d. All the Constitutions include chapters on local self-government. In the 1992 Constitution, local self-government is mentioned in 26 articles, and Chapter XIV Articles 154 – 160 specifically regulate the institution.

The concept of local governance is as old as the history of humanity but only recently has it entered into broad discourse in the academic and practical literature. Globalization and the information revolution are forcing a re-examination of citizen-state relations and roles and the relationships of various orders of government with entities beyond government-and, thereby, an enhanced focus on local governance (Shah & Shah, 2006:2).

The traditions of self-government in Estonia are among the longest in Europe. In addition to domestic experts, it has also been highlighted by foreign academics. For example, Professor Wolfgang Drechsler, now of Tallinn University of Technology, has written in a foreword to a book: "Historically, Estonia as a state emerged from local governments and Estonians have known communal self-government as a form of community life centuries longer than almost any other nation in Europe" (Schöber, 2003:5). Renowned Estonian statesman and professor Jüri Uluots wrote: "A well-known English lawyer once said that there is no mightier institution than the English parliament in terms of age, importance and influence. This statement could be paraphrased to suit Estonia. There is no legal principle that could compete with the idea of self-government in terms of age, continuity and education in Estonia. The Estonian self-government is the cornerstone of the present times." (Uluots, 1934:159). Uluots also analysed aspects of administrative division and management of power. Estonia was divided into eight counties, and into parishes and villages, with each county having its own assembly and the council of elders (Runnel, 2004:39). It is worth noting that, despite the centuries-long domination of foreign powers, the principles of administrative division set out above remained largely unchanged. Even today, in Raplamaa (Raikküla), Estonia's first exercise of popular power in community governance, the assembly of elders (Estonian: *kärjad*), similar to those in Nordic countries, is celebrated. (Runnel, 2004:44). One of the most important historical sources of Estonia, the Livonian Chronicle, published in Rostock in 1578, also mentions this (Tarvel, 1982: 172-173). Several cities (Estonian: *linn*) have had a tradition of self-

governance since the Middle Ages (e.g. Lübeck Law in Tallinn from 1248 onward). Estonian cities were also very active in the Hanseatic League.

This shows that historically, the local government has been a very important institution in Estonia. A new stage of development began in the early 19th century. Rural municipalities (Estonian: vald) as institutions of local self-governance were formed in the Estonian province (Estonian: kubermang) in 1816 and in the Livonian province in 1819. Rural municipalities were originally established within the boundaries of landed estates. The rural municipalities became more independent in 1866 when a rural community governance law was enforced. Councils, executive boards and mayors were elected in rural municipalities under the law, and since then we can speak about local self-government in Estonia that is based on modern principles. Leaders of the national awakening, as well as politicians and academics rated very highly the law of 1866 and the local governments that were formed under it. In the 1890s, a radical administrative-territorial reform was carried out with only about 400 municipalities of the approximately 1,000 initially formed ones remaining. In 1877, Lübeck Law became invalid on the territory of the present-day Estonia and the 1870 Russian Cities Act was enacted. (Lääne et al.,2017)

With the Decree of the Russian Provisional Government of 5 July 1917 "On Administration and Temporary Organisation of Self-government in the Province of Estonia", Estonia was turned into an autonomous administrative unit the borders of which coincided with the area inhabited by Estonians (incl. north Livonia). On 13 June 1917, provisional regulations were issued on the election of provincial councils and rural councils in counties. The regulations stipulated that members of a county council had to be elected by the county electoral committee. One representative per 1,000 voters in the local governments was elected to the county electoral committee. In turn, the county electoral committee elected the county council. The meeting was the executive body of the county council. On 2 July 1917, the Provincial Assembly comprising representatives of local governments was convened and declared itself the supreme power in Estonia.

The Estonian local governments made an extraordinary contribution to paving the way for the statehood, which resulted in the "Manifesto to all the people of Estonia" 24 February 1918, in which Estonia was declared an independent democratic republic within its historical and ethnic borders. There were eight historical counties within the boundaries of the independent Estonian Republic. The manifesto called on the local government institutions to immediately continue their work (Manifesto to all the people of Estonia,1918.)

It is emphasised in the commentaries of Estonia's 1992 Constitution that local self-government played, and still plays, a very significant role in the emergence, restoration and development of the Estonian State. (Eesti Vabariigi põhiseadus: kommenteeritud väljaanne,2017)

In 1920, the Association of Estonian Cities was founded and, in 1921, the Association of Municipalities of Estonia, both of which contributed greatly to the development of the state and local governments. In 1924, the first nation-wide congress of local officials took place where the development of local governments and relations with state institutions were critically discussed.

The associations were very active in pursuing international relations. In 1925, the Association of Estonian Cities became a member of the International Union of Cities (IULA). In 1927, the local government associations of Estonia, Latvia and Lithuania established the Baltic Committee, which was active until 1940. The 1920 Constitution provided for directly elected local councils and their right to impose taxes. However, local self-government was largely considered to be a segment of public administration. A co-operation assembly of local governments was formed. In 1933, the Constitution was amended and rural municipalities, towns and cities were recognized as local self-government units, which meant the transition to a one-level local self-government system. The 1938 Constitution required the re-establishment of a two-level system but at the second level, it was delegated self-government. In 1938, a new county law was adopted; in 1937, a new rural municipality law came into force, and a new city law came into effect in 1938. In 1939, a rural municipality reform was carried out. As a result, only 248 rural municipalities remained instead of earlier 365; in addition, there were 33 cities. This created a new national legal and organisational basis for the development of the local self-government system and the implementation of a wealth of previous experience.

The events that unfolded 21 June 1940, which followed the secret protocols of the Molotov-Ribbentrop Pact, brought along a fundamental but, unfortunately, negative change. Along with the liquidation of the Estonian Republic, the Soviet occupation regime commenced with the abolishment of the local self-government system in summer 1940. Many former local government leaders were deported to Siberia. In August 1940, the Association of Estonian Cities and the Association of Municipalities of Estonia were closed down. In August 1940, the Constitution of the Estonian Soviet Socialist Republic (ESSR) was adopted which stipulated, for example, that all power in the ESSR belonged to rural and urban working people through councils of people's representatives (Article 3). In 1950, rural municipalities, cities and counties were also formally abolished and an administrative-territorial reform was carried out. The regime tried to erase the memory of the earlier self-governing way of life from the minds of the people, both in substance and in form.

General changes in society in the second half of the 1980s gave rise to the idea to restore the local-self-government system and facilitated the subsequent steps to realize it. In August 1989, the Supreme Council of the ESSR adopted a decision of utmost significance titled "Implementation of Administrative Reform in Estonian SSR." The decision stipulated that, based on experience gained prior to 1940 and on the knowledge gained from democratic countries, an administrative reform was to be carried out in 1990–1994. On 10 November 1989, the Local Government Act was adopted which, as far as we know,

was the first law in Central and Eastern Europe to restore local democracy. On 10 December 1989, representative councils were elected in villages, towns, regional towns, republican cities and counties. Following the election, the actual restoration of local self-government began.

On 19 September 1989, representatives of towns and cities gathered in the town hall of Estonia's second largest city Tartu in order to restore the Association of Estonian Cities (ELL) on the basis of legal continuity. The same principle was followed when the Association of Municipalities of Estonia (EMOL) was restored. In February 2018, ELL and EMOL merged into a single national association. Both national and international co-operation between local governments had once again become part of a democratic society. Also, a third local government association was founded but it was short-lived. Local authorities began to establish county associations of local governments that formed the Union of Estonian Local Government Associations. On 1 January 1990, Estonian districts which had been reorganized into counties and so-called republican cities began functioning as local self-government units. In 1989-93, the restoration of local self-government took place at the first level of the self-government system: All villages, townships and district cities were required to draw up socio-economic development plans and statutes that had to undergo a hearing in the administrative reform expert committee set up by the Presidium of the Supreme Council; after a successful hearing, the Supreme Council Presidium granted the administrative units self-governing status. On behalf of the government, the Administrative Reform Committee coordinated the administrative reform. In addition to government representatives, the committee consisted of leaders of the local government associations and academics. Colleagues from Finland, Sweden, Denmark, Germany and other countries (Vakkuri & Stenvall, 2010; Schenk, 2010; Kaldmäe, 1992; Franzke, 2010), as well as the Council of Europe and the IULA, provided assistance in restoring local self-government in Estonia. Representatives of the Association of Finnish Cities and the Association of Finnish Municipalities played a particularly important role. Estonia became a special guest in the Council of Europe in 1991, and then had the opportunity to participate in the work of CLRAE.

In May 1993, the Estonian Parliament Riigikogu decided that the local self-government system is a single-level one. In June 1993, the Local Government Organisation Act (CODE) was adopted. In terms of protecting the local governments' rights, the 2002 Constitutional Review Court Procedure Act is of great significance because it allows local councils to directly turn to the Supreme Court. The local councils have exercised the right fairly frequently, also in connection with the administrative reform launched in 2016-2017. Until 2017, mergers of local governments only took place on a voluntary basis. In 2016, the Administrative Reform Act was passed under which, following the local election in October 2017, 79 local governments (64 rural municipalities and 15 cities) were formed instead of earlier 213 rural municipalities and cities.

Research-driven decisions, analyses of activities and their outcomes have become increasingly important for local government. NGO Polis, established in 2004, and

conferences, forums and discussions organised by the Polis network (which comprises local government associations, universities, politicians and officials of the central government, as well as other institutions) have become the forums for discussing important issues of the development of the state and local self-government. For example, a discussion on state and local government partnerships was jointly prepared for the parliament to ponder as a matter of national importance. The Assembly of Local Governments has become a new form of cooperation. The First Assembly of Local Governments took place in the parliament building 4 October 2016 where a resolution addressed to the leaders of the country and local governments was adopted (Lääne et al., 2017:82). A bill on declaring 1 October a national holiday, the day of local governments, was submitted to the parliament by participants of the Second Assembly of Local Governments, and is being discussed in the parliament. On 19 February 2018, a meeting with the parliament speaker and a forum "The Estonian State and Self-government – 100" took place in the parliament building. Ten proposals regarding the direction of development of the local governments and the regional level were presented at the forum by Polis, attracting a lot of attention among politicians, academics and experts. (Lääne et al., 2018).

Estonia joined the European Union in 2004, and the Estonian local governments sent their representatives to the EU Committee of the Regions. Representatives of Estonian local governments and their associations actively participate in international co-operation, e.g. through CLRAE and CEMR. CLRAE has adopted three reports on local democracy in Estonia, following monitoring visits in 2000, 2010 and 2017.

2 Constitutional and Legal Foundation for Local Self-government

The Estonian Constitution guarantees significant rights to local governments. Local self-government is mentioned in 26 articles of the Constitution and Chapter XIV Articles 154 – 160 specifically regulate the institution. It is important to add, that articles of the European Charter of Local Self-government were incorporated into the Constitution before the Estonian Parliament ratified the Charter 28 September 1994^e. This was possible because Estonian experts and politicians used the Charter's provisions in the Constitutional Assembly when the 1992 Constitution was drawn up. For example, in 1991, Assembly's expert Sulev Lääne emphasized in his report to the Assembly: "At this stage of development, we are unlikely to be able to formulate more precisely the place and structure of local self-government in the Estonian society and, therefore, we must agree to leave as much room for improvement as possible, both in terms of practical activities and regulating the relevant social relations in the future, which Article 2 of the Charter allows. However, regarding Article 117 of the draft constitution, we ought to compare the wording with the Charter's Article 3 (1)" (Lääne, 2015:56).

The section on local self-government of the final report by the committee, that had been set up by the government to formulate a legal opinion on the draft constitution, ties in with the above: "Despite a long dispute, the committee, similar to the Constitutional

Assembly, did not reach consensus on the question of whether local self-government in Estonia has been given a status based on the state-oriented or the community-based local government theory. The text of the Constitution represents a compromise. Article 154 (1) refers to the community-based theory while Section 2 refers to the state-oriented one. The European Charter of Local Self-government that Estonia has ratified does not determine which approach is preferred. (Eesti Vabariigi põhiseaduse juriidilise ekspertiisi komisjoni lõpparuanne, 1998:1-2). German lawyer Professor Rolf Stober, who submitted a thorough analysis of the sections regulating local self-government of the Estonian draft constitution, said among other things: "Chapter XIV of the Estonian Constitution is devoted to local self-government. The organization of the Estonian Constitution differs from the German one, which only mentions local self-government in Article 28 of the Constitution "The Federation and States". A separate indication in the Constitution shows the special appreciation that the Estonian parliament has of local self-government. (Stober,1997:4).

The strong representation of local self-government in the Estonian Constitution has also been noted by other foreign experts. For example, Finnish Professor Aimo Ryyänen and statesman Juhani Nummela have stated that Estonia, moving from dictatorship to democracy, has wished to ensure the transition of society with strong local self-government and, along with it, has also provided constitutional guarantees to local governments. The authors even say that the guarantees provided to the local governments by the Estonian Constitution are a showpiece of the Charter's principles. (Nummela&Ryyänen,1993:186,199-200).

Chapter XIV of the Constitution establishes the principles of representative democracy in local governments (Article 156), the basis for relationship with the state (Articles 154, 157, 158 and 160) and between local governments themselves (Article 159). Articles 154 and 157-160 of the Constitution along with the European Charter of Local Self-government grant various rights to local authorities (i.e. they provide constitutional guarantees). The obligated subject of the rights is the state, and in this context it means, first of all, the legislative and the executive branches.

The second sentence in Article 3 (1) of the Constitution states that generally recognised principles and rules of international law are an inseparable part of the Estonian legal system. In principle, the generally recognised principles and rules of international law are directly applicable in the Estonian legal system. Cases taken to Estonian courts may be based upon them. Chapter XIV of the Constitution regulating local self-government is in accordance with the principles established in the Charter which Estonia ratified without reservations.

Some other articles of the Constitution also mention local self-government. One of the constitutional guarantees granted to local governments results from Article 65 which states that the parliament manages the affairs of the state over which the president, the government, other national authorities or local governments hold no power of decision.

Article 79 of the Constitution prescribes that if the president is not elected by the parliament even in the third round of voting, the parliament speaker will convene an electoral body. The electoral body comprises members of the parliament and representatives of local councils. Article 14 stipulates that it is the duty of the legislative, the executive and the judiciary branches, and local authorities to guarantee the rights and freedoms provided in the Constitution etc.

According to the Local Self-government Organisation Act, adopted 2 June 1993^f local self-government is based on the following principles: 1) independent and final resolution of local issues, and organisation thereof; 2) mandatory guarantee of everyone's lawful rights and freedoms in the rural municipality or city; 3) observance of law in the performance of functions and duties; 4) the right of the residents of a rural municipality or city to participate in the exercise of local self-government; 5) responsibility for the performance of functions; 6) transparency of activities; 7) provision of public services under the most favourable terms. One of the principles of local self-government is the right of residents of local governments to participate in the exercise of local self-governance. According to the Local Self-Government Organisation Act, at least 1% of the residents of a local government with the right to vote, but no less than five such people have the right to initiate adoption, amendment or revocation of local legislation. The local council has the right to conduct opinion polls on essential issues among the residents of the local government. Carrying out an opinion poll is obligatory if redrawing the boundaries of the local government is considered. The results, however, are but of an advisory nature. The budget must be based on the local government development plan. The draft development plan must be made available to the public before it is approved by the local council. Starting from 2003, the law on permanently inhabited small islands establishes that a general meeting of the islanders has to be convened once a year; the decisions adopted at the meeting are recommendatory for the local council.

All local governments – cities and rural municipalities – are equal in their legal status. There are but two exceptions. Local elections in capital Tallinn are held by city districts (as of 1993, Tallinn consists of eight districts). Under the Local Self-government Council Election Act^g, half of the mandates (40 mandates since 2009) are equally divided between the districts (5 mandates each) irrespective of the number of population, and the other half (39 mandates) is divided according to the number of population. Under a 2003 amendment of the Permanently Inhabited Small Islands Act^h, a mandatory meeting of residents has to be held on small islands at least once a year.

Under the Administrative Reform Actⁱ, an administrative reform was completed in October 2017. The number of local council members was reduced from 2,026 to 1,019.

A very important provision allowing local governments to protect their rights is found in the Constitutional Review Court Procedure Act^j, especially in Article 7: "A local government council may submit a request to the Supreme Court to declare an Act, which has been promulgated but which has not yet entered into force or a regulation of the

Government of the Republic or a minister which has not yet entered into force, to be in conflict with the Constitution or to repeal an Act which has entered into force, a regulation of the Government of the Republic or a minister or a provision thereof if it is in conflict with constitutional guarantees of the local government." For example, 26 local councils lodged complaints with the Supreme Court's Chamber of Constitutional Supervision to challenge the constitutionality of the Administrative Reform Act. The ruling of 20 December 2016 declared the law to be in conformity with the Constitution, except for the provision which set up a limit on the compensation for merger costs (100,000 euros). Also, the regulations of the Government on mergers of local governments were challenged by several local councils, but the Chamber of Constitutional Supervision declared all challenged regulations to be in conformity with legislation and the Constitution. There are much more case-law concerning the Charter and Constitution. The local governments may also turn to administrative and civil courts.

Estonia actively participates in the work of CLRAE and contributes to the development of the legal environment and practices pertinent to local self-government. The reports and recommendations prepared by CLRAE on local democracy in Estonia are also significant. The main focus of these documents has been on the compliance with the provisions of the Charter in Estonia. Three reports have been drawn up on Estonia – in 2000, 2010 and 2017. The paragraphs below outline some of the most important recommendations from different years.

The report of 2000 highlighted (and offered recommendations on the matter) that the reform of Estonia's administrative-territorial organisation should not focus only on local governments but also include the central government and counties, and also pointed out that larger local governments are more capable of providing public services at a higher level. Administrative reform was touched upon in all the reports because the territorial organisation of Estonia had required improvements and changes for quite some time, and the CLRAE analyses also emphasised this. Several Estonian Governments drew up plans to carry out an administrative reform but, for various reasons, they were not executed until 2017.

The report of 2010 addressed the situation of local democracy in Estonia with the aim of assessing the activities that had been carried out. In the opinion of the CLRAE delegation, there were certain issues that needed reforming in Estonia: The status of capital Tallinn, the financial resources allocated to local governments, and the process of holding consultations with local and national associations of local governments. Following the report of 2010, the 2011 local government forum insisted that the government fully implement the CLRAE recommendations promptly. Such an attitude and show of initiative express the interest of the forum attendees in improving Estonian policies and society, and attest to their determination to do it.

The report of 2017 highlights points with which CLRAE is satisfied. These include, for example, amendments to the State Budget Act and the Estonian institutions initiating a

comprehensive reform to change the country's territorial organisation at the national and local levels. However, CLRAE still recommends changing the strategy and implementing changes regarding several issues: For example, distinguishing between local and national tasks, the lack of financial resources to fulfil the tasks assigned to local governments, and their excessive dependence on state subsidies and allocations. The report recommended that the legislation which regulates the distribution of responsibilities between local governments and the state, and the consolidation of democracy be amended, and financial inconsistencies in the legislation and in the performance of joint tasks be resolved.

Despite the Constitution and the current legal system generally being in good harmony with the principles of the Charter, there are still several important local self-government-related issues in Estonia. The most important issues have to do with the realisation of the Charter's Article 9 and the overall compliance with the fiscal autonomy principle, including the matter of local taxes. The issues of regional governance and development, alongside with ensuring the balanced development of all parts of the country, continue to be a major issue.

3 Scope of Local Self-government

Estonia began to build democratic institutions (political parties and multiparty elections, the cabinet system, autonomous local governments) and a market economy while still a part of the Soviet Union (Sootla & Lääne, 2013). At the end of the 1980s, Estonia established a dual system (Bennett, 1993) of municipal government. It presumed a strong autonomy of local authorities.

The Estonian Constitution distinguishes between self-governmental tasks ("local matters") (Article 154 (1)) and national tasks ("duties of the national government") (Article 154 (2)). The local government has general authority to make decisions on self-governmental tasks and organize them, i.e. to decide and administer all issues of local life without a special authorisation. It is impossible to establish an exhausting list of self-governmental tasks, i.e. their closed catalogue c). Delegated authority (national tasks) comes from the law or from an agreement between the state and the local government (contract under public law). Qualification of public tasks performed by the local governments emanates from the dualistic theory.

Local matters, following from the substantive criterion, are matters which spring up from the local community, concern it and, following from the formal criterion, are not within the competence of any national body, or upon which no national body has been conferred competence under the Constitution.

Self-governmental tasks may be classified in many ways. The classification into voluntary and mandatory self-governmental tasks is the most important one¹.

Voluntary self-governmental tasks are tasks which the local government is not obliged to perform but which it can choose to perform any time. This comes from the above fact that the local government has a so-called right of discovery of new tasks in the sphere of local matters. Regarding voluntary self-governmental tasks, the local government has the right to decide whether, when and how the tasks are performed. The law does not require the local government to perform voluntary self-governmental tasks². For example, voluntary self-governmental tasks are as follows: Cooperation with other (incl. foreign) local governments, the organisation of various cultural events, the provision of opportunities for recreational activities, and the establishment of certain structural units, etc.

Mandatory self-governmental tasks are tasks which the local government is required to perform by the state due to increased public interest. The legislator has the right to turn the performance of a voluntary self-governmental task into a mandatory one (a statutory self-governmental task) if – taking into consideration the right to self-management – this is a proportionate measure to meet the objective allowed by the Constitution².

The requirement to perform the task may be unconditional (the task must be performed in any case) or conditional (the task must be performed if necessary or under certain conditions). In principle, in case of mandatory self-governmental tasks, the local government is only free to decide how to perform the task, and not whether to do it. Mandatory self-governmental tasks have been specified, for example, in Article 6 (1) and (2) of the Local Government Organisation Act: To organise the provision of social services in the local government, to pay welfare benefits and provide other types of social assistance, to offer welfare services for the elderly, to organize cultural, sports and youth activities, to manage housing and utilities, to ensure local government maintenance and waste management, to coordinate spatial planning, local public transportation and the construction and maintenance of local streets and roads unless these tasks have been assigned to other bodies by law (Article 6(1)); to organise the maintenance of pre-schools, primary and middle schools, secondary schools, schools offering after-school programmes, libraries, community centres, museums, sports facilities, shelters, care homes, health care institutions and other local agencies if such agencies are owned by the local government. Law may prescribe that specified expenses of such agencies are covered from the state budget or other sources (Article 6(2)). Pursuant to Article 6 (3) (1), the local governments also performs and organises the performance of tasks that are assigned to them by other laws. For example, deriving from Article 13 of the now invalid Building Act, the obligation to ensure the construction of public roads, the development of public green spaces, the installation of street lighting and the construction of surface water drainage to the boundary of a land unit specified in a building permit on the basis of a detailed land use plan are essentially obligatory tasks that are within the competence of the local governments for the purposes of Article 6(3)1) of the Local Government Organisation Act³; also, somewhat more extensive tasks deriving from Article 131 (1) and (3) of the valid Building Code are obligatory self-governmental tasks⁴. Also, covering the operational expenditure of the local council is a mandatory self-governmental task for the purposes of Article 6(3)(1) of the Local Government Organisation Act⁵. National

(non-local, supra-local) tasks are the public tasks which do not highlight any relation, or predominantly any relation, to particular interests of the local community.

Pursuant to the first sentence of the Constitution's Article 154 (2), obligations may be imposed on a local government only pursuant to the law or by agreement with the local government. "Pursuant to the law" may mean under a law, decree and, in certain cases, also a regulation (if it is a less intensive restriction of the local government's right to self-management, and if there is a precise and clear provision delegating authority in the law which corresponds to the intensity of the restriction)⁶.

Provided that the requirement of adequate financing from the state budget, legal reservation and the principle of proportionality are observed when the national task(s) are delegated, prescribing local governments legislatively the way of performing the tasks and the form of it or some other parameter do not constitute a violation of their constitutional guarantee. In principle, the local government's right to self-management, that is provided in the Constitution's Article 154 (1), does not extend to the performance of the national tasks^{5&7}. However, this does not mean that the legislator may not grant the local government a certain right of discretion when performing the national tasks. The stronger the impact related to the performance of a national task, the more valid granting such right of discretion is, and vice versa.

The delegation of the national tasks to the local governments requires a specific legislative provision to delegate authority. The delegation of both individual matters and sub-domains is possible. The possibility of an infringement of the local governments' (and other persons') rights must be born in mind when performing national tasks¹. The fact that it is a national task does not exclude the involvement of the local governments in the decision-making process. In each specific case, such an involvement should provide the local governments with an opportunity to present their positions as well as ensure that balanced and reasoned decisions are made¹.

The Ministry of Internal Affairs drew up guidelines for defining mandatory self-governmental tasks and the national tasks performed by local governments. The document contains well-known criteria presented in legal literature for defining such tasks. It employs the exclusion method: The task, which is not self-governmental in nature, is considered to be a national one performed by the local government (Kohustuslike kohaliku omavalitsuse ülesannete ja kohaliku omavalitsuse üksuste täidetavate riiklike ülesannete piiritlemise juhend, 2009).

In the rulings on cases involving constitutional review proceedings, the Supreme Court has qualified the following issues as local matters:

- The restriction of driving vehicles into the Old Town of Tallinn⁸;
- The obligation to ensure the construction of public roads, the development of public green spaces, the installation of street lighting and the construction of surface water

drainage to the boundary of a land unit specified in a building permit on the basis of a detailed land use plan that derive from Article 13 of the now invalid Building Act³;

- The organisation of internal work of the local government, incl. the establishment of an organisation necessary for the provision of public services^{9&10} ;
- The organization of local elections⁵;
- The covering of the operational expenditure of the local council⁵;
- The determination of land use¹¹;
- The possession, use and disposition of local government property¹¹;
- Making decisions to assume debt obligations (e.g. a loan, capital lease, issuing of bonds, other long-term obligations requiring payment in the future)^{2&12}.

The Supreme Court has qualified the following issues as national matters:

- The formation of a national-territorial autonomous unit¹³;
- Everything to do with national borders and border regime^{14&15};
- The formulation of a health policy, including alcohol policy¹⁶;
- All issues related to monuments and markers of war graves¹;
- The establishment of detailed procedures for elections, based on the principles of the electoral system^{5&7};
- The setting of the minimum number of local council members⁵;
- The establishment of the requirements for the institute of representation in civil cases¹⁷;
- Making final decisions on the exploration and extraction of mineral resources¹⁸;
- The establishment of titles of intended purposes for nationwide uniform cadastral units¹⁹;
- The statutory obligation of local governments to ensure that primary education is acquired in private general education schools, incl. covering the schools' operational expenditures²⁰;
- The regulation of the principles of national waste management²¹;
- The changing of the country's administrative-territorial organisation on the initiative of a local government or the national government²²;
- The establishment of the basic principles for determining the capabilities of the local governments²²;
- The obligation of a local government to contribute to the financing of a general education school of another local government on behalf of their resident pupils who have places in a school of their local government but choose to attend another one²³.

The Supreme Court has qualified the locking a wheel of a motor vehicle that has been parked without a valid parking ticket or in an area not specifically designated for parking as both a local matter and a restriction of the right of ownership²⁴.

The Administrative Law Chamber of the Supreme Court (ALChSC) has ruled that the local government determining the intended use of a land unit in proceedings initiated with a purpose of keeping the land unit state property, is a local matter²⁵.

The right to self-management (independence, autonomy, self-liability, discretion in decision-making and freedom of judgement -- Article 154 (1) of the Constitution entitles the local government to decide and administer local matters freely, i.e. without the state's guidelines on expediency, and ensures an ability to make decisions according to one's political ideas. It means the right of the local government to decide when and how, or whether, to deal with the matters within its competence. For this purpose, all legal ways of performing the public tasks – those of public law and private law in nature, direct and indirect, planned, spontaneous and routine ones – may be employed. The right to self-management includes also the right of the local government to adopt regulations and issue administrative acts.

The Supreme Court has stated that the independent resolution of issues means autonomy of the local governments, which is a central principle of the Charter²⁶. The Court has also said that independent resolution of local issues means that members of a local council may make decisions independently from the central government and put local interests first. In case of a conflict between state and local interests, a local council member must have a possibility to resolve local issues independently and in the interests of the community²⁶. At the same time, the Supreme Court declared two laws to be compatible with the Constitution which enable parliament members and local council members to carry out two mandates at the same time: The Status of the Members of the Riigikogu Act and the Local Government Organisation Act Amendment Act, which were adopted in June 2017 and entered into force on the day of the local election in October 2017²⁷.

The local governments' right to self-management is not unlimited. The legislator may impose restrictions on the local governments' right to self-management. The restrictions may be direct or indirect. For instance, a restriction on the right to self-management may be:

- A general restriction put on the sphere of matters within the competence of the local government;
- A one-time transfer of a matter into the competence of the state (Article 65 (6), CRE);
- The imposition of an obligation to resolve a certain local issue;
- A prescription of the way mandatory local tasks must be performed (Madise, 2001:55).

Seeing that the purpose of the constitutional guarantees established in Chapter 14 of the Constitution is to ensure the position of the local governments within the national administrative organisation as well as their inherent competence, the Supreme Court has stated that the right to self-management can only be infringed upon when a legislative measure specifically infringes on the rights of the local governments, not on those of all participants in legal relationships in the same manner^{28&29}.

The right of the local governments to be heard during an administrative procedure derives from the Administrative Procedure Act (APA) as a general act (Article 40; a special

regulation in the open procedure – Article 49) but also from special laws. For instance, the Planning Act establishes that a national spatial plan is drawn up in cooperation with ministries and the national associations of local authorities. The parliament, the local governments as well as individuals and agencies that may have a legitimate interest in the significant environmental impact that may be presumed to result from the implementation of the national spatial plan or in the spatial development of the planning area, including non-governmental environmental organizations represented by an organization uniting them, are invited to participate in drawing up of the national spatial plan (Article 15 (1) and (2)).

A hearing is informal (Article 5 (1), APA). The local government is able to exercise the right the fullest when it has an opportunity to be informed about the eventual resolution of the act and its recitals³⁰. Opinions and objections regarding legal and factual conditions that are presented by a participant in the proceedings must be relevant, concrete and clear. Also, the participant in the proceedings must be set a reasonable deadline for the provision of the opinions and objections. If the representative(s) of the local government does not attend the hearing or fails to provide the objections within the set time-limit, the state administrative body may decide the matter without hearing the local government, provided that it has otherwise established essential facts.

Issuing an administrative act or taking measures without a hearing is legal only in the cases provided by law. To ensure the effectiveness of the proceedings, Article 40 (3) of the APA lists grounds granting a state administrative body the right to exercise discretion in handling the case without hearing a participant in the proceedings (prompt action is needed to prevent damage arising from a delay or to protect public interests; the resolution is not made against the participant in the proceeding not present at the hearing, etc.).

Failure to give an opportunity to be heard is such a gross violation of the requirements of the administrative procedure that, irrespective of the judgement rendered on the content of the administrative act, it will result in the administrative act being abrogated³¹, especially in case of discretionary decisions and in cases when the decision is the harshest one possible^{32&33}. If the right to be heard is violated, the court may refrain from declaring the administrative act null and void only when it is convinced that an appropriate hearing of the person (incl. a local government) would not have resulted in an administrative act more favourable for the person. The administrative body has the burden of proving that even a lawful hearing would not have resulted in a different administrative act, taking into account the circumstances presented by the person³⁴.

Pursuant to Article 158 of the Constitution, the boundaries of a local government may not be changed without hearing the opinion of the local government.

4 Protection of local authority boundaries

In the early 1990s when local self-government was restored in Estonia, there were 250 local governments (rural municipalities and cities) in the country with the population of 1.5 million residents. Many politicians and academics expressed the opinion that local governments were too small and their number ought to be significantly reduced.

Article 158 of the Constitution provides that the administrative area of a local government may not be changed without hearing the opinion of the local authority. The requirement complied with Article 5 of the European Charter of Local Self-Government, under which changes in local authority boundaries cannot be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

On 22 February 1995, the parliament passed the Territory of Estonia Administrative Division Act^k. Before the said law was enacted, it had not been possible to merge local governments without a decision of the parliament. Although even at the time the need for a radical administrative-territorial reform and merging of small rural municipalities and cities were discussed and written about, the parliament decided in 1993 to divide (not geometrically but in principle) five rural municipalities into two^l.

The Territory of Estonia Administrative Division Act stipulated that a local government cannot be abolished, or its boundaries or name changed without hearing the opinion of the local council concerned. The council has the right to carry out polls on important issues on the territory of the local government. The local government has the right to protect its legal rights and resolve disputes in court. A change in the administrative-territorial organization may be initiated by the Government or a local government. The final decision lies with the Government.

The first merger of local governments under the law – that of the town of Pärnu-Jaagupi and the rural municipality of Halinga – took place in 1996. The merging local governments received a special subsidy from the Government, which has been allocated to merging local governments ever since. In subsequent years, mandatory mergers of local governments on the initiative of the central government were also discussed but, until 2017, only voluntary mergers took place.

At first, changes in the administrative-territorial organization were possible only during regular local elections. These were held every three years. As a short-lived exception, a law amendment allowed for mergers prior to the 1999 local election but then the amendment was invalidated. It was found that, without changing the Constitution, no mergers can be carried out in between regular local elections. At the same time, it was also decided that local elections be held every four years and, as said above, changes in the administrative-territorial organization be allowed between elections.

Relevant amendments to the Constitution were introduced in 2003, and according to Article 156, the council, which is elected in a free election for a period of four years, is the representative body of the local government. The law allows the council's term of office to be shortened in case of a merger or a division of the local government, or in case the council cannot perform its functions.

The Promotion of Local Government Merger Act^m was adopted in 2004. According to Article 1, the purpose of the Act was to facilitate mergers of local governments and to improve the administrative organization of said areas, which would bring along improved administrative capacity and capacity to write successful project applications, as well as better availability and quality of public services provided by the local governments, and the development of the capacity for local government cooperation.

Overall, 72 rural municipalities and cities voluntarily merged to form 30 rural municipalities in 1996-2016 (Table 1).

Table 1: Number of Estonian local governments in 1993-2018 after local elections

Year	Rural municipalities	Urban local governments	Total number of local governments
1993	193	62	255
1996	193	61	254
1999 ^x	205	42	247
2002	202	39	241
2005	194	33	227
2009	193	33	226
2013	185	30	215
2017 ^{xx}	64	15	79

^x In this case, one rural municipality (Abja) and one urban settlement (Abja-Paluoja) in Viljandi County merged in 1998.

^{xx} In this case, three rural municipalities on the island of Saaremaa merged in 2016.

A radical administrative-territorial reform was carried out in October 2017 in connection with a local election; for the first time since the restoration of independence, along with voluntary mergers, mergers were also initiated by the central government.

There were 213 local governments in Estonia before the latest local election but only 79 local government remained after the election, including 64 rural municipalities and 15 cities.

Although many small rural municipalities and cities had merged since 1996 (in particular, cities and their surrounding rural municipalities), it was found in the 2000s that the pace of the recent mergers of small municipalities was too slow. The Government prepared several projects to accelerate the process. For example, a map of 100-110 local

governments was drawn up by 2002. At the same time, it was suggested that an administrative-territorial reform be carried out based on counties, which would have left Estonia with 15 rural municipalities and about 5-10 large cities (Tallinn, Tartu, Narva, Kohtla-Järve, Pärnu, and some other county centers). In 2013, then Regional Affairs Minister Siim-Valmar Kiisler proposed to introduce an administrative reform which would be based on poles of attraction and initially set their number at 30-50 but soon their number was increased to 60-70 as proposed by the counties.

By 2016, the Government had drawn up an administrative reform bill which was adopted by the parliament in June 2016ⁱ. The law was implemented during the local election 15 October 2017. One of the most important criteria set out in the Administrative Reform Act was the size of the population in the local governments.

Although the Act also allowed exceptions (for example, on small islands), it is important to note that the Territory of Estonia Administrative Division Actⁿ adopted more than 20 years earlier in 1995, approached this complex issue in a more diverse way. Article 7 (5) of the 1995 Act stipulated that the following circumstances be taken into account when initiating a change in the administrative-territorial organization:

- 1) Historical justification;
- 2) An impact on the residents' living conditions;
- 3) People's sense of cohesiveness;
- 4) An impact on the quality of public services;
- 5) An impact on administrative capacity;
- 6) An impact on the demographic situation;
- 7) An impact on the organization of transport and communications;
- 8) An impact on the business environment;
- 9) An impact on the local education system;
- 10) Integrity of the local government.

The objectives of the Administrative Reform Act of 2016ⁱ were relatively broad but, unfortunately, the Act only affected the administrative-territorial division. At the first reading of the bill in parliament 6 April 2016, then Public Administration Minister Arto Aas said: "... The purpose of the administrative reform is to facilitate the growth of local governments' capacities, the competitiveness of regions and, thus, the more equalized development of Estonia. The purpose is to create a new qualitative level of local self-government in order to be ready to face the challenges of the future. One of the important goals is to provide better services for people" The Act did not at all address the issue of the capital region, although nearly half of the Estonian population lives in the area and more than half of the country's GDP is produced here. For a long time it has been said that local authorities have little interest in boosting business activity in their areas (for example, 35% of corporate income tax was received into local budgets until 2002), but this very important issue was not mentioned in the Administrative Reform Act.

The Administrative Reform Act¹ paid little attention to the issue of decentralization and the right to form local government districts when the administrative-territorial organization of a local government is changed if it had been agreed upon in the merger agreement. A district formed on the basis of a merger agreement could commence its activities the day the results of a local election became official.

The Administrative Reform Act¹ stipulated that, in general, a local government should have a population of minimum 5,000 residents, although the formation of local governments with a population of at least 11,000 people was recommended to meet the objective of the administrative reform. At the time, 80% of the Estonian local governments had less than 5,000 residents. The Government had set aside up to 80 million euros to stimulate voluntary mergers. It was also stipulated that if there are local governments after the period of voluntary mergers that fail to meet the criteria, the Government will merge them. Opinions on obligatory mergers differed in many regions, and 26 local governments turned to the Supreme Court. The Supreme Court did not rule in their favor.

The approach of proceeding only from the size of the local population was quite actively criticized not only by the local governments but also by some academics. The Estonian co-operation assembly (an institution set up by the president years ago) drew up a plan in 2014 ("Trends and Scenarios of Local and Regional Governance") in 2014, which stated the following: "In the search for the most efficient administrative unit, the local government cannot lose sight of the purpose of its existence. ... Although the merging of small local governments into large ones has been the main content of the waves of major local self-government reforms around the world, the economic merits of local government mergers have increasingly been questioned in academic literature. ... there is no single and correct size of the local government ... "

The new Government, which took office in autumn 2016, have acknowledged on a number of occasions that substance must be brought to the administrative-territorial reform, which means, among other things, defining the responsibilities of the central and local governments, and the principles of financing the discharge of the said responsibilities. In 2018, the tasks of former county governments, i.e. regional tasks, were divided between the local governments and central government agencies

5 Administrative structures and resources for the tasks of local authorities

The Charter's Article 6 (1) has been integrated into the first paragraph of Article 154 of the Constitution, which states the following: "All local matters are determined and administered by local authorities, who discharge their duties autonomously in accordance with the law." Regarding the independence of the local government, i.e. the right of self-management, it is the exercise of discretion in local issues. In order to exercise the right of self-management, the local government wields, for example, organizational power as an instrument of power, which includes the right to determine its internal organization; it also includes the power to hire staff and to pursue cooperation. (Eesti Vabariigi

põhiseadus: kommenteeritud väljaanne, 2017). The same constitutional provision also grants local governments the right to have adequate financial resources to perform their tasks and a stable funding system which is aimed at ensuring the independent decision-making and management of local issues. Also, Article 160 of the Constitution stipulates: "The organization of work of local authorities and oversight of their activities is provided by law." The said law is, above all, the Local Government Organization Act^f. Under the Constitution's paragraph 1 of Article 154, the local governments must be able to establish an organizational structure that ensures the performance of dynamically developing tasks which take local peculiarities (Eesti Vabariigi põhiseadus: kommenteeritud väljaanne, 2017).

Pursuant to Article 156 of the Constitution, the representative body of the local government is the local council which is elected in a free election for a term of four years. The council's term of office may be reduced by law due to a merger or division of local governments, or due to inability to perform its functions. Local elections are general, uniform and direct. Voting is secret. People, who are at least 16 years old and permanently reside on the territory of the local government under conditions established by law, have the right to vote in local elections. The council has the right, within statutory limits, to make decisions on every issue within the competence of local governments unless it has been assigned to the local executive body pursuant to law^o. As the political representative body of the people with the right to vote residing on the territory of the local government, the council fulfils the most significant management and supervisory tasks: Pursuant to law, it formulates the principles of the local government's administrative organisation; it also monitors and supervises the activities of the local executive body and the implementation of its decisions. Above all, it is current administrative issues that fall within the competence of the executive body.

The local executive body has functional relations with the council as the representative body. The council forms the executive body. The council approves the statutes of the local government, establishing, for example, the procedures for forming the executive body and for electing the mayor, the scope of powers of the executive body and the procedure for establishing local administrative agencies. The powers of a council member will be prematurely terminated, if he/she is, for example, appointed as an official of the same local government. The powers of a council member are suspended, if he/she is, for example, appointed as the mayor or a member of the executive body, or appointed to a remunerative position as a member of the executive body in the same local government. For example, making decisions on the following issues falls within the exclusive competence of the local council: The election of the mayor; the approval of the size of the executive body and the organization under it; the confirmation of the appointment to and release from office of executive body members, and the appointment to and release from remunerative positions of members of the executive body; the movement of a no-confidence motion against the executive body, the mayor or a member of the executive body; decisions on remuneration paid to the mayor and members of the executive body who work in remunerative positions, and decisions on payment of

compensation to other executive body member and the amount of compensation; the foundation, restructuring and termination of activities of local administrative agencies, and the approval of the statutes of such agencies; the establishment of social guarantees for local government officials; the approval of the organization of local administrative agencies, the composition of their staff, salary rates and wage conditions. Decisions on matters placed within the scope of powers of the local government or its bodies by law are made by the local council that has the right to delegate the decision-making to the executive body. The law establishes, for example, the rights of the executive body and council committees, including the audit committee.

The relations between local government bodies and government agencies are based on the law and contracts. Local government bodies cannot delegate their responsibilities, powers or statutory resources for discharging the tasks to government agencies.

The Local Government Organization Act establishes the tasks, responsibility and organization of local governments, as well as the relations between the local governments and government agencies, incl. statutory obligations. The division of tasks within the local government, the tasks and the administrative organization of local government bodies are established by local government statutes. The universal competence of the Riigikogu on matters of national affairs (Article 65 point 16 of the Constitution) is correlated with the universal competence of local governments in matters of local life ((Article 154 (1) of the Constitution)(Kohustuslike kohaliku omavalitsuse ülesannete ja kohaliku omavalitsuse üksuste täidetavate riiklike ülesannete piiritlemise juhend, 2009))

Revenues of Estonian local governments are largely dependent on state revenues and, in many ways, it is up to government agencies to decide the allocation of financial sources to local governments. According to a report of the State Audit Office, in 2017, 17% of the income of local governments depended on the local governments to some extent while 83% of their revenues was decided by the central government (Riigikontrolli audit, 2017). Under the Local Taxes Act, the local government has the right to impose taxes to increase its revenue^p. However, there is minimal possibility to do that and local taxes account for less than 1% of local revenues. It is difficult to find a way out of the situation. The State Audit Office audit also points it out. For example, it states that "If, after the administrative reform, local governments are financed similarly to the present, the gap between local governments in terms of financial resources available to them will remain high." (Riigikontrolli audit, 2017).

Chapter 8 of the Local Government Organization Act provides for the establishment and routine of work of local government districts. Article 56 (1) of the Act stipulates that a local government district is an entity which, under the district statutes enacted by the local council, operates on the territory of and within a local government aiming to encourage local initiative, maintain local identity, involve residents in the decision-making, and represent district interests in performing local government tasks. Article 56 (5) stipulates that it is within the scope of powers of the district council to represent the local

government in matters concerning the district as well as make relevant decisions within the scope of powers granted to it by the law, the local government statutes, the district statutes or decisions of the local council. The formation of a district may be initiated by: 1) one quarter of the members of the local council; 2) at least one percent of the local government residents with a right to vote but not less than five residents with a right to vote; 3) the local executive body.

There have been a number of legal, organizational and financing changes in capital Tallinn. Tallinn City Council decided to form eight districts in September 1993. In each district, the district council acts as the community representative and the district executive body led by the district elders acts as the executive power. The district councils have limited powers and they can make proposals to the City Council on matters concerning their district. For example, the district development plan is approved by the district council but it is enacted by the City Council. The district executive bodies are not collegial bodies but act as district offices. The city of Kohtla-Järve and a few rural municipalities have also chosen to establish districts.

Decentralization has become much more important ever since the administrative-territorial reform was carried out in 2017. Some county-size rural municipalities, such as the islands of Saaremaa and Hiiumaa, have also decided to use the model of districts. Here and there, for example in Hiiumaa, the areas which operated as rural municipalities before the mergers during the reform, have been granted the rights of local government districts.

Major changes have taken place in the remuneration of local officials. Up to 1996, three different models were in use. Until 1992-1993, all local governments had to comply with wage rates established by the Government. After the adoption of the 1992 Constitution which ensured local governments budgetary autonomy, local councils (in particular in Tallinn) began to set their own wage levels for their officials. Soon, the Government accepted this approach in these local governments that were not subsidized by the central government. The remaining approximately 95% of local governments had to continue to apply the wage levels aligned with those of civil servants. Pursuant to the Public Service Act which entered into force 1 January 1996, all local councils have the exclusive power to approve the wage rates for the members of their executive bodies. These remuneration arrangements have been in force ever since.

In principle, Estonia has a uniform public service system for both central government and local government officials. The Public Service Act is the principal law regulating the field⁹ with certain provisions of the Local Government Organization Act also being relevant.

6 Conditions under which responsibilities at local level are exercised

A free mandate would become meaningless if the council member could not effectively carry it out. The Local Government Organization Act establishes the necessary prerequisites for it.

1. The right to be exempted from employment.

A council member is not a public servant. Article 2 (3) (9) of the Public Service Act stipulates that, unless otherwise provided by the Act, it does not apply to a member of the local council. Whether his office is considered to be public one, i.e. an honorary position, depends on what is meant by it. As a rule, nowadays members of local representative bodies no longer work without remuneration. However, unlike for a member of parliament, the position in a representative body is not the main job of council members. This chimes with the tradition of self-governance tasks being performed by people simultaneously gainfully employed elsewhere. Such carrying out a mandate is inherent in citizens' self-government, which emphasizes the citizens' co-responsibility for the welfare of their local government.

As a member of the council takes part in the work of the representative body while doing his/her professional work, there may be instances where he/she cannot attend council meetings and/or committee meetings without abstaining from work. The right to be excused from work is fundamental in order to enable broad groups of citizens to be involved in the democratic and political life. In the absence of this right, elected representatives may disproportionately comprise people whose position allows them to use their time at their own discretion.

According to Article 25 of the Local Government Organization Act, the employer is obligated to allow a council member to attend council and committee meetings, and to perform tasks assigned to him/her by the council. According to Article 19 (6) of the Employment Contracts Act, an employee has the right to refuse to perform a job, above all, if he/she has a reason for doing so under an employment contract, a collective agreement or some other statutory reason (i.e. a reason not specified elsewhere in the same provision). The Government does not monitor compliance with the requirement of the law (Employment Contracts Act Article 115) and there is no effective way for the employee to force the employer to comply with the requirement during working hours if necessary.

2. The right to remuneration and reimbursement

Article 17 (3) of the Local Government Organization Act provides that the council may pay remuneration to council members for participating in the work of the council and, based on submitted documents, reimburse the expenses incurred in carrying out council duties in the amount and following the procedure established by the council. Article 22 (1) (22) of the Local Government Organization Act provides that the establishment of the amount of remuneration to be paid to council members for council work and the

establishment of a procedure for reimbursing the expenses incurred in the performance of council work fall within the exclusive powers of the local council. The currently valid provisions have been in force since 17 November 2005. Previously, the law stipulated that the council had the right to reimburse council members for the expenses incurred in carrying out council duties and to compensate the salary lost at the council member's main place of employment at the rate and following the procedure established by the council. The changes were motivated by the fact that the system had not been in line with the general principles of remuneration for work.

The Local Government Organization Act does not impose specific upper or lower limits for remuneration and reimbursement. It would be problematic, and obviously against the principle of democracy, if council members were entirely left without remuneration/reimbursement. The arbitrary differentiation of remuneration and/or reimbursement would violate the formal principle of equality. At the same time, for example, the council chairman or deputy chairman receiving higher remuneration compared with rank-and-file council members is not unlawful as such.

In short, it appears from the by-laws adopted by the local governments that:

- Prevalently, a fee for attending council meetings has been established, with its size varying considerably;
- They provide for reimbursement of the expenses incurred in carrying out council tasks (e.g. for the use of a personal car, for business trips, for transportation and communication expenses) upon submission of expense reimbursement reports per the guidelines regarding the amount and procedure established by the council;
- They provide for additional remuneration if the council member is involved in the work of a council committee, takes minutes of committee meetings, etc.

Unlike the parliament, which is prohibited under Article 75 of the Constitution from changing the remuneration of parliament members during its parliamentary term, the local council can do so during its council term.

Article 17 (4) of the Local Government Organization Act stipulates that the positions of the council chairman or deputy chairman may be paid positions if the council so decides. The council chairman and the deputy chairman who hold paid positions may not be paid additional remuneration, receive reimbursement or subsidies; also, they may not receive benefits which the council has not introduced. If the council chairman or the deputy chairman are also members of parliament during a council term, they may not be paid salaries for holding the positions of the council chairman or the deputy chairman. The paid position of the council chairman or that of one deputy chairman means that it is the holder's main occupation.

The local council may decide to pay the council chairman or the deputy chairman, who hold paid positions, compensation for dismissal in the amount of up to three months'

salary if they have held the position for two to eight years, and up to six months' salary if they have held the position for more than eight years, and the dismissal takes place:

1. Due to the expiry of the council's mandate;
2. On his/her own initiative due to a medical condition which prevents the official permanently from performing his/her duties;
3. Due to a vote of no confidence (Article 541 (1) of the Local Government Organization Act).

No compensation is paid if the council chairman or the deputy chairman:

1. Is dismissed from office on his own initiative, except due to a medical condition which prevents the official permanently from performing his/her duties;
2. Is elected or appointed by the council for a new term (Article 541 (2) of the Local Government Organization Act).

Upon expiration of his/her powers, the council chairman who is paid a remuneration or compensation based on a decision of the council under Article 22 (1) (21) of the Local Government Organization Act, will be paid a compensation in the amount of six times his/her average monthly salary or a compensation in the amount of an average salary of two years preceding the date when the results of the local election were announced if the powers of the council chairman expire as a result of an alteration of the administrative-territorial organization of the local governments at the initiative of local councils, and he/she has worked as council chairman for at least one year before the date when the local election results of a new local government that was formed as the result of a merger were announced^f. In that case, the council chairman will not be compensated for the expiration of his/her powers. The above compensation will not be paid if the council elects the incumbent chairman for a new term^g.

3. The right to work conditions permitting the effective performance of tasks

The council member's right to have work conditions that permit effective performance of his/her tasks is the greater the more administrative services are at his/her disposal: Premises, the copying service, laptops, and training courses, etc. For example, a member of Tallinn City Council may use the premises of the district executive body to meet city residents and get technical assistance in organizing the meetings (the Rules of Procedure of the Tallinn City Council, p. 4.3.9).

Allocating additional resources to assist factions of the council cannot be considered unreasonable as such if unaffiliated council members are offered similar assistance to perform their tasks efficiently.

Although electronic document management is already widely spread in the local governments, and council committees are known to hold electronic meetings, while council members are known to have attended council meetings using Skype (on islands), the local government information system VOLIS as a multifunctional software solution has the potential to bring cities and rural municipalities vigorously into the information technology era. For example, the solution allows council members to attend council

meetings or meetings of council committees without being physically present: He/she must only have a computer with an Internet connection where he/she can identify himself/herself using an identification card. Voting, which can be done online via VOLIS, and revising documents, etc. is also easier. In principle, it is possible to replace the forms of work of the local government representative body and its committees which require physical presence in the same room, with effective long-distance communication. The system brings together electronic governance, participatory democracy and document management.

The Local Government Organization Act lists positions incompatible with the position of a local council member. The grounds for early termination of the council member's powers are prescribed by Article 18 (1) of the Local Government Organization Act. These include:

- Being elected the president of the republic or a member of the European Parliament, being appointed the state secretary, the auditor general, the chancellor of justice, a judge or a prosecutor;
- Being appointed as an official of the same local government or being employed by an administrative agency of the local government under an employment contract. These restrictions do not apply to a council member whose powers have been suspended in connection with he/she being elected the mayor of the same local government or being appointed as a member of the local executive body, a district elder or a paid member of a district executive body.

Until 31 March 2013, the Local Government Organization Act stipulated that the powers of a council member will expire before the due date if he/she becomes an official of the same local government. The legislator wished to avoid a conflict of interests when it prohibited council members from being hired by a local government agency of the same local government under the Local Government Organization Act by introducing an amendment to the Civil Service Act. It was necessary to avoid a situation where one person working for his/her local government could not be a council member but another person working for another local government could. In practice, the law amendment has had electoral committees assess civil law contracts. If necessary, the electoral committees have to interpret the contract concluded with a council member. The wording of the law amendment is not the best (it is too broad)³⁵. The Supreme Court has also held that the early termination of a council member's powers due to his/her appointment as a local government official does not disproportionately restrict his/her right to carry out his/her mandate³⁶.

The Local Government Organization Act associates the early termination of a council member's powers with the legal fact specified in Article 18 (1) of the Act and does not provide for the early termination of a council member's powers with a decision of an electoral committee. Thus, the powers of a council member are automatically terminated in the case of a legal fact specified in Article 18 (1) of the Act. Such regulation ensures

that the early termination of a council member's powers does not depend on the activities or inaction of an electoral committee³⁶.

The suspension of a council member's powers is regulated by Article 19 of the Local Government Organization Act. The suspension of a council member's powers is the temporary release of the council member from the performance of his/her duties as a council member. The powers of a council member are suspended in the following cases:

- The council member has been appointed as mayor of his/her local government, a member of the local executive body or the district elder of a local government district, or appointed to a paid position of a member of the executive board. The restriction does not apply to the mayor, an appointed executive body member and an appointed district elder who had been elected or appointed by the previous council but have now been elected to the new one and continue to discharge their responsibilities until the new council designates a new executive body.
- He/she becomes a minister of the Government until his/her powers as a Government minister expire.

The Supreme Court has held that the prohibition to combine positions serves the purpose of organizational strengthening of the separation of local government tasks and responsibility in the face of risks that may result from the combining of the office and a mandate in the representative body. This is a legitimate objective for the meeting of which there are no means, except for the suspension of the council member's powers who accepts a position in the local government executive body or becomes an official of the local government agency, or the early termination of the council member's powers who accepts a position as a local government official. Different treatment of a local executive body member and a local government official is justified by the fact that a member of the executive board is politically accountable to the council, but a local government official bears responsibility under the Civil Service Act³⁶.

In June 2016, the parliament passed the Status of Members of the Riigikogu Act (Riigikogu is the Estonian Parliament) and the law amending the Local Government Organization Act, which abolished the earlier prohibition to combine positions of a parliament member and a local council member. The law was to come into force on 16 October 2017, i.e. the day a local election was held. Four rural municipality councils then filed a complaint with the Supreme Court maintaining that the law contradicts the local governments' right of self-governance arising from Article 154 (1) of the Constitution and, in essence, also the principle of separation and balance of powers arising from Article 4 of the Constitution as well as the principle of incompatibility of the position of a parliament member and that of officials of other government agencies arising from Article 63 of the Constitution. However, the Supreme Court found that one cannot conclude from the fact that a parliament member carries out his/her mandate in parliament as a representative of all people that he should make decisions in a local council which are contrary to local interests³⁷. The principle of a free mandate ensures that a person, who simultaneously belongs to both representative bodies, has the opportunity to decide on

the basis of his/her conscience what is in the best interest of the local government and its residents. The court believes that the combining of mandates will ensure greater awareness among members of the representative bodies of issues that need resolving at both the national and local levels, and the possibility to take them into account at both levels of decision-making in a balanced manner. According to the court, the situation where parliament members understand the problems of local life better will also ensure wider consideration of the rights and interests of local governments in the activities of the legislator. The Constitutional Review Chamber of the Supreme Court acknowledged that the possibility for a person to combine the mandates of a parliament member and a local council member may facilitate a certain intertwining of national and local political decision-making. At the same time, the principle of local government autonomy does not require the people deciding local matters to have a connection with the national level decision-making, and the possibility of council members having conflicting interests cannot be excluded. This may be deduced from the principle of political party democracy which is included in the principle of democracy, because, according to this principle, political parties are the central political forces in Estonia, which aim at simultaneously exercising both state authority and local self-government. The Supreme Court also found that the contested law did not obligate a local government to adjust its working hours to take into account the working hours of the parliament. A person elected to both representative bodies must find a suitable balance to carry out his/her mandates and, in the event of failing to responsibly carry out his/her duties, risk having to take political responsibility. Also, the challenged law does not affect the opportunities of candidates, who have emerged from the local community, to stand for election or to be elected. Thus, the Constitutional Review Chamber of the Supreme Court found that the Acts amending the Status of Members of the Riigikogu Act and the Local Government Organization Act were not in conflict with the requirements of the Constitution set out in the petitions of the local councils, and the Chamber rejected the complaint. Following the local election in October 2017, it was then possible to combine the mandates of a parliament member and a local council member.

7 Administrative supervision of local authorities' activities

Administrative supervision means one administrative body overseeing another administrative body^f. Administrative supervision is exercised outside the subordination relationship^f and in the public interest. The exercise of administrative supervision is not administrative interference.

Until 1 January 2018, administrative supervision over local government bodies' administrative acts was primarily the responsibility of county governors. Due to the abolition of county governments as of 1 January 2018, their supervisory responsibility was transferred to the Ministry of Justice, and the Ministry of Finance assumed the responsibility to exercise supervision over the public property used and held by the local governments.

Administrative supervision of local governments' operations is regulated by Article 753 of the Government of the Republic Act. The Ministry of Justice exercises administrative supervision over the legality of administrative acts of local authorities, while in the cases and to the extent provided for by law, the Ministry of Finance exercises administrative supervision over the lawfulness and expediency of the usage of government property used or held by the local governments. The Ministry of Justice has the right to involve any ministry in the exercise of administrative supervision in whose field the local administrative act falls. The minister responsible for the field has the right to request transcripts of the enforced local administrative act. The local authority is required to submit copies no later than on the seventh day after receiving the request from the minister responsible for the field. If the responsible minister finds that the local administrative act is unlawful or contrary to the public interest, he/she may, within 30 working days after learning about the issuing of an administrative act or refusal to do so, submit a written proposal to revoke the act, bring it into compliance with the law or issue the required administrative act. A *lex specialis* may lay down exceptions regarding the deadline. If the responsible minister finds that the unlawful consequences of the revoked administrative act violate the public interest, he/she may, within three years after the issuing of the administrative act, submit a written proposal to eliminate the said consequences. The proposal may also propose to cancel the administrative act which brought about the consequences. If the local authority does not revoke the administrative act, bring it into compliance with the legal norms, issue a required administrative act or decide to remove the consequences caused by the administrative act within 30 working days after receiving the responsible minister's written proposal, the minister may file a protest in accordance with the conditions and pursuant to the procedure provided for in the Code of Administrative Court Procedure. If pursuant to Articles 14 and 160 of the Constitution and Article 15 of the Chancellor of Justice Act, the responsible minister asks the chancellor of justice to review the conformity of a general act given by a local government body with laws, he/she will send the said local government body a copy of his/her petition on the same day. If the responsible minister finds that a local government has possessed, used or disposed of government property unlawfully or inappropriately, he/she will inform the State Audit Office, an investigative body or other competent authority, and pass on to them any supporting documents and other materials at his/her disposal. The responsible minister has the right to review the performance of a government function delegated to the local governments by law or fulfilled by them under an administrative contract.

Administrative supervision is also supervision exercised over administrative tasks performed under a contract under public law pursuant to the Administrative Co-operation Act⁵.

Agencies and inspectorates (e.g. Data Protection, Language, and Labor Inspectorates, Land Board and Competition Authority, etc.) also exercise administrative supervision over operations of the local governments. Sectoral supervision is regulated by a *lex specialis*.

Thus, the subject of administrative supervision is another administrative body which is not subordinate to the supervisory body. The object of administrative supervision is the enforcement of public order and the performance of administrative tasks. Legality, and also expediency in the cases provided by law, are the scope of administrative supervision. A precept is the form of administrative supervision. The person exercising administrative supervision has the right to issue precepts in the course of a supervisory process; the failure to comply with the precepts brings along a penalty payment in the amount of up to 9,600 euros under Substitutive Enforcement and Penalty Payment Act¹.

Supervision over spatial planning in local governments is the responsibility of the Ministry of Finance. According to the Planning Act, a local government comprehensive plan is submitted for approval to the minister responsible for the field^u. In addition to the comprehensive plan, written opinions presented at the public display of the plan which were not taken into account in the preparation of the plan and the relevant reasoned opinion, are also submitted to the minister. The responsible minister either approves the comprehensive plan or refuses to do it within 60 days of its submission. In justified cases, the time limit may be extended to 90 days. Before making a decision, the responsible minister is required:

- 1) To verify that the procedure of the environmental impact assessment and the local comprehensive plan are in compliance with the legislation, the county-wide spatial plan and the national designated spatial plan;
- 2) To hear the persons who submitted written opinions at the public display of the comprehensive plan but whose opinions were not taken into account when drawing up the plan, as well as the body that organized the preparation of the comprehensive plan;
- 3) To either give or withhold consent to change the county-wide spatial plan if a change is sought with the comprehensive plan. If the parties referred to under point 2 fail to reach an agreement, the responsible minister will give them his/her written opinion within 30 days after the parties have been heard.

Detailed spatial plans will also be submitted to the responsible minister for approval under the Planning Act. Also in these cases, written opinions presented at the public display of the detailed spatial plan which were not taken into account in the preparation of the plan and the relevant reasoned opinions, are also submitted to the minister in addition to the plan itself.

The responsible minister either approves or refuses to approve the detailed spatial plan within 60 days from its submission. Before making a decision, the responsible minister is required:

- 1) To verify that the detailed spatial plan is in compliance with the legislation;
- 2) To hear the persons who submitted written opinions at the public display of the detailed spatial plan but whose opinions were not taken into account when drawing up the plan, as well as the body that organized the preparation of the comprehensive plan.

If the responsible minister does not approve a comprehensive plan or a detailed spatial plan, he/she will submit to the body responsible for preparing the plan his/her reasoned position justifying the decision. If there is a justified need, the responsible minister may propose to bring part of a comprehensive plan or a detailed spatial plan into effect.

Administrative supervision is a broad concept, and economic supervision exercised over operations of the local governments by the National Audit Office, and the so-called ombudsman function performed by the chancellor of justice under the Chancellor of Justice Act are special types of administrative supervision.

The supervision over the local governments exercised by the State Audit Office is essentially public economic control, which, to varying degrees, is exercised over the possession, usage and disposal of public assets and local government property. Pursuant to Article 133 (3) of the Constitution, the State Audit Office inspects the usage and disposal of government property in the possession of local governments. The National Audit Office may also conduct performance audits under Article 6 (3) of the State Audit Office Act^v. Article 133 (3) of the Constitution does not preclude the possibility of exercising economic control over movable and immovable public property which has been transferred into possession of the local governments, as well as over the usage of allocations for specific purposes, subsidies and funds allocated for the performance of government functions. Article 133 (3) of the Constitution does not restrict the legislature's freedom to regulate the scope of economic control over public assets referred to in Article 132 of the Constitution. In the case of government assets held by the local governments, supervision over both legality and expediency may be exercised (meaning an audit may be carried out). The State Audit Office's exercise of supervision over possession, usage and disposal of local government-owned assets is limited to the legality and does not include supervision over expediency (cost-effectiveness); the exercise of supervision must not violate the principle of local government autonomy. It is not within the jurisdiction of the administrative court to substantially examine the correctness of the findings of economic control carried out independently by the National Audit Office. However, the National Audit Office Act guarantees the local governments, which have actually been audited by the State Audit Office, the right to challenge the Office's procedural acts in the administrative court.

According to Article 33 of the Chancellor of Justice Act, the chancellor of justice checks whether the supervised institution (also a local government) complies with the principle of guaranteeing fundamental rights and freedoms, and the practice of good governance referred to in Article 14 of the Constitution^w. Good governance means the commitment of the public authority to operate in a human-friendly manner, embracing values that may not be legally protected but whose observance the chancellor of justice will be able to monitor when performing the ombudsman's function, such as fairness, courtesy, and willingness to help (Eesti Vabariigi põhiseadus, kommenteeritud väljaanne, 2017). The justice chancellor's ombudsman procedure is not a substitute for legal proceedings and it is not a legal remedy within the meaning of Article 13 or Article 35 (1) of the ECHR^x.

The chancellor's ombudsman procedure is regulated in Chapter 4 of the Chancellor of Justice Act. There are significant differences compared with court proceedings. The chancellor of justice may initiate proceedings not only based on a petition but also on his/her own initiative based on information received by him/her (for example, via the press). The procedure is more flexible and less formal (there are no deadlines and no need to pay a levy). The principle of investigation applies. The chancellor of justice's main procedural action is the request for information and, if necessary, the gathering of explanations and testimonies. The chancellor of justice may, if necessary, use other forms of procedural acts; for example, he/she may seek an opinion of a private expert or pay an inspection visit to a supervised institution (Eesti Vabariigi põhiseadus, kommenteeritud väljaanne, 2017).

The chancellor of justice has wide discretion in deciding whether to initiate proceedings as well as in choosing procedural actions. The proceedings of the chancellor of justice result in taking a position on whether the operation of the local government is lawful and complies with the practice of good governance. The chancellor of justice may propose a remedy for the violation, criticize, make recommendations and otherwise express his/her opinion. However, unlike court rulings, the positions of the chancellor of justice are not obligatory for the supervised institutions. Neither does the chancellor of justice have the power to revoke the acts of the supervised institution nor have the possibility to apply coercive measures, such as a fine or a penalty payment. The positions of the chancellor of justice are ensured, in particular, with his/her authority (Eesti Vabariigi põhiseadus, kommenteeritud väljaanne, 2017).

8 Financial resources of local authorities and financial transfer system

Upon the restoration of local self-government in Estonia, one of the main disputes with the then leaders of the communist party and the state regarding the local administrative system was the term "local self-government," which had existed in the independent Republic of Estonia prior to the Soviet occupation in 1940. However, party functionaries accepted it easier than the provision in bills that the local governments (rural municipalities and cities) have independent budgets. That very principle shattered the central management system run from Moscow and allowed the application of the subsidiarity principle. Independent budgets of the local governments received a constitutional guarantee with the 1992 Constitution (Article 157).

The main sources of revenue for the local budget are as follows:

- 1) Personal income tax – a certain percentage of it is received in the budget of the rural municipality or city where the individual's official residence is;
- 2) Land tax – 100% of it is received in the local budget, and the local council has the right to set the tax rate anywhere between 0.1% and 2.5% of the land's taxable value;
- 3) A proportion of the tax on extraction of natural resources (oil shale, sand, gravel, etc.), fees for special use of water, a proportion of the pollution charge and compensation for pollution damage.

More substantial funds from the state budget are allocated to the local governments through the local government equalization fund (90 million euros in 2018) and the local government support fund (424 million euros in 2018).

The purpose of the equalization fund is to provide the local governments with uniform conditions for the performance of local government tasks without establishing any conditions for the use of the resources. The distribution of the resources from the equalization fund is based on the personal income tax and land tax accruing to the local budget, as well as the number of local residents and other peculiarities of each local government.

The support fund comprises resources for the types of special purposes designated by law that allows the local governments to cover teachers' salaries, provide free lunch at general education schools, pay subsistence benefits and needs-based family allowances to disadvantaged families, and maintain local roads.

The support fund is a means of paying the local governments specific-purpose subsidies under conditions specified in the law or a means of paying specific-purpose subsidies from the state budget that are distributed only on the basis of set figures.

Throughout the period since the restoration of independence in 1991, personal income tax has had a leading role in the revenue base of local budgets (accounting for more than half of their income). Over time, there have been fundamental changes in the proportions.

Table 2: The distribution of personal income tax between national budget and local budgets (*26%=100%)

Year	Personal income tax (%)	To national budget (%)	To rural municipality or city budget (%)
2003 (and before)*	26	44	56
2004	26	14.6	11.4
2005	24	12.4	11.6
2006	23	11.3	11.7
2007	22	10.1	11.9
2008	21	9.07	11.93
2009	21	9.6	11.4
2010	21	9.6	11.4
2011	21	9.6	11.4
2012	21	9.6	11.4
2013	21	9.43	11,57
2014	21	9.40	11,60
2015	20	8.40	11.60
2016	20	8.40	11.60

Year	Personal income tax (%)	To national budget (%)	To rural municipality or city budget (%)
2017	20	8.40	11.60
2018	20	8.14	11,86

According to Article 154 of the Constitution, obligations may be imposed on the local government only by law or by agreement with the local government, which is undoubtedly a right constitutional guarantee of municipal autonomy. However, the local governments and their associations have often criticized the fact that the central government institutions (including the parliament) do not observe Article 154, which explicitly states that the expenses related to performing government tasks imposed on the local governments by law must be covered from the state budget.

The relationship between the central and local governments regarding the issue was particularly tense ten years ago when during an economic crisis in 2008, state budget allocations to local budgets were cut with a negative supplementary state budget (e.g. the proportion of personal income tax transferred to local budgets was reduced from 11.93% to 11.4%). From the point of view of local economic autonomy, a very important drawback is the very small share of local taxes in local budgets (Reiljan & Timpmann, 2010; Friedrich, Reiljan, & Nam, 2010).

In 1994, the Co-operation Assembly of national local government associations was formed. The Assembly, among other things (and mostly), began to hold negotiations with Government delegations on the issue of annual financing of the local governments from the state budget. Major disputes took place due to cuts in local budgets in 2008. However, the national discussions did not unfortunately help and, therefore, the delegations of the Association of Estonian Cities and the Estonian Association of Municipalities turned to the Congress of Local and Regional Authorities of Europe (CLRAE) in May 2009. The associations protested against the cuts in state budget allocations in February 2009 and requested a monitoring visit to Estonia to determine whether the activities of the Estonian central government complied with the provisions of the European Charter of Local Self-Government, and to obtain the position of the Council of Europe.

In April 2010, the CLRAE delegation visited Estonia. At the same time, Tallinn City Council filed a complaint with the Supreme Court regarding the reduction of the city budget revenues. A month before the visit of the CLRAE delegation, on 16 March 2010, the Supreme Court made a very important ruling which protects the interests of the local governments (Riigikohus, 2010), which stated the following:

"The court declares unconstitutional the failure to give legislative acts that:

1. Specify which obligations imposed on the local governments by the law are self-government functions and which are government ones;
2. Distinguish between the funds allocated to the local governments for resolving and organizing local matters, and the funds allocated to them for the performance of

government functions, as well as provide the financing of government obligations, which are imposed on local governments by the law, from state budget. "

At the session of the CLRAE Chamber of Local Authorities held 26-28 October 2010, Recommendation 294 (2010) on Local Democracy in Estonia (CLRAE, 2010) was approved, which was also apprised of by the Council of Europe's Committee of Ministers in November the same year. The recommendations highlighted, for example, the need to quickly amend national legislation in order to channel most of the financial resources to the local government level in order to bring the financial resources into line with the obligations imposed on the local governments with the Estonian Constitution and other laws, and to allow the local governments to generate income from local taxes (EMOL web page).

In addition to the directly elected council, one of the most important features of local self-government is the right to impose local taxes, which is found in both the European Charter of Local Self-Government (Article 9) and the Constitution of the Republic of Estonia. Pursuant to Article 157 of the Constitution, the local governments have the right to impose and collect taxes, and impose duties on the basis of the law. The introduction of the taxes is regulated by the Local Taxes Act^p, which allows the local council to levy up to eight local taxes.

It is interesting to note that Estonia's first constitution, the Constitution of 1920 granted local governments the right to impose local taxes, and the 1938 Cities Act allowed local councils to levy up to 26 local taxes.

Today, the share of local taxes in the local revenues in Estonia is among the smallest in Europe (accounting only for a few percent of local revenues). Regrettably, the number of types of local taxes has been reduced over time. At the turn of the century, head tax and local corporate income tax were abolished. In 2010, boat tax and sales tax, that many local governments had imposed somewhere in the mid-1990s, were excluded from the list of local taxes. The city of Tallinn, which had been politically opposed to the central government, had decided to collect boat and sales taxes, and the parliament decided for political reasons to exclude them from the list of local taxes. The only new local tax to have been imposed since 1994 is the parking fee which was introduced in 2002 and is the biggest local tax in terms of volume. In accordance with the Local Taxes Act, the local governments have also the right to impose advertising tax, motor vehicle tax, road and street closure tax, animal tax and entertainment tax^p.

The local council has the right to take out loans both domestically and from abroad. There are restrictions prescribed by law that the total amount borrowed (with interest) must not exceed 60% (formerly 75%) of the budget of the year when the loan is taken out, and no repayment of a loan may exceed 20% of the budget of the year when the loan is taken out.

Nearly half of the local expenditure is related to the provision of educational services (kindergartens, schools), and a third is related to the provision of services related to the maintenance of local roads and recreational activities. General administrative expenses (including debt servicing) and, for example, social expenses account for less than 10% of the local expenditure.

The Local Government Financial Management Act is the framework law in local financing^y. The Act establishes the principles for the drawing up, adoption and implementation of local budgets as well as the principles for financial reporting; it also lays down measures to ensure financial discipline in local government financial entities, the principles of the procedure for implementing financial discipline measures and the principles of the procedure for eliminating a difficult financial situation.

The willingness of residents to pay local taxes in order to exercise local self-government and provide local services is a significant indicator of the performance of the local self-government institution. "The smaller the share of the local financial resources that is generated from local taxes, the less likely it is that residents are prepared to exercise local self-government" (Pöllumäe, 2008). Thus, capable local governments, whose tax revenues enable them to provide services to residents through more diverse organizational units and offer more capable management, have a higher number of different administrative bodies. Every year, the delegations of the national local government associations' Co-operation Assembly and the Government hold negotiations and try to find compromises.

9 Local authorities' right to associate

Estonia has abundant experience in local government cooperation, in terms of both legal and practical cooperation. Historically, two nationwide local government associations have operated in Estonia. The Association of Estonian Cities was founded in 1920 (Mäeltsees et al., 1995:13). The Association of Municipalities of Estonia was founded in 1921. The associations were active participants in the development of the local government sector at home and in international cooperation. Both associations were liquidated when the Soviet occupation began in 1940 (Lääne et al., 2015:31).

Together with the restoration of the statehood of Estonia, the associations were restored in 1989-1990 following the principle of legal continuity. The legal basis for the operation of the associations was laid down in Estonia's first law on local self-government of the period – the Local Self-government Foundation Act (Lääne et al., 2015:117). In the first few years, the associations took very active part in rebuilding the state and the local self-government system, as well as in restoring and developing Estonia's international relations (Lääne et al., 2015:43-52). For example, the decisions made at meetings of the general assembly of the Association of Cities influenced the Constitution's chapter on local self-government and other legislation, as well as the implementation of an administrative reform. Representatives of both associations were invited to become

members of a number of key national bodies. Another national association was founded in 1990 (Lääne et al., 2015:41). Starting in 1991, county (regional) local government associations were established. In 1993, the Union of Estonian Local Government Associations was established (Ludvig, 2003). By the time, the national association founded in 1990 had practically ceased to function. The local government associations have played and will play a major role in local life and will also affect the effective functioning of the state.

The compliance with Article 10 (1) of the Charter has generally been ensured in Estonia by the functioning legal system and active practical operation of the associations. The adoption of the Constitution in 1992 was a very important step in the legal regulation of the associations' activities. Article 159 of the Constitution stipulates as follows: "A local authority has the right to form associations and establish joint agencies with other local authorities." The subsequent development of the legal environment took into account both the constitutional provision and the relevant norms of the Charter. The principles of the organization of the associations' activities are set out in detail in the Local Government Organization Act and in the Local Authority Associations Act^m.

The exercise of administrative supervision is not administrative interference.

According to Article 12 of the Local Government Organization Act, the local governments have the right to form associations and joint agencies with other local governments based on and pursuant to the procedure laid down in legislation. Article 62(1) Local Government Organization Act stipulates that to express, represent and protect common interests and to perform common tasks, the local governments may 1) cooperate; 2) delegate powers to another local government for this purpose; and 3) form local government associations and other organizations. Article 62(2) provides that, in the case of such co-operation, the local governments may conclude contracts to found joint agencies. According to Article 63, the local governments may establish county and national associations pursuant to the Local Government Associations Act that also regulates their operations. The Local Government Associations Act is a *lex specialis* adopted in 2002. Article 1 of the Act specifies differences in the establishment and operation of a county or district association and the national associations compared with the provisions of the Non-profit Associations Act. The Act provides in detail the legal basis, tasks and organization of activities of county and district associations and the national associations. It is important to note, however, that the legal status of the associations has been a topic of many a discussion. The Constitution and laws allow the local governments to be members of an association but do not say that it is mandatory. In spite of the importance of the associations, for various reasons, several local governments are neither members of a county association nor a national one. In the current situation, the associations are non-profit organizations of a specific type, but many politicians and academics have repeatedly proposed administrative reform plans and turning the associations into public ones, thereby further increasing their importance in the development of local self-government. (Ludvig et a., 2017:116-130). Making the

membership compulsory has also been under discussion, in particular considering the fact that the local governments perform public-law functions.

From the point of view of the development of cooperation between the local governments and the associations, the 1994 nationwide conference of the local governments was an important event. National and local leaders, leaders of the associations and academics tried to formulate common positions to ensure the development of the local self-government system and further cooperation. Based on the decisions of the conference, the cooperation assembly of the national associations was set up and annual negotiations between the Government and the cooperation assembly were launched. At the same time, however, not all decisions were carried out.

A cooperation network established by NGO Polis in 2004 has become a key forum for discussing matters important for the development of the state and local self-government. The network comprises representatives of the local government associations, several state institutions such as the parliament and several ministries, as well as representatives of universities, embassies of other countries, the Representation of the European Commission in Estonia, the Nordic Council of Ministers' Office in Estonia, and other organizations. The network has organized several conferences and forums. Together the network helped organize a discussion in parliament on state-local partnership as a matter of national importance 30 September 2010. The co-operation has continued in various forms with new opportunities and the international dimension emerging. Joint forums have been held, for example, focusing on various aspects of the EU Baltic Sea Strategy. The international forum organized by the cooperation network at the University of Tallinn in March 2010 focused on research-based regional and local governance, and cooperation, and had special resonance (Sootla&Lääne, 2010).

The general assembly of the local governments held at Tallinn University of Technology 31 March 2012 was another significant event. The assembly had been convened by two national local government associations and the leaders of all 15 county associations. Issues concerning local life and development of the local governments were on the agenda: A reform of regional administration and local self-government, i.e. a change in the country's administrative organization; priorities of the local governments for the new budget period of the European Union (2014-2020); the financing of the local governments and the county associations. After a thorough discussion, the declaration of the general assembly was issued.

The local government associations are, by nature, a bridge between the local and central governments, representing the interests of the local governments and thus giving the extra power to the local level. The so-called cooperative associations play a significant role in harmonizing differences between the local governments and in facilitating joint activities. In Estonia, the local government associations predominantly have the coordinating and planning role, and aim at developing regional, nationwide and international cooperation, while also acting in the advisory capacity. The purpose of the associations is, above all,

to support the local governments. Unlike in Finland, Sweden, Denmark and Germany where cooperative associations have quite a lot of public tasks delegated to them, the cooperative associations predominantly represent the local governments in Estonia, although it has been under discussion whether the national associations ought to be granted, for example, the statutory status of an employer. The Association of Municipalities recently started to offer information technology-related services and the services will be provided under the new association, too.

The annual negotiations between the cooperation assembly and the central government are still important. Unlike on some occasion in the past, in recent years, increasingly more common ground has been found, and leaders of the associations and the public administration minister signed a protocol (Ludvig, 2017).

Local government conferences have become an annual event, and in 2017, the 14th conference took place. Politicians, officials and experts take floor at the conferences. A discussion of representatives of political parties has also become a tradition.

Assemblies of the local governments have become a new form of cooperation on the initiative of NGO Polis. The first assembly of the local governments took place in the parliament building 4 October 2016, and the second one convened in Tallinn 26 September 2017. A bill introducing 1 October as the day of local self-government and making it a national holiday is currently discussed in the parliament. The idea was proposed by the Polis network and supported by the participants of the second assembly of the local governments (The Bill on Amendments to the Holidays and Anniversaries Act, 2018)

International and transnational cooperation of the Estonian local governments and their associations has become increasingly more comprehensive, especially since Estonia joined the Council of Europe and the European Union. The national associations participate in the work of the Committee of the Regions of the European Union that enables local and regional representatives to contribute to the drafting of EU legislation, to promote the implementation of the subsidiarity principle and to be in contact with EU institutions. The Estonian associations take an active part in CLRAE activities. The local governments and their associations have an opportunity to participate in international projects and establish twinning relationships. The associations and the city of Tallinn have a representation in Brussels in order to stay in touch with EU institutions. Representatives of the Estonian national associations are members of the Council of European Municipalities and Regions (CEMR), which is at the forefront of the twinning movement. The Association of Estonian Cities is a member of the Union of Baltic Cities (UBC), which furthers cooperation between member cities. The associations are also active participants in the political network of the Baltic Sea States Subregional Cooperation which promotes co-operation in various policy fields, such as transport, culture and sustainable management.

In addition to the Constitution, the Charter and the above provisions of the Local Government Organization Act, Article 13 of the Act forms the legal basis for the international cooperation pursued by the local governments and their associations:

- "(1) Councils, executive boards and administrative agencies have the right, within their competence, to cooperate with all other local governments outside of Estonia and enter into contracts with them. Administrative agencies shall inform the council of such cooperation.
- (2) Local governments have the right to become members of international organisations and to co-operate with such organisations.
- (3) In relations with international organisations, a local government is represented by the council or representatives appointed by the council.
- (4) Contracts which are to be entered into are subject to prior review and approval by the council if performance of the contracts involves expenses from the local government budget or other proprietary obligations are assumed. "

In this case, the levels of the power vertical are the level of the European Union, the central government and the local government levels. By ratifying the Charter, the state has granted certain rights to the local governments and guaranteed them (including the right to establish associations). However, Article 10 of the Charter does not make the Council of Europe a separate level of the power vertical. The European Union can be regarded as a level of the power vertical because the European Union directly affects the performance of regional and local tasks, for example through the EU Structural Funds. Receiving the funding for projects from the Structural Funds requires expertise and financial capacity, which many small local governments lack, and it has pushed the local governments to cooperate in Estonia just like in Germany (Benz& Zimmer,2012; Sootla&Kattai,2012). This is also encouraged by domestic legislation, for example, by the Local Government Organization Act. Still, the impact of CLRAE and the Charter on the Estonian local governments and their associations as well as on their cooperation is significant. The first contacts with the Council of Europe emerged already in 1990, and the role of the associations was very big; unions were among the first to contribute to the restoration of Estonia's independence in international contacts. The rapid development and effective co-operation of the Estonian local self-government system is well illustrated by a conclusion from the final report by then CLRAE President Lucien Sergent, published in the Forum magazine in July 1991 following his visit to Estonia, which noted that the local governments in Estonia already operate very democratically. (Lääne et al., 2017). CLRAE and its monitoring visits have played an important role in the process. For example, the report drawn up by CLRAE after a monitoring visit in 2000 recommended that Estonia strengthen the local government associations in order for them to be able to represent the shared interests of the local governments; the local governments can then better coordinate co-operation, especially when participating in negotiations with the central government. At the same time, the rapporteurs found that Estonia should ratify the European Convention on Transfrontier Co-operation at the earliest opportunity (CLRAE, 2000). Also, the report suggested that the national associations should consider merging in order to better coordinate activities and to increase overall capacity. The 2010

monitoring visit regarding Article 10 did not find any shortcomings in Estonia (CLRAE 2010). The Estonian local governments have worked together through CLRAE to resolve differences with the central government regarding local income base. The report of the 2017 monitoring visit states that the cooperation between the Estonian and Russian local levels is spot on – meaning that the issue raised in the 2000 report has been resolved. It is also noted separately that the information gathered during the monitoring visit, including opinions of local representatives, did not indicate in any way that there were problems with implementing Article 10 of the Charter (CLRAE, 2017). Transnational cooperation has always been considered very important in Estonia – this was the case prior to 1940, and it has been the case since the restoration of independence. For example, from 1989 onward, there was a sudden surge in the twinning movement in the local governments and the associations helped coordinate the process. Over the course of a single year, more than 100 local governments found partners in Finland while previously the number of twin local governments had been six. Also, mutual visits between national associations took place – initially, it was largely an educational experience for the Estonian party. The first meeting of the Estonian-Finnish Twin Cities was planned to be held in Pärnu, Estonia in August 1991. It came to an end prematurely because there was a coup attempt in Moscow at the same time (Lääne et al., 2017). Cooperation with local governments and their associations in Sweden, Denmark, Germany, Latvia, Lithuania, the Netherlands, Poland, Hungary, the United States and several other countries became very close. Cooperation has become increasingly closer over the years and involves a number of new countries and fields. Cooperation with the neighboring countries and throughout the Baltic Sea region remains particularly close. For example, in January 2018, Finland's Ambassador to Estonia Kirsi Narinen introduced a new local government cooperation initiative and there are plans to hold another meeting of the local governments of the two countries in Pärnu. The establishment of a new nationwide Association of Cities and Rural Municipalities 28 February 2018 will provide an even better opportunity for cooperation between the local governments seeing that the objective of the association is to represent and protect the members' common interests and to contribute to the general development of local self-government.

10 Legal protection of local self-government

The local governments can challenge violations of their constitutional guarantees. The institutions indirectly protecting the local governments are as follows: The president of the republic (Article 107 of the Constitution), the chancellor of justice (the cases stated in Article 142 of the Constitution and supervision over constitutionality of international treaties) and administrative courts (Article 152 of the Constitution). The president may initiate a constitutional supervision procedure if he/she finds that a law is unconstitutional. The chancellor of justice, finding that a regulatory act of the legislator or an executive authority is unconstitutional or does not comply with the law, makes a proposal to the body which passed the act to dispose of the contradiction. If it is not done, the chancellor of justice will refer the matter to the Supreme Court which may declare the instrument invalid.

The local government may seek protection of an administrative court if an administrative act (i.e. an individual act issued in a legal relationship determined by public law) of a state body (generally – an administrative body), a contract under public law (an agreement which regulates administrative law relationships) or a measure (an act performed by an administrative authority which is not an issuing of a legal act and which is not performed in civil law relationships) is in violation of its constitutional guarantees. Administrative courts are competent to decide on disputes arising in public law relationships. According to the Code of Administrative Court Procedure (Article 44 (4)), a local authority may bring an action against another public authority for the purpose of protection of its rights, including the right of ownership and any rights arising from public law contracts. Section 5 of the same paragraph stipulates that a local authority may also bring an action if an administrative act or a measure of another public authority significantly hinders or complicates the performance of the duties of the local authority^{38&39}. The Supreme Court has established the following:

- The right of the local government to turn to an administrative court in order to seek annulment of decisions or have measures regarding environmental matters declared unlawful must be recognized if the decisions or the measures may substantially affect the local government's ability to manage local life and resolve local matters and, consequently, affect the local government's opportunities to perform the tasks that are inherently self-governmental in nature⁴⁰;
- In order to control violations of the local government's right to self-management, the provisions regulating the right to take legal action over an order issued by the Government to grant a permit to carry out a general geological survey, an exploration permit or an extraction permit despite the local government's opposition, must be interpreted so that the order may be challenged separately from the final administrative act¹⁸. Such an interpretation provides the strongest protection of constitutional values⁴¹;
- If the resources to finance self-governmental tasks fall below the minimally necessary level in a local government, the local government may turn to the state and apply for additional financial resources, and if no additional resources are allocated, the local government may take legal action against the state by taking the matter to an administrative court (Article 44 (5), CACP). The administrative court may look into the constitutionality of the provisions regulating the financing of the local governments during these proceedings⁴²;
- Although no relevant special regulations have so far been enacted, the court does not consider it reasonable that executive bodies continuously settle their financial issues in court when relevant court rulings exist. Therefore, more economical internal administrative procedures must preferably be used to settle such matters^{43&44}.

Pursuant to Article 14 of the State Liability Act, the local government may file a claim for compensation in an administrative court of first instance and seek the failure to pass a regulatory act to be declared unconstitutional if, because of the said failure, the local government has not been provided minimal necessary financial resources, it has been

allocated insufficient resources from the state budget for the performance of national tasks, or damage has been inflicted on the local government in some other way.

The options available to the local governments to protect their rights by going to court are substantially widened under Article 7 of the Constitutional Review Court Procedure Act. The Article establishes the right of the local councils to ask the Supreme Court to declare a promulgated but not yet enforced law or a not yet enacted regulation of the Government or a minister to be in conflict with the Constitution, or to repeal an enacted law, a regulation of the Government or a minister or a provision thereof, if it is in conflict with the constitutional guarantees granted to the local governments. The Supreme Court has estimated that Article 7 of the Act also enables the applicant to challenge the failure of a legislator to pass a regulatory act if this violates the constitutional guarantees of the local governments (e.g. a violation of financial guarantees by failing to allocate resources from the state budget for the performance of a national task).

If the submitted request meets the requirements established by law, the Supreme Court must handle it. The request is admissible under the following circumstances: The request seeks to protect a constitutional guarantee, the request is submitted by a local council, and the request seeks to challenge a regulatory act or provision(s) thereof.

Article 7 of the Constitutional Review Court Procedure Act grants the local council a limited right to initiate a constitutional review procedure. The council cannot ask the court to declare a legal act or its provision to be in conflict with just any provision of the Constitution but only with a provision which constitutes a constitutional guarantee of the local governments. If the provision which the local government's request is based on does not regulate a constitutional guarantee of the local governments, the request is inadmissible under Article 7 of the Act and, under Article 11 (2) of the Act, the court will not handle the matter².

The fact that Article 7 of the Constitutional Review Court Procedure Act limits the local governments' right to file a complaint by requiring that the claimant show a violation of the local governments' constitutional guarantees does not require the Supreme Court per se to check whether a regulation complies with a law as a legal act of higher rank (Constitution, Article 87 (6)), if the latter specifies the constitutional guarantees granted to the local governments. The legislator must also take into account the general principles of law when regulating relations between the local governments and the State. At the same time, the fact that some general legal principle was violated (e.g. a legal act is unclear) does not alone constitute a violation of the constitutional guarantees of a local government. If a local council requests that a legal act be declared invalid because the act is in conflict with the principle of legal clarity, the council has to explain how the lack of legal clarity affects a local governments' constitutional guarantee⁴⁶.

All local councils, which challenged the constitutionality of the Administrative Reform Act in the Supreme Court, claimed in their complaints that provisions of the Act violated

the constitutional guarantees of the local governments: The local governments' guarantee of individual legal personality provided in Articles 154 and 158 of the Constitution, and the financial guarantee established in Article 154²². In their complaints against the Government's regulation regarding compulsory mergers filed with the Supreme Court, the local councils challenged the provisions of the regulation which outlined the change in the administrative-territorial organisation, set boundaries of administrative units, and amended the list of administrative units, etc. The claimants believed that the regulation regarding compulsory mergers as a whole, or in some respect, violated the guarantees granted to the local governments under Articles 154 (1) and 158 of the Constitution (the right of self-management and the right to be heard respectively).

A decision of the local council to submit a request to the Supreme Court under Article 7 of the Constitutional Review Court Procedure Act must be adopted by a majority of votes of the entire council (Article 45 (5), the Local Government Organization Act). It is a position of the Supreme Court that the aim of the requirement set out in Article 7 of the Constitutional Review Court Procedure Act and in the relevant part of Article 45 (5) of the Local Government Organization Act is, above all, to ensure that the decision to turn to the Supreme Court has a stronger legitimation through a larger majority. It is also expected to avoid unsubstantiated complaints with the Supreme Court. Additionally, the provisions must ensure that the will of the council to turn to the Supreme Court is formed freely and in full knowledge of the content of the decision. This prerequisite deriving from the principle of democracy must also ensure that the request for constitutional supervision will not become an instrument of political struggle.

Also, Article 8 (1) of the Constitutional Review Court Procedure Act requires that the request for constitutional supervision must be motivated and constitutional provisions or principles, which the challenged legal act does not comply with, must be listed. The Constitutional Supervision Chamber of the Supreme Court is of the opinion that the requirement was also introduced in order to ensure that the councils take a vote in the appropriate manner on the content of the request and not just grant a general authorization to turn to the Supreme Court.

In order to decide whether to turn to court under Article 7 of the Constitutional Review Court Procedure Act, the council must vote on the final text of a complaint to be filed with the Supreme Court. The Supreme Court believes that such an interpretation helps avoid subsequent disputes over the issue of whether the final text is consistent with the will expressed in the authorization granted in advance.

An alleged violation of the local governments' constitutional guarantee must be committed in a regulatory act or the provision(s) thereof^{47&48}. If it is alleged that a local governments' constitutional guarantee has been violated in an administrative act issued by a state body or with a measure taken by one, the administrative court is the court which will have jurisdiction in that case.

11 Future challenges of the implementation of the European Charter of Local Self-Government

Even before ratification in the parliament in 1994, the Charter played an important role in shaping the legal environment regulating local self-government. Articles 154-160 of the Constitution closely follow the principles of the Charter. After the ratification, Supreme Court rulings have often been based on the Charter, and the Charter has also been taken into account in legislation. CLRAE monitoring visits have contributed significantly to the development of local self-government. However, the implementation of several articles of the Charter, in particular Article 9, has been problematic. This is illustrated by Tables 3 and 4.

Previously, it was noted that, at the initiative of the academics studying local self-government at Estonian universities, a think tank, NGO POLIS, had been set up. The objective of the think tank is to analyze and discuss the most topical issues of the local governments and the regional level by involving politicians, officials and experts, e.g. by representing the local government associations, in order to find solutions to their problems and further develop levels of public administration. NGO POLIS submitted proposals to the political parties which formed the Government in autumn 2016 to be included in the coalition agreement. The proposals were discussed at the forum "Estonian State and Local Governments – 100 Years" held in the parliament's conference center 19 January 2018 with the parliament speaker, members of parliament, ministers, local leaders, representatives of local government associations and academics present (Truuväli et al., 2018).

The most noteworthy proposals of NGO Polis were as follows:

To develop the division of tasks between the state and the local governments with a view to significantly increasing the number of local government tasks, and to developing a relevant legal, political, organizational and financial system; to analyze the possibility of taking the experience of other countries into account, including through experiments and pilot projects.

To expand substantially the financial autonomy of the local governments; for example, by creating a system of local taxes.

To bring about a change in relations between the local governments and government institutions from competitive relations to cooperative ones by creating suitable conditions; to modernize the internal and external auditing and monitoring mechanisms.

To ensure balanced regional development of the country and slow down marginalization of remote areas.

To reorganize regional governance and management, and to reduce administrative fragmentation, improve regional coordination, and establish the necessary legal, political,

organizational and financial mechanisms; to ensure a balance between sectorial and territorial governance; to analyze the experience and possibilities of using relevant EU resources for local and regional development; to identify and analyze possible differences in the exercise of public authority in capital Tallinn and the surrounding area, and create an appropriate legal environment.

In co-operation with the efficiently functioning national local government association of extensive powers that was established 27 February 2018, to establish mechanisms for regional co-operation with a view of resolving common problems and representing regions (for example, by founding regional associations).

In co-operation with the central government and considering sectorial policies, to define the substantive role and responsibilities of the local governments in shaping the local business environment. For example, education and labor policies are key policies in ensuring a viable local government and regional policy. School management and provision of education have been core functions of the local governments since self-government emerged in Estonia.

In order to ensure sustainable development of the field, the central government must establish the following permanent institutional structures – the parliamentary development committee, a permanent government body and a competent consolidating think tank of local and regional development. The latter will bring together academics, politicians and experts. In co-operation with universities, a foundation must be laid to ensuring research-based governance, and local and regional development. To pursue closer cooperation with international partners.

To create an institutional and substantive capacity to analyze what is going on and predict what the world and the position of local governments will be like in the middle of the century, taking into account globalization and the development of information and communication technologies, the virtual world and electronic services. To involve representatives of different social groups, including young people, more extensively.

To ensure that the principles of democracy and decentralization are adhered to and the principle of subsidiarity is applied, while taking into account the provisions of the Constitution and the European Charter of Local Self-Government, and the historical experience in organizing open government; to involve the local governments and their associations, universities and representatives of the third sector in the shaping and implementation of regional and local self-government policies.

The above basic principles of development need to be clarified and further developed, taking into account the Charter and CLRAE monitoring visits to Estonia. It is also necessary to develop the existing cooperation network, for example, by involving more foreign partners. Since the 1990s, founding a research, training and development center for the field has been on the agenda. In a situation where the Government and the

parliament have accepted the proposal of the first and second assemblies of the local governments to declare 1 October the day of local self-government, the establishment of the center has become especially topical. The establishment of the center along with a regular celebration of the local self-government day will enable us in a more systematic and dignified manner to celebrate the role of local self-government as a constitutional institution in the creation, restoration and development of the Estonian State. It would also provide a better opportunity to explore the nature of local self-government and to better understand the principles of the Charter, as well as to speak about the problems and activities of the field in order to more effectively involve the entire society in meeting current and future challenges. The day of local self-government would provide a good opportunity to organize various events all over the country – wherever local self-government is exercised. For example, to mark the day of local self-government, an assembly of the local governments will be convened in a different local government every year. The assemblies will address previously agreed topics, and relevant government institutions and other interested parties will be involved in the preparatory work. It would be appropriate if the events marking the day of local self-government would celebrate significant national or local self-government-related occasions, which would further emphasize the meaning of the day and increase its impact. It would be up to organizers to decide which occasion to celebrate.

It goes without saying that this would catch the attention of the entire society and the media, which in turn would bring about a better understanding of the nature and problems of local self-government, as well as contribute to resolving the problems. It is important to raise the society's awareness of local self-government and this way offer people more opportunities to be involved in the work of democratically functioning local governments.

Today, the responsibility of the local governments is increasing and, in the context of the administrative reform, new challenges await us. A number of important changes to the local self-government system is still needed to ensure the more democratic functioning of the society and the delivery of more efficient services. This requires willingness of various branches of public power as well as private and third-sector representatives to cooperate.

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Local Self-Government in Finland

HANNA VAKKALA, LOTTA-MARIA SINERVO & ANNI JÄNTTI

Abstract This chapter describes how Finnish legislation follows the articles of the European Charter of Local Self-Government. In general, even though local self-government in Finland is constitutionally and legally protected, it is highly state-dependent and restricted in many ways. The current government reform challenges local self-government by establishing a new regional level of governance, altering the Finnish local government system. The burden of public services exposes local government for reforming, which has affected the relationship between central and local governments. In Finland, to follow and implement the principles of the Charter, the biggest challenges are with the municipalities' wide responsibilities, financial constraints, and strong state steering. This chapter illustrates how the role of local government as a service provider has led to a situation where municipalities are strictly steered by and financially dependent on the national government.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Finland

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1 Introduction

Local government in Finland is essential for national well-being and democracy. In Finland, the first national articles of local authorities were enacted in 1865, when municipalities separated from the church and became autonomous. The key idea was to give power to and create opportunities for citizens to manage collective tasks and develop the community. Today, the basic principles of local self-government remain: (a) representative decision-making, (b) task and service responsibilities, (c) power to plan and decide of organisation and economy, and (d) right of taxation. The Local Government Act provides the autonomy, organs, decision-making authority, and the responsibilities of municipalities (365/1995).

Finland joined the European Charter of Local Self-Government in October 1991. In Finland, the principles of local self-government have a long history and are in line with the Charter. When accepting the Charter, Finland defined “local authority” to refer to the municipalities, and local self-government is seen as municipal self-government (Ryynänen & Telakivi, 2006, pp. 14, 54). The Finnish Association of Local and Regional Authorities took part in preparing the Charter (e.g., Ryynänen & Telakivi, 2006), and Finnish local authorities are generally committed to its principles (e.g., Haveri, Stenvall, & Majoinen, 2011). However, strong state steering, the reforms of local and regional government and financial constraints challenge municipalities to follow the idea of local autonomy.

As of 2020, the Finnish local government consists of 310 municipalities, of which 107 are cities. Finnish municipalities are the basic units of services, democracy, and the sense of community for their citizens. Their field of tasks and responsibilities is wide, and their incomes come from local taxation and state subsidies. The constitution gives equal rights for every citizen to access public services, regardless of the location or wealth of the municipality. The state and ministries steer and regulate the services and economy of the municipalities and cities, and influence their financial resources by state subsidies and economic policies. Strong state steering combined with strong local autonomy represents the Nordic model of local governance (von Bergmann-Winberg, 2000).

During the last decade, local government in Finland has been at the centre of large renewals. The national renewal policy has been aimed at two main goals: merging municipalities or health and social-care organisations to encourage a deepening cooperation in service production. The general strategy is to seek benefits by economies of scale. The current reform underlines competition and open service markets. Every local and regional government reform has been highly disputed and criticized, and the parties have argued about reform strategies. Over the years, the main criticism about the reforms has been about tightening state steering and forgetting local actors and the local autonomy. The Finnish tradition of local self-government is strong, and borders in many municipalities and regions are both historical and cultural (Vakkala & Leinonen, 2016). Ideally, local identities and citizens’ rights are appreciated, and local autonomy is

considered to emanate from the citizens. In practice, Finnish municipalities are highly dependent on central steering and state subsidies, and the service tasks are highly regulated. Therefore, every new reform from the central government has raised discussions about localism and the essence of local self-government.

In this chapter, we discuss how the principles and articles of the European Charter of Local Self-Government are followed in Finnish legislation and practical implementation. We examine the problems and challenges that have risen about local self-government. We also examine articles 1–11 in order, which we precede with a history of how the local self-government was developed. Finally, we discuss the future challenges of local self-governance in Finland.

2 Historical development of local self-government in Finland

As mentioned, the roots of the official Finnish local government system date back to 1865 when the first law concerning local self-government (Local Government Act 4/1865) in Finland was enacted (e.g., Haveri & Anttiroiko, 2009, p. 192). At the time, Finland was an autonomous grand duchy of Russia. Secular matters were transferred from the church to the municipalities, with the aim of transferring state-level tasks to the local level. The system created in 1865 was based on a one-tier, local self-government. In Finland, municipalities are the organisations that run the local self-government.

The guiding principles in creating a local self-government in Finland were independence from the state and local democracy (Aaltonen, 1934, pp. 228–229). These same principles continue to guide today's Finnish local government and are similar to the European Charter of Local Self-Government (66/1991).

The ideological background for the Finnish local government system stems from the 18th and 19th centuries when local levels started were seen as a counterforce for the state (Soikkanen, 1966, p. 115). Ideologically, both romanticism and liberalism emphasized the ideals of local self-government. In line with these ideals, rising nationalism paved the way to local self-government. Strong local government increased national liberty and was seen as an important pre-stage for an independent Finnish state (Kaukovalta, 1940, pp. 44–46; Soikkanen, 1966, pp. 116–118, 120). Along with the ideological changes, economic and societal changes greatly influenced the creation of a Finnish local self-government. The breakdown of a class society, emancipation of peasantry, and industrialization started the transition from an agrarian society to an industrial society (Soikkanen, 1966, p. 121).

Although the administrative basis of local government in Finland has been quite stable over the past 150 years, the role and status of municipalities have changed along with societal, economic, and ideological changes. These changes have also affected the perceptions of local government (Jäntti, 2016, p. 72.)

The first phase in the history of local government in Finland was autonomy (1865–1917). Municipalities were given extensive self-government. In the Local Government Act (4/1865), some regulations were made about the tasks and administration of municipalities, but municipalities were free to arrange the obligatory tasks in their own way. From the beginning, Finnish municipalities had the right to levy taxes (Johanson & Tattari, 1984, p. 512). Municipalities had the right to take on additional tasks other than the ones mentioned in the law. Free decision-making power at the local level was regarded as important. Thus, this phase was characterized by locality and freedom (Jäntti, 2016, p. 73). Different solutions in the various municipalities diversified local government and emphasized mutual disparity (Soikkanen, 1966, pp. 412–413.)

At times, local self-government collided with other important endeavors. For instance, the meaning of education was considered more important than local self-government. The state obliged municipalities to establish schools, which previously was a voluntary task (Soikkanen, 1966, pp. 413–414, 464). Little by little, municipalities started to be seen as a part of the state. Thus, the state had the right to decide new tasks for municipalities (Kaukovalta, 1940, p. 221). Effectivity in organizing state-controlled tasks began to be more important than the municipality freedom. The guiding principle of local-level independency started to deteriorate as the tasks for local government increased (Johanson & Tattari, 1984, p. 510; Soikkanen, 1966, p. 815–816).

The second phase in the history of local government in Finland were the first decades of Finland's independency starting in 1917. The obligatory tasks increased notably alongside state control and supervision over municipalities. Local self-government was reduced as the amount of the tasks increased (Kröger, 1997; Rönkkö, 2007a, p. 96). State subsidies were a remarkable factor in municipal economy, bringing stability and continuity. In the beginning of the 20th century, subsidies were designated to certain tasks, such as child welfare, libraries, and schools (Soikkanen, 1966, p. 565–566). The focus gradually moved toward the effectivity and productivity of municipalities, while the ideals of local democracy started to gain less attention (Soikkanen, 1966, pp. 595, 639–641).

The post-war rebuilding era launched a new phase in the history of local government in Finland (Jäntti, 2016, p. 81). The focus began to move from the administration toward the services that municipalities provided, again changing the role of municipalities (Soikkanen, 1966, p. 671). In the 1950s, the number of obligatory and voluntary municipal tasks increased in line with the requirements for efficient administration (Jäntti, 2016, pp. 81–82). Even though self-government was considered an essential part of local government, the perception of local government as a public services provider began to take over (Hannus, 1976a, pp. 13–14; Mennola, 1992, pp. 5, 8). This line of development was typical across Nordic countries, because, during the post-war period, they were building a welfare society (e.g., Page, 1991, p. 134).

In the 1960s, Finnish municipalities were already in charge of a vast number of public services affecting people's everyday lives, with more to come. Increasing tasks meant increasing steering and supervision from the state. The significance of municipalities as local communities decreased, while service-orientation was highlighted. Municipalities were valued according to their ability to produce public services effectively. This ability required a sufficient population basis, which was apt to increase the pressure for municipal mergers (Jäntti, 2016, pp. 83, 85). These reforms were also implemented in Norway, Sweden and Denmark. The reasoning for these reforms was that larger municipalities could handle vast public services (Page, 1991, pp. 133–134). The existence of a local government was based on the role of the municipality as local executors of state-level visions (Möttönen, 2011, p. 67). Equal public services across the country were the cornerstone of welfare society. Local self-government gave way to ensure equality as these services were created. (Anttiroiko & Jokela, 2002, p. 131; Julkunen, 2001, pp. 115–116). The welfare society era gave municipalities the role of welfare distributors and public service producers. From the 1960s to 1980s, the tasks kept on increasing as municipalities produced both state-steered and voluntary welfare tasks, including social and healthcare, education, recreation, and cultural services (Rönkkö, 2007a, pp. 97–98). Furthermore, this state-centric era deteriorated the limits and meaning of local self-government (Ryynänen & Telakivi, 2006, p. 39).

In the early 1990s, Finland faced a severe recession with notable effects on the municipalities. The state reduced obligatory tasks, regulation, and supervision over the municipalities. In this sense, local self-government increased. However, due to a declining economy, the resources at the local level decreased, affecting local leeway (Jäntti, 2016, p. 89.) This phase can be described as a period of decentralization and deregulation, which was boosted because of the recession and a new public management ideology (Julkunen, 2001, pp. 117, 120; Möttönen, 2011, p. 69). Freedom as a value for local government gained some more importance. However, the main value in legitimizing local government was still effectivity. The state transferred power to municipalities, as well as the responsibility to cope with a difficult economic situation. The phase of increasing self-government lasted for only a decade, until the state began to tighten its grip on municipalities (Haveri, Stenvall, & Majoinen, 2011, p. 8).

The first decades of the new millennium can be described as a phase of reforms, recentralization, and reregulation. Since the aughts of 2000, obligatory tasks and detailed regulation have increased, weakening local self-government by reducing the opportunities for local choice in municipalities. The reason for tightening regulation on municipalities was to provide equal public services to all Finnish citizens. Fulfilling fundamental rights has again been contradicted with local self-government. In decision-making, services have been emphasized more than local self-government (Jäntti, 2016, p. 93; see also Ryynänen & Telakivi, 2006, p. 44). It can be argued that local self-government in Finland is in crisis due to the overload of tasks, increased regulation, and state-led reforms (Haveri, Stenvall and Majoinen, 2011, p. 8). The legitimacy of local

government is increasingly linked to its effectivity in organizing public services (Sipponen 2016, 111).

Recently Finland has been in the middle of the biggest local self-government reform in its history. The government of Finland is preparing for this massive reform, which will transfer social and healthcare services from municipalities to counties in 2020. If the reform takes place as planned, the counties will be responsible for employment, regional and economic development, and the environment. A crucial part of the reform is the creation of a regional self-government so that, in the future, Finland will have a two-tier self-government system. Strong economic drivers of the reform aim to save EUR3 billion by 2029. This remarkable change will have strong effects on municipal and regional administrations, economy and self-government, and the roles of municipalities and regions.

3 Constitution and legal foundation for local self-government

According to the the European Charter of Local Self-Government the principle of a local self-government must be recognized in national legislation and in the constitution. However, the structures and traditions of local self-government vary in the EU member countries, which is why the Charter leaves many possibilities to formulate a local self-government nationally (Ryynänen & Telakivi, 2006, pp. 32–33).

Local self-government has a constitutional protection in Finland: the principle of local self-government is explicitly written in the Finnish Constitution. The constitution (731/1999) includes regulations on local self-government in municipalities. It also includes regulations on regional self-government. According to the constitution, Finland is divided into municipalities, whose administration is based on the self-government of their residents. Provisions on the general principles that govern municipal administration and the duties of the municipalities are laid down by the act. That is, the state can give duties to municipalities only through legislation. The right to levy a municipal tax has a constitutional foundation in Finland. Provisions on the general principles governing tax liability and the grounds for the tax are defined by act. The Sami (a native people, mostly living in northern Lapland), have linguistic and cultural self-government in their native region, as provided by act.

The constitution of Finland includes the basic regulations concerning local self-government. The implementation of local self-government and extensive rules on the legal status of municipalities are more closely regulated in the Local Government Act (410/2015) (see also Torres Pereira & Van Overmeire, 2017, p. 21). The purpose of the act is to establish the conditions in which self-government of residents in the municipalities can occur and where residents can participate and influence municipal decision-making. The act applies to the arrangement of administration, duties, and finances in local government.

The Local Government Act (410/2015) has regulations on municipal tasks. Municipalities can perform the functions that they choose for themselves by virtue of their self-governing status. They have to arrange the obligatory functions that are provided for them separately through legislation. The law also specifies when functions, such as special healthcare or rescue services, have to be arranged in cooperation with other municipalities (statutory joint responsibility). Municipalities or joint municipal authorities themselves can provide the services for which they have a service arranging responsibility. Alternatively, they can acquire these services from other service providers (other municipalities, joint authorities, or private or third sectors) on the basis of an agreement.

The relationship between the central and local governments is defined in the Local Government Act (410/2015). The Ministry of Finance monitors the activities and finances of the municipalities in general and ensures that their self-governing status is considered whenever legislation regarding local government is drafted. Regional State Administrative Agencies can investigate whether municipalities have acted in accordance with the legislation. When the state give tasks to the municipalities, the state must provide them with adequate funding to meet their duties, which refers to the principle of adequate financial resources.

Municipalities have local councils that are responsible for the municipalities' activities and finances. They also exercise the supreme decision-making power in municipalities. According to the Local Government Act (410/2015), the local council decides on:

- the municipal strategy;
- administrative regulations;
- budget and financial plan;
- ownership policy principles and corporate governance principles that apply to the local authority corporation;
- operating and financial objectives set for municipally owned companies;
- principles for managing assets and for investment activities;
- principles for internal control and risk management;
- general principles about payments charged for services and other tasks performed;
- granting of a guarantor's undertaking or other security for another party's debt;
- election of members to the decision-making bodies, unless otherwise provided hereafter;
- principles about the financial benefits of elected officials;
- appointment of auditors;
- approval of the financial statements and granting of discharge from liability; and
- other matters that are presented for the decision of the local council.

Local councillors and deputy councillors are elected to local councils in local elections. The term of the local council is four years, starting at the beginning of June in the election year. Local elections are direct and proportional, as well as by secret ballot. All eligible voters have an equal right to vote. The local council can establish sub-area local authority

committees or sub-area management boards to further the opportunities of residents in a sub-area of a municipality to exert influence. (Local Government Act 410/2015.)

To summarize the legal foundation of Finnish local self-government, the basic principle is that municipal tasks and duties are laid down by legislation. Another important feature is the right to levy taxes and the principle of adequate financial resources that enables adequate financial autonomy. In addition, the right to perform functions chosen by virtue of the municipalities' self-governing status is one of the main legislative principles of implementing local self-government, which is constitutionally and legally protected in Finland. However, many strictly regulated service tasks combined with only one sub-national self-government level (municipalities) has led to a situation where local self-government is highly dependent on the state and restricted in many ways (Haveri, 2015; Jäntti, 2016; Jäntti, Sinervo & Vakkala 2019; Vakkala, Sinervo & Jäntti (forthcoming 2020)).

4 Scope of local self-government

In the Charter, local self-government is defined as “the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population. This right shall be exercised by councils or assemblies composed of members that are freely elected by secret ballot, on the basis of direct, equal, universal suffrage, and which may possess executive organs committees responsible to them” (European Charter of Local Self-Government).

Article 3 contains a restriction for local self-government by recognizing the fact that the legal right to manage public affairs needs to be, in some cases, defined more closely by national legislation. However, this article also highlights the idea of local authorities as independent actors that can function under their own responsibility not limited to acting as agents of national authorities (Explanatory Report, 1985).

A fundamental question regarding the tasks of local government is what affairs local authorities should be entitled to manage. This question remains open because it is impossible to give a clear answer. The circumstances, history, and culture differ from country to country. Also, a country might have its own huge disparities, making it difficult to decide at what level certain tasks should be managed. In addition, some tasks can be local, regional, and national by nature (Explanatory Report, 1985).

The intention of Article 3 is that local authorities should have a broad range of responsibilities to carry out at the local level (Explanatory Report, 1985). In Finland, this intention can also be seen in practice. Finland can be described as a so-called *municipal state*, where municipalities have traditionally had a big role in carrying out two-thirds of public services. The scope of local government in Finland is, thus, extensive.

Article 3 also highlights that the rights of self-government must be exercised by democratically constituted authorities, such as councils. In Finland, local council members who have the supreme decision-making power in municipalities are freely elected. Forms of participatory democracy, such as users' boards, panels, initiatives, or co-designing services, are used at the local level along with the representative system. The right to vote in a municipal election and municipal referendums is defined by the constitution.

Implementing the European Charter of Local Self-Government in the national legislation has in part strengthened the status of local self-government in Finland by affecting former legislation. This instance can be seen as an example of deregulation of the laws and norms for municipal organisations. The scope of local self-government in legislation is strong, but financially, the situation is more restricted (Ryynänen, 2003, pp. 24–25). In addition, as a side effect of the broad tasks, municipalities are strictly connected to the state, as noted by the number of obligatory tasks (Ryynänen, 2011, p. 147), which are often highly regulated. Therefore, *de facto* municipalities do not have proper decision-making power in how the tasks are carried out. This question also arose in the evaluation report by the Monitoring Committee of Congress of Local and Regional Authorities in Council of Europe (Torres Pereira & Van Overmeire, 2017, p. 24). In addition, municipalities can perform functions that they choose for themselves by the virtue of their self-governing.

Finland is committed to the principle of subsidiarity: the municipalities are mainly in charge of public tasks. Some of the tasks, such as special healthcare, are carried out by inter-municipal cooperation with joint authorities, which is argued by the nature and scope of the tasks. In special healthcare, for instance, the medical procedures require an adequate population basis for good quality services and sufficient expertise of the personnel. Other public tasks, such as urban planning, require cross-border cooperation in designing land use, housing, or public transport in metropolitan areas. The decision-making power in these cases can be transferred to the regional level, where municipal representatives decide on inter-municipal issues.

According to the Charter, the mandate of local governments should be unlimited. Other authorities should not have the right to restrict or weaken their mandate. In Finland, the restrictions are based on the rule-of-law principle and, thus, are connected with the legitimacy of municipal decision-making. Regional State Administrative Agencies have the right to investigate whether municipalities have acted in accordance with legislation. Restrictions of municipal mandates also concern citizens' right to appeal against municipal decisions. The regulations are based on the Administrative Procedure Act (434/2003) and the Local Government Act (410/2015). The appeal authority is the administrative court. An appeal can be made on the grounds that the decision was not taken in the proper sequence, the public authority that made the decision exceeded its powers, or the decision is otherwise unlawful.

Other restrictions on local self-government concern municipal boundary divisions and the financial performance of municipalities. The state has issued a decree concerning criteria for so-called crisis municipalities. The criteria is based on the financial statistics of municipalities, representing their ability to carry out their tasks. If a municipality meets the criteria, the Ministry of Finance appoints an assessment group to prepare a program to balance the financial situation in the municipality. If the municipality cannot improve its financial situation, the state can launch a special investigation for municipal mergers. This investigation can lead to an involuntary municipal merger, which is a severe restriction of local self-government.

Local authorities should be heard when planning and making decisions about issues they are involved with, as defined in the Local Government Act. Demand for hearing municipalities is seen as part of the principles of good governance (Ryynänen & Telakivi, 2006, p. 118). In Finland, municipalities and the state have a negotiation process between central and local government. The Association of Finnish Local and Regional Authorities represents municipalities in this negotiation process. Due to the vast heterogeneity between Finnish municipalities, it can sometimes be problematic to find a common policy or opinion about issues that affect municipalities differently depending on their size, circumstances, and situation in general.

Negotiations between local and central government are carried out when:

- 1) new legislation concerning local government is planned;
- 2) central government measures are far-reaching and important in principle concerning the activities, finances, and administration of local government; and
- 3) it comes to the coordination of central and local government finances (Local Government Act 410/2015).

Local self-government in Finland is protected by the constitution and controlled through the constitution committee. Overall, the principles of local self-government in Finland are taken into account quite well. The scope of local self-government is vast, in line with the principle of subsidiarity that covers most of the services that people need in their everyday life. However, the number of tasks puts municipalities in a situation where they are financially dependent on the state and their discretion is restricted through detailed legislation, which in practice restricts local self-government.

5 Protection of local authority boundaries

Article 5 focuses on the right of municipalities to decide on their own boundaries: “Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.” The idea of this article follows the subsidiarity principle and addresses that, in cases of fundamental importance, decisions should be made by residents or as locally as possible (Ryynänen 2012, pp. 57–58).

Article 5 includes only one paragraph, which can be approached from three directions. First, it can be argued whether it is possible to force municipalities to merge or change their boundaries in other ways. Second, if forced mergers are possible and justified according to national law, prior consultation of local actors is needed, which leads to a discussion about how the negotiation processes and mergers are managed locally and nationally, and between these parties. Third, Article 5 includes a viewpoint of citizens' participation by referendum as a consultative process, when it is enabled in legislation (Explanatory Report, 1985).

Forced mergers have been a hot topic in Finland, especially during the last decade. For example, in regard to the core of this chapter, one question begs whether the institutional autonomy of municipalities is to their own borders. Another question seeks to determine whether the municipalities' power to decide on their boundaries is a starting point, rather than the actual objective. As Ryyänen (2012, pp. 57–59) interprets the aim of the article is that all changes in local boundaries should be made in good negotiation and cooperation between the municipalities and the state. From this point of view, the strong Finnish idea is that municipalities as autonomous institutions lose statutory groundings, when they can be forced to merge with only prior consultation needed. This idea shifts the focus to interaction between state and municipalities, especially in emerging situations of difficult financial problems.

In Finland, the law allowed the state to force mergers without the consent of involved municipalities during the years 1946–1992, if required by an important common benefit. Yet, this practice was seldom used, under 15 times and mostly in the 1960s and 1970s (Laamanen, 2007). In 2013, the Local Government Act was completed with decrees that allowed the state to force merging if a severe financial crisis occurred in a municipality. The government can start the evaluation process for municipalities in a difficult financial situation or if at least 20% of the local residents entitled to vote make a motion to cease the municipality or establish a new municipality. This decree was included in the reform of local authorities by the government of Prime Minister Jyrki Katainen, who strived to strengthen the local government structure and closely followed the economy of the municipalities. This time, forced mergers without the consent of municipalities were implemented in four cases, but the fourth merging process was repealed in the Supreme Administrative Court, and the municipalities continued autonomously. The municipality of Lavia was forced to merge with the city of Pori starting in 2015, despite both of the local authorities opposing the merger. At the same time, the municipality of Tarvasjoki was forced to merge with the opposing municipality of Lieto. Both sides accepted the merger only in Jalasjärvi and Kurikka. In 2014, the Rääkkylä municipality, which was in a difficult financial position, was forced to merge with the municipality of Kitee. However, the Supreme Administrative Court declared the decision by the Finnish Government (Antila, Asikainen & Koski, 2015).

Instead of administratively forced mergers, the Finnish Government has used other ways to support, motivate, and further mergers. Until 2013, the central government paid extra

subsidies for municipalities that merged voluntarily. The Local Government Act (478/2013) regulates voluntary mergers of municipalities, which have been implemented in all regions of Finland during the last decade. The number of municipalities has decreased from 415 in 2008 to 311 in 2018. A merger can be implemented if it strengthens locally solid structures, services, livelihood, and the functional and financial conditions of a municipality. The municipalities can evaluate the outcomes and negotiate the terms and objectives by themselves or with the help of professionals.

In Finland, forced mergers have been an extreme measure and face severe criticism (e.g., Stenvall et al., 2015; Laamanen, 2007). According to Article 5, the process of a forced merger starts with local consultation. The municipal governments first go through negotiations to see whether they are willing to merge voluntarily (Stenvall et al., 2015). Proceeding with the negotiations, even in voluntary processes, requires open interaction and dialogue between the municipalities. In state-initiated processes, understanding of the reasons and objectives of change is even more important to the parties that are involved. However, mergers are complicated and complex processes, and the results and effects are difficult to evaluate. Complexity is also present in the management system of the municipalities. Personal interests are likely to emerge, and power struggles between political groups can take a strong role (Leinonen, 2012). Even a good, discussive and comprehensive process can end after long preparation if the majority of the local councillors decide to object. Common opinion indicates that the municipalities should be able to decide on their own future, but autonomy should not continue at any price (Pikkala, 2015). When an “own” municipality is at stake, emotional factors start affecting opinions, and criticism is stronger toward other merging processes. However, the citizens’ opinions can become more positive (Pekola-Sjöblom, 2011).

As a whole, issues about municipality borders and mergers raise strong opinions, for example, based on history, traditions, or identity. The attention is aimed at the opinions of local residents. Article 5 suggests referendums as a possible way to consult citizens. In Finland, the Local Government Act (410/2015) enables local, advisory referendums that are decided in Local Councils. However, only a few referendums have been organised in Finland, reflecting common opinions about the strength of a local representative democracy. According to the Ministry of Justice (2015), local referendums were organised 61 times during the years 1991–2014; most of them concerned mergers or other changes in the boundaries. The referendums are advisory, leaving the power to the Local Councils to decide whether they will follow the results. In the case of mergers, Local Councils have decided according to the voting result 44 times, and 11 times against the result.

Although referendums are seldom used in Finland, voting activity is usually high. Citizens wish for opportunities to vote for local issues, and more than half of the citizens think that referendums are important (Pekola-Sjöblom, 2016). Referendums are an important part of local democracy, even though most Finns have not been able to participate in them.

6 Administrative structures and resources for the tasks of local authorities

Democracy and political decision-making form the basis of justification and existence of municipalities. However, strong, capable administration is equally needed. Both political and administrative leaders should work actively together as partners for shared purposes (Leinonen, 2012). This complementary model emphasizes the partnership between administration and politics, addressing dynamic and active collaboration (Svara, 2007). Ideally, political leadership sets goals and strategies, and administrative management implements them, although the relationship between these tasks has become vague (Leinonen, 2012).

Article 6 addresses the role and responsibilities of administration in municipalities. According to the Charter Explanatory Report (1985), the focus of the first paragraph is on how the administrative services are organised and how local circumstances, and requirements are taken into account. The purpose is to encourage organising efficient local administration and solid structures. In addition, the second paragraph addresses the competence of personnel and managers to organise high-quality services, which are aimed at reliability and transparency. Local officers and staff must have freedom and space to exercise their duties and organise services, along with adequate financial compensation for their work (Sadioglu & Dede, 2016, p. 33).

In Finland, the Local Government Act G (410/2015, 30 §) requires all municipalities to have a council, board, audition committee, and election committee. Other political organs can be formed locally. In legislation, the political committees and their tasks are defined in detail, but the administrative structures are left open for municipalities to decide. According to the Finnish Constitution (121.2§), only the general basis of municipality administration is ordered in law, which is in line with the first paragraph of Article 6. Municipalities can create and follow their own administrative provisions, which orders locally on general management, personnel management, and financial management, in addition to other administrative issues (410/2015, 90§). Finnish municipalities have a rather wide freedom to organise (Heuru et al. 2011, p. 225), which has led to a various structural models.

The only statutory administrative post is that of a municipal manager or a local mayor (Local Government Act 41–44§). The local council appoints the municipal manager, who works under the municipal board. The municipal manager is an executive leader (CEO), working as the head of the administration and the highest municipal official. Administratively, the manager acts as a presenter in the board meetings and coordinates the implementation of decisions. In external relations, the municipal manager is a key actor in building relationships with local stakeholders and governing networks. This central role makes the municipal manager's influence and power strong in policies and strategic plans, local governance, and local well-being (Leinonen, 2012). Since 2007, legislation has enabled electing a mayor instead of a manager, as the person who is responsible for management, financing, other functions, and acting chairperson of the

board. The mayor is a political actor who is chosen by the council. However, the mayoral model has raised discussions in many municipalities, but so far only a few of them have decided to choose a mayor instead of a municipal manager.

In the majority of Finnish municipalities, organisational structures have gone through remarkable changes, due to, for example, the general goals of efficiency and cost-effectiveness, the purchase-provider model, or customer-oriented service development. Many municipalities are also interested in process organizations, where services are grouped according to the users' and citizens' needs in certain life phases, not by traditional sectors (Kenni & Asikainen, 2011). The development has been supported by the previous national reforms of local government structures, and where mergers have been implemented, organisations have been completely reorganised (e.g., Stenvall et al., 2015). Finnish municipalities have adopted varying structures, and finding two comparable organisations has become difficult and even impossible.

The second paragraph of Article 6 addresses the competence, remuneration, and development of staff in local governments. The Finnish education system has been consistently leading many rankings. All posts in municipalities have education and experience requirements, the basic level of which is defined in the collective labour agreement of the municipalities. In practice, the requirements and task descriptions are specified in municipalities when recruiting. In addition, the minimum level of financial compensation is defined in the collective labor agreement, and it is followed tightly especially in service branches that hold the largest number of employees. However, the remuneration of municipal managers and top administrative managers can be agreed locally. Here, the principles of the Charter have been followed well in legislation (Ryynänen & Telakivi, 2006, p. 92), where the main acts are the Administrative Act (434/2003) and the Act of Local Office Holders (304/2003).

Human resources management in municipalities has experienced several challenges since the Charter was implemented. An aging population and lack of workforce have impacted the municipalities that have to organize services for citizens regardless of price, which has led to outsourcing and privatizing. Some municipalities have been forced to considerably raise the salaries of key professionals, such as to attract enough doctors to healthcare centers. In addition to demographic development, mergers and other structural reforms have brought a culture of constant changes to municipalities (e.g., Vakkala, 2012). Recruiting, keeping, and motivating skilled professionals in the context of a tight economic situation and constant reforms has become a permanent challenge to local authorities. Municipalities vary widely in how well they manage human resources and development, especially during change processes (Jokinen & Heiskanen, 2013, p. 91). Yet, the idea of Article 6 is followed tightly and implemented locally within these limits.

7 Conditions under which responsibilities at local level are exercised

Article 7 of European Charter of Local Self-Government aims to ensure that the conditions of the office of locally elected representatives shall enable them to exercise their functions freely. This article also ensures that purely material considerations shall not prevent elected representatives from standing for office. One of the main aims of the current Local Government Act (410/2015) was to promote a representative democracy by ensuring good working conditions for elected officials and transparency of decision-making. To address workload difficulties, such as managing work-life balance, a new Local Government Act was created to allow full-time elected officials to take a leave of absence from their jobs as needed for the duration of their position. In addition, elected officials can work part-time, but they are not entitled to a leave of absence. In addition, full-time and part-time elected officials have the same rights as local government officers with rights to annual leave, sick leave, family leave, and occupational healthcare services (Torres Pereira & Van Overmeire, 2017, p. 29).

A new Local Government Act (410/2015) introduces new management models to strengthen political leaderships. These models are an attempt to clarify the position and distribution of work between the municipal manager, local council, and local executive. However, the distribution of work is linked to the distribution of obligations to municipalities in general. As mentioned previously, municipalities are seen as service providers with a massive load of tasks. If service obligations are reduced, they will result in distribution of work between the administration, local council, and local executive.

Article 7 is implemented in Local Government Act (410/2015), Section 82. Section 82 states that elected officials shall be paid meeting fees, compensation for loss of earnings, costs incurred when engaging a substitute, arranging childcare, or other similar reasons arising from the position of trust. An average meeting fee is around EUR70. Also, compensation for travel costs and a per diem allowance shall be paid. Elected officials can also be paid a fee for a fixed period and other separate fees, averaging around EUR2000 for a chairperson. In addition, on the basis of authorisation received from an elected official, the municipality can collect the elected officials charge that is referred to in Section 31(1)(5) of the Income Tax Act (1535/1992). The charge is collected from the fees that are paid to the official and then disbursed to the party or party association (a so-called *party tax*). The sum of the charges that is collected must be accounted for in the municipality's financial statements (cf. Torres Pereira & Van Overmeire 2017, p. 29).

Article 7, Section 3, states that any functions and activities that are deemed incompatible with the holding of a local elected office shall be determined by statute or fundamental legal principles. In Local Government Act (410/2015), Chapter 10 deals with elected officials and their eligibility. It states that persons who are eligible for election to a position of trust in a municipality are those:

- 1) whose municipality of residence is the municipality in question;

- 2) who, in the year when local councillors are being elected or when an election is being held for some other position of trust, have the right to vote in local elections in one of the municipalities; and
- 3) who have not been declared legally incompetent.

In local councils, eligibility restrictions apply to persons who are employed by local government in a senior position within an area of responsibility of the local executive, of a local authority committee, or in a comparable position. This restriction also applies to persons who are in a comparable position in a municipal corporate entity or foundation and to public servants in central government who perform supervisory tasks directly related to local government administration. Persons in these employment relationships are eligible for election as local councillors if their employment relationship ends before the local councillors' term begins.

Persons who are eligible for local councils are also eligible for local executive. Justifications in the Local Government Act (410/2015) indicate that it is generally seen problematic if the members of a local executive are employees of a local government or its entities, weakening the local executive's ability to act. In addition, it is highly problematic for unbiased decision-making if the chairperson of a local executive is employed by a municipality. In a few cases in Finland, local councillors have had dual roles where they were in the position of trust for a local executive while being employed by municipal corporate entities.

8 Administrative supervision of local authorities' activities

Municipalities primarily supervise their own financial activities. Article 8 of the Charter deals with supervision of local authorities' activities by other levels of government. Issues regarding this supervision are implemented in the national legislation, precisely in Chapter 3 of the Local Government Act (410/2015), where the relationship between central and local government is considered. As mentioned previously, the negotiation process between the central and local governments is a tool to coordinate public finances as whole. At the same, this coordination provides a way to control public finances and financial resources. It is also required in the Stability and Growth Pack (SGP) of the European Union. The SGP is a set of rules that ensure that countries in the European Union pursue sound public finances and coordinate their fiscal policies. The SGP defines rules for a national budgetary framework in each member state. The SGP applies to the government in general, but it is required to have a separate national budgetary framework for each sub-sector. These comprise of central and local governments, as well as social security funds (Matikainen, 2015). Thus, local government as a part of public finances is more closely monitored and guided. A statute regarding a plan for public finances (120/2014) is included in national legislation.

The Local Government Act (410/2015) defines the relationship between central and local government in the sense of monitoring municipalities and oversight legality of their

actions. Supervision over the legality of municipal activities is mainly exercised by the administrative courts in individual cases. Any municipal resident who has a standing in cases regarding general competence of the municipality can submit an appeal against a municipal authority decision to the (Regional) Administrative Court. Such an appeal can be made on the grounds that: (a) the decision was not taken in accordance with proper procedure; (b) the body exceeded its powers; or (c) the decision was otherwise unlawful. Further appeals can be lodged with the Supreme Administrative Court. Regional level authorities control municipalities formally only through the supervision of legality, which is performed by Regional State Administrative Agencies. Economically and functionally, the regional level does not control municipalities in any way (Torres Pereira & Van Overmeire, 2017, p. 30).

While overseeing matters of the legality of the municipalities' actions, two important institutions, the Ombudsman and the Chancellor of Justice (with a constitutional position since 1809), must be recognized. Municipalities can file complaints with the Chancellor of Justice. The Chancellor of Justice checks the lawfulness of decisions made by the government and the President of the Republic prior before they are implemented. Such decisions also apply to matters that are connected with municipalities, such as decisions about municipal mergers. The Chancellor of Justice receives a considerable number of complaints from citizens concerning municipal administration. Most often these complaints are related to corruption regarding the administration or to social, healthcare, and educational services. Finland does not have regional or local ombudsmen, but it does have ombudsmen for patient and social concerns (Torres Pereira & Van Overmeire, 2017, pp. 30–31).

The Ministry of Finance monitors the activities and finances of municipalities in general and ensures that their self-governing status is taken into account whenever legislation about local governments is drafted (Local Government Act 410/2015, chapter 3). Monitoring also involves the negotiation process between the central and local government and a specific program for local government finances. The plan for public finances and programs for local government finances are both part of European Union (EU) regulations for member countries. While both of these policies ensure long-term financial sustainability of the public sector, they also place municipalities under tighter supervision by the central government.

As defined in the Local Government Act (410/2015), the preparation of the program for local government finances is a part of the preparatory work of general government fiscal plan and budget proposal for the central government. This program ties the local and central governments together more closely when it comes to governing public financial resources as a whole in a more sustainable way. As stated in the Act, the program for local government finances shall include the part of the general government fiscal plan that deals with local government finances. Provisions on the general government fiscal plan are defined as part of the Act on the Implementation of the Treaty on Stability, Coordination, and Governance in the Economic and Monetary Union and on Multi-annual

Budgetary Frameworks (869/2012). The preparation of program for local government finances is under the Ministry of Finances. It is also part of the Ministry of Social Affairs and Health, the Ministry of Education and Culture, the Ministry of the Environment, the Ministry of Transport and Communications, the Ministry of Employment and the Economy and, if necessary, other ministries. The Ministry of Finance prepares the economic forecasts and assessment of the trend in local government finances, which form the basis for the program for local government finances. The Association of Finnish Local and Regional Authorities shall participate in the preparation of the program for local government finances (Local Government Act 2015/410, chapter 12).

The program for local government finances deals with the issues of adequate financial resources. This principle for financial resources is defined in Article 9 of the European Charter of Local Self-Government. In previous local government acts, this principle was not defined. However, it could be interpreted from the rulings of the Constitutional Law Committee of Finland. The current Local Government Act (2015/410, chapter 12) is the first one to include a provision on this principle (e.g., Matikainen, 2017, p. 86): “The program for local government finances shall include an assessment of the adequacy of funding for meeting the duties of municipalities (*principle of adequate financial resources*).” In preparation of the new Local Government Act, the Constitutional Law Committee strongly urged for the principle and especially the assessment of adequacy to be statutory, which resulted in defining the principle in the Local Government Act.

The program for local government finances currently contains an assessment of changes in the municipalities’ operating environment and demand for services, and in the functions of local authorities. It also provides an estimate of the trend in local government finances, which are assessed as a whole: as a part of general government finances, and in terms of different groups of municipalities. The assessment distinguishes between the statutory functions and other functions of municipalities and assesses the cost-effectiveness of municipal activities. Trends and the impact of the central government’s budget on local government finances are all assessed in connection with the central government’s budget proposal.

In Finnish national legislation, the principle of adequate financial resources is tied to the *assessment* of adequacy even though the idea of the principle is to *ensure* adequate financial resources for municipalities, not merely to assess their adequacy (e.g., Harjula & Prättälä, 2015, p. 217; Matikainen, 2017, p. 87). In addition, Finland does not have a specific mechanism to assess adequate resources. The program for local government finances is a tool to monitor than manage local government finances as a part of public economy in a financial sustainable way. However, this program lacks the concrete measures and means to achieve the aim of adequate finances.

In Finnish legislation, the financing principle is closely tied to the program for local government finances and, therefore, to the SGP. This principle defines the rules for the central government, which must provide local authorities adequate financial resources for

their statutory responsibilities, where the SGP sets rigid budgetary frameworks to the member states of the EU. Within those budgetary frameworks, a member state must ensure local authorities adequate financing for their statutory responsibilities as required by the financing principle, which begs the question of public sector responsibilities in general, making the principle highly political. From the point of view of public finances, the financing principle can be interpreted so that the public sector cannot take on more tasks than it can afford (Matikainen, 2015; Sinervo & Meklin, 2017).

The central government monitors the financial position of the municipalities in Finland (Local Government Act 410/2015, 118§) with an assessment procedure for difficult financial positions. According to the Act (410/2015, 118 §), a municipality is in a difficult financial position when it has not covered the deficit in its balance sheet within four years (planning period). A difficult financial position can also be when the latest financial statements of a local authority corporation show a deficit per resident of at least EUR1,000 and the preceding financial statements show a deficit per resident of at least EUR500. Financial difficulty can also occur when the key financial figures for finance adequacy or solvency of the municipality and the local authority corporation have reached the following limits for two successive years:

- 1) the annual contribution margin of the local authority corporation is negative without a discretionary increase in central government transfers to local government granted under Section 30 of the Act on Central Government Transfers to Local Government for Basic Public Services (1704/2009);
- 2) the rate of local income tax for the municipality is at least 1.0 percentage point higher than the weighted average rate of the local income tax of all municipalities;
- 3) the debt per resident of the local authority corporation exceeds the average debt for all local authority corporations by at least 50%; or
- 4) the relative indebtedness of the local authority corporation is at least 50%.

The evaluation of a difficult financial position leans heavily on one indicator, and an assessment procedure might be started based on the deficit only. The reasons for the deficit and interpretation of the indicator is not within the focus of assessment procedure. However, deficits can accumulate for different reasons, and a municipality could have a balanced economy even with a deficit (Kärki et al., 2006; Sinervo, 2014). In the assessment procedure, the municipality and central government together must examine the municipality's opportunities for securing the services for its residents that are required by legislation and must take measures to ensure the preconditions for the services are in place. The examination shall be performed by an assessment group, of which one member is appointed by the Ministry of Finance and one is appointed by the municipality. After hearing the views of the municipality, the Ministry of Finance appoints as the group's chairperson a person who is independent of the municipality and the ministry. The group formulates proposals for the measures that are required to secure the services for the municipality's residents. The local council must consider the group's proposed measures and inform the Ministry of Finance of its decision on them for the purpose of any further action. Based on the group's proposed measures and the local council's decisions, the

Ministry of Finance decides on the need for a special report. This report is referred to in the Act on Local Authority Boundaries (2009/1698, amendment in 2013) for the purpose of amending municipal boundary divisions.

Based on a difficult financial position, the municipality might be forced to merge with a bigger municipality that has a more solid financial position. The criteria for a difficult financial position and the assessment procedure might have severe consequences for the local self-government. As mentioned in Section 4, forced mergers have been made twice in Finland, highlighting the importance of financial autonomy in local self-government. Without adequate financial resources, a municipality might literally lose its self-government.

9 Financial resources of the local authorities and the financial transfer system

Autonomy of the local government requires citizens to have the right to decide on the finances and economy of the local government. The key financial goal of the public sector and local government is financial sustainability. Fundamentally, local government exists to ensure adequate well-being for its citizens by organizing good quality public services for tax-paying residents.

This basic idea of the public sector creates two fundamentals of public financial management. First, the public sector and its organisations must have its economy and finances in balance in the long run. In a municipality, incomes that it receives from its residents should be adequate to organize services for them. There should not be a need to collect too many or too few taxes than needed. Secondly, tax incomes must be used economically, efficiently, effectively, and equally (e.g., Pollitt, 1986), giving value to tax payers' money (e.g., Martin, 2000, cf. McKevitt & Davis, 2016). Financial sustainability deals with the issues of financial resources commensurate with responsibilities, which eventually ensure financial autonomy and, thus, a local self-government.

The Constitution of Finland (731/1999) states that municipalities have the right to levy a municipal tax. Thus, the basis of one's *own* financial resources for local government in Finland is on the municipal tax income as required in Article 9. The local council determines the municipality's rate of taxes in the approved municipality's budget (Local Government Act 410/2015). This municipal tax meets the requirement of Article 9, paragraphs 1 and 3 of the European Charter of Local Self-Government and implementation in the national legislation. However, the right to levy taxes or tax incomes does not guarantee the adequacy of financial resources. Therefore, paragraph 2 of the same article addresses the principle for adequate financial resources.

The financial resources of Finnish municipalities consist of different types of incomes. Municipalities have the right to levy taxes on earned income, real estate, and other sources. According to the Local Government Act (410/2015), a local council decides on the rates of local taxes with no restrictions. Municipalities are also entitled to a portion of

corporation tax that laid down by a specific act. On average, tax incomes make up half the incomes of municipalities. For example, in 2019, municipalities and joint municipalities pulled in 48%. A significant source of income for local authorities are grants from central government (18% in 2016), charges from customer and service fees, and sales incomes (20% in 2016). The remaining income come from borrowing (9%) and other incomes (5%).

Central government grants are a notable part of municipality incomes. The principles and criteria for the grants are defined in the Act on Central Government Transfers to Local Government for Basic Public Services (1704/2009). The basic public services are social services, healthcare, education, and cultural services, which are organized by the municipalities. Grants are mainly block grants, leaving local authorities to freely exercise policy discretion within their own jurisdiction. Grants are accounted for on the estimated operating costs of basic public services. The Act (1704/2009) has defined a criteria for socio-economic and demographic factors. For instance, some municipalities have massive demographic development. If they are densely, scarcely, or insularly populated or have Swedish, Finnish, and Sami speaking populations, they receive increased grants. The various basic public services have a different criteria for accounting in regard to the grants. In healthcare services, health, unemployment, and disability indexes are accounted in for defining the amount of the grants.

The point of focus in the adequacy of financial resources is the question of adequate for *what*. The Constitution of Finland (731/1999) indicates that public authorities must guarantee equal opportunity for everyone to receive basic educational services and the right to social security. They must also guarantee adequate social, health, and medical services for everyone and promote the health of the population. Moreover, they must support families and others who are responsible for providing for children so that they have the ability to ensure the well-being and personal development of the children. Public authorities must also promote the right of everyone to have housing and the opportunity to arrange their own housing. These constitutional rights are mainly the responsibility of the municipalities, because they are the public authorities that arrange these services.

The Local Government Act (410/2015), among many other Acts, lays down specific service obligations. The principle for adequate resources should ensure the financial autonomy of the local government and, therefore, the local self-government. The principle underlines the role of the central government in proving adequate resources, especially for *statutory* responsibilities. In practice, municipalities might be forced to cut down voluntary services if financial resources are inadequate for the tasks and obligations as a whole. The question of *what* is highly political and requires a shared understanding of the tasks and obligations of the municipalities, including the statutory and voluntary services. In 2019, nearly half of the costs of municipalities and joint municipalities as a whole came from social and healthcare services (48%). Less than one-third was from educational and culture services (31%). The rest was from other services-related tasks,

such as infrastructure, planning, and land use (Association of Finnish Local and Regional Authorities, 2020).

In recent decades, local governments in Finland have been struggling with the adequacy of financial resources for tasks and obligations. One factor is the steady year-by-year increase in the numbers of tasks and obligations that municipalities have. For instance, in 2013, municipalities had 535 obligatory/statutory tasks defined by 135 different acts. Most of the new obligatory tasks were prescribed during the decades of 1991–2000 and 2001–2010 (Hiironniemi, 2013). While municipalities have the freedom to determine expenditure priorities, in practice, they can organize only the statutory services. The difficulties in following the principle of adequate resources are the focus of the Charter evaluation by Torres-Pereira & Van Overmeire (2017, pp. 34–36). Ryyänen and Telakivi (2006, p. 105) indicate that despite the importance and significance of the principle, in Finland, most of the challenges in implementing the articles are defined by this principle.

The imbalance between obligations and financial resources can be easily detected from the financial statements of the municipalities. In 2006, the level of loans per person was EUR1464, whilst in 2019, it was EUR3342 per person. The relative indebtedness was 42.1% with an equity ratio of 67.5% in 2006. More than a decade later, the relative debt was 62% and an equity ration of 57.9%. The tax rates on earned incomes have also increased. For example, they were 17.53% in 1988, 18.54% in 2008, and 19.86% in 2018. However, interestingly surpluses have accumulated in balance sheets in municipalities and joint municipalities, perhaps taking the focus away from increasing indebtedness of Finnish local government.

The Finnish Local Government Act (410/2015) includes requirements for municipalities to ensure adequate resources in their management of finances. By the end of each year, local councils must approve a budget for the municipality for the next calendar year, taking into account the financial responsibilities and obligations of the local authority corporation. In connection with the budget approval, local councils must also approve a financial plan for three or more years (planning period). The budget year must be the first year of the financial plan. The budget and financial plan must be drawn up to put the municipal strategy into effect and to secure the preconditions for performance of the municipality's functions. The operating and financial targets of the municipality and the local authority corporation must be approved in the budget and financial plan. The financial plan must be in balance or surplus. A deficit in the municipality's balance sheet must be covered within no more than four years from the start of the year following adoption of the financial statements. In its financial plan, the municipality must decide on the specific measures for covering the deficit during the stated period. The obligation for covering deficits must also apply to joint municipal authorities. The central government monitors the financial position of the local government and of single municipalities. As mentioned previously, if severe financial difficulties occur, municipalities can go through an assessment procedure (Local Government Act 2015/410, 118 §).

Finnish municipalities have different financial positions. Finland has 310 municipalities in different parts of the long, narrow and scarcely populated country. The location of a municipality is the key factor in explaining the differences in financial resources of Finnish local governments. If the location of a municipality is unfavourable when it comes to employment and education possibilities, it eventually shows in the demographic development. In Finland, people are moving from the scarcely populated north and northeastern parts of the country to the southern municipalities and bigger cities (Kytö & Kral-Leszczynska, 2013). While, municipalities receive their financial resources from their residents directly through tax incomes and indirectly via grants, the location and migration affect the incomes, expenditures, and the possibility of receiving more income and organized services.

The adequacy of financial resources should be considered from the perspective of financial autonomy in local self-governments. Municipalities might have a broad self-government, but in practice, it is limited by the scarcity of financial resources. The question is how municipalities can affect to their financial resources themselves. To analyze this, we look at the possibilities of gaining more financial resources and managing those resources (Meklin & Vakkuri, 2011). *Managing financial resources* refers to the use of those resources in the organization of services. The national legislation outlines the responsibilities of the municipalities. The number of tasks for statutory responsibilities that municipalities have is remarkable in the sense that few opportunities are available to influence that number. Municipalities that are in a good financial position have more room to manoeuvre compared to municipalities that are in a poor financial position. There is also the question of the level of service quality. Minimum requirements are legislated for municipalities above the minimum municipalities can choose the level of service quality. In addition, municipalities can freely decide how to organize services, for instance, outsourcing, public-private-partnership, within their own organizations, etc. Within the statutory responsibilities and requirements, municipalities can manage and control the use of their financial resources. (Meklin & Vakkuri, 2011, pp. 288–290).

In terms of influencing incomes, municipalities have the right to levy local taxes and can determine the tax rate without restrictions. However, the constitution (731/1999, 121 §) outlines the provisions for the general principles governing tax liability and the grounds for the tax. The legal remedies that are available to citizens or entities that are liable to taxation are also defined. That is, decisions on the grounds of taxes are made by the Finnish Parliament, and single municipalities have no ability to effect those decisions. Municipalities have indicated an extension on grounds of taxes, including proportions for environmental, vehicle, fuel and transportation, and capital taxes (Meklin & Vakkuri, 2011, p. 291).

Municipalities decide the local tax rate, but in practice, the possibility to increase rates depends on current tax rates compared to the average rates. If a municipality already has higher than average tax rates, financial autonomy is quite narrow when it comes to receiving more tax incomes. While tax rates on earned incomes do not have any ceilings,

taxes on real estate do have ceilings. Municipalities must abide by those ceilings, leaving less room for autonomous decisions. The central government and parliament also have a say in the level of tax incomes in practice. Decisions about tax allowances diminish the actual amount of tax incomes without input from municipalities. The effective local tax rate (14.45%) illustrates that the actual level of tax incomes is significantly lower than the average local tax rate (19.86%) (Association of Local and Regional Authorities, 2018). The central government also makes decisions about the division of corporate tax incomes. A single municipality has only limited possibilities to try to influence those decisions.

The purpose of the grants from the central government is to equalize the differences in incomes and expenditures in local governments and ensure that different municipalities have the ability to meet the service requirements. Through the grants, the central government finances part of the public services that it offers. Today, grants are calculated based on an estimation of the average operating cost, in consideration of the socio-economic and demographic criteria. In practice, municipalities have little to no ability to influence the amount of grants they receive. One part of the grants is the equalization of tax incomes (cf. Article 9, paragraph 5). That is, municipalities that have good taxpayers and, therefore, a high level of tax incomes, have to pay an equalization amount to municipalities that have lower tax incomes. Equalization of tax incomes ensures that all municipalities in Finland have at least 92% of the average tax incomes per inhabitant. Equalization can have an incentive for passive trade and employment policies in municipalities when the increase in their tax incomes decreases the equalization grants they receive (Meklin & Vakkuri, 2011, p. 292).

Municipalities have little ability to increase their incomes through service charges because of ceilings for charges in national legislation. Municipalities can collect charges that are lower than the ceilings. The Finnish Parliament decides on the ceilings of charges for public services.

Municipalities have unlimited access to loan finances (cf. Article 9, paragraph 8). In many countries, loan finances are restricted for investment purposes only. However, Finland does not have any judicial restrictions for what municipalities can borrow money nor for the level of borrowing.

Altogether, on paper, municipalities have real control over their finances, and they can control their revenue base (cf. Torres-Pereira & Van Overmeire 2017, p. 32), but in reality, municipalities have a restricted autonomy in terms of their financial resources. The level of financial resources are in the hands of the central government and parliament. If a municipality needs to increase its income, it can only do so by raising taxes and collecting more service charges, at least in the short run. However, both possibilities have restrictions (Meklin & Vakkuri, 2011).

10 Local authorities' right to associate

Article 10 of the European Charter of Local Self-Government emphasizes the right of municipalities to cooperate and associate locally, nationally, and internationally. The article is divided into three paragraphs that steer municipalities cooperation: (a) municipalities can cooperate with other local authorities in producing services and other tasks; (b) municipalities can belong to associations to protect and promote common interests; and (c) municipalities can cooperate across borders in other EU states.

The cooperation of Finnish municipalities is provided in Local Government Act (2015/410, Chapter 8). Finnish legislation forces and supports intermunicipal cooperation, the depth of which varies between compulsory hospital districts, joint authorities, cooperative societies, foundations, merged services, and task-based agreements. Municipalities can establish joint authorities with many member municipalities, for example, to organise basic healthcare services, and every municipality belongs to a hospital district. In Finland, the interests of municipalities are promoted in one large association, The Association of Finnish Local and Regional Authorities (Suomen Kuntaliitto).

During the reforms of the last decade, cooperation between municipalities has been one of the main themes, but in different ways. In 2005, the reform of Prime Minister Vanhanen was aimed at forming authorities that have at least 20,000 inhabitants, by merging or forming cooperation areas. In some cases, municipalities were able to appeal to difficult circumstances, such as long distances, archipelagos, or languages of minorities. Small municipalities that wanted to stay autonomous were forced to cooperate, which was problematic, because municipalities' freedom to choose was limited to two options. Although the reform did not treat municipalities equally and increased tensions between them (Stenvall et al., 2009), it raised the number of mergers, and many cooperation areas were launched. However, in 2011, the reform of Prime Minister Katainen put cooperation aside with the goal of creating strong municipalities through mergers.

Following the idea of recentralization, the current reform—if accepted in the Finnish Parliament—will establish 18 large regional organisations. The biggest change is aimed at healthcare and hospital districts. The contracts of 21 joint authorities in hospital districts and the cooperation of organisations in basic social and healthcare would be dissolved. Approximately half of the municipalities' tasks, staff, and budgets will move to the new regions. The legislation is currently being prepared. Still, the legislation related to cooperation between municipalities is valid for arranging those tasks that remain as part of their responsibility.

Article 10 also addresses the ability for local authorities to cooperate with municipalities in other states. Cooperation between neighbor municipalities across national borders has a different context. In Finland, cross-border cooperation has a long tradition, especially

between Sweden and Norway. To support cross-border cooperation, Norway, Denmark, Sweden, and Finland have agreed on a treaty between nations (2/1979), where they agree on cooperation from municipalities in border areas, as long as they follow national legislation. Beyond the treaty, many EU programs have also supported cross-border cooperation in northern countries. Although cooperation in programs and in regional development has been fruitful and cooperation concerning security, safety, and healthcare tasks has been developed, especially after recent immigration developments, border-area municipalities have rather limited abilities to cooperate in providing services. In Finland, this issue has been raised regularly, especially in Lapland, a region of long distances and scarce population. Few municipalities in border areas have been actively cooperated such as the twin cities of Haparanda (Sweden) and Tornio (Finland). The differences of national legislation limit the depth of cooperation.

In Finland, municipalities have been more or less active developers of networks and cooperative connections in their area. Compared to the traditional local administration system, the change has been remarkable and has forced them to consider the scope of autonomy in their own decision-making (Ryynänen, 2008, pp. 100–102). In addition to their internal processes, municipalities have coordinated and joined a large variety of networks in their interests. The right of municipalities to cooperate and associate is generally well-enabled in Finland. Yet from municipalities' point of view, the governments are wished to hold a more persistent line in their reform targets.

11 Legal protection of local self -government

Even though local self-government in Finland is protected by the constitution, many of the core questions concerning the relationship between the state and municipalities are not mentioned in the constitution (Oikarinen, Voutilainen, Mutanen, & Muukkonen, 2018, p. 26). Legal protection of local self-government in Finland is mainly handled by the legislation process, where the constitution committee controls the legislation related to local self-government and other principles that are defined by the Constitution. Legislation cannot contradict the Constitution. Another crucial aspect is the entity that is composed of all the legislation concerning municipalities. An entity as a whole can restrict local self-governments even though the individual laws did not contradict the Constitution (Ryynänen, 2009, p. 71). As described in Section 2, the Ministry of Finance monitors the performance and finance of municipalities in general and ensures that local self-government is taken into account when preparing legislation concerning the municipalities.

Constitutional protection has both institutional and practical dimensions. *Institutional dimension* means that administration in Finland is organized so that municipalities form their own self-governmental tier. The *practical dimension* refers to single municipalities in that the basic principles of local self-government, such as the self-government of the residents, actualizes in every municipality (Oikarinen et al., 2018, p. 36).

Local self-government cannot be scrutinized solely from the perspective of municipalities. In Finland, municipalities are an important part of public administration and society and have an inseparable relationship with the state. In addition, the financial performance of municipalities is connected to a broad regional cooperation networks with other municipalities and local and regional enterprises and communities. A main feature that affects municipalities and their local self-government is the role of municipalities in allocating public resources and providing public services. The tasks that municipalities are responsible for are crucial in terms of the economic, social, and cultural rights of their citizens (Oikarinen et al., 2018, p. 38).

State authorities do not have a general jurisdiction to rule on administrative decisions that bind municipalities, nor do they have the right to interfere with the decision-making of single municipalities. Municipal decisions cannot be subjected to be verified by state authorities. In some cases in Finland, state actions have been directed to local self-government. In these cases, municipalities have applied for legal protection from the Supreme Administrative Court. In addition, in some situations, state decisions have been made against the constitution (Oikarinen et al., 2018, pp. 16, 39).

Despite the legal and constitutional protection of local self-government, some risks are apt to restrict local self-government. One risk is the financial situation and capacity of municipalities. Municipalities that are financially dependent on the state affects their level of self-government. Another risk is related to the broad tasks that municipalities are responsible for. The obligatory tasks concern mainly the economic, social, and cultural rights. They are regulated only by the state, which leads to a situation where municipal discretion and local self-government are somewhat restricted.

12 Future challenges of implementing the European Charter of Local Self-Government in Finnish legislation

Among EU members, Finland has a good reputation for following the European Charter of Local Self-Government. In this chapter, we have discussed how the principles and articles of the European Charter of Local Self-Government are followed in Finnish legislation and implemented. As a whole, implementing the Charter in Finland has strengthened the status of local authorities by affecting legislation and supporting the idea of local self-government and local democracy. Although Finland follows the European Charter of Local Self-Government relatively well, the principles are visible in national legislation and Finnish municipalities are generally committed to them (e.g., Haveri, Stenvall, & Majoinen, 2011), a few problems exist. These aspects and future challenges are all bound within local self-government through its definition, restrictions, and actualization.

Besides legal protection, the financial aspects are essential to accomplish authentic local autonomy and local self-government. Local self-government has a constitutional and legal protection in Finland. However, a vast number of strictly regulated tasks combined

with only one sub-national self-government level has led to a situation where local self-government is highly dependent on the state and restricted in many ways (Haveri, 2015; Jäntti, 2016; Jäntti, Sinevro & Vakkala, 2019; Vakkala, Jäntti & Sinevro, incoming 2020). This situation aims the discussion toward the relationship between the state and municipalities, which set limits and boundaries on local self-government (Ryynänen, 2011a).

Implementing the Charter, and local self-government as a whole, has three main challenges. First, the role of local government as a service provider in Finnish welfare society affects local self-government. Secondly, the financial circumstances of municipalities create constraints to local self-government. And, thirdly, the recent and current administrative reforms that are led by the central government have influenced local self-government and the relationship between the state and municipalities. These three intertwined challenges are connected to the idea of local self-government and how the principles of the Charter are understood.

In Finland, every municipality, regardless of size or location, has the same service responsibilities as defined by legislation. The principles of the Charter, such as subsidiarity, actualize well from this perspective. However, vast responsibilities, such as social and healthcare services, have put local governments under strict control by central government (Haveri & Majoinen, 2017, p. 45; Nyholm & Niiranen, 2017, p. 123). The government and ministries have gradually reinforced controls to ensure equality and service availability to all citizens. These good intentions of equality and service availability have effected local autonomy. It has been estimated that the fundamental idea of local government has been buried under the overload of tasks (Haveri, 2015, p. 126; Jäntti, 2016, p. 209).

In this situation, the municipalities are obliged to arrange services, despite facing severe financial difficulties, while the costs of welfare services as a whole are constantly increasing. The central government has not sufficiently compensated the municipalities for the overload of tasks (e.g., Meklin & Vakkuri, 2011; Matikainen, 2017), which has created a structural imbalance between service responsibilities and financial resources. This imbalance and inadequacy of financial resources have forced municipalities to raise tax rates and increase the borrowing level. Some municipalities have faced a financial crisis, which can lead to the assessment procedure and possibly a forced merger. From the perspective of local self-government, these situations are highly problematic. What needs to be discussed is whether forced mergers can be avoided by ensuring sufficient financial resources for the municipalities in scarcely populated areas, for instance, to tackle their ever-growing tasks or diminishing tax incomes. If the reform takes place, discussion is also needed regarding the distribution of responsibilities and the allocation of resources between the central government and local authorities, both municipalities, and the new counties.

Over the last decade, the steering role of the central government has been mounting along the national local government reforms. State-led reforms have attempted to solve the problems regarding municipalities' tasks, financial difficulties, and growing service needs, but the concrete means have changed according to the leading political parties in the parliament. The common factor for these recent reforms is how municipalities are seen, valued, and evaluated. Following the idea of the Nordic model (e.g., Ryyänen, 2012), the reforms have concentrated on the ability, or lack of it, of municipalities to provide public services. Other means of local government, such as local self-government, subsidiarity, and local democracy, have been put aside to ensure that the basic rights regarding public services would be fulfilled (Jäntti, 2016). The Charter, as well as Finnish legislation, includes all of these principles, but in the reform context, they have become contradictory.

From this foundation, it can be stated that the biggest challenges in implementing the Charter have been caused by the Finnish central government. Its inability to follow the principle of adequate financial resources has resulted in imbalanced economies of municipalities, which have been used as drivers for nation-led reforms. In addition to the main problem of leaving local autonomy aside, local and regional features have not been taken into account because the central government has been stuck with one reform model throughout the country (Jäntti, 2016; Vakkala & Leinonen, 2016; Torres-Pereira & Van Overmeire, 2017). Municipalities have raised this message to the central government. It might be possible to answer the needs of the municipalities to be more independent from the state by loosening regulations regarding services and by assuring adequate financial resources. One of the challenges is that the state does not adequately recognize the heterogeneity of municipalities but treats them more or less as a whole. This approach threatens the ability of local governments to effectively make local decisions by taking into consideration local circumstances.

Finnish municipalities are waiting to see how the current reform is implemented, what it will mean to local self-government, and how the new level of regional government will find its place. This is the major challenge for local self-government in the near future. The reform means that the municipalities must give up remarkable number of their duties and finances, reform their structures and processes, and reconsider and reformulate their role and identity. If the planned reform comes into force, municipalities must also understand how they can use local self-government for the good of the community. They need to argue their significance to both their residents and the state.

According to current plans, regional self-government will be restricted financially, thus not supporting local decision-making power (cf. Torres-Pereira & Van Overmeire 2017, p. 36). A completely new self-government level is about to be created in Finland, and yet, it is difficult to estimate the effects and consequences of this massive reform.

Along with the changes on local level, it would be highly beneficial if the role of the central government toward the local level was reconsidered and reformed as well. Having

discussions about the definition of local autonomy and local self-government would be a good start. This would strengthen the ideas and principles of local self-government that are included in the Charter. Municipalities would no longer be seen, valued, and evaluated mainly as service providers, but more as active local, self-governmental actors.

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Local Self-Government in Hungary

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Abstract The the changing approach on the nature of local governance in Hungary is reviewed by this chapter. During the Democratic Transition the evolvement of the Hungarian municipal system was based on the paradigm and approach of the European Charter of Local Government. Thus one of the most autonomous local government system of Europe evolved in Hungary. Although the municipal reforms were basically successful, several dysfunctional phenomena could be observed and the request for the municipal reforms was strong from the late 1990s in Hungary. The new constitution of Hungary, the Fundamental Law introduced a new model. The approach of the local governance has been transformed: the autonomy of the municipalities have been limited. Thus the autonomous nature of the Hungarian model changed and new challenges have appeared in the field of the implementation of the regulation of the Charter.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Hungary

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1 Introduction and history

The Hungarian regulation on local governance has a long tradition. During the feudal ages, the local governments of the nobility and other privileged persons (for example the bourgeoisie, several privileged ethnicities etc.) had a significant role in the Hungarian administration. Practically, these feudal municipalities were the main executive bodies of the administration, they were responsible for the law enforcement and they were the lower judicial level (1st and – in small cases – 2nd instance) (Mezey et al., 2003: 76-82). At the end of the feudal age, a debate emerged on the future role of the municipalities. The majority of the Hungarian liberal opposition of the Habsburg administration – the so called ‘municipalists’ – wanted to modernize the feudal local governments and their idea was a decentralized country. The minority of this liberal opposition – the so called ‘centralists’ – tried to follow the French (Napoleonic) model and tried to centralize the Hungarian administration (Gergely, 2009: 299).

1.1 The beginning of the modern Hungarian municipal system

The modern Hungarian local government system has been evolved after the revolution in 1848. The legislation of the revolution followed the ‘municipalist’ approach: they began to modernize the former feudal municipalities. Because of the fall of the Hungarian revolution (and freedom fight against the Habsburg Empire) the Habsburg administration was introduced in 1850/51. The Hungarian local self-governments were revived after 1860 and 1867. After the Austro-Hungarian Compromise and the establishment of the Austrian-Hungarian Monarchy the regulation on local governments belonged to the competencies of the Hungarian (royal) administration. The framework of the Hungarian municipal system was formed in 1870/71. Firstly, the self-governance of the counties, the privileged districts and the towns were guaranteed by the new Act XLII of 1870 on the organization of municipal authorities. The former feudal suffrage was abolished by the revolutionary acts of 1848. These municipalities had broad responsibilities, and they were – partly – the executive bodies of the central government. A new supervision model was introduced: the decisions of the municipal bodies were supervised by the Lord Lieutenant (*főispán*) who was appointed by the King at the suggestion of the central government. The Lord Lieutenant was the president of the county (district, town) council and he could suspend those municipal bodies if they acted illegally. The municipal system was transformed partly in 1886. The Act XXI on the municipalities introduced a simplified system. The former privileged districts were dissolved, and they were merged into counties. Thus three type of the municipalities were established: the counties (*megye*), the unitary authorities (*törvényhatósági jogú város*) and Budapest royal capital city (*Budapest székesfőváros*). The unitary authorities and the capital city were responsible for the competences of the counties and the communities, as well. The communities (*községek*) had a limited self-governance: they were under the administrative tutelage of the counties. These communities were classified into three groups by the Act XVIII of 1871 on the organization of the communities. The small villages belonged to the first group. These communities could not perform the tasks of a community independently,

therefore they were obliged to form intercommunal cooperation, the so-called circles (kör). The large villages belonged to the second group. They could perform the tasks of a community independently. The small town (towns with regular council) belonged to the third group. Although the regulation was renewed by the legislation of 1886 (Act XXII of 1886 on the communities), this system remained practically the same – with some amendments in 1929 – until 1950. Thus the governance of the rural areas was based on the mandatory intercommunal cooperation of the (small) villages and the broad competences and tasks of the counties which were transmitted to the local areas by the leader of the districts (which were the agencies of the counties) by the chief constable (*főszolgabíró*) (Hoffman, 2009, pp. 88-92).

1.2 The regulation of the Soviet-type administration

After the World War II a Soviet-type administrative system evolved in Hungary. The self-governance of the counties, towns and communities were dissolved, the Soviet-type councils were defined as the local and regional bodies of the central administration. A three-tier system has been established by the Act I of 1950 on the councils: the communities (*községek*) belong to the first tier, the districts (*járás*) and the towns (*városok*) to the second tier, and the counties and Budapest Capital City to the third tier. These entities were directed by the central government. Theoretically the main body of these entities were the councils, but the majority of the competences belonged to the executive committee (*végrehajtó bizottság*) of the councils. These executive committee were under dual control: they were controlled by their own councils and by the executive committee of their superior executive committee (Fonyó, 1976: 452). The former municipal properties were nationalized, the councils could be considered only as the trustees of the state property (Hoffman, 2009, pp. 105-109). The second Act on the councils (Act X of 1954) did not change significantly this model, only the central direction became less centralized. This original model transformed significantly after the economic and legal reforms of 1968. The third Act on councils (Act I of 1971) were passed. Firstly, the *self-government nature* of the councils were recognized by this act, however the councils remain the local and regional agencies of the central government. Secondly, the whole system was decentralized, the role of the county councils in the direction of the local (town and community councils) have been strengthened. The town areas (*városkörnyék*) were established. The legal status of the districts transformed: the district councils were abolished and in the districts the district offices were institutionalized. These offices were the agencies of the county councils. Thirdly, the merge of the communities was an important process from the 1960s, therefore new regulation on the common village councils (*községi közös tanács*) were institutionalized. In this model the former municipalities preserved their formal independency, but their whole administrative structure was united, therefore a merged municipality was formed. Although merging communities was an important element of the new reforms, the intercommunal associations were reborn. The cooperation between towns and villages was not solved by the merge of the municipalities, and the town areas were not universal in the 1970s. Therefore the town-village associations – which can be classified as

intercommunal cooperation (Kiss, 1985) – were established by a normative tool. Fourthly, the direction of the subordinate councils became the supervision of them, however the judicial remedies against the decision of the supervisory bodies (Hoffman, 2013: 36-38). The system was transformed by the territorial reform of 1983 when the district offices were dissolved. By this reform the town areas became universal in the rural administration. This system existed until 1990. The former centralized structure was converted by the evolvement of the new democratic Hungary.

1.3 Democratic municipal system: the Act LXV of 1990 on the local self-governments

In 1990 a new, local government system was established by the Amendment of the Constitution and by the Act LXV of 1990 on the Local Self-Governments (hereinafter: Ötv). The Soviet-type system was abolished and the self-governance of the local and regional units was recognized.

A very broad municipal autonomy was institutionalized by the Amendment of the Constitution. The Article 44/A defined the ‘basic rights’ of the local governments which have been guaranteed by the Act XXof 1949 on the Constitution of the Republic of Hungary(hereinafter: Constitution). These ‘basic right’ should be protected by the Constitutional Court and by the courts. Although these guarantees of the local self-governance were considered as ‘basic rights’ they constitutional protection was lower than the human rights. It was highlighted by the Resolution No. 31 of 2014 (published September 11th) that these rights – including the essential content of these municipal rights – could be restricted by the Act of the Parliament passed with a qualified (two-third) majority. The municipal structure was regulated by the Constitution, because the Article 41 of the Constitution defined the municipal units (communities, towns, capital and its districts and the counties). Therefore a very autonomous model evolved in Hungary which was based on the concept of ‘inherent rights’.¹ This approach was strengthened by the definition of the subject to right to local self-government. The article 42 of the Constitution stated that the subject to this right is the community of the eligible voters of the municipalities.

The scope of the self-governance was defined by a general clause. The article 42 of the Constitution stated, that ‘[l]ocal government refers to independent, democratic management of local affairs and the exercise of local public authority in the interests of the local population’. The concept of ‘local affairs’ was interpreted by the paragraph 2 section 1 of the Ötv as ‘local public affairs’. This paragraph defined the general clause. After the Ötv local public affairs ‘constitute providing local residents with public utilities, locally exercising public power through self-government and creating the organizational, personnel and financial conditions for these’.

¹ The concept of the inherent rights was based on the interpretation of Thomas Jefferson. According to Jefferson, the right to self-governance could be interpreted as a collective right of the local communities (Bowman & Kearney, 2014: 230-234).

The autonomous nature of the Hungarian model was strengthened by another general regulations of the Ötv. The principle of *subsidiarity* prevailed, the priority of the municipal responsibility in the field of local public affairs. Thus the paragraph 2 of section 6 of Ötv stated, that only ‘[u]nder special circumstances, a public affair may be delegated to the powers and responsibilities of another organization by an act of Parliament.’

The new, democratic municipal system was a two-tier, but local-level centered one. The first tier was the local (community) level. According to the Ötv villages, large villages, towns, county towns and Budapest as the capital city were considered as local-level governments (municipalities). The second tier was the county level. The county local governments had an intermediate service-provider role, but the county-level service delivery could largely be overtaken by the municipalities. The counties lost the majority of their former competences and the democratic legitimacy of them was weakened: the county assembly was elected indirectly. The unitary authorities were not part of the counties. Unitary authorities were formed in those towns which have at least a population of 50 000 inhabitants and have regional significance (after 1994 the county seat towns were *ex lege* unitary authorities). The local-centered nature of the Hungarian local government system was strengthened by the system of voluntary inter-municipal associations. Therefore, the introduction of a compulsory inter-municipal association system was very difficult (Verebélyi, 1999, pp. 30-36), almost impossible, due to the need for a broad political consensus.

The structure of the municipal administration was transformed. The new structure – the municipalities have the freedom of administration within the framework of the central regulation – was based on the decisive role of the councils (in communities, towns and in the districts of the capital it was called *representative body – képviselő-testület* – and in the unitary authorities, counties and the capital city it was called *assembly – közgyűlés*). The committees of the councils could perform significant competences, but it depended basically on the decision of the council. The administrative body of the municipalities had a dual leadership. The political leader of the administrative body was the *mayor*. Originally the mayor was elected directly in those municipalities which have less than 10 000 inhabitants, but after 1994 the mayor became elected indirectly. The role of the mayor was strengthened after 1990. Firstly, it had political reasons, because typically the mayor was the leader of the governing party or coalition of the council (Soós & Kákai, 2011: 535). Secondly, the competencies and the legal status of the mayor has been strengthened as well. For example, they were elected indirectly and they had practically a suspensive veto power over the decisions of the councils. The administrative body, the so called *mayor's office (polgármesteri hivatal)* had a professional leader: the municipal clerk (*jegyző*) should have legal or administrative qualifications and practice. The clerks were appointed for an indefinite period – following an open call – by the councils on the mayor's proposal. Although the system was dual but the political leaders were factually more powerful: they have strong democratic legitimation and they were the employers of the clerks (without the right to dismiss and appoint and without the disciplinary rights). The right to the municipal property was recognized by the paragraph 2 article 12 of the

Constitution. After 1991 the municipal property was established: they became the owner of their properties (as I have mentioned, the Soviet-type councils were only the trustees of the local state properties). The incomes of the municipalities were based primarily on the state aid of the municipal tasks. The municipalities could introduce local taxes but the framework of the local taxation (the types of the taxes and their minimum and maximum) was defined by the Act C of 1990 on Local Taxes (Péteri, 1993, pp. 112-113).

The relation between the central and local government transformed radically, as well. The former direction of the executive committees and the supervision of the councils was abolished. The regional (and later the county-level) agencies of the central government had only a weak legal control on the decision and operation of the municipal bodies. These agencies could not quash or even suspend the execution of the decisions: if they found them illegal, then they could initiate the process of the Constitutional Court or the courts which have the right to quash the municipal decisions.²

Therefore a very autonomous and democratic municipal system was established during the Hungarian Democratic Transition which could be the solid base of the evolvement of the local democracy in Hungary (Soós & Kákai, 2011: 547-548). But these changes had another side, as well: several dysfunctional phenomena appeared.

1.4 Dysfunctional phenomena of the new municipal system and reform attempts after 1990

Meanwhile, local public service systems – which were built on the duties and responsibilities of the local governments – had several dysfunctional elements. The main dysfunctional element was the fragmented spatial structure which was strengthened by democratic changes, as a counterpart to former Communist times: where compulsory inter-municipal associations (the above presented common village councils) treated size inefficiency problems. This compulsory form was unpopular among Hungarian municipalities; therefore, it disappeared with the democratic transition, giving opportunity to a disintegration tendency in the transition period (Hoffman, 2009, pp. 130-132). This fragmentation and the related size inefficiency problem was tried to be solved by inter-municipal cooperation. The inter-municipal system of the Ötv was based on voluntary cooperation. The new types of associations could not stop the disintegration because of their purely voluntary nature and the poor financial support provided by the central budget. Therefore, the number of service provider associations was only 120 in 1992. The joined municipal administrations decreased in these years: the number of common municipal clerks was 529 in 1991, 499 in 1994, and only 260 administrative inter-municipal associations were established until 1994 (Hoffman, 2011, pp. 30-31). The lack of intercommunal cooperation, the fragmented spatial structure, and the weak, subsidiary intermediate level public service provider role of the county local governments

² The municipal decrees could be quashed by the Constitutional Court and the resolutions of the municipal bodies could be quashed by the courts (from 1991 to 1999 by the town courts of the county seat towns and after 1999 by the county courts).

resulted in significant service delivery dysfunctions. The local self-governments – especially the small villages which were the majority of the Hungarian municipalities – were not able to perform a significant part of the municipal tasks. The dysfunctional phenomena of the new, democratic system became well recognizable already in 1992-1993. Therefore, in 1994 a partial review of the regulation took place. The county governments were strengthened: the county assemblies were elected directly, and the competences of the counties were partly expanded. The democratic legitimacy of the county governments were strengthened, as well, therefore the former ‘floating counties’ became ‘politics counties’ (Zongor, 2000, pp.19-22). Although the significance of the counties changed, important issues remained partly centralized. Thus the regional development was just partly decentralized by the reform of the Act XXI of 1996. The tasks of the regional development belonged to the competences of the county development boards, which bodies were based on the representation of the central and local government.

The financial status of the municipalities transformed just partially: the municipal bankruptcy was regulated in 1996 by an act of the Parliament (Fábián, 2017, pp. 85).

In 1997 the regulation on inter-municipal associations was changed. Its rules were originally kept very scarce to secure a great organizational freedom for municipalities in this field. New, additional state subsidies were introduced to accelerate the formation of voluntary inter-municipal associations after 1997 (Balázs, 2014, p. 428). As a result of these changes, the number of inter-municipal associations radically increased after 1997. The joined form of municipal administration was stimulated as well. The establishment of common municipal clerks was strongly supported by the central budget. Thus, the disintegration tendencies of the local administration stopped at the end of the 1990s, giving place to the concentration of the municipal administration in rural areas (Balázs & Hoffman, 2017, pp. 11-12). In 2004, the legislator introduced a new type of inter-municipal association – the multi-purpose micro-regional association – based on the French inter-municipal association form ‘SIVOM’. The central government significantly supported service delivery through associations: in 2004, the share of the special subsidies for them was 1.19% of the whole central government subsidies for local governments, and in 2011 it already reached 2.91% (Hoffman, 2011, p. 31).

The Hungarian local public services were influenced by the New Public Management paradigm from the late 1990s. The problems of size inefficiency and economies of scale were tackled within the municipal system by inter-municipal associations and the competition tried to be intensified. One of the greatest debts of concentration reforms around the Millennium was the lack of association forms for urban local governments (Horváth, 2015, pp. 48-49).

2 Constitution and legal foundation for local self-government

The Constitution of the Democratic Transition – which was formally the amendment of the former Constitution – was replaced by a new Constitution, the Fundamental Law of Hungary (published on April 25th 2011) (hereinafter: Fundamental Law). The new Constitution entered into force on January 1st 2012. The constitutional status of the Hungarian municipalities were transformed significantly by the new regulation. The municipalities are institutionalized by the Fundamental Law of Hungary. An independent title ('Local Governments') of the Fundamental Law contains the constitutional rules on them. This title contains 5 articles. The paragraph 3 article 31 states, that '[t]he rules relating to local governments shall be laid down in a cardinal Act',³ thus a strong political support of the Parliament is required for the regulation on municipalities.

Although the new regulation is based on the concept of the 'local public affairs' – in accordance with the the Article 3 of the European Charter of Local Self-Government (hereinafter: Charter). The paragraph 1 article 31 states that '[i]n Hungary local governments shall function to manage local public affairs and exercise local public power'. Although the concept of local governance have not changed by the Fundamental Law, several important element of the regulation transformed significantly. As it was mentioned by the point 1, the tiers and types of the Hungarian municipalities were defined by the former constitution. Now the title on local self-governments do not define the municipal entities. Similarly, it was regulated by the former Constitution that the local governance is a right of the community of the voters of the given municipal entities. These rules are not regulated by the Fundamental Law. Therefore the types and tiers of the municipalities and the subject of the self-governance can be defined by the (cardinal) act on local self-governments.

The most important transformation of the new Fundamental Law is a paradigm shift on the concept of the nature of self-governance. The self-governance was interpreted by the former Constitution as a fundamental right of the local and regional communities. The main competences and liberties of the local self-governments were interpreted as a 'fundamental rights'. It was highlighted that these municipal rights were not equal to the fundamental rights of the persons, but it was clear, that the Constitution of the Democratic Transition was based on the concept of inherent rights (Bodnár & Dezső, 2010, pp. 220-222). These concept has been transformed by the Fundamental Law. The article 32 of the Fundamental Law contains the major municipal competences. These competences are not defined as 'fundamental municipal rights', and it is highlighted by the new regulation, that the municipalities could perform these competences only 'within the framework of an act'. These competences are similar to the former 'fundamental municipal rights' and they are defined by the paragraph 1 article 32 of the Fundamental Law. Thus the competences of the municipalities could be widely limited and restricted by the acts of the Parliament.

³ The cardinal acts should be passed by the two-thirds majority of the members present in Parliament. See paragraph 4 article T) of the Fundamental Law.

The new regulation is based on the concept of the municipal competences of the German Constitution (*Grundgesetz*). The pattern of the paragraph 2 article 28 of the German *Grundgesetz* was followed by the Hungarian regulation. The transformation of the interpretation of the municipal competences was highlighted by the Resolution No. 3105/2014 (published on April 17th) which stated that a municipality cannot file a constitutional complain, because they do not have fundamental rights and the constitutional complain is the tool of the defense of fundamental rights. The paragraph 1 article 32 of the Fundamental Law was interpreted as a rule on the municipal competences and not on municipal 'rights'. This interpretation has been confirmed by the Resolution 3180/2018 (published on June 8th), as well.

Thus the former paradigm – which could be interpreted as an 'autonomous model' – transformed into a model which could be interpreted as an 'integrated model' (after the classification of Kjellberg, 1995). This approach is highlighted by the paragraph 1 article 34 of the Fundamental Law, which states that the '[l]ocal governments and state organs shall cooperate to achieve community goals.' The integrated approach is mirrored by the definition of the Fundamental Law on municipal asset. The municipal asset is interpreted by the paragraph 6 article 32 as a 'public property which shall serve for the performance of their tasks.' Thus the municipal asset is practically a 'purpose fund': if the tasks are changing, the municipal asset could be transferred to the new body (responsible for the task). This concept is strengthened by the paragraph 1 article 38 of the Fundamental Law: the national asset contains the property of the State and of local governments.

Thus the concept of the local governments have been transformed after 2012. A relatively wide regulatory freedom on the municipal law has been allowed by the new constitutional regulation. The basic structure of the municipal law has not changed. There is a cardinal Act on the municipalities, but a new Act was passed after the publication of the Fundamental Law. The new Municipal Code is the Act CLXXXIX of 2011 on the Local Self-Governments of Hungary (*Magyarország helyi önkormányzatairól szóló 2011. évi CLXXXIX. törvény* – hereinafter *Mötv*). As part of the transformation of the regulation on municipal system the subject of the local governance and the type of the municipalities are defined by the *Mötv* and not by the Fundamental Law. It is defined by the article 2 of the *Mötv* that the local governance is a right of the voters of the communities and the counties. Thus the two-tier municipal system has remained: the community and the county levels have been institutionalized. Therefore former constitutional rules are regulated now by the *Mötv*.

It is stated by the paragraph 1 article 34 that '[a]n Act may set out mandatory functions and powers for local governments.' Therefore the mandatory tasks of the municipalities are defined by the different Acts on the given sectors. Thus rules on the municipal competences are incorporated into several (sectoral) acts. For example the mandatory tasks of the municipalities in the field of social care is defined by the Act III of 1993 on the Social Administration and on the Social Benefits. The municipal educational competences are regulated by the Act CXC of 2011 on the National Public Education.

The executive regulation on the municipal tasks could be regulated by Government and – partly – by ministerial decrees after the paragraph 1 article 14 of MötV.

The Hungarian regulation on the constitutional and legal foundation for local self-government is based on the article 2 of the Charter. The new constitution of Hungary, the Fundamental Law have a title on the status of the local self-government. The major rules on municipalities are defined by an independent Municipal Code, by the MötV which is a cardinal act (an act should be passed by the two-third majority of the Parliament). The regulation on mandatory municipal tasks should be regulated by Acts of the Parliament. The Government of Hungary and the ministers could pass only executive decrees on the detailed regulations of these obligatory tasks. Thus the Hungarian regulation is in accordance with the article 2 of the Charter but it should be highlighted that the approach was transformed by the new Constitution. The types of the municipalities and the subject of the right to local governance is now defined by the MötV and not by the Constitution, thus the constitutional defense of the municipal system has been weakened.

3 Scope of local self-government

The Hungarian municipal system is based on the *general clause of local public affairs*. As I have mentioned, the article 31 of the Fundamental Law states that the local governments have *general powers* in local public affairs. As I have mentioned, the basic competences of the municipalities are defined by the paragraph 1 article 32 of the Fundamental Law.⁴ Thus, in the management of local public affairs and within the framework of an Act, local governments: a) shall adopt decrees; b) shall take decisions; c) shall autonomously administer their affairs; d) shall determine the rules of their organization and operation; e) shall exercise the rights of ownership with respect to local government property; f) shall determine their budgets and autonomously manage their affairs on the basis thereof; g) may engage in entrepreneurial activities with their assets and revenues available for this purpose, without jeopardizing the performance of their mandatory duties; h) shall decide on the types and rates of local taxes; i) may create local government symbols and establish local decorations and honorific titles; j) may request information from the organ vested with the relevant functions and powers, initiate decisions or express an opinion; k) may freely associate with other local governments,

⁴ See paragraph 1 article 32 of the Fundamental Law: 'In the management of local public affairs and within the framework of an Act, local governments: a) shall adopt decrees; b) shall take decisions; c) shall autonomously administer their affairs; d) shall determine the rules of their organization and operation; e) shall exercise the rights of ownership with respect to local government property; f) shall determine their budgets and autonomously manage their affairs on the basis thereof; g) may engage in entrepreneurial activities with their assets and revenues available for this purpose, without jeopardizing the performance of their mandatory duties; h) shall decide on the types and rates of local taxes; i) may create local government symbols and establish local decorations and honorific titles; j) may request information from the organ vested with the relevant functions and powers, initiate decisions or express an opinion; k) may freely associate with other local governments, establish associations for the representation of their interests, cooperate with local governments of other countries within their functions and powers, and become members of international organizations of local governments; l) shall exercise further functions and powers laid down in an Act.'

establish associations for the representation of their interests, cooperate with local governments of other countries within their functions and powers, and become members of international organizations of local governments; 1) shall exercise further functions and powers laid down in an Act.

The framework of the general powers are defined by the concept of ‘local public’ affairs and by legislation. The municipalities have general powers in the field of their local public affairs. This concept is interpreted by the section 4 of the MötV. Thus the concept of local public affairs have three elements. Firstly, the *provision of the local public services* belongs to the local public affairs. Thus the performance of the local public services are primarily municipal competences, the municipalities main function is to provide the basic services for the local population. Secondly, ‘*local governance and the cooperation with the local population*’ is interpreted as local public affairs. Thus the municipalities could exercise public powers and the forms of local direct and indirect democracy is interpreted as local public affairs, as well. Similarly, the organizational, personnel and material resources of these tasks is defined as local public affair, and belong to the competences of the municipalities. Another important element of the constitutional regulation that this local public affair could be limited by the legislation (Szente, 2013, 154-155).

Thus the municipalities have general powers in local public affairs and within the framework of an act – actually under the law. Thus the responsibilities of the municipalities can be restricted by the central legislation, however the limit of this restriction could be the ‘competences guaranteed by the Fundamental Law [see Decision No. 47 of 1991 (published on September 24th) of the Constitutional Court of Hungary].

Two major group can be distinguished among the tasks performed by the municipalities and the bodies of the municipalities.

3.1 Municipal tasks

The *municipal tasks* belongs to the first group and the so called *delegated tasks*. The mandatory municipal tasks, the alternative municipal tasks and the facultative municipal tasks can be distinguished within the municipal tasks. The major responsibilities of the municipalities are defined by the section 13 of MötV. This section is not a rule by which the competences are directly installed, but it can be interpreted as an open list which defines the framework of the task performance of the Hungarian municipal system. This open enumeration is interpreted as a list of the *possible and typical tasks of the different types and tiers of the Hungarian local government system*. As I have mentioned, the actual municipal competences and mandatory tasks are regulated by the sectoral acts.

Another general rule on the scope of the municipalities are the concept of the differentiated installation of powers and responsibilities. The legal status of the Hungarian municipalities are equal, but their tasks and responsibilities could be different because of the different size and economic capacity. Thus the section 11 of the MötV states that the

different types of the municipalities – the communities, the towns, the district-seat towns and the county towns – could have different tasks. It is a legal prescription that the legislator should define the mandatory tasks of these municipalities different. The economic capacity, the population, the area of the municipalities should be considered by the legislators when the mandatory tasks are defined (Nagy & Hoffman, 2016, pp. 67-70).

Obligatory municipal tasks are defined by act having. According to a significant modification of the regulation, *new instruments of legal supervision* could guarantee the fulfilment of these tasks. Beyond the new instruments of legal supervision the *differentiated installation of tasks* is required. Although this differentiation was allowed by the Act LXV of 1990 on Local Self-Governments, it is required by the New Municipal Code. Thus the tasks of the diverse municipalities should be defined differently by the sector/special regulations. The main criteria of this installation of tasks are determined by Act CLXXXIX on the Local Self-Governments of Hungary. Thus 1. the nature of the duty, 2. the different capability of the local governments, especially the different economic performance, population and the size of the area of the municipality shall be taken into account (section 11(2) of the New Municipal Code). The personnel, the material and the financial conditions of the performance of the obligatory tasks (public services) can be regulated not only by acts, but also by the decrees of the Hungarian Government and by the decrees of the ministers after these general rules of the municipal law. This right of the central government to regulate the conditions of (local) public services is not unconditional: Resolution 47/1991. (24th September) of the Hungarian Constitutional Court declared that the decree which entirely excludes the free decision of the local government breaches the constitution. The performance of the obligatory municipal tasks has *priority* because the performance of these duties must not be jeopardized by the performance of the facultative tasks of local governments.

Thanks to the continental (general clause) approach of the Hungarian local government system, these tasks may be performed which are not required by acts: namely the *facultative tasks of the local governments*. I have mentioned that the main aim of the municipalities is the fulfilment of the obligatory tasks, thus local governments can provide these tasks if *strict legal conditions* are met. As I have mentioned, municipalities can perform as a facultative task only *local public affairs*. Local governments could perform such a task which is not among the responsibilities of the central government. Therefore the Constitutional Court declared that a local government decree by which a city policy (with the powers and duties of the – state – police) was established is a breach of the constitution [Res. No. 8/1996. (23rd February) of the Constitutional Court]. Secondly, the performance of facultative tasks cannot be contrary to the law. As was mentioned above, obligatory tasks have priority. The performance of facultative tasks can be funded only by *own revenues of the local governments* and by *special central subsidies* for these tasks determined by the (annual) Act on the Budget of Hungary. Thus Hungary has a unified state police system, where the police are maintained and directed by the central government. However, special regulations regarding the tasks of local public

safety are determined by the Act on the Local Self-Governments of Hungary. Municipalities are allowed by the new Municipal Code to establish bodies responsible for local public safety and for the preservation of local government assets. This body can use force determined by acts. This task is obviously facultative. Because the use of force, the central government has stronger supervision: the (state) police have not only legal but technical supervision powers, as well. Therefore the municipality should establish agreements with the police (Fábián & Hoffman, 2014, pp. 327-329).

The third element of the municipal tasks is *alternative (voluntarily assumed) tasks*. This type of municipal task has evolved in the “border area” of the obligatory and facultative tasks in the European municipal systems. These tasks could be defined as a “correction tool” of the differentiated installation of tasks. The possibility of the voluntary assumption of the tasks of the county level local government or those settlement level municipalities which have a larger population or greater economic power could solve the inelasticity of the differentiated tasks system determined by central regulation (by acts). In the European municipal systems this opportunity was regulated by sector/special acts. Although the European acts on local self-governments have not contained this type of the tasks, the Hungarian municipal law allows and it has been regulated by the Hungarian municipal codes. This specialty of the Hungarian regulation remained, however it was transformed significantly. The first tier (community-level) municipalities and their inter-municipal associations can voluntarily assume the obligatory tasks of those first tier municipalities which have greater economic capacity or larger population, if 1. the transfer of tasks is justified by the needs of the population of the (smaller) municipalities, and 2. after the assumption the public services are provided more efficiently and at least on the same professional standard, and 3. supplementary state subvention is not required for the performance. The tasks of the second-tier (county) municipalities cannot be assumed. If these requirements are fulfilled the tasks are assumed by the decree of the municipality (or by the resolution of the inter-municipal cooperation). The procedure and the conditions are legally supervised by the County Government Office. Financing of the alternative tasks is similar to the obligatory tasks: the assuming municipalities get the same amount from the central budget as those municipalities which should compulsorily perform these services. A special type of the alternative tasks is if *the tasks of the central government* are assumed by a local government. A strong limit of the municipal task performance is that a local government project funded by the European Union could be completed by the Government for the fulfilment of the national obligation to the European Union – despite against the will of the given local government. This right is the final guarantee of the compliance with the national obligations because Member States are responsible for these obligations and are represented by their Governments. Thus, primarily the central governments are responsible for the offences of the local governments. Therefore the Government of Hungary has this right. Municipalities have legal remedies against these decisions (Nagy & Hoffman, 2016, pp. 80-82). The resolution of the Government of Hungary can be (judicially) revised by the Budapest-Capital Regional Court.

3.2 Delegated tasks

It has been widely allowed by the Hungarian municipal law for the officers of the local governments to perform central government tasks by the officers of the local governments. If the officers make a decision in their delegated power, this decision cannot be considered as a municipal decision. Therefore, the municipal bodies and organs cannot direct this officer. The reason of for the transfer of power is the efficient and grassroots public administration. There are powers and duties which have to be performed at the settlement level but it is not efficient if the central government had has agencies in every settlements.

Because the delegated nature of these powers, the territorial central government agencies have not only legal but technical supervision rights. These agencies are the supervising organs of local government officers, which supervision is regulated by the Act CXXXVI of 2010 on the County Government Offices.

Although the number of the cases, in which the officers of the local government have had duties in delegated power, was reduced by the establishment of the District Government Offices in 2013, these officers play an important role in the Hungarian regulatory activities.

Originally the mayor and the president of the county council could perform delegated duties by according to the original text of the paragraph 3 article 34 of the Fundamental Law. The Government Resolution No. 1299/2011. (published on 1st September) on the Establishment of the Districts was in line with this approach. The separation of the municipal and central government tasks was planned by the sub point 2. j) of that Resolution. The rigid separation of these tasks was not fulfilled: the delegated powers of the municipal clerks (*jegyző*) were allowed by paragraph 2 article 28 of the Transitional Provisions of the Fundamental Law (published on 31st December 2011). This was a limitation, because formerly the mayor, the clerks and the officers of the Mayor's Office could perform these powers. The original state of the regulation has been restored by the Fourth Amendment of the Fundamental Law (published on 25th March 2013) which affected paragraph 3 article 34 of the Fundamental Law. Thus the mayor, the president of the county council, the clerk and the officer (civil servant) of the Mayor's Office could perform delegated powers and duties. A significant change is that the right of the central government has been limited by the Fundamental Law. The differences between the municipal and delegated administrative tasks are shown by the following table.

Table 1: Municipal and delegated regulatory cases

	Municipal regulatory cases	Delegated regulatory cases
Related to...	<i>Local public affair</i>	<i>National or general public affair</i>
Which type of legal norms could define it?	<i>Act of the Parliament, Decree of the Local Self-Government</i>	<i>Act of the Parliament, Governmental decree issued under the authority of an act</i>
Acting authority	<i>Representative Body ; under the authorization of the representative body the mayor, the clerk, the committee of the representative body and the inter-municipal association</i>	<i>Mayor, clerk, officer (civil servant) of the Mayor's Office; by the agreement of the local governments, the inter-municipal association</i>
Remedies	If 1 st instance is the representative body, then remedy to the court (Administrative and Labour Court) If 1 st instance is the mayor, committee, clerk or inter-municipal association, then appeal to the representative body (after the 2 nd instance decision of the representative body: remedy to the court) – according to the article 142/A of the Möt.v.	<i>Appeal</i> if the 1 st sentence is the mayor, (municipal) clerk, officer (civil servant) of the Mayor's Office, the 2 nd instance is in principle the County Government Office, but another supervising authority can be defined by an Act or by a Decree of the Government (article 44 of the Act No. CXXV of 2018 on Government Administration)
Role of the County Government Office	It is not covered by the legal supervision, either.	Supervising authority under the article 44 of the Act No. CXXV of 2018.

Source: own editing

4 Protection of local authority boundaries

Formerly the main regulation on the boundaries of the municipal authorities were defined by an independent act, by the Act XLI of 1999 on the Land Management. Now the regulation on the boundaries and on the establishment of the municipal units are integrated into the Möt.v. The main rules on them are defined by the Chapter V of the Möt.v. Although the norms of the land management are part of the general Municipal Code, these regulation are declared as non-cardinal rules which can be passed and amended by the simple majority of the Members of Parliament.⁵ The Act on the Local Self-

⁵ In Hungary the cardinal rules of the different acts are defined by the acts. Thus the majority of the Hungarian cardinal acts are just partially cardinal: they contain several articles which should be passed or amended with simple majority of the Parliament (Jakab & Fröhlich, 2017, pp. 425-426).

Governments of Hungary states that the local voters of the villages and towns (first tier or community local governments) and the counties (county local governments) has the right to self-governance. Firstly, a local community can have in that case autonomy in that case, if it is classified as a village, or as a town or as a county. These questions are regulated by the Chapter V of Möt. Secondly, the scope of the municipalities are determined by their borders. Therefore the definition of the municipal borders are an important element on the autonomy of the municipalities. Therefore several guarantees and standards are defined by the article 5 of the Charter. In the following the regulation on the land management in Hungary will be reviewed. In the Hungarian law the land management has different topics: firstly, the establishment of the municipal units and secondly the rules on the change of the boundaries of local governments. In the following the regulation on these topics will be reviewed in the system of the Hungarian regulation.

4.1 Declaration (establishment) of a village

The smallest unit which has the right to self-governance is the *village* in Hungary. The Möt does not contain any definition of the village.⁶ Only the *conditions* of the declaration of village are determined by the municipal law. Thus the declaration shall be initiated by local voters of a geographically and architecturally separated, populated area, which unit is able to exercise the right to self-governance and is able to perform and organize the municipal tasks without the decline of the service standards. The village can be established if these conditions are met by the remained and the newly established settlement, as well. Before the declaration of a village a local referendum shall be held: the whole population of the “old” settlement (and not only the population of the populated area which wants to be a new village) shall be involved. Other conditions of the declaration are that the population of the separated populated area has increased in the last ten years, the infrastructure is more developed than the national average and the municipal tasks are provided performed at lower costs by the local government than the national average. The aim of these very strict conditions has been to slow down the increasing number of municipal units. These conditions can be fulfilled very hardly, therefore, the number of the villages have not changed since 2013 (Rozsnyai, 2013, pp. 39-40).⁷ The conditions and requirements are examined by the minister responsible for the legal supervision of the local governments (in the current Government system this minister is the Minister of the Prime Minister’s Office). The decision of the minister can be judicially reviewed by the Budapest-Capital Administrative and Labour Court. If the minister supports the lawful initiative, the village could be declared by the President of the Republic. The President can review the legality of the proposal and can deny it. There is not remedy against the decision of the President.

⁶ The last legal act which defined the village was the – the last act which contained this definition was the Act XLII of 1870 on the communities (Beluszky, 2004, pp. 149-151).

⁷ The last declaration (establishment) of village was made in 2013. This last decision was the establishment of Village Balatonakarattya by the Resolution of the President of the Republic No. 13 of 2013 (published on January 13th).

4.2 Amalgamation of the municipalities

Villages and towns which have been built together can initiate their amalgamation. This results practically the termination of the former municipalities and the establishment of a new local self-government which is the (legal) successor of the former settlements. The amalgamation of the municipalities are is declared by the President of the Republic on a proposal of the minister responsible for the legal supervision of the local self-governments. Because the subject of the right to local self-governance is changed by the amalgamation of the municipalities, local referendum shall be held.

4.3 Replacement of the parts of the communities (transformation of the municipal boundaries)

The subject of the local self-governance could be partially change when the boundaries of the municipalities change. These changes can be initiated only by the municipalities, the central government could not transform these boundaries after the regulation of the Mötvt. Because of the partial change of the subject of right to self-governance if habited parts of the towns and villages are affected by the boundary changes, local referendum shall be held. Because the right to self-governance is not affected by the replacement of *uninhabited* parts of the municipalities, therefore it can be decided by the resolutions of the representative bodies (councils) of the given municipalities. The change of the boundaries of the counties is an independent procedure which will be analysed later.

4.4 Towns

The Mötvt states that the representative body of a village which have has a central role and reaches the average urban development can initiate the *declaration of a town*. A community is declared town by the President of the Republic on a proposal of the minister responsible for the legal supervision of the local self-governments. The towns should provide services – which are defined by an Act – not only for their population but for the population of their agglomerations. *County towns* are the seat towns of the counties and the towns which were declared county towns before 31stDecember 2012.⁸ The *district headquarters' towns* are assigned by a Government decree – which is now the Government Decree No. 86/2019. (published on April 23rd) on the County Government Offices and on the District Offices.

4.5 Counties and the Capital of Hungary

The territory, the name and the seat towns of the counties and the Capital and the system of the metropolitan districts of the Capital are determined by the *Parliament*. Because of the change of the subject of the local government in several cases, a local referendum is

⁸ There are five county towns which are not the seats of their counties: Dunaújváros, Érd, Hódmezővásárhely, Nagykánizsa and Sopron.

required before the decision of the legislator. In the case of the change of the name of the county, the county government could give an opinion on it. The metropolitan district system of the Capital is defined by an Act of the Parliament which is based on the initiatives of the given metropolitan municipalities. The regulation is consistent with the article 5 of the Charter but this rule can be overwritten by the Amendment of the Mötvt. Thus a new type of the metropolitan administrative units were established by an Amendment of the Mötvt in 2013: the Margitsziget as directly managed territory of the Capital Government. This territory formerly belonged to the 13th District of the Capital. The constitutional complaint of the Metropolitan District Government was rejected because constitutional complaint could be filed on the basis of the offense of the fundamental rights, and the – as I have mentioned earlier – the guarantees of the self-governance are not interpreted as fundamental rights by the new Fundamental Law [see Decision No. 3105/2014. (published on April 17th) of the Constitutional Court].

Thus the regulation of the Mötvt is based on the article 5 of the Charter. If the subject of the local government changes local referendum is required. The majority of the land management procedures are based on the initiatives of the municipalities. But these rules could be circumvented by the amendment of the Mötvt, because these rights are guaranteed by the Mötvt.

5 Administrative structures and resources for the tasks of local authorities

The administrative structure of the local authorities is based on the point d) paragraph 2 article 32 of the Fundamental Law, which declares, that the municipalities shall “within the framework of law ...determine its organizational structure and rules of operation”. Thus the local authorities have great freedom to institutionalize new local bodies, but the framework of the local administrative structure is defined – in a very detailed form – by the Municipal Code (Mötvt). The organizational freedom of the municipalities have been recognized by the Hungarian Constitutional Court and by the Curia, as well. It is stated that the bodies defined by the Mötvt should be formed. According to this approach the Decision No. 22/2015 (published on June 18th) stated that this freedom is “within the framework of law”, thus the central legislation can institutionalize municipal bodies. Another limit of this freedom is, that the municipal tasks should be fulfilled by the municipal administration. If the local administrative system do not fulfil their tasks the central government and the county government offices have the opportunity to form several bodies – within the framework of the regulations of the Mötvt. Thus this resolution stated that the establishment of the joint municipal office by the county government offices does not conflict with the provision of the Charter. The common municipal offices – as it will be shown later – are established by the given municipalities. If these municipalities do not form this – mandatory type inter-municipal associations – the county government offices have the right to appoint the communities which are part of this cooperation. Because of Constitutional regulation and the *ultima ratio* nature of this power, it basically complies with the provisions of the article 6 of the Charter. But it was against the Charter that the opinion of the municipalities should not be asked during this

procedure. Therefore the Hungarian Constitutional Court stated that the lack of the rules on the procedure for asking the opinion of municipalities is an unconstitutional omission. The deadline for the remedy of the omission was December 15th 2015, but the new regulation was passed only by the Act CXXI of 2018 (which entered into force on January 1st 2019).

Although the central legislation is a strong limit of the organizational freedom of the municipalities, the Decision No. 834/B/2003 stated that the municipalities could form such bodies which are not institutionalized by an Act of the Parliament and which fulfil municipal tasks. Therefore it was stated that the institutionalization of the fractions of a county town assembly is consistent with the freedom of the organizational freedom. Another limit is, that the fulfilled task should be a local task: if the task does not belong to the municipal tasks, the establishment of the local body is unconstitutional. Therefore the Decree of the Town Municipality of Gyula No. 20/1993. (published on April 19th) on the Town Police of Gyula was annulled by the Decision No. 8/1996. (published on February 23rd) because the tasks of the Town Police belonged to the tasks of the Hungarian (state) Police, and therefore these competences were not 'local public affairs'.

Within the above mentioned constitutional framework the central body of the Hungarian local government is the *representative body* (in the counties, in the county towns and in the capital the *assembly*). The municipalities are represented by the representative bodies which are practically the councils of the Hungarian municipalities. The decision of the representative body can be of two types, namely a *decree* or a *resolution*. A *decree* is a legal act (law) which cannot be contrary to other legal regulations; thus it is at the lowest level among the legal hierarchy. Local governments can adopt a decree *in their own right* in accordance with article 32(2) of the Fundamental Law, which *allows local governments to publish legal regulations in their duties. Local governments can be authorized to adopt a decree by an Act* (of the Parliament), as well. The decrees are signed by the mayor and the clerk. The publication of the local government decree is different from the publication of the central legislation. It shall be published in the official gazette of the local government, or if the local government does not have an official gazette, it shall be published in the manner customary for the locality. Since 2013/2014 the decrees of local governments shall be available on the National Law Library, which can be accessed on the Internet (www.njt.hu). As I have mentioned earlier, the representative body has only municipal tasks and duties; it cannot have delegated administrative tasks. Duties of the representative body can be classified as *non-transferable duties*, in which only the representative body can make decisions; and *transferable duties*, which can be delegated to the mayor, the committee, the representative body of the sub-municipal entities, the inter-municipal associations and to the clerk. (Fábián & Hoffman, 2014, pp. 337-339). The chairman or chairwoman of the representative body is the mayor. If the mayor is unable to attend to his or her responsibilities, he or she is substituted by one of the deputy mayor who has been elected for councillors. The representative body shall convene as needed, as often as is called for in the organizational and operational regulations but *at least six times per year*. The representative body shall hold an announced advanced *public*

hearing at least one time per year. The session of the representative body (council) is *in principle public*. The Local Government Council of the Curia states in the Res. No. Köf.5.036/2012/6. that “the public of the exercise of power is the basis for the democratic operation and it is the cornerstone of the operation governed by the rule of law”. There are *three options* defined by the Mötv in which the council has to or shall or may convene *in camera*. The representative body has a *quorum* if more than half of the councillors are present at the session. The Local Government Council of the Curia stated in the Res. No. Köf.5.003/2012/9. that the participation shall be in person, which does not allow a session to hold a session by video conference or to a vote to be sent by letter or by other mode.⁹ The quorum shall be observed maintained continuously during the session. The representative body makes a decision by *simple* or by *qualified majority*. The majority is *simple* if the proposal is supported by the majority of the present councillors. The majority is *qualified* if the proposal is supported by the majority of the elected councillors. A qualified majority is needed for example for the adoption of a local government decree, for the establishment of an inter-municipal cooperation or institution, the exclusion of a councilor or to establish the a conflict of interest or the indignity (see section 50 of the Mötv). Protocol shall be prepared on the sessions of the representative body which is signed by the mayor and by the clerk, and it will be sent to the supervising authority, to the county (metropolitan) government office within 15 days after the session.

Representative bodies can establish *committees* for more efficient and faster decision making and for the adequate control. Establishment of the committees can be required by an act (of the Parliament). The Act on Local Self-Governments of Hungary contains such a rule, as well. The community having a population of at least 2000 people shall establish an economic committee according to the order of section 57(2) of the new Municipal Code. Villages having a population of maximum 100 people cannot establish committees and villages having a population of maximum 1000 people can establish only one committee which can fulfil duties of all committees which establishment is required by the law. *Sub-municipal councils* can be established, which are interpreted as special committees of the representative bodies.

The personal and political leader of the municipality is the *mayor*, who have been elected indirectly since 1994.¹⁰ The mayor has significant powers. First of all, the mayor is the chairperson of the representative body, several personal decisions are determined by the mayor: for example, the mayor has the right to nominate the deputy mayors and the members of the committees of the representative bodies. The mayor has a suspensive veto on the decisions of the representative body. The veto of the mayor has been strengthened by the regulation of the Mötv: if a decision is vetoed, the representative body could accept it with a qualified majority. The representative body is represented by the mayor. The

¹⁰ From 1990 to 1994 the mayors of the municipalities with more than 10 000 inhabitants were elected by the representative body. The only exception is the election of the personal and political leader of the county government. The chairperson of the county assemblies are elected by the county assembly (Nagy & Hoffman, 2016, pp. 120-124).

mayor could accept in special cases – defined by the organizational and operational rules of the municipality – substitute decisions by which resolutions the decisions of the representative bodies are substituted. Secondly, the mayor is the leader of the municipal decision-making. The county clerk (*jegyző*), the professional leader of the municipal office (or joint office) is appointed by the mayor, and the mayor is the employer of the clerk. Thus the municipal office (which is called ‘mayor’s office’) dependent on the mayor. The mayor has several municipal and delegated state administration powers, as well (Nagy & Hoffman, 2016, pp. 264-265). Thus the model of the administrative structure of the Hungarian municipalities were centralized by the Mötvt: the personal political leadership has been strengthened.

The professional leader of the municipal decision-making is the municipal clerk. The clerk is a qualified (in the field of law and management studies) civil servant and he or she is appointed by the mayor for an indefinite term. Formerly, the clerk was appointed by the representative body, but in the new model, the clerk is practically a high-ranking subordinate of the mayor. The clerk has different tasks. First of all, he is the clerk is the professional leader of the municipal office: he or she is the employer of the civil servants, but her or his employer’s right is limited by the right of consent of the mayor. Secondly, the clerk is a professional legal advisor of the representative body: he clerk is responsible for the minutes of the sessions of the representative body and he or she shall signalize if the representative body would break the law. Thirdly, the clerk can fulfil several municipal tasks – defined by municipal decrees – and he or she is the representative of the central government in the different communities: he or she has several state administration tasks.

The *municipal office* – which is called ‘mayor’s office’ (*polgármesteri hivatal*) – hasn’t own responsibilities, this body is the decision-making body of the mayor and the municipal clerk. In the small Hungarian municipalities a mandatory integration of these bodies was established by the regulation of the Mötvt: these municipalities shall form *joint municipal offices* (see later in point 9). The employees of these offices are professional public servants.

Thus the municipalities have the right to establish own municipal bodies within the framework of the Act of Parliament and within the framework of their own municipal tasks. The administrative structure is strongly determined by the central legislation. The structure has transformed in the last decade: the mayor, as a personal political leader has been strengthened by the Mötvt. The significance of decision-making of the representative body and the professional leadership of the municipal clerk has been weakened. The roots of these changes were the strong politicization of the municipal administration and the eminent role of the mayor of the local party politics. Now the former informal structures have been the base of the new regulation and the informal structures turned to formal models.

6 Conditions under which responsibilities at local level are exercised

The mandate of the councillors begins by a *vote*. Since 2014 the term of the mayors and the councillors has been five years (until 2014 it was four years).

The councillors are primarily directly elected. In the municipalities which have more than 10 000 inhabitants approx.. 75% of the councillors are elected directly in constituencies, but approx.. 25% of the councillors are elected by a compensation list (the losing votes are considered in principle in this list). In the municipalities less than 10 000 inhabitant there are just one constituency, and the local voters have multiple vote. The constituencies are based on the first-past-the-post (FPTT) model, thus the Hungarian local democracy is based on the majoritarian democracy (Sóos & Kákai, 2011, pp. 537-538). The county councils are elected by a proportional system which is based on party-lists. The mandate of the councillors are free and the councillors cannot be recalled by the voters.

The representative body starts its current operation by its opening session. The end of the mandate is in principle the opening session of the representative body elected by the next general local elections. The mandate of the representative body can be ended before the end of general term, if the representative body is dissolved by the qualified majority decision of this body. There are time limitations for the dissolution decision: it cannot be within six month of the local general elections and after the 30th November of the year before the next general local election. As it was previously mentioned, the representative body can be dissolved by the Parliament if the representative body breach the constitution by through its operation or by through the lack of the (municipal) operation.

The mandate of councillors can be ended end before the next general local elections, in the following cases:

- a) the councillor lost his or her right to vote,
- b) conflicts of interest are stated,
- c) the indignity of the councillor is stated,
- d) absentee termination: if the councillor is absent from the sessions of the representative body for a one year period,
- e) the councillor resigns,
- f) the representative body is dissolved by itself or by the Parliament,
- g) the councillor dies.

The cases of the incompatibility is defined by the Mötvt. Three major cases can be distinguished: the incompatibility of another state and municipal post, economic incompatibility and incompatibility caused by managerial role in a media services (Nagy & Hoffman, 2016, pp. 161-162). The procedure on incompatibility is regulated by the Mötvt. The decisions of the municipal councils can reviewed by the administrative and labour courts.

The councillors (and the members of the committees) are entitled to honorarium and to benefits in kind. The actual measure of these benefits are defined by municipal decree. The upper limit of these benefits are not defined by the Mőtv. Just a general clause is in the Municipal Code: the mandatory tasks of the municipalities cannot be jeopardized by the high measure of the benefits. This rule is actually based on the situation of the small municipalities, which have just limited resources. It is stated by the Mőtv that the presidents of the committees, the municipal commissioners could receive a higher amount of honorarium. The councillors are entitled to compensation if they have expenses incurred in the exercise of the office. The costs should be verified by invoices and the compensation is permitted by the mayor.

Thus the Hungarian regulation is based on the rules of the Charter and it gives a relatively great freedom for the municipalities to institutionalize and regulate these benefits and salaries. Thus a diversified model has been developed in Hungary, which depends on the size of the municipality, the duties on them, and on the local financial resources. Sometimes the model is based on the local political situation, as well.

7 Administrative supervision of local authorities' activities

The In principle, monitoring the legality of local government decisions is fundamentally divided between two different jurisdictions: arbitration on individual local government decisions is the responsibility of the judge, although any action on local administrative general decisions is – in principle – under the jurisdiction of the Hungarian Constitutional Court or the Curia of Hungary Kovács, 2017: 428; Nagy, 2017: 24-25). The Constitutional Court is charged with verifying the constitutionality of local government decrees. The Curia (The Supreme Court of Hungary) is charged with the verifying that local government decrees are in compliance with the legislation and with the decrees of the central government. In regard to the supervision of normative acts, there is no *actio popularis*, the procedure of the Constitutional Court can be initiated by the Government of Hungary, by the quarter of the members of the Parliament, by the president of the Curia, the Prosecutor General and by the ombudsman. A judge can initiate the constitutional review of a local government decree, if the violation of the Fundamental law is suspected by the judge. Similarly, the judicial review of the local government decrees can be initiated by the leader of the county government office, by the ombudsman and by a judge of a litigation who suspends, that the applicable decree is unlawful.

The legality of the municipal decisions are legally supervised by the county government offices. The actions, the decision-making procedure and the omission of the municipalities are supervised by the county government offices. In case of resolutions taken within local discretionary power, the head of the county government office could only control the legality of the decision, not its effectiveness nor its merits. Within the scope of its powers in the field of review of legality, the county government office may

1. issue a legal notice;

2. initiate the convocation of the representative body or the council of the inter-municipal association;
3. propose that the minister responsible for the legal supervision of the municipalities to initiate the submission of a Government proposal requesting the Constitutional Court to review the constitutionality of a local government decree;
4. initiate the review of the local government's resolution at an administrative and labour court
5. initiate the commencement of an administrative litigation against a representative body for an omission in decision-making or task performance obligation and for ordering substitute decision-making;
6. propose to the minister responsible for the legal supervision of the municipalities to initiate submission of a proposal by the Government for the dissolution of any representative body breaching the Fundamental Law;
7. initiate at the Hungarian State Treasury the withholding or withdrawal of a specific part of a state subsidy, defined by the Act of Parliament, due from the national budget;
8. file a suit against a mayor who commits serial violations, in order to remove him or her from office;
9. can initiate disciplinary proceedings against the mayor of the local government and against the chief executive before the mayor;
10. initiate an audit of the local government's book-keeping by the State Audit Office of Hungary;
11. provide professional help to local governments in cases arising from its tasks and powers and
12. impose a review of legality fine on the local government or on the partnership, in the cases determined by the law (Fábián & Hoffman, 2014, pp. 346-347).

If the government office finds a government *regulation of the government contrary to the Fundamental Law* – after the unsuccessful application of the legality appeal or the convocation of the body of representatives – it presents its proposal for the revision of the local government regulation by the Constitutional Court to the Government, with the draft of the motion being sent to the minister responsible for review of legality for local governments. After having examined the proposal, the minister can call upon the county government office to propose revisions to the local government regulation by the Constitutional Court, in order to complete or modify the motion. The minister informs the county government office which proposed modifications to the government regulation by the Constitutional Court and the government whose regulation is being challenged. After this, the minister files a Government motion to review the conformity of the local government regulation with the Fundamental Law. The government office sends the draft of the motion simultaneously to the minister responsible for review of legality for local governments and to the affected local government.

Within 15 days of receiving the information from the local government or after the unsuccessful expiration of the time allotted for providing information, the government

office can file decision at the Regional Courts which have administrative branches (the 8 assigned regional courts from the 20 regional courts. The municipal decrees could be filed regardless of the above mentioned time limit at the Curia. Simultaneously with the launching of the litigation process, the government office sends the motion to the affected local government.

The offending – individual – decisions can be annulled by the – (8) assigned – regional courts, and the offending normative decisions and decrees can be quashed by the Curia. If a decree or a normative resolution (or a specific part of a decree or the normative resolution) is quashed the decision of the Curia (or the decision of the administrative and labour court) should be published in the Hungarian Official Gazette. The rules of the litigation is regulated by the Act I of 2017 on the Code of the Administrative Litigation. The quashing procedure of the normative decisions and decrees of the municipalities have special rules which are regulated by the Chapter XXV of the Act I of 2017.

The head of the county government office also have legislative powers and obligations. If the government office states that the body of representatives has not fulfilled its obligation to legislate, it can file – while simultaneously informing the local government – a statement of the local government’s neglect of its obligation to legislate with the Curia. If the local government does not fulfil its obligation to legislate within the deadline given by the Curia, the government office initiates proceedings in the Curia within 30 days of the termination of the deadline with the aim of allowing the government office to repair the negligence by the government office. The head of the government office enacts the regulation in the name of the local government, according to the rules for the regulations of the local government, so that the regulation is signed by the leader of the government office and is published in the Hungarian Official Gazette. The regulation enacted by the leader of the government office in the name of the local government has the status of a local governmental regulation, with the proviso that the local government is only authorized to modify it or to set it aside after the next local governmental election; before that time, only the leader of the government office is authorized to modify it.

If we look at the new model, *prima facie* full legal protection is provided by this new model of judicial and constitutional review to individuals. If we look closer at the regulation several lacunas could be noticed. The main problem is, that now an individual cannot initiate directly the judicial review of a local government decree. We have mentioned above that only the judge of the case, the ombudsman and the county government office may submit a request to the Curia. The procedures aim to safeguard first of all public interest, and regard the safeguarding of subjective rights and positions only as an accessory aim of them. Although the individuals can submit a constitutional complaint to the Constitutional Court against the decisions of the courts by the individuals, the success of these procedures is highly doubtful, as a local government decree rarely violates exclusively the Fundamental Law without being contrary to lower sources of law. The unconstitutional local government decree often violates an act of the

Parliament or a decree of a central government organ and – if the constitutional complaint is based on the unconstitutionality of the applied decree – the decree cannot be reviewed by the Constitutional Court in lack of competence. Exclusively the Curia is licensed by the new constitution, by the Act CLXI of 2011 on the Organisation of the Courts and by the Act I of 2017 on the Code of the Administrative Litigation to the judicial review of the legality of the local government decree.

8 Financial resources of local authorities and financial transfer system

Firstly, I would like to analyse the regulation on the static element of the municipal financial system, the regulation on the *municipal asset*. The regulation on the assets of the local government has been transformed during the last few years. The last amendment of the Constitution of the Republic of Hungary changed the article 12(2) of the Constitution, which was in force until 31st December 2011. The amendment allowed the Parliament to nationalize without any compensation the local government assets by an act, if the powers and duties of the local governments change, and the asset is related to such a task which does not belong to the new responsibilities of the municipality.

This amendment was in harmony with the new regulation of the Fundamental Law of Hungary. The article 32(6) states that “assets controlled by municipal governments shall be public property, serving the performance of municipal government tasks.” According to this regulation, local government assets are not separated from the assets of the central government, but rather these are together the *national assets*. Because of the local government asset is an integrated part of the national asset, it serves as the performance of the municipal tasks. Therefore if the responsible authority of the former municipal tasks has been changed, the asset may be free expropriated. Thus the local government asset can be classified as a kind of constitution of *trust*, which is related to the tasks of the municipalities and it is not defended against the interventions of the central (parliamentary) legislation (Hoffman, 2013, p. 20 and Pálné, 2016, p. 84).

Since 1st of January 2012 the main rules on municipal asset have been regulated by the Act CXCVI of 2011 on the National Assets (National Asset Code). The *dual system* of the municipal asset has been remained, because the local government asset can be either a *core asset* or a *business asset*. The *core asset* directly serves as the performance of the obligatory municipal tasks. The core asset has two components. The first component is the *unfit core asset* which is an asset owned exclusively by local governments and which is determined by the National Asset Code and by another Act or the decree of the local government. The second component is the *limited marketable municipal asset* which is defined by an Act (of the Parliament) or by a local government decree. The local roads, the local parks and public spaces, the international airports and waters – not including water utilities – which are owned by the municipalities belong to the *exclusive municipal assets*. The *priority national assets* owned by the municipalities – which is part of the unfit municipal assets – are determined by the Annex II of the Act on the National Assets and by the decrees of the Local Governments. Records must be kept on the core assets of

the local government. The public utilities owned by the municipalities; the local public buildings which are maintained by the local governments and their institutions; the ownership of the local government in a public service company with a municipal majority ownership and the ownership of the local governments in the Balaton Shipping Co. is defined by the Act on National Assets as *limitedly marketable core asset*. This condition is linked to the performance of the public functions as long as public services are performed by these assets their marketability is limited. The free exercise of the right of the municipal ownership is limited by the regulations of the National Asset Code. Thus the business activity of the local government may not risk the performance of municipal tasks. Therefore the local government may take part in those companies which have the limited liability of for the members. The local government may not take part in companies which have no transparent ownership structure. The local governments shall adopt a medium-and long-term asset management plan. The *exclusive economic activities* of local governments are determined by the Act on the National Assets which can be performed by the institutions (governed by public law) of the local governments, by municipal-owned companies. The local governments can grant concession as well. *Trust law* can be established on the local government asset, which is regulated by the Municipal and the National Assets Codes.

Thus regulation on municipal asset has been transformed significantly: the former independency of the municipal asset and the protection of it from the nationalization has been eliminated. The municipal asset can be interpreted as a trust-nature asset, which can be nationalized if the municipal tasks are centralized.

Secondly, I would like to analyse the dynamics of the municipal finances, the *municipal revenues, budgeting and control*. Although it is a *separated subsystem*, the budget of the municipalities is *part of the national budget*. The separation does not exclude the subsidy of local governments by the state (by the central government). The local government finance is based on the *annual budget* of the municipality. The funding of the mandatory and voluntary municipal tasks and the delegated administrative powers is based on this legal norm. A significant change in the new Municipal Code is that the *operational deficit* cannot be planned, thus the expenditures of the performance of the municipal tasks shall not exceed the revenues. Therefore the *deficit* can be planned only for the financing of the *investments and developments*.

The municipal tasks can be funded by *own revenues, received funds* and *state subsidies*. The Act on the Local Self-Governments of Hungary states *that the local government is burdened by the consequences of loss management*, and the central government is not responsible for the obligations of the municipalities (Kecső, 2013, p. 26).

The following *public revenues* are considered municipal *own revenues*: *incomes, fees* and *charges* of municipal services and of municipal asset management, *dividend, profit* of the municipal business activity, *rent, received funds* as *private incomes* of the local government and *local taxes, fees and fines*. *Local taxes* are the *local business tax*, the *tourism tax*, the *communal tax of the individuals and the businesses*, the *land tax* and

building tax. The main changes of the regulation on own revenues are the new limitations of *local credits*. The permission of the Government of Hungary for local government borrowing was introduced by the article 34(5) of the Fundamental Law. The aim of this regulation is to prevent local government debt. This type of limitation is based on the regulations of several German provinces (*Länder*). Thus the Government has a prior consent to the local government borrowing. Detailed rules are regulated/established by the Act CXCIV of 2011 on the economic stability of Hungary. Shortly, in principle all loans and other transactions with a nature of loan (for example municipal bonds) shall be permitted by the Government. There are broad exceptions of this principle. For example there is a *de minimis* rule and illiquid loans do not need permission. Similarly, loans which are required for the financing of projects with the co-payment of the European Union and the reorganization credits linked to the municipal debt settlement process do not need the consent of the Government. Although there are other huge number of the exceptional cases, the financial freedom of local governments is significantly limited by this legal institution. The aim of this regulation was to *prevent the indebtedness of the Hungarian municipalities*.

The *assigned central taxes* have remained as the revenues of the local governments, but their significance was weakened. Such an assigned central tax is the income tax of land rent.

The regulation on state subsidies was significantly changed by the new Municipal Code. In 2013 a *task-based financing* system was introduced. Thus state subsidies are based on the mandatory (obligatory) tasks of the municipalities. Firstly they depend on the standards of the services defined by legal norms. The efficient management, the expected own revenue of the municipality and the actual revenues of the local self-governments have to be taken into account by the determination of the subsidies. The determination of this subsidy is based on the efficient local management, the expected own revenues of the municipalities and the actual local revenues. The main principle of the task-based financing system is the *additional nature*: the own revenues of local governments are complemented by the state subsidies, thus local communities are interested in collecting their own revenues (Kecskó, 2013, pp. 27-28). The task-based subsidies are earmarked, thus the expenditure shall be spent on the financing of the obligatory and several – by the act on the annual central budget defined – voluntary tasks several – defined by the act on the annual central budget – by of the municipalities. The *normative state subsidies* of several local public services have remained. The services of the social care, of the kindergartens and several cultural services are directly financed and these supports are not integrated into the task-based funding. The *complementary state subsidies* remained: in exceptional cases, local self-governments that are disadvantaged through no fault of their own may receive this state subsidy in order to protect their independence and viability.

Local governments are responsible for their economic management, thus local government can also go bankrupt. The procedure of liberating the bankrupt municipalities

from debts is regulated by the Act XXV of 1996.

Another important field of the financial resources is the *financial control* of the municipalities. The legality of economic decisions is supervised by the county (metropolitan) government office. The economic activities of local governments are controlled by the *State Audit Office of Hungary*, which controls and monitors the legality, expediency and effectiveness of these decisions. The subsidies co-paid by the European Union are controlled by an independent regime. New element is the ASP (Application Service Provider) system which allows to the State Treasury a real-time control on the municipal finances. The financial control and monitoring within the municipal organization system were amended partially. Similarly to the former regulation, the internal control is conducted by the municipal clerk. The internal audit has been simplified by the new Municipal Code because the audit by independent auditor companies is no longer required by the municipal law.

Summarizing the financial freedom of local governments and the defence of assets: they were weakened by the new regulations of the municipal law. Thus the financial autonomy of the municipalities is very limited in the new Hungarian municipal system. These changes have been justified by the prevention of the local government debt and by more efficient national asset management.

9 Local authorities' right to associate

First of all, it should be mentioned, that the right to establish cooperation with foreign municipalities have been recognized by the former Constitution of the Republic of Hungary and the by Fundamental Law of Hungary, as well. The cooperation with foreign municipalities is widespread in Hungary, practically every town have foreign partner municipalities, and a significant number of the villages have similar partnerships, as well (Fazekas et al., p. 298-300).

As I have mentioned earlier, the regulation of the Ötv on the inter-municipal cooperation was based on a diversified and differentiated system. The basic rules on the inter-municipal associations were regulated by the Ötv, but the definitions on the types of these associations and the rules on the organization and finance of these forms were regulated by the Act CXXXV of 1997 on the Inter-municipal associations and the cooperation of the local governments. There were acts on specific types of the associations. Such acts were the Act CVII of 2004 on the Inter-municipal Associations of the Small Regions and the Act XXI of 1996 on the Regional Development and Planning which contained rules on the regional development associations. The Act CVII of 2004 was based on the French model, it was strongly influenced by the *loi Chevènement*¹¹. An important difference was that – as I have mentioned earlier – the former Hungarian constitutional regulation was

¹¹ *Loi n° 99-586 du 12 juillet 1999 relative au renforcement et à la simplification de la coopération intercommunale (loi Chevènement)*

based on the voluntary cooperation of the municipalities. Therefore the different types and forms of inter-municipal associations were encouraged by financial aid of the central government. Thus a significant growth of the number of the cooperative forms was resulted by this new model of diversified, state-supported inter-municipal system (see Table 2)

Table 2: Number of service provider inter-municipal associations from 1992 to 2005

Year	Number of the inter-municipal associations responsible for public service provision
1992	120
1994	116
1997	489
1998	748
1999	880
2003	1 274
2005	1 586

Source :Hoffman et al., 2016, p. 460.

This diversified system has been replaced by a unified model. The general rules on the inter-municipal associations are regulated by the Chapter IV of the Act CLXXXIX of 2011 on the Local Self-Governments of Hungary, but there are other legal institutions which have the nature of an inter-municipal cooperation. These legal institutions are regulated by other public law instruments. As it was mentioned above, the article 34(2) of the Fundamental Law of Hungary allows the Parliament to require the performance of an obligatory municipal task by inter-municipal cooperation. The Parliament can establish by an act a mandatory inter-municipal association. The Chapter IV of the Municipal Code does not contain rules on these mandatory established associations, but other articles of this Act have such rules.

The amendments of the Act on the Local Self-Governments of Hungary have dual nature. Firstly, the formerly differentiated system in which there were institutionalized several types of the inter-municipal associations has been simplified. Only one type of the inter-municipal associations is regulated by the new Municipal Code: the *association with legal personality*. Secondly, the formerly separated – regulated (Józsa, 2006, pp. 106-107) in the Act CXXXV of 1997 on the Inter-municipal Cooperation and Associations and in the Act CVII of 2004 on the Associations in the Small Regions – legal norms were incorporated in the Municipal Code. The section 87 of the Municipal Code states that the representative bodies (councils) of the municipalities may form inter-municipal associations with legal personality in order to more efficiently and appropriately perform one or more municipal tasks or the delegated tasks of the mayor and the clerk. Although only the association with legal personality is declared by the Act on the Local Self-Governments of Hungary the new rules allows to establish different service delivery districts within the associations. Thus the new associations are mainly umbrella associations which unify more inter-municipal cooperation with different participating

local governments. The association shall be established by a *written agreement* of the participant local governments. It is based on the decisions of the representative body. These decisions have been made by qualified majorities of the bodies. A decision with qualified majority is required for the access to the association, as well. Access can take place on the first day of the year (1st January) having regard to the legal personality of the association. The secession can take place – for similar reasons – on the last day of the year (31st December). The representative body shall decide on the access or the separation at least six month earlier and the body shall inform the council of the association shall be notified of the intention of separation or access (Nagy & Hoffman, 2016, pp. 302-312).

The association can establish organizations governed by public law, companies, non-profit organizations and other form of organizations for the performance of the public task. Because of the legal personality of the association, it has an asset which is separated from the local governments which established this cooperation, but this asset is a part of the national asset. In the legal disputes related to the associations, the *courts of public administration and labour* have jurisdictions. Formerly the ordinary, civil courts have had jurisdictions in these cases, because these disputes were considered by the legislation – which was in force until 31st December 2012 – as disputes governed by private law (see the decisions No. 5.Pf.20.332/2008/4. of and No. Pfv.X.20.104/2009/4. of the Hungarian Supreme Court). The procedural rules on the juridical review of the inter-municipal cases changed significantly after January 1st 2018: these disputes are interpreted as special administrative remedies, and the procedures are regulated by the Act I of 2017 on the Code of the Administrative Litigation.

If there is no other rule in the agreement on the association, the participant local government shall financially support the association proportionally in proportion to the number of their population. The cessation cases of the association and the mandatory elements of the agreement on the inter-municipal association are defined by the Act on the Local Self-Governments of Hungary.

The central organ of the inter-municipal association is the *council of the association*, whose members are delegated by the representative bodies of the participant local governments. The members of the council have a vote which is defined by the agreement. The decisions of the councils are made by in the form of a *resolution* because the associations do not have legislative powers.

The legal supervision tasks are performed by the county (metropolitan government) offices. Thus the government office can convene the council, and it can initiate a lawsuit at the court of public administration and labour on the grounds of violation of law and the government office may impose a fine of legal supervision.

Because of the lack of the incentives and the centralized municipal tasks – practically the main tasks of the former associations were centralized, and these tasks are performed now

by the central government and by its agencies – the number of the voluntary association seriously – by approx. 40% – dropped (see Table 3)

Table 3: Number of the (voluntary) intercommunal associations in 2013 and 2014

Year	Number of (voluntary) intercommunal associations
2013	1185
2014	709

Source: Balázs & Hoffman, 2017, p. 16.

Two other form of the inter-municipal cooperation is regulated by the Mötvtv: the fully integration of the municipal organization and finance, the associated representative body of the settlements and the integration of the administrative organization of the local governments, the common office of the settlements. The *associated representative body* can establish by the representative bodies of the given settlements. The annual budget is united by this form of cooperation and a common municipal office and common municipal institutions are maintained. As I have mentioned earlier, the *joint municipal offices* of the villages (and exceptionally the common office of the towns and the villages) can be interpreted as *mandatory inter-municipal associations*. This form of cooperation is the mandatory integration of the administrative organization of the small Hungarian municipalities. The result of this new regulation is a heavy concentration process: in 2014, the major form of local administration was already the joint municipal office (see Table 4).

Table 4: Municipal offices and joint municipal offices in Hungary (2014)

Joint municipal offices		Number of the (independent) municipal offices (mayor's offices) in Hungary	Number of the local municipalities in Hungary
Number of the joint municipal offices	Number of the participant municipalities		
749	2632	521	3,153

Source: Fazekas *et al.*, 2015, p. 299

The municipalities tried to fight this centralization process. Several municipalities, even though obliged, did not join the joint municipal offices. When the commissioner of government replaced their consent to the agreement, and joined them forcedly to a joint municipal office, these municipalities sued these decisions before administrative courts. Several judges handling such cases turned to the Constitutional Court. The judicial applications accepted by the Court stated the regulation to be contrary to the European Charter of Local Governments. The provisions of the Mötvtv on the joint municipal office were seen to infringe Article 6, which gives the freedom of determination of appropriate administrative structures, and Article 4 para 6 on the duty of preliminary consultation in the planning and decision-making processes for all matters which concern local

governments. The Constitutional Court did not annul the contested rules, in its decision 22/2015. (June 15) it stated that the freedom of municipalities regarding the determination of their administrative structures has its limits in the provisions of the Fundamental law and other statutes setting up rules on these structures. The municipalities have to consider these rules. The Court stressed that the municipalities have the possibility to mutually agree with other municipalities on the joint municipal office within the fixed time limits given by the Mötvt. The government commissioner can only act, if the municipality did not fulfil its duty. The possibility of the government commissioner to decide on the forced joining of a municipality to an office or to replace the agreement establishing the office is an extraordinary last tool, which is necessary for ensuring the effective administration and the right of the inhabitants to self-government. The need for effective administration entitles the state administration to intervene, and the infringed tool of the supervisory authority is in line with Article 8 para 1 of the Charter, too. The only point where the Constitutional Court accepted the applications was the infringement of Article 4 para 6 of the Charter. It held that an unconstitutional omission exists, because of the lack of rules for the consultation with the affected local governments. The Court obliged the legislator to heal the omission until the end of 2015, but the new regulation was passed only in 2018 (Act CXXI of 2018) and it entered into force only on January 1st 2019.

Thus the Hungarian inter-municipal system is an important element of the local governance in Hungary which is connected to the fragmented spatial structure. The model is based on the voluntary cooperation, however the mandatory cooperation was established by the new Fundamental Law of Hungary. The voluntary associations are responsible for the joint provision of local public services, The mandatory common municipal offices are responsible for the local administration. The regulation on mandatory common municipal offices was revised by the Hungarian Constitutional Court. An unconstitutional omission was stated because they have not been institutionalized regulation on the consultation with the municipalities when the common municipal offices are established by the agency of the central government. The omission was repaired by the Act CXXI of 2018.

10 Legal protection of local self -government

It is stated generally by the article 5 of the Mötvt that the lawful exercise of the municipal powers are protected by the courts and by the Constitutional Court. Although this is a general statement, the actual regulations on the legal protection of local self-governments are defined by the Act CLI of 2011 on the Constitutional Court, by the Mötvt and by the Act I of 2017 on the Code of the Administrative Court Procedure.

Thus there is a general statement on the protection of the municipal powers, but a suit for the defence of the municipal rights have not been institutionalized by the new Hungarian regulation. The acts of the Parliament and the decrees of the central government which violate the self-governance of the municipalities cannot be sued. As I have mentioned earlier, the municipal autonomy is interpreted as the constitutionally defended powers of

the local governments, but they are not interpreted as fundamental rights. These rules cannot be directly sued by the municipalities, because the former *action popularis* of the a posteriori constitutional review of these acts and decrees was abolished. As I have mentioned earlier, this constitutional review can be initiated by the Government of Hungary, by the quarter of the members of the Parliament, by the president of the Curia, the Prosecutor General and by the ombudsman. The municipalities did not have the right to sue these acts.

Although the constitutional complaint has been institutionalized as a lawsuit against the unconstitutional rules this complaint can be brought in the case of the infringement of fundamental rights. As I have mentioned earlier, the municipal autonomy is not interpreted as fundamental right, thus this complaint cannot be practically initiated by the municipalities.

Therefore the protection of the local self-government is *indirect* in the Hungarian legal system: these procedures can be initiated by the above mentioned bodies, therefore the municipalities shall ask these bodies. Thus the legal protection of the Hungarian local government cannot be interpreted as a strong and efficient system.

11 Future challenges of the implementation of the European Charter of Local Self-Government in ... legislation

The Hungarian system based on the European Charter of Local Governments was one of the most decentralized municipal systems in Europe. Due to the fragmented spatial structure and broad responsibilities of the local governments, serious inefficiency problems evolved in the Hungarian self-governance.

This model has been changed after 2011/2012 after the new Hungarian constitution. The elements of the new model introduced in 2011/2012 are not unknown in European democracies. It is rather the mixture of these elements, which is unfamiliar: a strong centralization of the delivery of former local public services, and at the same time the concentration of the local public administration. The former concentration of the local government system partially remained, but the inter-municipal associations are now mainly responsible for the joined local administrative tasks, which turns this form of concentration into a mode of centralization in its effects. Now, Hungary has a very centralized local administration system, in which the autonomy and the service provider role of the local governments (and their inter-municipal entities) have been largely weakened. This transformation has been a much stronger centralization than the changes in the European countries after 2008/2009.

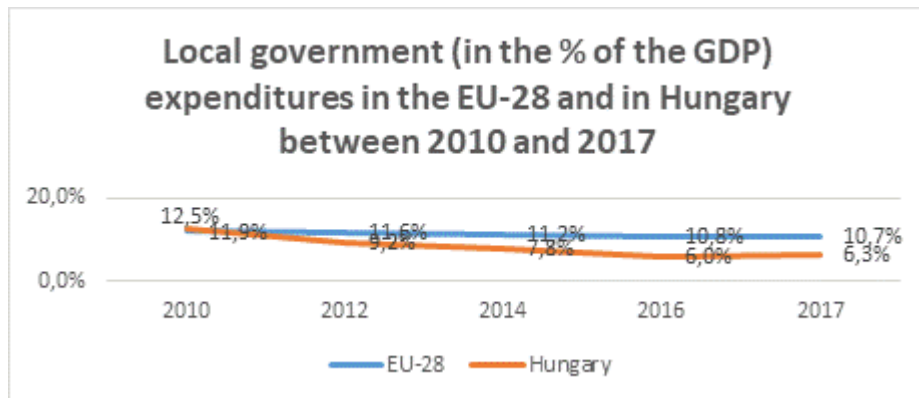
Although a strong centralization has taken place, the resistance was relatively limited. The new approach on the local autonomy of the political decision-makers will not alter in short time, and there is not a strong request for the change of this concept among the experts and scientists. It seems to be that the changes are noted by the Hungarian decision-

makers, local politicians, by the councils of the Hungarian municipalities and by the scientists and experts.

The new municipal regulation was strongly criticized by the Monitoring Committee of the Charter. The revision of the new municipal regulation was recommended by the Recommendation 341 (2013) of the Congress of Local and Regional Authorities¹². The recommendation stated that the constitutional guarantees of the local governance were significantly weakened, the financial autonomy and the judicial protection of the rights of the Hungarian municipalities is not enough sufficient, the competences of the counties should be strengthened, and the consultation between the central and local government should be not only formal as it has been institutionalized by the new rules.

Although the rules of the new regulation are basically consistent with the Charter, the new regulation could be interpreted as an actual backward. The role of the municipalities have been significantly weakened which can be observed by the municipal expenditures. In 2010 the municipal expenditures were 12,5% of the GDP and in 2017 only 6,3% (in the EU-28 in 2010 the municipal expenditures were 11,9% and in 2017 10,7% of the GDP) (see Figure 1).

Figure 1: Local government (in the % of the GDP) expenditures in the EU-28 and in Hungary between 2010 and 2017



Source: Eurostat

(<http://ec.europa.eu/eurostat/tgm/refreshTableAction.do?tab=table&plugin=1&pcode=tec00023&language=en>, downloaded at April 15th 2018)

Thus the main challenge of the recent municipal legislation in Hungary the centralization of the local administration. The municipalities should find their place and role in the new, strongly centralized Hungarian public administration.

¹² The Recommendation can be found at https://rm.coe.int/168071910d#_Toc371513645

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Local Self-Government in Italy

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Abstract This paper deals with local self-government of municipalities in Italy. It analyses how the Italian legal system develops the principles mentioned in the European Charter of Local Self-Government. Italy ratified the European Charter of Local Self-Government on 11 May 1990 and the treaty entered into force in respect of Italy on 1 September of the same year. Recommendations that the Congress of Local and Regional Authorities of the Council carried out in 1993 and 2017 for assessing the application of the European Charter of Local Self-Government in Italy are a good starting point for this paper. The present essay aims to highlight the leading constitutional and legislative reforms, which have been significant development of the European Charter.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Italy

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1 Introduction and history

In 2018, the European Charter of Local Self-Government will celebrate its 30th birthday from entry into force in Italy. A survey of the state of the art within the different legal systems represents, not only an interesting opportunity for a comparative analysis, but also an hypothesis of circulation of this model beyond Europe (Himsworth, 2011). The Charter was opened for signature on 15 October 1985 and entered into force on 1 September 1988 and ratified by Law no. 439 of 30 December 1989 (Ratification and implementation of the European Charter of Local Self-Government, signed in Strasbourg on 15 October 1985). After depositing the instrument of ratification, the Italian government lodged the following declaration: “Concerning the provisions of art. 12, paragraph 2 of the European Charter of Local Self-Government, the Italian Republic considers itself bound by the Charter in its entirety”.

The process of formation of the local government is one of the most significant problems in Italian and European history. It develops in the period of the history of northern and central Italy that goes from the XI century to the Later Middle Ages. The decomposition of the feudal world and the strong immigration tendencies from the countryside to the cities involved a rapid expansion of urban aggregates and the transformation of existing economic and social structures. According to Calasso, “the cities create their Laws with full freedom, they give their Laws (*statuta*), exercise jurisdiction, impose taxes, mint coin, make political and economic pacts with other cities.” We agree that “from a legal point of view, it was a particular system in the orbit of the universal order of the Empire.” (Calasso, 1961: 169).

The municipalities were born as organizations of citizens (*cives*) – the only ones to be holders of political rights and charges – in a struggle with the old feudal lord recoiled in the countryside and with the Emperor, defending the rights that had conquered. Citizens chosen by the Consuls (*Consules*) – prominent figures in the city government up to the Peace of Constance of 1183 – carried out administrative tasks, such as a revenue and tax assessments, the management of the markets and legal documents. In the last years of the twelfth century until the beginning of the thirteenth century, the Italian municipality passed to a monocratic single magistrate (*podestà*), assisted by officers entrusted with the functions and for which he was responsible.

Another element of particular interest in the history of local government concerns the role of the cities in a monarchical system, with specific reference to the Norman-Swabian experience. The structure of this relationship between political power and administrative functions will characterize the history of the municipal system in Italy.

Many urban aggregates – developed with different characteristics, depending on the diversity of territorial and historical-social factors – lost their autonomy to the advantage of a centralized administrative organization. Despite the differences in the different historical situations, the various local realities conformed to a uniform administrative

model. The structure of the relations between the city administration and central power remained stable over time, despite the succession of different dominations, which tried to change this relationship, despite the uneven character of a political reorganization of the cities in the fourteenth century. An element to be considered in the progressive autonomy of the cities was the ability to adopt their norms. Over time, however, the autonomy of the cities ended up flattening towards the local sovereign's government.

These phenomena characterized the Italian states that arose after the municipal age. In the eighteenth century, the idea of a unitary regulation of the activity of the municipalities to be imposed from above by the central power began to circulate. Examples of this are the reform of Carlo Emanuele III in Piedmont (and extended from 1751 to the Sardinian municipalities), of Maria Teresa in Lombardy in 1755, followed by Tuscany in 1772. According to Calasso, the animating principle of these reforms was mainly economic and "it was particularly evident in the prevalence criterion in public administration recognized to the classes of landowners, most burdened by taxes." The French Revolution did not substantially change the structure of local institutions, notwithstanding a resolution by the French Constituent Assembly in December 1789 of the reorganization of the national territory, according to the principles of unity, indivisibility, decentralization and the electivity of the organs. During the Napoleonic period, the French administrative system provided a rational subdivision of the national territory and the creation of uniform administrative circumscriptions to which corresponded as many levels of power: the departments, the districts, the cantons and the municipalities. This model circulated in the states occupied by the Napoleonic troops, including some Italian territories. However, if the Decrees of December 1789 followed a perspective of administrative decentralization, the Napoleonic legislation promoted, on the contrary, the widest declination of the centralization of the state.

The pivotal figure of this system was the prefect (the officer in the Ancient Regime) who was the head of each department, flanked by a departmental general counsel and a prefecture board. The hierarchical line of power descended from the Minister of the Interior, passed to the prefect (and the sub-prefect) and arrived at the mayor. Prefect and mayor were, at the same time, representatives of the local body and delegates of the government, while the organs exercised a limited representation of the local communities. The main rule governing this model was the Law of 28 'Piovoso' year VIII (February 7, 1800).

The hierarchical and centralized Napoleonic order found a rapid reception in the Italian peninsula, especially in Piedmont - in 1802 annexed to the French Empire and therefore directly underwent the legislative legal system - in the Kingdom of Italy (direct emanation of the Cispadana Republic, of the Cisalpine Republic and of the Italian Republic) and in the Kingdom of Naples. The military occupation of the peninsula by the French armies imposed, in fact, a close imitation of the 1800's legislation. In Piedmont, divided by Decree of 8 June 1805 in circumscriptions, which reproduced both the four levels of government of the French model (the departments, the districts, the cantons and the

municipalities), the figure of the prefect became central in the administrative organization. Similarly in the Kingdom of Naples, on August 8, 1806, the Napoleonic model was introduced, which included the figure of the provincial intendant.

The fall of the Napoleonic Empire and the Restoration did not cancel the administrative institutions created during the French domination. In Piedmont, there was the hybridization between the institutions of the Ancient Regime with those of Napoleon. On 10 November 1818 the Royal Decree No. 859 by Vittorio Emanuele I confirmed the division of the territory into divisions, provinces, mandates, and communities.

In the Kingdom of the Two Sicilies the Laws of May 1 and December 12, 1816, determined the administrative organization, keeping almost unaltered the Napoleonic model. The subdivision of Sicily followed the centralized, hierarchical model of the French circumscriptions. The island, traditionally divided into three geographical-military zones without administrative consistency (Mazara, Dromedary and Noto valleys), including 7 offices. The process of administrative rationalization undertaken in 1812-1813 was thus completed with the creation of 23 districts and with the elimination of the fief as an element of the official definition of the territory.

In Lombardy, after the Restoration, the model previously in force created by the Napoleonic legislation was reintroduced. It derived from a consolidated tradition of local autonomy promoted by Maria Theresa of Austria with the reform of December 30, 1755. In the Austrian model, the municipalities represented, on the one hand, the last link of the central administration and, in the other one, a self-governing institution of the local community with elective representation.

The Royal Committee on 7 April 1815 united Lombardy and Veneto in a single kingdom, called Lombardo-Veneto, divided into two government territories, separated by the river Mincio. Each government was divided into provinces, districts, and municipalities, while a governor and a government college, residing in Milan and Venice, exercised the political power. A Royal Delegation applied the administration of the provinces while the administration of the districts belonged to the chancellor of the census that depended on the Royal Committee. The division of the municipalities into three classes, provided by the Napoleonic Italian legal system, remained in force. From the first phase of the Restoration, two models of local order contrasted: the Austro-Lombard and the Franco-Piedmontese models. The latter, through some successive modifications, and by the political-military role played by the Savoy dynasty during the Risorgimento, will constitute the backbone of the local order of united Italy.

One of the novelties of the Savoy Kingdom was the establishment of the province and the creation of the provincial council as a new organ (Royal Patent Letters, 31 December 1842 which constituted, in fact, the regulation for the execution of the Royal Patent Letters, 25 August 1842). On 7 October 1848, after the granting of the Albertine Statute of March of the same year, the Savoy parliament approved the municipal and provincial Law. It

applied the principle of direct election for all local bodies, on the one hand, it paved the way for a new form of political representation and, on the other, reinforced the administrative centralization that started a series of increasingly strict controls on local bodies. Furthermore, in 1848 – during the process of national unification – there was a remarkable turn from the administrative point of view by applying ‘the representative principle.’ The possibility of being elected at the same time in the municipalities, provinces, and divisions produced a dense network of personal interests and in fact deferred the distinctions between the various administrative bodies.

After the Italian unification, some Laws succeeded to regulate the territorial articulations of the State: the Municipal and Provincial Law of the Kingdom of Italy of 20 March 1865, which divides the Kingdom into provinces, districts, mandates, and municipalities. The subsequent Laws issued during the pre-Fascist¹ and Fascist² period did not substantially change this structure until the 1948 Constitution came into force. The constitutional reform project aimed at eliminating the rules dating back.

2 Constitution and legal foundation for local self-government

The first of the questions to be analyzed in this report is whether the Constitution recognizes the principle of local autonomy, as indicated in Article 2 of the European Charter of Local Self-Government and its implementation in the national legislation. The 1948 Italian Constitution introduced a new conception of local authorities, as subjects of autonomy with relief and constitutional guarantee, representative of the respective communities and endowed with relative independence concerning the choices of the State. (De Marco, 2015: 9). The Constituents introduced the Franco-Piedmont model of the legal uniformity of the municipalities, rather than the Austrian model of differentiation. According to the combined provisions of Articles 5 and 128 of the Constitution, we can reconstruct the original autonomous design, subsequently partly modified by legislative reforms starting from the Nineties.

Article 5 of the Constitution provides the principles of unity and indivisibility of the Italian Republic, promoting local autonomies, and implementing the fullest measure of administrative decentralization in those services which depend on the State. In the draft Constitution this principle, which was in Part Two of Title V on local self-government, is moved among the fundamental ones to indicate that it is an integral part of the constitutional characterization of the legal system (Vandelli and Scarciglia, 1995: 1). This premise, to which the Constituents give development in the original Title V of the Constitution, where the art. 114, stated that Regions, Provinces, and Municipalities – necessary and autonomous entities, according to the provision of art. 128 – composed of the Italian Republic.

¹ Consolidation Act on ‘The Municipal and Provincial law’: Royal Decree, February, 4th 1915, No. 148.

² Consolidation Act on ‘The Municipal and Provincial law’: Royal Decree, March, 3rd 1934, No. 383.

The Constitution establishes the extent of local autonomy within the framework of the principles set by ordinary Laws, which determine its functions in compliance with the impassable limit of the same constitutional principle. The Italian Constitutional Court decision No. 52/1969 interpreted the provision of art. 128 in the sense that it is necessary to ascertain, from time to time, that the legislative requirements remain within the strict framework required to satisfy general needs, guaranteeing to the local authorities the powers of its constitutionally recognized autonomy. On the other hand, it appears evident that the constitutional principle of municipal autonomy cannot lead to an autonomous and unjustified elimination of all powers of a State's legislative intervention, within the general principles, according to the Italian Constitutional Court decision No. 118/1977.

Always regarding art. 128, we can further observe that the Constitution defined as 'general Laws' affirm the reference to the same discipline for all the local bodies of the same typology.

The implementation of the Constitution has been very slow since the experience of the Italian Regions began only after twenty-two years and the implementation discipline of the local government just in 1990.

In the Mid-Seventies, the Decree of the President of Italian Republic No. 616/1977 defined the regional competencies, and the Act No. 833/1978 on Health Care System, exercised a significant impact on the functions and structures of local administrations. The draft proposal launched by a group of legal scholars at University of Pavia ("Gruppo di Pavia") was the starting point of a process involving professors, civil servants and politicians, that culminated in the enactment of a structural reform of the local government system, better known as the Act No. 142/1990³ (Vandelli, 1990: 307).

What were the key points of the legislative reform?

One of the most significant innovations that characterized the 1990s local government reform was the provision of a statutory autonomy (Article 4). It was the first time that a Law recognizes that local authorities have the power to acquire a supra-regulatory normative source, which contains the basic rules for the organization of the local entity, the competences of the political bodies, the organization of public offices and services, the forms of decentralization and access of citizens to information and administrative procedures. The Law No. 142/1990 determined the principles on the form of government and local administration, leaving the statutes their adaptation to local realities. Another element of particular interest for the development of local autonomies was the establishment of metropolitan areas (Turin, Milan, Venice, Genoa, Bologna, Florence, Rome, Bari, Naples and possibly Cagliari). These metropolitan areas replace the provinces and exercise, in addition to the usual duties, other functions established by Law. This type of local intermediary entity never really started if not in a voluntary form among

³ Act, No. 142, 8 June 1990, on "Legal System of Local Autonomy".

the local authorities since the Constitutional Act No. 2001/3⁴ – which amended Article 114 of the Constitution – as well as Law No. 56/2014 (*Delrio Law*)⁵, which regulated the establishment of metropolitan cities in substitution of the provinces, as entities of the large area in the regions with an ordinary statute. There are 14 metropolitan cities: Bari, Bologna, Cagliari, Catania, Florence, Genoa, Messina, Milan, Naples, Palermo, Reggio Calabria, Rome, Turin, and Venice. Its organs are the metropolitan mayor, the metropolitan council, and the metropolitan conference. The metropolitan council – consisting of the metropolitan mayor, and a variable number of councillors (from 14 to 24 members) in connection with the population, and elected by the mayors and by the local council members of the municipalities of the province. Most of the elections and an effective constitution of the “councils” of the metropolitan cities took place in 2016.

Another problem that was already posed with the Law No. 142/1990 - and that we will see again occurs with the metropolitan cities - is that of the choice of representation mechanisms in local authorities, as foreseen by Article 3, paragraph 2, of the European Charter of Local Self-Government.

After a troubled political debate, the Italian Parliament passed the Law No. 81/1993⁶ which introduced the direct election of the mayor and the president of the province, as well as the reorganization of the local councils formation system. Laws No. 59/1997⁷, No. 127/1997⁸ and Legislative Decree No. 112/1998⁹ contributed to reinforcing the legislative design. Finally, we can mention Legislative Decree No. 267/2000¹⁰, containing the consolidated act on the Laws regulating the system of local authorities.

Furthermore, between 1999 and 2001, three fundamental constitutional Laws radically changing Title V, Part II, of the Italian Constitution concerning regions, provinces, and municipalities (No. 1, 22 November, 1999¹¹; No. 2, 31 January 2001¹²; and No. 3, 18 October 2001¹³). In particular, the constitutional Act No. 1/1999 opened a new statutory

⁴ Constitutional Act, No. 3, 18 October, 2001, containing “Amendments to Title V of the second part of the Constitution”.

⁵ Law, No. 56, 7 April, 2014, concerning “Provisions on metropolitan cities, provinces, unions and mergers of municipalities.”

⁶ Law, No. 81, 25 March 1993, on “The Direct election of the Mayor, the President of the Province, the City Council and the Provincial Council”.

⁷ Law, No. 59, 15 March, 1997, on the “Delegation to the Government for the transfer of functions and tasks to the Regions and local government, for the Public Administration reform and administrative simplification.”

⁸ Law, No. 127, 15 May, 1997, containing “Urgent measures to streamline administrative activity and decision and control procedures”.

⁹ Legislative Decree No. 112/1998, on the “Attribution of State administrative tasks and functions to the Regions and Local authorities, implementing Law No. 59/1997.”

¹⁰ Legislative Decree No. 267/2000, “Consolidated text of the laws on the organization of local authorities.”

¹¹ Constitutional Act, No. 1, 22 November, 1999, containing “Provisions concerning the direct election of President of the Regional Executive and the statutory autonomy of the Regions”.

¹² Constitutional Act, No. 2, 31 January, 2001, containing “Provisions concerning the direct election of the Presidents of the Special Statute Regions and of the Autonomous Provinces of Trento and Bolzano”.

¹³ Constitutional Act, No. 3, 18 October, 2001, containing “Amendments to Title V of the second part of the Constitution”.

season for the regions. It produced some significant innovations to present a generally complete picture of the organs and procedures of connection between the regions and the existing local autonomies. It is therefore intended to precede the analysis of the forms, concerning the activity of the consultation bodies, by a brief overview of the new statutory provisions currently in force which include an organization representing local authorities.

The Constitutional Act No. 3/2001 incorporated the principle of local autonomy into the Constitution, modifying Article 114, and, in particular, the paragraph 1, where it recognizes equal constitutional dignity to Municipalities, Provinces, Metropolitan Cities, Regions, and State. Moreover, the Municipalities, the Provinces, the Metropolitan Cities and the Regions are autonomous bodies with their statutes, powers, and functions, according to the principles established by the Italian Constitution (paragraph 2).

Other relevant Laws for the life of local government were the No. 243/2012 – which introduced the principle of the balanced budget¹⁴ – and, as I said before, the No. 56/2014 on Metropolitan Cities, Provinces and unions and mergers of municipalities¹⁵. The Italian Constitution does not refer to the European Charter of Local Self-Government. However, we can point out that in 2011, the President of the Constitutional Court, Alfonso Quaranta, responding to a specific question formulated by the delegation of the Congress of Local and Regional Authorities of the Council of Europe, spoke about the value of the Charter as a source of Law in Italian legal system (see Bellocchi and Nevola, 2011).

The Italian Constitutional Court had already referred to the Charter in the sentence No. 325 of 2010. Although the Court affirmed that the programmatic value of the principles of the Charter, the Constitution Court justices considered it such as an act of international Law, transposed into Italian legal system. The provision of the first paragraph of art. 117 of the Constitution imposes respect for the constraints deriving from international obligations on the state and regional legislator bodies. Despite the lack of perceptiveness of its provisions, the Charter sets itself as a suitable parameter for guiding the activity of both the legislator and the interpreter. The former should not dictate different disciplines, while the latter must apply the current legislation by the provisions of the same Charter.

3 Scope of local self-government

A reflection on the scope and development of local government in Italy started at the time of the Constituent Assembly. The basic idea was to implement, after the approval of the Constitution, a regional system and a review of the discipline of local government, applying the constitutional principle of autonomy. From this moment on, the debate on local autonomy has always been alive in Italy, even if for different reasons that the Legislator, both constitutional and ordinary, has tried (or not) to valorize, in close connection with the political orientation of the government in charge. Since the Nineties,

¹⁴ Law, No. 243, 24 December, 2012, concerning “Provisions for the implementation of the balanced budget principle pursuant to Article 81, sixth paragraph, of the Constitution.”

¹⁵ Law, No. 56, 7 April, 2014, concerning “Provisions on metropolitan cities, provinces, unions and mergers of municipalities.”

the reasons for these choices are not only political or economic but are also linked to the different levels of implementation of the Charter by the subscribing countries. In the Italian legal system, the fundamental principles which govern this process are listed in Article 4, paragraph 3 of Law, No. 59, 15 March, 1997. The first principle (letter *a*) consists in the attribution “of the generality of the duties and administrative functions to municipalities, provinces and mountain communities, according to the respective territorial, associative and organizational dimensions, with the exclusion of the only functions that are incompatible with the same dimensions.” It prescribes that the responsibility for certain functions and tasks should be given to the institutional level, which is more likely to fulfil the respective needs, because of the features of the social, economic and territorial context. From this point of view, the institutions closer to the citizens should manage administrative functions and public services.

Regarding the attribution of duties and functions, another significant contribution comes from the Article 4 of Law, No. 127, 15 May, 1997, which provides that this assignment to local authorities shall take place in compliance with some basic principles.

The principle of subsidiarity – to which Italian Law refers (Article 4, paragraph 6, Law No. 59/1997) and Article 4 of the European Charter of local self-government – is undoubtedly an obligatory point of reference for establishing the correct distribution of functions. Nevertheless, the use in a polysemous way in different normative texts, makes it an “ambiguous principle, with at least thirty different meanings, program, magic spell, alibi, myth, an epitome of confusion, a fig leaf” (Cassese, 1995: 373). In any case, Law No. 127/1997 confirmed the principle according to which the assignment of the general duties and administrative functions to municipalities, provinces and mountain communities, must be by their respective territorial, associative and organizational dimensions. Article 4, paragraph 3 provides an exclusion of the only functions incompatible with the dimensions of local bodies, attributing public responsibilities also to favor the fulfillment of duties and tasks of social relevance by families, associations, and communities, to the territorial authority and functionally closer to the citizens concerned.

Another principle that Law considers is completeness, in the sense that to the regions remain the competence of the functions not assigned to the local bodies and of the planning functions (letter *b*, art. 4). The list of Article 4 also includes the principle of efficiency and economy, which involves the suppression of functions and tasks that have become superfluous (letter *c*); the principle of cooperation between the state, regions and local authorities also to guarantee adequate participation in the initiatives taken within the European Union (letter *d*); the principle of responsibility of the administration (letter *e*); of homogeneity, taking into account, in particular, the functions already performed with the assignment of homogeneous duties and tasks at the same level of government (letter *f*); the principle of adequacy, about the organizational fitness of the receiving administration, to guarantee the exercise of functions, also in association with other local bodies (letter *g*); the principle of differentiation in the allocation of functions in

consideration of the different characteristics of the receiving entities (associative, demographic, territorial and structural characteristics) (letter h); the principle of financial coverage of costs for the exercise of the conferred administrative functions (letter i); the principle of organizational and regulatory autonomy and responsibility of local authorities in the performance of the functions and administrative tasks conferred on them (letter l).

Article 7 of the Constitutional Act No. 3/2001 amended Article 118 of the Constitution, providing the assignment of the administrative functions to the Municipalities. Law makes an exception in cases where a unified exercise of the duty is necessary, and, in this case, by an assignment to Provinces, Metropolitan Cities, Regions, and State, respecting the principles of subsidiarity, differentiation, and adequacy. Generally, Municipalities, Provinces and Metropolitan Cities hold their administrative functions, and those conferred by State or regional Law, according to their respective competencies.

The previously mentioned normative sources highlight the importance of the principle of subsidiarity understood both horizontally and vertically. Moreover, it could not be otherwise, if we consider the constant reference of the legislator to the “citizen proximity” and the enhancement of families, associations, and communities. Vertical subsidiarity is akin to the autonomous principle set out in Article 5 of the Constitution and constitutes a precondition for horizontal subsidiarity (Razzano, 2005: 3). From a jurisprudential point of view, we can point out that the Council of State emphasized the principle of subsidiarity provided by Article 4 of Law No. 59/1997 even before the reform of Title V of the Constitution. The highest administrative justice body dealt with it in the judgment of Section IV, No. 1493/2000, in the opinions of Section II, No. 2691/2/2003, and No. 1440/3/2003, extensively focusing on the concept of horizontal subsidiarity. In particular, the Council of State has ruled out that the enforcement of the principle of horizontal subsidiarity in cases of aid to companies.

As regards the obligation laid down in Article 4, paragraph 6, of the Charter to consult the local administrations in the planning and decision-making process, a first contribution also comes from the Article 4 of the Act, No. 127, 15 May 1997. It provides that in the matters referred to the Article 117 of the Constitution, the regions confer on provinces, municipalities and other local authorities all the functions that do not require unitary exercise at a regional level. When the regions confer the functions, also provide to advice and discretionary consult the representatives of local authorities.

The new regional Statutes have implemented the fourth paragraph of the Article. 123 of the Constitution, which assigns the regulations of the Council of Local Autonomies to the Statute as a consultative body between the Region and local authorities, redefining the pre-existing bodies regulated by regional Laws. The Council's provision arises from Article 7 of the Constitutional Act No. 3/2001, which added a paragraph to Article 123 of the Constitution and is undoubtedly an essential tool for the protection of local interests in the region. It represents a form of coordination between the various levels of government, similar to the State-Regions Conference and the State-Autonomy Conference.

However, it is necessary to underline the great novelty of the Prime Ministerial Decree n. 76/2018 of May 10, 2018, implementing Legislative Decree 50/2016, which formalizes the operational participation of local communities in the design choices of major strategic works. This is perhaps one of the main implementations of Article 4, paragraph 6, of the European Charter, in the part where it provides for public consultation of local authorities. The activity of the State-City and local autonomies Conference contributes to the development of this principle¹⁶.

4 Protection of local authority boundaries

After a very long period of inactivation of the constitutional provisions of art. 132, paragraph 2, of the Constitution – which regulate the passage of Municipalities by one Region to another – there are many initiatives of Municipalities to belong to the territory of another Region. The constitutional procedure provides for the intervention of ‘affected populations, similar to what the European Charter states, in Article 5, where there is a reference to the ‘local communities concerned.’ In this procedure, various subjects intervene, in addition to the populations concerned: the municipal councils, which must deliberate the referendum request; the regional councils which must give an opinion, and the Parliament by ordinary Law, according to Article 42, Law No. 352/1975.¹⁷

In particular, Article 42, provided in paragraph 2, that the referendum took place at the request of: a) the municipal councils of the bodies to be separated and re-aggregated; b) a third of the population of the region from which the separation was requested; c) many municipal councils that represented at least a third of the population of the region to which aggregation was requested. Italian Constitutional Court (decision October 28 – November 10, 2004, No. 334) declared constitutional illegitimacy of the paragraph 2, in the part in which it prescribes the resolutions of the municipal councils not directly concerned. As a consequence, the sentence does not allow the provisions of Article 44 of the Law No. 352, namely that the referendum should take place in both regions.

The only procedures completed for the time being are those of separation-aggregation of Alta Valmarecchia from the Marche to Emilia-Romagna and the municipality of Sappada from Veneto to Friuli-Venezia Giulia.¹⁸

The territorial changes can also concern the provinces, as well as the regulatory instruments necessary to modify them. From this point of view, it is worth recalling that the Constitutional Court in the judgment No. 220/2013, declaring unconstitutional some

¹⁶ See at: <http://www.anci.it/index.cfm?layout=sezione&IdSez=2821>.

¹⁷ Law, No. 352, May 25, 1970, concerning “Rules on referendums provided by the Constitution and on the legislative initiative of the people.”

¹⁸ For a complete list of referendums held, see <https://web.archive.org/web/20150323032821/http://www.comunichecambianoregione.org/risultati.php>.

provisions of the Decree Laws No. 201/2011¹⁹ and No. 95/2012²⁰, excluded that a wide-ranging reform, which even can introduce the suppression of some provinces through the decree-law.

5 Administrative structures and resources for the tasks of local authorities

The implementation of Article 6 of the European Charter has had a setback over the years of financial crisis due to staff reductions and the arbitrary nature of financial restrictions (linear cuttings) for employees of local authorities. For more than a decade, local authorities have been applying stringent binding regulations on staff costs and turn-over limitations. Financial legislation reduced the capacity for local administrators to manage effective personnel policies. Statistics published since 2008 have highlighted how this policy has severely penalized local self-government.²¹ This cutting led to a reduction in the number of civil servants, particularly in the regional and local authorities sector. Similarly, there has been a drastic decline in the use of coordinated and continuous collaboration, which has penalized the autonomy in particular. The reduction concerned the personnel expenses of the regional and local authorities sector, and the remuneration paid to employees of the public administration, confirming that the employees of the autonomies receive less treatment than that of other public employees.

In Italy, the internal stability pact disciplines the fiscal relations across levels of government and is a prerogative of the Italian Government. It works within the framework of the Cohesion Action Plan agreed with the European Commission. The Laws No. 111/2011 (passing of the Decree-Law No. 98/2011), and No. 148/2011 (passing of the Decree-Law No. 138/2011) and No. 183/2011 (Articles 30 and 31), as amended by the Law No. 147/2013, regulates the internal stability pact for the three-year period 2012-2014.

Starting from the year 2013, also the municipalities with population superior to 1000 inhabitants must respect the rules also fixed the cities with community superior to 1000 inhabitants. The Law No. 190/2014 (2015 Financial Stability Law), paragraph 498, made changes to paragraph 23 of the Article 31 of the Law No. 183/2011, excluding the application of the paragraph for the Metropolitan Cities and the Provinces. These are an object of reorganization according to the Law No. 56/2014. Also, the Municipalities established as a result of the merger, as of 2011, are subject to the rules of the stability pact from the fifth year following that of their institution, assuming as a basis for calculating the results of the last three years available.

¹⁹ Law Decree, No. 201, December 6, 2011, (Urgent provisions for growth, equity and consolidation of public accounts), converted, with amendments, by art. 1, paragraph 1, of the Law No. 214, December 22, 2011.

²⁰ Law, No. 95/2012, July 6, 2012, (Urgent provisions for the revision of public spending with invariance of services to citizens as well as measures to strengthen the capital of companies in the banking sector), converted, with amendments, by art. 1, paragraph 1, of the law No. 135/2012, August 7, 2012.

²¹ At: http://www.mef.gov.it/ministero/commissioni/copaff/documenti/Primo_rapporto_Copaff_su_entitx_e_ripartizione_misure_finanza_pubblica_gennaio_2014.pdf.

Within 2015, public employees fell by 6.9% compared to those in service in 2007: in absolute terms, the reduction is 237,220 employees. The greatest contraction is in Regions and local autonomies: the difference between 2015 and 2007 is 10.7% and, in absolute terms, a good 55,388 units. We can underline the strong decrease registered in 2015 compared to 2014 which was 3.9%.

The sector (local authorities) registered, therefore, a considerable reduction in personnel, despite the confirmation of the tasks performed. We should recall that the marked decrease recorded in 2015 (in absolute value 18,702 employees) is mainly due to the contraction of the personnel of the large area entities, in particular for the use by almost all the provincial administrations of the 'early retirement' tool. The decrease principally concerns permanent employees: the difference between 2015 and 2007, in fact, recorded a negative balance of 11.6% and that between 2015 and 2014 a decrease of 4%. It is not by chance that the data on the other personnel show a slight increase in their number both in percentage and absolute values. In 2015 the incidence of personnel hired with flexible contracts (fixed time, supply contracts, training and work contracts, etc.) compared to staff employed for an indefinite period stood at 9.2%. Worthy of mention is the sharp reduction in the stabilization process of precarious workers: in 2015, including the permanent hiring of former socially useful workers, 490 cases were recorded (the tendency to reduce these assumptions is present from 2013), to the front of the 9,830 of 2008.

Other data to highlight is the sharp decline in the number of recipients of coordinated and continuous collaboration positions, particularly in the Regions and local autonomy sector (from 34,464 assignments in 2007 to just 4,388 in 2015). As a percentage, the reduction is 87%, confirmed by the decrease in relative spending which decreased by 86%.

However, the situation could improve in 2019. 2018 is the last year in which the temporary discipline in concerning the turn over limits, introduced, for the 2016-2018 three-year period, by the 2016 budget Law (Article 1, paragraph 228, Law No. 208/2015). As a consequence, starting from 2019, the provisions contained in Article 3, paragraph 5, of the Law Decree No. 90/2014, and the determination of the exceeding of the limitations on the turnover for all local authorities, which can have a capacity of 100% of the staff expenses ceased in the previous year.

Article 6, paragraph 2, of the European Charter, provides for the recruitment of high-quality staff with merit and competence.

On June 22, 2017, the legislative Decree No. 75/2017 came into force, containing important changes concerning the work discipline in the p., Having modified important provisions of the legislative Decree No 165/2001. A fundamental point of the reform design, with a view at the same time of simplification and rationalization of the employment relationship to the public administration, consists of overcoming the

traditional determination of the needs of administrations anchored to the organic endowment and the introduction of a plan actual staff needs. In particular, with the changes made to Article 6 of the legislative Decree No. 165/2001, the organizational structure of public administrations is no longer assigned to a programmatic tool, but necessarily static, but to an essentially managerial plan, of a dynamic nature.

The new system foresees that every single administration - and, consequently, local ones - adopts a three-year plan of personnel needs that is coherent not only with the specific lines of ministerial address, but also with the organization of offices and with the multi-year planning activities and performances for a programmatic coverage of staff needs within the limits of available financial resources. The capacity and responsibility of each individual administration determines the concrete and progressive identification of the professional skills required to achieve their institutional goals, with the sole limitation of compliance with spending constraints and public finances.

6 Conditions under which responsibilities at local level are exercised

Article 7 of the European Charter guarantees to local administrators the free exercise of the mandate, similarly to what art. 67 of the Constitution provides for parliamentarians. A first criticism that it is possible to note in this regard concerns the recent introduction by a ruling party (the 5 Stars Movement) of the obligatory signing of a contract by the candidates – and, before the election – with the movement, sharply limiting the freedom of mandate. In the agreement, there are not only penalties for 100 thousand euros (or more) in case of damaging of the image of the Movement, but also that proposals for acts of high administration, and legally complex issues, must be submitted in advance to a prior technical legal opinion to the staff coordinated by the guarantors of the M5S. We can recall here that the Mayor of Rome, Virginia Raggi, signed this contract before being elected. It seems clear that the provision of these clauses is clearly contrary to the European Charter and, for this reason, represents only a natural obligation, and not a legal requirement, which binds the elected – who, for example, decides to leave the Movement – to the payment of the sum stipulated in the contract.

Another problem concerns the paragraph 2 of the art. 7, that is adequate financial compensation for the performance of the functions. Law No. 56/2014 introduced relevant changes regarding the number of administrators of municipalities with a population of fewer than 10,000 inhabitants and their allowances. In absolute contradiction with previous regulations, aimed at reducing the number of local administrators, the composition of the bodies for the demographic band of the Municipalities has increased, up to 10,000 inhabitants (Article 1, paragraph 135, of Law No. 56/2014). The municipalities affected by the aforementioned provision must re-establish with their own deeds the charges connected with the activities concerning the status of local administrators referred to in Title III, Chapter IV, of the first part of the consolidated text, in order to ensure the invariance of the relative expenditure in relation to the legislation in force. This invariance needs a specific certification by the board of auditors (Article 1, paragraph 136, of Law 56/2014). The following Law Decree No. 66/2014, converted into

Law No. 89/2014, in paragraph 136, added the provision that ‘for compliance with the invariance of expenditure, about the calculation of the charges related to the activities concerning directors’ status, we can exclude those relating to paid leave, social security, welfare and insurance costs. Referred to in Articles 80 and 86 of the consolidated act’.

The provision has led to many interpretative doubts. The Court of Auditors, Section of the Autonomies, with an opinion expressed with resolution No. 35/SEZAUT/2016/QMIG²², communicating some undoubtedly innovative principles on the subject, while confirming the current orientation in other respects. With particular reference to the allowances of the directors, the different aspect between the regional sections of the Court concerned the extent to which the invariance of expenditure should be guaranteed.

The doubts concerned, on the one hand, the alternative whether to evaluate the amounts disbursed in the reference year (actual expenditure). On the other, to take into account expenses that are abstractly due to directors based on the size of the institution, regardless of any subjective assessment (waiver or reduction of compensation on a voluntary basis, halving of the same in consideration of the lack of expectation of the employee administrator). The Court reconstructs a different legal discipline for the two cases. The principle of expenditure invariance pursuant to art. 1, paragraph 136, of Law 56/2014, concerns only the charges related to the performance of activities related to the status of the local administrator (including the tokens of the presence of councilors of local authorities) that must be determined according to the criterion of historical expenditure. From another point of view, the charges deriving from expenses for the function of the statutory auditor and the assessors are not subject to recalculation and are due to the extent provided for in Table A of the Ministerial Decree. 119/2000, with the reduction, referred to in art. 1, paragraph 54, of Law 266/2005. The resolution, therefore, remains outside the principle of invariance of expenditure according to art. 1, section 136, of the Law No. 56/2014 the expenses for the function allowances, precisely because they are not subject to a reduction, to the charges related to paid leave, to the social security, welfare, and insurance expenses.

A second element to consider is the power of supervision of local authority bodies. The main problem concerns the dissolution of municipal councils for mafia infiltration, now governed by Article 143 of Legislative Decree No. 267/2000. The President of the Republic has the supervision of this function and has the power to dissolve municipal and provincial councils, on a proposal from the Minister of Interior, who informs Parliament immediately of the dissolution decree. A consequence of this Presidential Decree is the appointment of a commissioner in place of the council pending the next elections.

²² At: <https://www.self-entilocali.it/wp-content/uploads/2016/12/CC-Sez.-Autonomie-del.-n.-35-16.pdf>.

Law No. 94/2009 introduced some changes to the discipline of the proceedings of dissolution of the municipal and provincial councils. The decree of dissolution for mafia infiltration preserves its effects for a period from twelve to eighteen months that can be extended up to a maximum of twenty-four hours with a further presidential measure. The elections of the dissolved bodies take place on the occasion of the ordinary annual round if the duration of the dissolution expires in the first half of the year. In the case of expiry in the second semester, the elections take place in one shift extraordinary to be held on a Sunday between October 15 and 15 December.

The law provides for the dissolution of municipal councils when concrete, univocal, and significant elements emerge on direct or indirect links with organized crime of the mafia or similar type of criminal organizations. The same sanction applies in the case of forms of conditioning of the institution, such as to determine an alteration of the procedure formation of the will of the elective and administrative bodies, and to jeopardize the excellent performance or impartiality of the municipal administrations, as well as the regular functioning of the services entrusted to them. These elements may also refer to the municipal secretary, the general manager, managers and employees of the institution.

In the period 1991 and 1996 the dissolution regarded 90 councils. However, in 2016 there were only 8 cases of dissolution due to mafia infiltration. The main causes of dissolution found in the same year are: forfeiture (5), death (19), resignation (39), impediment (2), non-adoption of the financial statements (10), failure (1), resignation of directors (75), motion of no confidence (4), for a total of 163 entities.

If we consider a more extended period instead, from 1991 to 2018, the dissolutions are 306, even if in 25 cases, the measures were canceled in court. The decrees of dissolution were more numerous in the Southern Regions (Calabria: 105, Campania: 104, Sicily: 73, Puglia: 13, Basilicata: 1), compared to the Northern Regions (Piedmont: 3, Liguria: 3, Lombardy: 1, Emilia-Romagna: 1) and of the Center (Lazio: 2).

The Constitutional Court addressed the issue of the dissolution of the councils, in the sentence No. 103/1993, noting that the art. 15 bis of Law No. 55/1990, requires a stringent consequentiality between the emergence of one of the situations provided by law (links or forms of conditioning). Furthermore, it is necessary to ascertain the compromise of the freedom of determination and the good administrative performance and the regular functioning of the services. The dissolution of the elective body ‘has no repressive purpose against individuals but for the safeguarding of public administration’ (Council of State, VI, 13 May 2010, No. 2957), and it represents a ‘measure of extraordinary character to face an extraordinary emergency’ (Council of State, VI, March 10, 2011, No. 1547).

The fulfillment, by the municipal administration, of illegitimate acts, is not sufficient to determine the dissolution of the entity. A *quid pluris* is necessary. It consists in conduct, active or omissive, conditioned by crime even if suffered, found by ‘competent administration with broad discretion (Council of State, VI, April 24, 2009, No. 2615,

April 6, 2005, No. 1573). Moreover, in the presence of a phenomenon of organized crime spread throughout the territory, the judge must consider the elements confirming collusion, connections and conditioning (see Council of State, IV, 6 April 2005, No. 1573, 4 February 2003, No. 562, V, March 22, 1998, No. 319, February 3, 2000, No. 585).

Undoubtedly, the anti-mafia legislation is a particular case, which concerns the Italian legal system and, however, precisely because of the potential contraposition with Article 7 of the European Charter, requires that the administrative measures of dissolution must contain a specific motivation.

7 Administrative supervision of local authorities' activities

The European Charter excludes that checks on local authorities are intrusive unless they are decisions of administrative or civil courts. From another point of view, the spending and financial procedures of local authorities fall under the scrutiny of the Corte di Conti. In this regard, it is necessary to remember that the constitutional reform of 2001, on the one hand, repealed art. 130 of the Constitution, and, on the other, inserted a new discipline of substitute checks against the regions and local authorities. This discipline concerned the failure to comply with international norms and treaties, a danger to public safety, and the protection of the legal and economic unit (Vandelli, 2013: 237).

The replacement powers represent an exception to the exercise of local functions, and the Italian Constitutional Court has set some fundamental principles. Firstly, a Law must provide the replacement powers, and establish the substantive and procedural assumptions.²³ Furthermore, a replacement in local functions can only take place when a local authority must carry out a mandatory behavior;²⁴ the requirement of participation or consultation of the local authority is not necessary if the exercise of substitute powers is linked to events of an objective nature.²⁵ The system of controls over local authorities has undergone profound changes after the constitutional reform, particularly by Legislative Decree No. 150, October 27, 2009, and Article 3 of the Decree Law No. 174, October 10, 2012, that completely redesigned the structure outlined by Article 147 of Legislative Decree 267, 18 August, 2000.

Concerning controls over administrative management, Legislative Decree No. 150/2009 assigned this function to independent assessment bodies, which replace the internal control services in this activity, and the enforcement of measurement of organizational and individual performance to the administrative staff. Article 3 of the Decree Law No. 174/2012 provides, in addition to traditional controls (accounting administrative regularity, management and strategic control), new activities, such as: the control over the financial balance of the institution, the checking of effectiveness and the economics

²³ Constitutional Court, judg. No. 338, 15 June, 1989.

²⁴ Constitutional Court, judg. No. 177, 18 February, 1988.

²⁵ Constitutional Court, judg. No. 244, 24 June, 2005.

of the management bodies, and the quality of the provided services, either directly or through external management bodies. Another novelty of the Law concerned the control of the participating companies, which must be periodic, and provides for the analysis of the deviations from the assigned objectives, also regarding the possible economic and financial imbalances recorded for the local authority budget. The control over the participating companies concerns both administrative and accounting regularities (including the check of the company's financial performance to detect possible repercussions on the local entity) and exemplary aspects of management and strategic control.

In this regard, there has been increasing attention of the legislator on the companies controlled by local authorities, which stems from the actual need to monitor with growing attention the total expenditure of local administrations. In many cases, the situations of instability, or in any case of serious economic and financial imbalance, of the local authority were linked to circumstances that involve participating entities.

The new Article 147-quater of legislative Decree No. 267/2000 reaffirms the obligation to draw up the consolidated financial statements, already provided for under legislative Decree No. 118/2011, on the harmonization of accounting systems and financial statements of the regions, local authorities and their bodies. Regarding the pre-existing checks, such as, in particular, the control of the administrative accounting regularity, Law Decree No. 174/2012 – converted into Law No. 213/2012 – the internal controls are more stringent in the cases in which Law requires an opinion of accounting regularity. It establishes that such advice should be requested not only for the proposals of resolutions submitted to the Board and the Council involving a commitment to spend or decrease the entry, but on any proposed decision that includes direct or indirect consequences on the economic-financial situation, or on the assets of the institution.

Furthermore, legislative Decree No. 149/2011 introduced some specific instruments aimed at ensuring the coordination of public finance, and in particular the principle of transparency of the incomes and expenses decisions. The legislative Decree provided for the provinces and local authorities, as well as for the regions, the obligation to draw up an end-of-term report, consisting of a document signed by the president of the province, or by the mayor, certified by the internal control bodies of the institution, and verified by a specific inter-institutional technical table. This document is primarily a tool for reporting the main regulatory and administrative activities carried out during the mandate, with particular reference to the system and the results of internal controls, to any findings of the Court of Auditors (Corte dei Conti). It regards the actions to comply with the financial balances, public programs and the status of the convergence path towards the standard needs, the economic situation, and assets, also highlighting the weaknesses found in the management of institutions and companies controlled by the municipalities or the provinces. The document also points out the actions to contain expenditure, and the state of the convergence process to the standard requirements, to the quantification of the provincial or municipal debt measure. Local authorities must publish it, together with the checking report, on the institutional (also website) of the provinces or municipalities.

Municipal and provincial authorities have also the obligation to draw up a mandated report, aimed at verifying the financial and equity situation, and the extent of the indebtedness of the same bodies. The president of the province, or the mayor, within the ninetieth day from the beginning of the mandate, must sign the start-up report prepared by the head of the financial service, or by the general secretary.

Regarding external controls, Article 3 of the Law Decree No. 174/2012 enhanced the powers of the Court of Auditors, expanding the control parameters, also during the year, including the regularity of the financial management, of the planning documents, and the checking of the functioning of the internal controls of the local authority. Article 148 of legislative Decree no. 267/2000 provides that the regional sections of the Court verify, every six months the regularity of the management, and the operations of internal controls adopted to comply with accounting rules and budget balance of local authorities. For the performance of the six-monthly verification activity, the local auditing sections of the Court can also avail themselves of the Finance Guard Corps, or of the Inspection Services of the State General Accounting Department.

In the exercise of its control function – and concerning the year 2015 – the Court notes the substantial stability of the revenue of the municipalities, and the lack of sufficient resources for metropolitan provinces and cities, in its Report on the activity presented at the inauguration of the 2018 judicial year.²⁶

For the Municipalities, the Court points out a substantially stable trend in revenues compared to a decrease in commitments (-11.15%). The most substantial resources are represented by income related to real estate taxation and the revenue from the waste tax, which is, however, totally absorbed by the cost of the service. The revenue that is specifically dependent on the municipal tax levy (including that of the tourist tax), as well as income from the fight against tax evasion, is modest, even if it is growing.

From another point of view, provinces and metropolitan cities have persistent problems on the revenue side, above all concerning the revenue deriving from own taxes. An expenditure analysis shows, compared to 2014, an increase in the commitments undertaken on the accrual basis (22.86%) mainly attributable to the growth in investment expenditure (due to the effect, also, of the more significant financial space created by the reduction of debt and, therefore, the cost of repaying loans) and less to the dynamics of current spending (up 12.63%). Commitments for personnel expenses (-9.53%), and for the purchase of services (-2.11%) were reduced.

The funding of local authorities, despite the efforts made, is the main problem that prevents the implementation of the European Charter.

²⁶

http://www.corteconti.it/export/sites/portalecdc/_documenti/chi_siamo/presidente_buscema/Inaugurazione-Anno-giudiziario-2018-Relazione-Attivita-Presidente-Buscema.pdf.

The Court also points out that its analysis of the financial stability indicators of the sector, on the basis of trends overall financial equilibrium, highlights a situation of progressive suffering of the municipalities and, above all, of the provinces and metropolitan cities: 150 municipalities and 64 provinces are non-compliant with the stability pact for 2015. 2015 analysis of the administrative results, in contrast with the two-year period previous, denotes a considerable increase in the number of deficit institutions, mainly attributable to the application of the harmonized accounting rules. The total amount of the deficit (net of off-balance sheet debts) amounts to approximately € 4,004 million in the municipalities, while in the provinces and metropolitan cities, it stands at 121 million euros.

8 Financial resources of local authorities and financial transfer system

The problem of the financial autonomy of local authorities is essential for the development of the principles contained in the Charter. Article 119 of the Italian Constitution of 1948, in its original text, attributed a financial autonomy only to the regions, and not to the other local authorities, codifying the aim for a revenue and expenditure autonomy, corresponding to the principle that all levels of local self-government should have independent financial resources (principle of fiscal federalism). The constitutional reforms of 2001 introduced some tenets, primarily against this perspective, by a prolonged failure to enact the legislation necessary for the implementation the financial autonomy and to produce a change concerning the Government's measures taken, since 2008, in response to the global financial crisis. A first, foremost, goal towards the implementation of art. 9 of the European Charter was the approval of Law No. 42/2009 on fiscal federalism, which establishes the fundamental principles of the coordination of public finance and the tax system.²⁷ It also regulates the setting up of the *Equalization Fund* for areas with lower tax capacity per inhabitant as well as additional resources and the implementation of particular interventions pursuing the development of the under-utilized regions in the perspective of overcoming the country's economic dualism.

The 2015 legislation was useful for the performance of the financial statements of local authorities, as well as their cash flows. I refer, in particular, to Law No. 125 of August 6, 2015, on essential provisions concerning local authorities. Until the entry into force of this Law, local authorities had to respect the Stability and Growth Pact, which establishes the rules that local authorities must follow to compete with the achievement of the public finance objectives set by the Financial Laws (now 'Stability Laws'), concerning the parameters of the deficit and public debt that derive from EU commitments.

The rewriting of financial rules was necessary for supporting the local investments. It took place between 2016 and 2017, also in the implementation of the amendment of the

²⁷ Law No. 42, May 5, 2009, concerning "Delegation to the Government regarding fiscal federalism, implementing art. 119 of the Constitution.

law on budget balancing, together with the input of resources (concerning financial space) useful to allow a higher capacity to use administrative surpluses accumulated during the years of the Stability and Growth Pact. A composite range of direct support interventions, related to different priority sectors, followed these measures. Economic and Financial Document (DEF) 2019-21 recalls these interventions without however delineating the further actions necessary to consolidate the overall financial balance of the municipalities.

The extent of the effort required by the Municipalities in the period 2010-2017, amounting to over 9 billion euro of cuts in resources between 2011 and 2015 (besides 3.3 billion in the whole period for the public finance constraints). The effects of these economic sacrifices were differentiated according to the characteristics of the institutions, inevitably affect their full involvement in the implementation of policies for economic growth and territorial development.

Table 1: The maneuvers on the Municipalities 2010-2017 (in millions of euros)*

	2010	2011	2012	2013	2014	2015	2016	2017
Maneuvre		3.009,3	5.185,9	3.160,7	43,8	850,5	-534,1	662,0
Pact and new accounting from 2015	345,1	1.509,3	1.522,3	1.261,3	-448,5	-637,3	-534,1	662,0
Of which cutting tax transfers		1.500,0	3.663,6	1.899,4	492,3	1.487,8	0,0	0,0
"Costs of policy"			118,0					
cuts D.L. 78/2010		1.500,0	1.000,0					
cuts D.L. 201/2011			1.450,0					
cuts D.L. 95/2012			95,6	2.154,4	250,0	100,0		
cuts o D.L. 66/2014					375,6	187,8		
cuts L. Stab. 2015						1.200,0		
IMU revision cuts					170,7			
ICI /IMU hidden cuts			1.000,0	-255,0	-304,0			

(*) IFEL elaborations on data from the Ministry of the Interior and Ministry of Economy and Finance

The obligation of the regions and local authorities to participate in the achievement of public finance objectives has recently taken on constitutional significance with the new formulation of Article 119 of the Constitution – made by Constitutional Law No. 1/2012 to introduce the principle of balanced budget in the Constitutional Charter – which, in addition to specifying that the financial autonomy of local authorities (Municipalities, Provinces, Metropolitan Cities and Regions), is ensured in compliance with the balance of the related budgets, at the same time, it requires these institutions to contribute to ensuring compliance with economic and financial constraints arising from the Law of the European Union.

Starting from 2019, the reductions of resources carried out by Decree 66/2014 will cease to affect the contribution of regions and local authorities (reduction of public spending review). It is a 'return' to the funds' financial statements of € 563.4 million, the

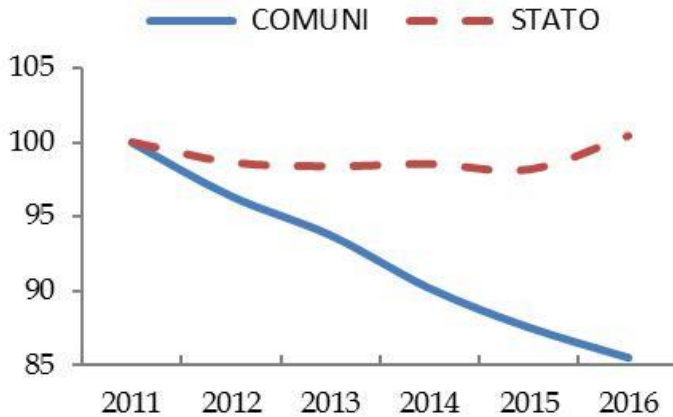
quantification of the annual cut for the period 2015-2018, operated directly on the Municipal Solidarity Fund.

Concerning staff costs, for more than a decade, local authorities have been applying stringent binding regulations to cover staff costs and turn-over limitations. Financial legislation has strongly compressed the capacity for local administrators to manage effective personnel policies. In a few years, it produced: a) a drastic reduction in the number of civil servants employed in the sector; b) a decrease in the average value of the individual salaries of the municipal staff; c) a significant increase in the average age of personnel. In recent years the relevant legislation has reached a stratification level and unprecedented complexity, which makes an organic review of the subject indispensable and urgent (Dota and Buldrini, 2018, 1).

As is clear from the graph below the expenditure by the staff of State and municipalities has drastically reduced from 2011 to 2016.

Figure 1: Expenditure by staff of state and municipalities. 2011-2016 trends

Index numbers (2011 = 100)



Starting from 2018, after almost a decade of a freeze, wages increase due to the renewal of the contract will begin for the public (and also local) administration staff. It is unthinkable that the local authorities can have the responsibility for the higher cost of renewal of the contract. The rigidity of the financial rules that local authorities must meet to cover the higher charges, together with the magnitude of the increases (around € 650 million for all local authorities) are likely to nullify the painstakingly achieved results regarding staff substitutability ceased. It can be considered that, in this case, the provision of art. 9 of the European Charter should be regarded as not respected, in a context characterized by a strong aging of the workforce and an unprecedented reduction, almost

14% in six years. It makes particularly tricky in small and medium-sized municipalities the effectiveness of essential offices such as technical and financial services.

The local financial situation does not allow to affirm the compliance with Article 9 of the Charter.. Equalisation is not working, even in view of the still existing interpretative uncertainty despite the Court of Auditors ruling on this issue. Regarding the consultation of local authorities before the choices of economic policy, paragraph 6 of art. 9 of the Charter is not yet sufficiently implemented, even if the National Association of Municipalities (ANCI) was present on May 9, 2018 for a confrontation with the Special Commission for acts of the Government of the Chamber of Deputies.

9 Local authorities' right to associate

The aims of Article 10 of the Charter are mainly two: the protection of the right of local authorities to form and join associations 'for the protection and promotion of their common interests', and also the right to co-operate, and to form consortia with other local authorities in order to carry out tasks of common interest. After the provision of the Law No. 142/1990, also art. 4 of Legislative Decree No. 267/2000 regulate this principle 'to achieve an efficient system of local autonomies at the service of economic, social and civil development.' There are many forms of association and cooperation. We can point out the National Association of Italian Municipalities (ANCI), the Association of Italian Provinces (UPI), the National Association of Municipalities and Mountain Communities (UNICEM), some structured institutions, such as the Union of municipalities, the multipurpose consortium, the mountain community', or even the conferences, such as the State-City and Local Autonomies Conference (see Guerra, 2017: 609).

Associationism is a handy tool to allow, in a particular way, smaller municipalities to participate in the exercise of functions, also about regional competences, among which there is the preparation of a program to change the municipal districts and merger. The intercommunality has become the object of attention by the legislator, in connection with the federal design initiated by Law No. 59/1997, and Legislative Decree No. 112/1998, in parallel with the constitutional reform of Title V of the Constitution, introduced by Constitutional Act No. 3/2001. From this point of view, on the one hand, we point out the suppression of the obligatory nature of the transition from the union to the merger of municipalities, and, on the other, the provision of the obligation for institutions of smaller demographic size to perform the functions in associated, to ensure optimal performance levels identified by the regions (Guerra, 2017: 612).

We can point out here that Decree-Law No. 78/2010 imposed the obligation for municipalities under 5,000 inhabitants - 3,000 if they are part of mountain communities – management in an associated form of essential functions. The law left the choice between the use of a convention or the model of union of municipalities. Law No. 56/2014 confirms the mandatory use of the essential functions by the small municipalities, reformulating the discipline of the union of towns in the direction of

forced integration, but with the power of choice of the extension of this process by the same municipalities. The failure of the constitutional revision project following the last referendum consultations did not change the constitutional framework, but interrupted the process of reforming the territorial articulations of the State.

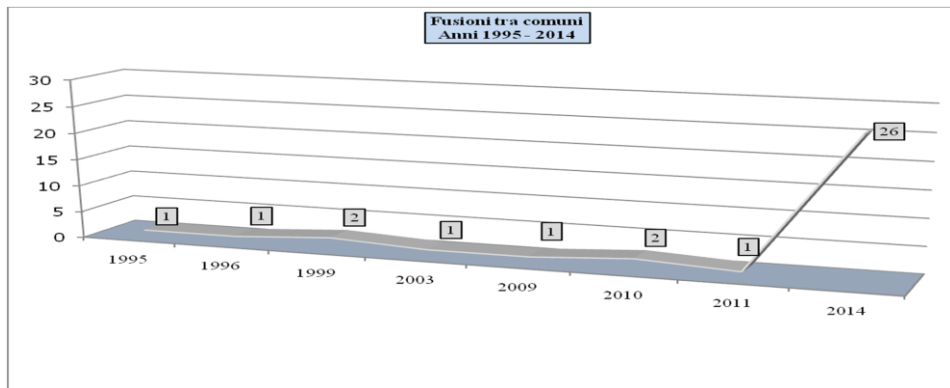
A rough analysis of the unions of the currently operative municipalities can be defined as follows²⁸: Abruzzo (11), Basilicata (2), Calabria (10), Campania (15), Emilia-Romagna (42), Friuli Venezia Giulia (19), Lazio (19), Liguria (19), Lombardy (80), Marche (19), Molise (8), Piemonte (108), Puglia (23), Sardinia (36), Sicily (47), Trentino Alto-Adige (0), Tuscany (22), Umbria (1), Valle d’Aosta (8), Veneto (2).

As for the mountain communities, partly suppressed by regional measures, the current number is 94, divided as follows²⁹:

Abruzzo (0), Basilicata (0), Calabria (0), Campania (20), Emilia-Romagna (0), Friuli Venezia Giulia (0), Lazio (22), Liguria (0), Lombardy (23), Marche (0), Molise (0), Piemonte (0), Puglia (0), Sardinia (5), Sicily (0), Trentino Alto-Adige (22), Tuscany (0), Umbria (0), Valle d’Aosta (0), Veneto (2).

About the mergers of the municipalities, 73 mergers were carried out at the beginning of July 2014, with an upward trend starting in 2011.

Figure 2: Mergers of municipalities



Source: Ministry of Interior.

Finally, it could be interest point out that article 10 of the Statute of the City of Bolzano (2015) – the central town of the Autonomous Province of Bolzano (South Tyrol) – expressly provides that the European Charter of Local self-government should constitute

²⁸ Ancitel, 2018.

²⁹ Ancitel, 2018.

«a guide for the activities of the City.” From this point of view, the City of Bolzano, exercising its competences, pursues the intent of the European Charter of Local self-government to respect its principles and work for its full implementation. Furthermore, it promotes and supports projects that develop the process of European integration, developing any useful initiative to establish relationships of mutual understanding between the different local communities. Finally, the perspective into which the City operates is that of a culture of peace and human rights through every useful initiative to develop forms of stable associations and cultural activities that propose these purposes.

10 Legal protection of local self -government

In the Italian legal system, local authorities have the right, exercised by their legal representatives, to appeal to the courts for the guarantee of legitimate interests and subjective rights, as provided for each citizen by Articles 103 and 113 of the Constitution. Tuttavia, il problema che alcuni studiosi si pongono è se non sia opportuno che sia introdotto un ricorso davanti all'organo di giustizia costituzionale. However, the problem that some scholars pose is if it is not appropriate to appeal to the constitutional court in cases where there may be a violation by the legislator of the principle of local autonomy.

The Italian Constitution does not allow a defense of the local government against the legislator in the judgment of constitutionality. If we consider Article 134, paragraph 3, of the Constitution, combined with Article 11 of the European Charter of Local Self-Government, we should consider the possibility of the introduction of the appeal to the Constitutional Court.

The introduction of an individual appeal to the Constitutional Court by local authorities, who consider themselves injured in their constitutional rights, appears to be challenging to implement in the Italian legal system.

Nevertheless, in the hope of an implementation of the art. 11 of the European Charter, a necessary reference is to art. 9 of Law No. 131/2003. It which provides that the question of the constitutional legitimacy of a regional law can be raised by the President of the Council of Ministers, following deliberation by the Council of Ministers, also on the proposal of the State-City Conference and local autonomies, by direct appeal to the Constitutional Court. It follows that the President of the Regional Council, subject to the resolution of the Regional Council, also on the proposal of the Council of Local Autonomies, can promote a question of the constitutional legitimacy of a law, or an act of the State, having the force of law, can before the Constitutional Court. We can consider the proposal of local bodies such as a sort of "surrogate" of the appeal directed to the judge of the laws, denied in the constitutional reform of 2001. The holders of the power of proposal, in fact, are the collegiate bodies that place themselves (the Conference) as the institutional forum for comparison and connection between the State and the local autonomies and the other (the Council of Local Autonomies) as consultation body between local authorities and the Region.

As regards, in fact, the appeal of laws and acts with the force of state law and other regions, the Council's initiative cannot go beyond a 'simple stimulus' for the Region, and we exclude any constraining conditioning to the free decision on the an and the quomodo of the appeal to the Constitutional Court.

Therefore, even after the entry into force of Law No. 131/2003, the Court reiterates the known foreclosures against local authorities.

The real turning point happens with the sentence of the Constitutional Court n. 196/2004, on the subject of building amnesty, where, for the first time, a question of constitutional legitimacy raised in principle by a Region to 'assert not only its competencies but also of local authorities.' The Court declares this question as admissible with the 'close connection, in particular in urban planning and terms of regional and local finance, between regional and local self-government.'

It allows considering that the lesion of local competences is potentially suitable to determine the vulnerability of regional powers. The decision of the Court introduces an interesting opening about the feasibility of indirect access by the local authorities to the constitutional justice. Furthermore, the Court, despite the widening of the possibility of a 'procedural substitution' of local authorities legislative competence to any form of regional autonomy. And, it continues to require the presence of the close connection between the lesion of the attribution of the local authority, and, at least, one of the constitutional attributions of the regions.

11 Future challenges of the implementation of the European Charter of Local Self-Government in Italian legislation

The Monitoring Committee of the Congress of Local and Regional Authorities Report 2017 on local and regional democracy highlighted some of the problems (and potential challenges) of the implementation of the European Charter of Local Self-Government in Italian legislation. From this point of view, the perspectives can be mainly two. The first is political and concerns the uncertainty of the Italian situation after the adverse outcome of the constitutional referendum of December, 4th, 2016, and the formation of a new government in June 2017. This uncertainty does not only affect national and regional policies but also, in many ways, the context of local self-government, guaranteed by the European Charter. The lack of constitutional reform is a negative element for the strengthening of local autonomies. There are many doubts that the current government can take the necessary measures to implement the European Charter.

In this regard, we can ask ourselves how the current Italian financial situation can allow us to find adequate solutions to implement the Charter with more resources and economic balance for local authorities. It will be inevitable that the Government adopts some measures because new abrupt cuts in the funding of the systems of territorial government may have the effect of breaching not only art. 9 but also arts. 3, 4, 5, 6 and others.

The contractual renewal costs for local staff – estimated at over one billion euro for the municipal sector only – cannot be left to the local authorities alone, which will have to finance this step exclusively with the annual resources of competence. Furthermore, the problem of the economic imbalance between the local bodies of the Center-North and those of the South remains unaltered. To a significant investment trend in the Center-North between 2015 and 2016, correspond the negative values of the South, and the most substantial growth among small and medium-sized organizations (only) in the North, both regarding commitments and payments. The municipal debt remains very low (only 1.8% of total public mortgages) and continuously decreasing (from 2.5% in 2011 to 1.8% in 2016). However, it also affects the budgets of broad groups of institutions in all areas of the country, having been contracted in periods of rates much higher than the current and subjected to very high penalties in the event of extinction. Similar problems arise for the metropolitan cities where the overall size of the structural imbalance (between 200 and 300 million euro) reflects the underlying situation of the financial statements, due to the prolonged economic suffering of the entire former provinces sector, from 2013 then, despite the substantial sterilization of the 2016 and 2017 incremental cuts.

If the solution of financial problems is important, there are other issues – which also require interventions by the central government – that condition the implementation of the European Charter and the constitutional development of the local government.

The Decree of the Ministry of Economy and Finance, No. 182944, 23 July 2018³⁰, introduces a positive element from this perspective, dealing with the question concerning the rulings of the Constitutional Court No. 247/2017 and No. 101 / 2018. The two sentences, interpreting the art. 9 of the Law No. 243/2012, consider that the administrative surplus and the limited multi-year fund of the local authorities cannot be limited in its use since once realized a more significant entry is in the availability of the entity that obtained it. The Constitutional Court's orientation could allow local authorities to balance the budget and to overcome the internal stability pact.

At this time, government politics and financial uncertainty represent, together with corruption, and the presence of criminal associations, the main problems of local authorities. These problems also have consequences on the institutional set-up and the exercise of local functions. The phenomenon is widespread especially in the Southern Regions, and has produced the dissolution of many municipal councils for mafia infiltration, pursuant to art. 143 of the legislative Decree No. 267/2000. From 1991 to May 2018 there was the dissolution of 306 municipal councils for mafia infiltration (i.e. Calabria: 105, Campania: 104, Sicily: 73, Puglia: 13).

Among the various functional areas, recent (and tragic) Italian events highlight, in particular, the theme of immigrants, the great public works, and the environment.

³⁰ At: <http://www.rgs.mef.gov.it>.

The Italian Government, since its establishment in June 2017 until today, has focused mainly on the issue of migrants. This problem touches on different aspects of the Charter, from the concept of autonomy to the sphere of local autonomy, from the adaptation of structures to the resources necessary for the exercise of functions to the guarantee of human rights in the local dimension.

The issue of the guarantee of human rights at the local level with particular reference to migrants and refugees represents a significant and constant criticality for Italy as the Monitoring Committee noted. According to data from the Ministry of the Interior, between 2016 and 2018, 218,392 migrants have landed in Italy³¹, with a drastic reduction in the last year. Although this is a national problem, as well as a European one, it mainly concerns local authorities.

The problem mainly concerns the Southern Regions where the main landing ports reached in 2018 are: Sicily (Pozzallo, Catania, Augusta, Messina, Lampedusa, Trapani, Palermo), Calabria (Crotone, Porto Empedocle, Reggio Calabria) and Sardinia (Cagliari), as well as the reception centers. These structures are divided into first aid and reception centers (CPSA), reception centers (Cda), reception centers for asylum seekers (Cara) and identification and expulsion centers (CIE). The procedures for recognition and ascertainment of refugee status are unusually lengthy in Italy, and this produces tension in the local communities. First, due to the severe lack of resources allocated by the government to the municipalities to provide for the maintenance of sheltered centers and immigrants. Public order and economic problems complicate the life of local governments with regard to this issue.

For example, from the first point of view, many mayors make opposition to the government's plans for the redistribution of migrants in different Italian Regions, in the same way, it happens in some Countries of the European Union. Since June 2018, the Italian government received many criticisms for the prohibition of entry into the Italian ports of NGO ships that have collected migrants at sea. Even some city mayors with large ports have expressed their dissent on this policy.³²

About the action of local authorities for the protection of asylum seekers and refugees we can point out the SPRAR Project³³, created under Law No. 189/2002. It consists of a network of local authorities, which run reception projects for people forced to migrate with members of third-sector and ONG, within the limits of available resources. In the 2011-2013 period, 128 local authorities - of which 110 local authorities, 16 provinces, and two consortia of local authorities - took part in the project. In 2016 the municipalities that joined were 1017 out of 7898, of which the majority are in the southern regions.

³¹ At: http://www.interno.gov.it/sites/default/files/cruscotto_statistico_giornaliero_17-08-2018.pdf.

³² See Pianigiani, G., Horowitz, J. and Minder, R. (2018) Italy's New Populist Government Turns Away Ship With 600 Migrants Aboard, at <https://www.nytimes.com/2018/06/11/world/europe/italy-migrant-boat-aquarius.html>.

³³ At: https://www.sprar.it/wp-content/uploads/2016/07/sprar_description.pdf.

From this point of view, if the financial resources of the local communities are not sufficient, it is evident that not even the funds transferred to the Italian State in the European context can contribute significantly to the solution of the problems linked to immigration. However, if the main difficulties relate to intersubjective relationships, an opportunity can be given by solutions of a large area, from the management of reception facilities to the ports of metropolitan cities.³⁴

Another critical area for local authorities concerns the infrastructures of a particular size, located in the territory. Even if not the under the responsibility of local authorities, however, produce effects on the level of administrative functions, and consequences on citizens resulting from severe and tragic events, as happened for the collapse of Morandi Bridge in Genoa on August 14th, 2018.

The Decree of the Minister of Infrastructures and Transport of January 17, 2018, updating the technical standards for buildings – which revises the old technical regulations of 2008 – entered into force in March 2018. The question that is mandatory to apply regards the exercise of controls by the competent public (or private) subjects, considering that the local authorities do not have this competence. However, without going into the merits, we can underline the great novelty of the Prime Ministerial Decree n. 76/2018 of May 10, 2018 (whose entry into force is August 24, 2018), implementing Legislative Decree 50/2016, which formalizes the operational participation of local communities in the design choices of major strategic works. This is perhaps one of the main implementations of Article 4, paragraph 6, of the European Charter, in the part where it provides for public consultation of local authorities. Concerning the consultation of local authorities, before the approval of the state budget, it should be noted that the joint budget committees of the Senate and the Chamber of Deputies heard in the audience the Italian Association of Italian Municipalities to assess the financial needs for 2018. It remains to be seen whether the government's uncertainties about actions taken for political choices compromise the expectations of local self-government. Otherwise, the implementation of the European Charter itself could be jeopardized, as well as the guarantee of essential services to citizens.

The interruption of the constitutional reform process – after the failure of the last referendum consultation – had the effect of crystallizing the reform, for the profiles relating to the provinces and the entities of large area, according to the Law No. 56/2014, determining, however, a condition of uncertainty, above all for the regulation of the institutional structures and the financial aspects of the entities involved in the reform. With the disappearance of the planned abolition of the provinces, at least in the medium term, it seems necessary to impose, in public sector policies, the operation of these bodies (by arts. 114-118 of the Constitution as institutional subjects recipients of their fundamental functions and functions conferred) no longer suffers the effects of this

³⁴ At: <http://www.lavoro.gov.it/notizie/Pagine/Rapporti-sulla-presenza-dei-migranti-nelle-aree-metropolitane.aspx>.

conditioned perspective. In regards to the severe deterioration of the structural equilibrium conditions of the related financial statements, which took place in the last two fiscal years, and to which the subsequent emergent interventions, partly unrelated to the regulatory system of local finance, that the previous governments didn't give a solution.

The consolidation of public accounts, the restrictive effects of the new accounting, the freezing of the maneuverability of the local tax lever, and the start of equalization, contributed to a substantial compression of the political and administrative autonomy of the municipalities. It also requested an exceptional effort for the adaptation to the new paradigms. In this regard, we can point out that, even in the absence of further cuts in resources, the current-account tightening is continuing to occur due to accounting harmonization, due in particular to the gradual adjustment of the provision to doubtful receivables (FCDE), for several hundred million annually until 2021. The analysis of the financial situation of the provinces and metropolitan cities offers a significant comparison with what was shown about the detrimental effects produced, on the one hand, by the multiple maneuvers of public finance that affected the sector and, on the other hand, by the precarious situation connected to the uncertain implementation of the institutional reorganization process.³⁵

The government emerged since the elections of March 2018, does not seem to have among its priorities the problems of funding, and organization of local authorities, nor the implementation of the European Charter of Local Self-Government.

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Local Self-Government in Lithuania

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Abstract Lithuania is a parliamentary democracy and a decentralised unitary state. In 2018 on 16th of February country celebrated 100 years of the birth of modern Lithuania. In 1918 there was established an independent, modern state of people, which had to be ruled by democratically elected government. Since June 1940 country was occupied by the Soviet Union. Lithuania restored its independence on 11 March 1990. Nowadays Lithuania has the population of 2.8 million (2019) and the territory of 65 300 km². Lithuania has got one tier local government system. It consists of 60 local authorities or *municipalities*. Lithuania has constitutional basics of local government, local government are regulated in the Law on Local Government, and European Charter of Local Government was signed in 1996 and ratified in 1999 without reservations. The chapter present brief historical development of local self-government in Lithuania, describes constitution, legal, administrative, financial and other local self-government issues, paying attention to such local self-government dimensions as responsibility, right to associate and protection. Also there are presented future challenges of the implementation of the European Charter of Local Self-Government in country.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Lithuania

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1 Introduction and history

Lithuania is a unitary state, administratively divided into 10 counties (or lith. “apskritis”) and 60 municipalities (or lith. “savivaldybė”). There is one-tier of self-government in Lithuania. The right to self-government for municipalities is guaranteed by the Constitution of Lithuania. By a decision of the local Council municipality can be administratively divided into smaller territorial units wards (or lith. „seniūnija“). There are 545 wards. The ward is headed by a civil servant – the elder (or lith. “seniūnas”) appointed by the director of the municipal administration. “Seniūnija” is divided into a “seniūnaitija” (ward or neighborhood) with directly elected volunteer “seniūnaitis”.

The history of local self-government began more than 600 years ago. Vilnius, the capital of Lithuania, obtained the right to self-government in 1387 through the Magdeburg Rights, which spread throughout Lithuania. Such self-government established the right of towns (in the fight with the feudal lords) to have their own figure of authority (the magistrate) and a separate court consisting of the jury elected by the townspeople.

In 1795 m, the Polish-Lithuanian Commonwealth was divided among Austria, Russia and Prussia. The bigger part of Lithuania went to the empire of Russia. Governance was quickly reformed to follow the Russian model. In 1808 Lithuanian cities Vilnius and Kaunas began to be governed by *dumas* (Councils). The functions of *duma* were not extensive: they were to maintain order, stimulate business, care of city property. Some problems related to city management were solved by other institutions, e.g., the governor, police, etc. In 1876 the regulations of cities entered into force that replaced the order of elections to the self-government organs. The city Council (*duma*) was elected not by the representatives of castes but by the owners of property. The *duma* was elected for four years term of office. City residents being 25 or older, who owned real estate in the city and paid taxes to the city treasury had the right to vote. In 1892, Czar Alexander III affirmed new city regulations that rather limited the rights of city self-government, and the number of electors having the right to vote decreased.

In 1861, the occupied Lithuanian territory was divided into administrative territorial units or townships, each having a caste-based form of self-government with an assembly, a Council and a court. Only peasants belonged to the townships municipalities. The nobility solved its matters separately: from 1566 to 1863 the institutions of noblemen’s local self-government functioned – assemblies of counties’ noblemen (Šaparnienė, Lazauskienė, 2012: 389).

After the World War I, the sovereign state of Lithuania was restored in 1918. Administrative division remained similar to the previous ones: counties were divided into townships. Self-government existed at two levels: both county and township Councils were elected. Depending upon their size belonged to either counties or townships. In 1919 the Law on Local government was adopted, establishing modern, democratic self-

government. Municipal Councils were elected in a democratic way – the elections were general. Townships' Councils were elected directly by residents and counties' Councils were elected by a secret ballot by the members of townships' Councils. In accordance with the Law on Municipalities in 1929, one representative of each ward was elected to the township's Council. Qualification elections were established (not only the qualifications of principle of territoriality of benefits, age were applied but education and property qualification as well); however, self-government institutions remained although their autonomy was constricted. Local self-government was provided for in 1922, in 1928 and in 1938 in the Constitution of the Republic of Lithuania (Šaparnienė, Lazauskienė, 2012: 390)

In 1940, when Lithuania was occupied and incorporated into the Soviet Union, the constitutional institute of local self-government was abolished. Municipalities did not have any independence. Institutions of local governance became not a part of citizens' self-government, but a part of central governance system, i.e. institutions that implemented the decisions of the highest central governance and the directives of a single legally operating communist party (Šaparnienė, Lazauskienė, 2012:390).

In 1990 the independence of Lithuania was restored. The territorial administrative network remained the same as the one under the Soviet regime, except that the elections to the institutions of local self-governance were democratic. Through the Law on Basics of Local Self-government, a two-tiered system of local government was established, with a higher tier consisting of 44 districts, 12 towns of the Republic and a lower tier consisting of 80 district towns, 19 settlements of town's type, and 427 wards. Councils of wards and districts and towns were elected, and a executive government was formed (Šaparnienė, Lazauskienė, 2012:390).

The system of institutions of local self-government established in 1990 functioned till 1995. In July 1994, a new Law on Administrative-Territorial Units and their Boundaries (1994, No. I-558) replaced the former system consisting of 581 administrative units with a new system consisting of 66 territorial units: 10 counties and 56 municipalities (44 municipalities of districts and 12 municipalities of cities and towns). For the first time in Lithuania a single-tier system of self-government was created. Counties became de-concentrated State authorities, headed by centrally appointed governors. In 2010, another county reform was carried out. All the administrative functions have been removed from the counties and re-distributed to either central or local government. Regional Development Councils (composed of municipal Councilors) were established in each county, claiming the right to make decisions on key issues for each region.

Since the 1990 the self-government system has been changed many times and many laws have been passed, various legislative provisions have been often adjusted and shifted. Even just the laws on Municipal Council Elections and Local Self-Government have been amended almost 100 times, excluding other laws and secondary legislations.

In 1994 a proportional election system was introduced. This system wanted to provide the conditions for the parties to get stronger, as well for allowing for the preconditions for creation of party. Improvement of the municipal Council election system manifested itself in the changes to the duration of the term (from two to four years) and the introduction of the rating of candidates. The voting structure was modified before the election in 2000: the closed structure of the list was changed to open, allowing the voters to choose not only the party's list but also specific candidates in it. In the 2000 election, 3 candidates could be rated, while from 2003, it is possible to rate 5 candidates. In this way, the voters could influence the order of the list's candidates. When applying this principle, there were cases when in some lists a candidate moved up by several or even several dozens of positions.

However one of the fundamental changes of the municipal election system was the permitting nominations of candidates not only by the parties but also by independent candidates (election in 2011) and by public election committees (from 2015). These amendments were made in accordance with the ruling of the Constitutional Court (2007), which acknowledged that the fact that the law has not determined that people may be elected to municipal Councils and be included in lists of candidates made not by political parties is contrary to the Constitution of the Republic of Lithuania.

One of the changes in the election system was related to the principle of incompatibility of duties, i.e. persons who can be nominated but cannot get a mandate when elected. Candidate holding the office incompatible with the office of municipal Councilors (e.g. the post of a career civil servant or an employee working under the employment contract at the secretariat of the Council of that municipality, the office of head of a budgetary institution of that municipality etc.) Since 2003, individuals who head budgetary institutions of municipalities or municipality-controlled companies or work at the municipal administration have to decide before the day of the first meeting of the newly elected Council: either become a municipal Council member and leave his current duties or continue working in the current office but give over the mandate to another nominee from that political party. This change had significant influence on the composition of district (rural) municipal Councils: the school principals, hospital or dispensary directors, and heads of municipal economy institutions and companies who had previously dominated the municipal Councils lost the possibility to become Council members. The local elite, which had been elected to Councils and had had substantial influence until that point, conceded its place to business representatives (Astrauskas, 2013:12).

The status of the Mayor as the municipality's head has changed four times since 1990: he has been both the executive authority and the representative authority. By changing legislation his powers have been both strengthened and weakened. From 1990 until 1995, model of institutional structure dominated by diarchy was used: the Council was headed by the Council chairman elected from the Council members and the administration was managed by the Mayor (or the administrator, if it is a district rather than a city), he was

also the executive authority. After the Law on Local Self-Government was changed, starting from 1995, the Mayor became the one-man executive institution and was also the chairman (head) of the municipal Council and the head of the collegial executive institution (Council). Several legislative amendments were passed in 1997-1999 which solidified the Mayor's role even more (Astrauskas, 2004: 17). A turn occurred in 2003; even though the talks about direct Mayoral elections already began, nevertheless the Mayor's powers were weakened even more after a ruling of the Constitutional Court. The Constitutional Court concluded that three elements of the model were contrary to the Constitution (the Mayor cannot be the executive authority as well as the head of the Council and others). The change of the municipal institutions' model in 2003, when executive functions were transferred to the municipality's administrative director, caused a kind of disarray and complicated the work, especially at the municipalities where the Mayor and the administrative director represented different parties (Mačiulytė, Ragauskas, 2007). The instability of the Mayor's position was a rather common phenomenon. In accordance with the law on local self-government, a third of the Council's members could initiate the motion of censure against the Mayor and the Mayor lost the position if half of the Council's members voted for this decision. Thus in some municipalities the Mayor's position was quite unstable, especially where the ruling coalition was composed of 3-6 parties. In the 2011-2015 term, "upheavals" occurred in 13 out of 60 municipalities and Mayors elected in the beginning of the term lost their positions. For instance, over a four year period, three Mayors were replaced in Šilutė and Pakruojis municipalities and two Mayors were replaced in other municipalities (Lazauskienė, 2015: 119). The Mayor's instability was one of the reasons why the Association of the Municipalities of Lithuania expressed support for direct Mayoral elections. However, the opinion of other authors can be supported as well, that the idea of directly elected Mayor was the most actively promoted in the Seimas of 1996-2000, after the 1996 Seimas election and the 1997 self-government election were won by the right: the Homeland Union (Conservatives) and the LCDP (Christian Democrats) dominated everywhere. According to Liudas Mažylis, "the opposition (LDDP and other centre-right powers) of the time saw it fit to highlight "the people's desire to see personalities in the local government". It "did not "see it fit" that the Mayors from the "wrong" parties dominated" (Mažylis, Leščauskaitė, 2015: 47). In the later terms of the Seimas this idea was developed further, especially as the residents were also in favour of directly elected Mayor. However, in order to adopt such a model, the Constitution had to be changed. This was attempted several times (in 2005, 2007, and 2010), but there was a shortage of political will. Discussions in the Seimas regarding directly elected Mayor continued for two decades. The Liberal and Centre Union even had devised the idea of holding a referendum on this issue. The initiatives related to legislation on direct Mayoral election came from different parties that recognized the citizens' support of the idea of directly elected Mayor. In the political discussions during 2010-2014, several models were proposed: either the Mayor is the head of the executive authority and the head of the administration (Constitution would have to be changed in this case), or he remains only the chairman of the municipal Council, "head of municipality" in accordance with the

law. After the Seimas passed the amendments to the laws on Municipal Council Elections and on Local Self-Government on 26 June 2014, a decision was made to hold direct Mayoral election in Lithuania. Direct Mayoral elections in 2015 have shown that the residents' activity in them almost did not increase but not only party representatives were elected as Mayors, which was new (Kukovič, Lazauskienė, 2018:12).

Thus, the ways have been often sought to improve the self-government system: the administrative division was changed, as well as the status of a Mayor and elder; the system of the municipal Council election was improved several times. This was done with the aim of improving the self-government system, however, such legal instability is not beneficial to consistent functioning of self-government.

2 Constitution and legal foundation for local self-government

Lithuania joined the Council of Europe on 14 May 1993 and ratified the European Charter for Local Self-Government (ETS 122, hereafter "the Charter") without reservation on 22 June 1999, with entry into force on 1 October 1999. It also signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) on 16 November 2009 and ratified it on 20 July 2012 with entry into force on 1st November 2012.

The ratification of Chapter committed Lithuania's state to regularize national legislation of local self-government in accordance with Chapter's norms and keep all principle provisions defined in it. Thus, in Lithuania direct legal force for the European Charter of Local Self-Government was given.

The European Charter of Local Self-Government in the Lithuanian legal system takes the special and distinctive role. In accordance with LR Constitution "all international treaties, which were ratified by the Seimas of the Republic of Lithuania are the constituent parts of the legal system of the Republic of Lithuania" (Article 138, part 3). Thus, the ratification of the Charter as international treaty does not commit to adopt any other legal act for incorporation of Charter norms into internal state's law, and the Charter provisions should be applied directly by the Lithuanian state governing institutions, also the courts of Lithuania. It should be noticed, that according to Article 7 of the Constitution of the Republic of Lithuania, neither the law nor any other legal act contradicting the Constitution is valid in Lithuania. Bearing in mind this legal norm, it could be stated, that the European Charter of Local Self-Government is the constituent part of the legal system of the Republic of Lithuania, as much as it does not contradict the Constitution. However, in the case of international treaty's contradiction to other legal acts of Lithuania, the European Charter of Local Self-Government actually has the precedence above the Lithuanian laws (the Law on International Treaties of the Republic of Lithuania on June 22, 1999, No. VIII-1248, 11 Article, part 2). In other words, internal laws and other legal acts in Lithuania cannot contradict the European Charter of Local Self-Government. So,

the Charter with all its provisions is a useful instrument for municipalities in their constant discussions with the central government institutions because of the real powers of government.

Article 2 of the Charter refer to the requirement to recognize the principle local self-government in domestic legislation, and where practicable in the constitution. In other words, this principle implies that the local self-government being a fundamental provision of democracy shall be recognized in the supreme law of a nation – i.e. Constitution, and elaborated in specific law. According to Law on International Treaties of the Republic of Lithuania (1999, No. VIII-1248, at last amended in 2014, No. XII-1410, 11 Article, part 3), if the implementation of the international treaty requires the adoption of a law or other legal act, the Government of the Republic of Lithuania in accordance with the procedure, shall submit to the Seimas (Parliament) a draft law or to adopt an appropriate Government resolution, or ensure, in accordance with its competence, the adoption of another legal act. However it is important to notice that the provisions of 2 Article of the Charter have been mainly implemented in national legislation before the ratification of the Charter.

Firstly, the principle of local self-government is recognized in the Constitution of Lithuanian Republic, adopted by referendum on 22 October 1992. The Constitution contains a specific chapter on local self-government (Chapter X) including 6 Articles (119-124) guarantying the right to self-government to administrative units of the territory of the State and its implementation through corresponding municipal Councils; generally regulating Council's election procedure and tenure; obligating Councils' to form executive bodies accountable to it and as well as draft and approve their budget; recognizing municipalities freedom and independency as well as rights to establish local levies, to provide for tax and levy concessions, to apply to court regarding the violation of their rights; establishing general rule of municipalities' supervision by the representatives appointed by the Government; refereeing to possibility temporary introduce a direct rule in the territory of municipality by Seimas and to appeal municipal Councils' and executive bodies' and officials' acts and actions in court.

Both the Charter and the Constitution requires adopting the law which shall establish the procedure for the organisation and activities of self-government institutions (Article 119 of the Constitution). Thus the principle of local self-government in Lithuania is also recognized in separate Law on Local Self-Government since 1994 (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244), defining local self-government as the right and real power of local self- government institutions, elected by the inhabitants of Lithuanian Republic territorial administrative unit, freely and independently but under own responsibility to regulate and manage public affairs and satisfy the needs of local inhabitants, according to the Constitution of Lithuanian Republic and laws (Article 1). According to the Law, the local self-government was based on these principles: 1) the adjustment of municipal and State interests; 2) the principle of local inhabitants' direct participation in the elections of municipality's Council, polls, meetings of inhabitants and

petitions; 3) accountability of self-government's institutions and servants to the citizens; 4) principle of publicity and responsiveness to the opinion of the residents of a municipality; 5) the principle of lawfulness and social justice; 6) self-sufficiency; 7) the respect for human rights and freedoms (added since 1997-02-25, No. VIII-123).

In 2000-10-12 the Statutory amendment of the Law on Local Self-Government was adopted (No. VIII-2018). It reflected fundamental changes in the meaning and significance of the local self-government principle. Firstly, the law intended „to promote and develop local self-government as the foundations of the development of a democratic State” (Article 1). Secondly, the procedure of formation and activities of municipal institutions is based on the provisions of LR Constitution as well as of European Charter of Local Self-Government (Article 2, part 1). Thus the imperatives of the Charter are recognized being equally significant to the foundation of local self-government as the constitutional provisions. Thirdly, the list of local self-government principles was extended to 9 and updated with broader definitions. For instance the principle of accountability of self-government institutions was supplemented with the responsibility to voters; self-sufficiency was expanded to the independence and freedom of municipal institutions when implementing the laws and other legal acts as well as responsibilities to the community and decision making. Two new principles were added, i.e. transparency of the activity and the adjustment of community's and individual's interests. Thus the Ratification of the Charter was a positive step while developing participatory democracy model corresponding the system of local government institutions and recognizing main self-government principles, particularly decentralization and subsidiarity.

During last decades the Law on local self-government was amended several times, revising and sketching in the principles of self-government. According to actual version of the Law (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244), “local self-government” means the self-regulation and self-action, in accordance with the competence determined by the Constitution and laws, of the permanent residents' community of a law-defined administrative unit of the state territory, where the community enjoys the right to self-government guaranteed by the Constitution (Article 3, part 2). It shall be based on the following main principles: 1) representative democracy; 2) the freedom of independence and activity of municipalities in accordance with the competence denoted in the Constitution and laws; 3) supremacy of the municipal Council over accountable executive institutions of a municipality; 4) accountability of executive institutions of a municipality to the municipal Council; 5) responsibility before the municipal community; 6) lawfulness of the activities of a municipality and decisions taken by municipal institutions; 7) adjustment of municipal and State interests when managing public affairs of municipalities; 8) adjustment of interests of the community and individual residents of a municipality. 9) participation of the residents of a municipality in the management of public affairs of the municipality; 10) transparency of activities; 11) development and activity planning; 12) responsiveness to the opinion of the residents of a municipality; 13) ensuring and respect for human rights and freedoms;

14) subsidiarity and 15) publicity (Article 4, Law on Local Self-government of the Republic of Lithuania, 1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244).

The organisation and functioning of local authorities in Lithuania in addition to the Law on Local Self-Government are enacted by a considerable number of other laws, the most important of them are:

- The Law on Elections to Municipal Councils of the Republic of Lithuania (Law on Elections to Municipal Councils, 1994 No I-532, as last amended on 2015, No XII-1976);
- The Law on Budgeting (1990, No. No. I-430, at last amended in 2017, No. XIII-809);
- The Law on Temporary Direct Rule in the Municipal Territory (1995, No. I-830, at last amended in 2016, No. XII-2637);
- The Law on Administrative-territorial Units and their Boundaries (1994, No. I-558);
- The Law on the Basic Regulations of the Association of Municipalities of Lithuania (1995, No. I-833);
- The Law on Territorial Planning (1995, No. I-1120, at last amended in 2017, No. XIII-427);
- The Law on the Transfer of State Property to Municipalities (1997, No. VIII-546, at last amended in 2008, No. X-1734);
- The Law on the Methodology of Determination of Municipal Budgetary Revenues (1997, No. VIII-385, at last amended in 2017, No. XIII-808);
- The Law on Administrative Supervision of Local Authorities (1998, No. VIII-730, at last amended in 2010, No. XI-710);
- The Law on Management, Utilisation and Disposition of State and Municipal Properties (1998, No. VIII-729, at last amended in 2014, No. XII-802);
- The Law on Public Service (1999, No. VIII-1316, at last amended in 2017, No. XIII-818).

It could be concluded, that article 2 of the Chapter is fully implemented in the case of Lithuania. The principle of local self-government in Lithuania is guaranteed by double protection – by the set guarantees in the Constitution and other internal laws as well as by the international treaties such as the European Charter of Local Self-Government, which according to monistic doctrine, after ratification automatically has become part of domestic law and has the precedence above the Lithuanian laws except the Constitution.

3 Scope of local self-government

General structure of municipalities is established by the Law on Self-government of the Republic of Lithuania, i.e. a unanimous model operates in the state – the Council, the Mayor, the Head of Administration, Municipality's Controller. The way of their election and nomination and their functions are indicated. However, minor control is left for the

municipalities' discretion. It means that much may be decided by the Municipality Council. Procedure and forms of activities of municipality's Council are determined by the Law on Local Self-Government of the Republic of Lithuania and regulation of procedure of municipality's activities (each Council approves its rules of procedure).

Municipalities Council can make decisions regarding internal organisation of the deliberative body (the elected Council). The Council itself may decide what committees and commissions to form. The only control committee is obligatory according to the Law on Local Self-Government of the Republic of Lithuania. While forming other committees the proportional principle of representation of minority and majority is followed (it is established by the Law on Local Self-Government of the Republic of Lithuania). The number of committees and their members, authorisations of committees are determined by municipality's Council. Working arrangements of committees are determined by the regulations approved by each municipality. In the Law on Local Self-Government of the Republic of Lithuania it is established that municipality's Council forms the Administrative Commission and Ethics Commission for the period of its authorisations. Municipality's Council appoints the chairmen of the commissions upon the submission of the Mayor from the Council members. The Council may form other commissions upon its own discretion i.e. is independent when solving this matter. The members of municipality's Council, civil servants, representatives of communities of settlements and communal organisations, other members of municipality's community may be the members of commissions formed by municipality's Council. The procedure of formation of commissions' of municipality's Council is determined in the regulation.

In addition, the Council independently solves the following organisational issues:

- determination of the number of deputy Mayors, designation of deputy Mayor (deputy Mayors) on the proposal of the Mayor and dismissal prior to the expiration of their term, establishment of wages of deputy Mayor (deputy Mayors) in compliance with the laws;
- determination of activity spheres of deputy Mayor (deputy Mayors) on the proposal of the Mayor;
- adoption of the decision regarding the formation of Council of Municipality's Council and formation of Council of municipality's Council on the proposal of the Mayor (Municipality's Council may form the Council of municipality's Council (Council's deliberative body) for the period of its authorisations; the number of Council's members, rules of procedure, order of organisation of sittings is determined in municipality's regulation).

The Law on Local Self-Government determines that a municipality can have from 1 to 3 deputy Mayors (depending on the number of the municipal Council members). Not more than three positions of deputy Mayor of a municipality may be established in the municipality the Council of which consists of 41 and more Councilors; not more than two positions of deputy Mayors of a municipality may be established in the municipality the

Council of which consists of 27-31 Councilors; and not more than one position of deputy Mayor may be established in other municipalities. However, there is no obligation in practice to have 3 deputy Mayors in a municipality which is permitted to have such a number of them: 1 or 2 Mayoral positions may be allocated. The same is applicable in the case of the number of deputy directors of the municipal administration.

Municipality's administration is municipality's institution consisting of structural divisions, civil servants and structural territorial divisions not belonging to the structural divisions (affiliates of municipality's administration). The structure of municipality's administration, regulations of its activities are approved and changed by municipality's Council on the proposal of administration director, upon the submission of the Mayor. However, referring to the Law on Local Self-Government of the Republic of Lithuania there are certain areas provided as compulsory - e.g. in administration structure it is compulsory to have the Office of centralized internal audit.

Municipality's Council decides upon the establishment of the position of deputy director (deputy directors) of municipality's administration and the name of the director of municipality's Council (according to the new corrective of the Law on Local Self-Government of the Republic of Lithuania (2008), the maximum of such positions is determined referring to the size of the Council, before it was not applicable). To the competence of the Council belong the following:

- appointment to the position and dismissal of the director of municipality's administration (deputy director of municipality's administration) under the proposal of the Mayor;
- decision making on the subject of the establishment of position (positions) of deputy director of municipality's administration;
- decision making on the subject of substitution of director of municipality's administration, determination of the wages and salaries of director of municipality's administration and deputy director of municipality's administration;
- decision making on the subject of the establishment of positions of civil servants of Mayor's political (personal) confidence, determination of their number and formation of secretariat of municipality's Council upon Mayor's proposal.

The biggest justifiable number of positions of civil servants and employees working under the work contracts and receiving pay from municipality's budget is affirmed and changed by the Council on the proposal of director of municipality's administration and upon the submission of the Mayor and the positions are affirmed by the director of municipality's administration. In addition, the wages fund is affirmed and changed by municipality's Council as well.

The director of municipality's administration organises the work of municipality's administration, affirms regulations of activities of structural divisions of municipality's administration and affiliates-subdistricts of municipality's administration, carries

responsibility for internal administrating of municipality's administration; in compliance with the laws appoints and dismisses civil servants of municipality's administration and other employees of municipality's administration; performs other functions of staff management ascribed by the Law on Government Service and municipality's Council; organises the training of the members of municipality's Council, civil servants and employees who work under the work contracts.

The Council makes decisions upon: the establishment of subdistricts and determination of their number, granting the names to subdistricts and changing them, the allotment of territories to the subdistricts, the determination and changing of borders of territories maintained by the subdistricts.

According to Law on Local Self-Government Art. 5-7 (2016, cor. 2017, 2018, 2020), by the freedom of decision making functions of municipalities are divided into:

- Independent (autonomous) functions and
- Delegated by the state.

Independent functions of municipalities (Article 6) (set out (assigned) by the Constitution and laws):

- 1) drawing-up and approval of a municipal budget;
- 2) setting of local fees and charges;
- 3) management, use and disposal of the land and other property which belong to a municipality by the right of ownership;
- 4) establishment and maintenance of budgetary institutions, establishment of public institutions, municipal enterprises and other municipal legal entities;
- 5) ensuring of learning according to the programmes of compulsory education of children under 16 years of age who live on the territory of a municipality;
- 6) organisation and coordination of the provision of educational assistance to a pupil, teacher, family, school, the implementation of minimal child care arrangements;
- 7) organisation of free of charge transportation to schools and to places of residence of pupils of schools of general education, who live in rural localities;
- 8) organization of pre-school education, non-formal education of children and adults, organisation of occupation of children and youth;
- 9) formation of hunting-ground units and changing of their boundaries;
- 10) organization of meal services according to the procedure laid down by legal acts in educational establishments, which implement education according to pre-school, pre-primary and general education programmes;
- 11) organisation and carrying-out of geodetic and cartographic works assigned to municipalities by the law, except for the management of the municipal spatial data set;
- 12) ensuring the provision of social services by planning and organizing social services, controlling the quality of general social services and social care, as well as establishing and maintaining social service institutions;

- 13) cultivation of general culture and fostering of ethnoculture of the population (participation in culture development projects, establishment, reorganisation, transformation, liquidation of museums, theatres, culture centres and other cultural institutions as well as supervision of their activities, establishment, reorganisation, transformation of public municipal libraries as well as supervision of their activities);
- 14) provision of conditions for social integration of the disabled residing within the territory of a municipality;
- 15) provision of support for the acquisition or rental of housing in accordance with the procedure established by law of the Republic of Lithuania for the acquisition or rental of housing;
- 16) participation in solving issues relating to employment of residents, acquiring of qualification and re-qualifying, organisation of public and seasonal works;
- 17) primary personal and public health care (founding, reorganization, liquidation and maintaining of establishments) with the exception of public health care of learners educated under pre-school, pre-primary, primary, basic and secondary education curricula at pre-school education, general education schools and vocational training schools located within the
- 18) planning and implementation of health promotion measures; support of health care of the municipal population;
- 19) territory planning, implementation of solutions of a general plan of a municipality and general plans and detailed plans of the parts of a municipality;
- 20) setting of special architectural requirements and issuing of documents permitting construction in accordance with the procedure laid down by the law;
- 21) supervision of exploitation of construction works in accordance with the procedure laid down by the law;
- 22) preparation and implementation of strategic development documents and planning documents implementing them;
- 23) participation in the preparation and implementation of regional development programmes;
- 24) implementation of information society development;
- 25) establishment, protection and management of protected territories of a municipalities;
- 26) maintenance and protection of the landscape, immovable cultural values and protected areas established by a municipality, protection, maintenance and development of green areas, vegetations, organisation and monitoring of inventory, accounting, cadastral measuring of land plots of separate green areas and their recording in the Real Property Register;
- 27) provision of addresses to land plots, on which the construction of buildings is permitted in accordance with the purpose (way) of use or spatial planning documents, to buildings, apartments and other premises, provision of names to streets, to buildings, construction works and other facilities situated within the territory of a municipality as well as change and cancelation of these addresses and

names in accordance with the procedure laid down by the Government or an institution authorized by it;

- 28) improvement and protection of environment quality;
- 29) development of physical training and sports, organisation of recreation of the population;
- 30) organization of supply of heat and drinking water, and wastewater treatment;
- 31) development of municipal waste management, organisation of secondary raw materials collecting and processing, establishment and exploitation of landfills;
- 32) maintenance, repairing, surfacing of municipal roads and streets of local significance, as well as organisation of traffic safety;
- 33) organisation of transportation of passengers by local routes, calculation and payment of compensations for preferential transportation of passengers;
- 34) participation, cooperation in ensuring public order, creating and implementing crime prevention measures;
- 35) assigned to municipalities implementation of environmental noise prevention and state management of environmental noise;
- 36) approval of sanitary and hygiene rules and organisation of the control over compliance with the said rules, ensuring of cleanliness and tidiness in public places;
- 37) establishment of the procedure for providing trade and other services in marketplaces and public places administrated by municipalities or undertakings controlled by them;
- 38) creation of conditions for the development of business and tourism, and promotion of such activities;
- 39) issuance of permits (licences) in cases and manner prescribed by the law;
- 40) control of compliance with the prohibition or restriction of alcohol and tobacco advertising on exterior means of advertising;
- 41) ensuring of rendering of burial services and organisation of maintenance of cemeteries;
- 42) supervision and control, pursuant to model rules approved by an institution authorized by the Government, of activities of the management bodies of associations of owners of apartments and other premises as well as of the persons authorized by the joint venture contract and of the administrators of common objects appointed by the executive institution of the municipality, where the abovementioned activities are related to the performance of the functions assigned to them by laws and other legal acts;
- 43) provision of the social allowance and compensations set out in the Law of the Republic of Lithuania on Cash Social Assistance to Poor Residents;
- 44) participates in the implementation of the protection of the rights of the child, ensures the organization of preventive assistance to the child and the family, coordination of services provided by social, educational, health care institutions and other institutions;
- 45) Organization and coordination of measures for the implementation of the family card program in the territory of the municipality;

46) other functions that are not assigned to state institutions.

Delegated by State to Municipality (Article 7) functions shall be as follows:

- 1) registration of acts of civil status;
- 2) management of registers assigned by the law and furnishing of data to State registers;
- 3) civil protection;
- 4) fire protection;
- 5) participation in the management of national parks;
- 6) repealed;
- 7) organisation of pre-primary education, general education, vocational training and vocational counselling, ensuring of studying of children under 16 years of age, residing within the territory of a municipality, in accordance with compulsory education programmes, maintenance of schools (classes) which implement general education programmes and are designated for pupils having exceptional talents or special needs;
- 8) administration of free-of-charge meal provision for pupils at schools established by a municipality and schools not belonging to the State which were established within the territory of a municipality, as well as administration of provision with pupil supplies for pupils from low-income families, who have declared the place of residence or reside within the territory of a municipality;
- 9) calculation and payment of social benefits and compensations, except the social allowance and compensations set out in the Law of the Republic of Lithuania on Cash Social Assistance to Poor Residents;
- 10) management, use and hold in trust of the State land and other State property assigned to a municipality;
- 11) consideration of citizens' requests to restore ownership rights to the existing real property, as well as adoption of decisions on the restoration of ownership rights in the cases and according to the procedure laid down by the law;
- 12) execution of State guarantees for tenants moving out from dwelling houses or their parts and flats, which are returned to owners;
- 13) control of use and accuracy of the State language;
- 14) management of archival documents assigned to municipalities in accordance with legal acts;
- 15) repealed as of 1 January 2011;
- 16) participation in preparing for and implementing mobilization, demobilization, support of the host country;
- 17) provision of statistical data;
- 18) participation in preparing and implementing labour market policy measures and employment programmes;
- 19) participation in organising elections and referendums provided for by law;
- 20) participation in holding surveys and other citizens' (popular) initiatives provided for by law;

- 21) participation in the carrying-out of population and dwelling census as well as other total census;
- 22) implementation of youth policy;
- 23) administration of agricultural production quotas;
- 24) registration of agricultural holdings and farmers' farms;
- 25) administration of activities related to declaration of agricultural land and crops;
- 26) implementation of programmes pertaining to the liquidation and monitoring of natural disasters, communicable diseases of animals, determining of losses and damage caused to the agriculture by hunted animals and wild animals of the strictly protected species;
- 27) management and use by the right of trust of land reclamation and hydrotechnical construction works which belong to the State by the right of ownership;
- 28) registration and technical maintenance of tractors, self-propelled and agricultural machines and their trailers;
- 29) administration of implementation of rural development measures;
- 30) provision of primary legal aid guaranteed by the State;
- 31) processing of data related to declaration of a place of residence and accountancy data of persons who do not have a place of residence;
- 32) ensuring of provision of social care to individuals with a severe disability;
- 33) gathering, storing and provision to the European Commission in the manner prescribed by the Government of the information about financial relations of municipal institutions and enterprises managed by a municipality, which meet the criteria set by the Government and on enterprises obliged to manage separate accounts in accordance with the procedure established by the Government;
- 34) organization of the secondary health care in the cases and according to the procedure laid down by law;
- 35) public health care of learners educated under pre-school, pre-primary, primary, basic and secondary education curricula at pre-school education, general education schools and vocational training schools located within the municipal territory; public health improvement and public health monitoring;
- 36) radiation protection;
- 37) ensuring of the revision of the health status of legally incapable persons;
- 38) management of the municipal spatial data set;
- 39) other functions delegated under laws.

Law on Local Government stipulates that the competence of self-government institutions is autonomous and is delegated by the state. They are entitled to free activities, initiatives and adoption of decisions. Other problems that do not fall within the competence of state institutions and that affect population of the administrative unit are resolved by local self-governments. State functions are delegated to local authorities by the Law on Local Government or other laws; state institutions supervise and control self-government institutions that execute the functions delegated by the state only in cases provided by the law.

Law on Local Government numerates autonomous competencies of the Council and of the local government itself. Those delegated by the state include: civil registration; registration of municipal, state and private enterprises and public organisations; management of state parks (national and regional); organisation of municipal police, civil security and fire prevention; and implementation of other functions delegated by the law. The local government is free to decide independently to provide some public services. For instance, they are free for provision of some cultural and sport services. Of course if it corresponds to the national legislation.

The municipality shall administer and ensure rendering of public services to residents by determining the way, rules and regime of rendering of these services, setting up municipal budgetary and public establishments, selecting providers of public services in accordance with the procedure laid down by the laws and other legal acts, and implementing supervision and control over rendering of public services. Municipalities can establish agencies (public institution, status similar to NGO), so called budget bureaus (budgetary institution) or municipal enterprises.

Local authorities are obliged to manage education (kindergarten, primary, secondary), social services, public health (primary), municipal transport, public utilities (energy, infrastructure, water), some cultural, environmental so called administrative services (certificates, registers and others).

According to the Law on Local Self-Government of the Republic of Lithuania, in order to achieve general aims municipality may compose agreements of joint activities or agreements of general public procurement with state institutions and (or) other municipalities.

Municipality may transmit the implementation of functions of administrative and public services to other municipalities under mutual assent of municipalities' Councils on the basis of the agreements; however, the responsible municipality for the implementation of these functions is the one that transmits the functions. Usually it is not widely spread in practice. Municipality usually organises provision of services only in its own territory. It depends upon the decision of municipality's Council.

At the same time, some functions are moved from local level to national level. For example, the protection of the rights of the child until 2018 was state functions delegated to the municipalities, but after July of 2018 the function of the protection of the rights of the child are centralized. All the departments for the protection of the rights of the child currently operating in the municipalities are removed from the municipal structure and are under the authority of the Ministry of Social Security and Labour.

Local authorities have the right to manage public services of general interest. Of course, if it is not interfering national legislation and public services provision regimes. For

instance, in 2016 Vilnius municipality established municipal safeguard unit new in Lithuania. It is necessary to stress that such practices are very rare, for the reason that Lithuanian local government financial system is very centralized and municipalities do not have enough autonomy in the terms of decision making. In addition, central government has a quite strict supervision system.

In fact the local authorities are exercising some economic activities. The main forms are municipal, joint stock companies with portfolio or some services contracting out forms (services or concession contracts).

Local authorities have influence only in their controlled enterprises. The following belong to the competence of municipality's Council:

- appointment and dismissal of the heads of municipalities' budgetary institutions in accordance with the procedure determined by the laws, implementation of other functions related to work relations of the heads of these legal entities in accordance with the procedure determined by the Labour Code and other legal acts;
- appointment and dismissal of the heads of municipalities' budgetary institutions, appointment and dismissal of the heads municipality's public institutions (which owner is municipality), implementation of other functions related to work relations of the heads of these legal entities in accordance with the procedure determined by the Labour Code and other legal acts.
- formation of collegial organs of municipality's public institution (which owner is municipality) when it is determined in the articles of association of public institution.

In the Competition Law of the Republic of Lithuania, article 4, part 1 (Gazette, 1999, No. 30-856) it is established that the duty of state management and self-government institutions is to ensure the freedom of honest competition, and part 2 of this article forbids state management and self-government institutions to adopt legislation or other decisions that provide privileges or discriminate separate economic operators or their groups and due to which there appears or might appear the differences of competition conditions for economic operators competing in a particular market.

National laws of the Republic of Lithuania do not consider local public services to be guaranteed by Article 16 of the ECT and therefore, do not exempt from the competence of the Article 86 of the ECT. The mentioned article 4 of the Competition Law of the Republic of Lithuania obliges self-government institutions when performing delegated tasks related to regulation of economic activities to ensure freedom of honest competition. In addition, according to the Article 86 of the ECT, European Commission has a special task to observe public enterprises and enterprises that are awarded with special or exclusive rights by member states.

It is impossible to state like this since often provision of local public services is not profitable and business enterprises are not interested in providing such services; therefore, if there is no competition among business entities the rights of consumers might be violated. In addition, some services might be provided to the population nongratuitously. Therefore, Article 8 of the Law on Local Self-Government (2020) foresees that municipality is responsible for provision of public services to people. It is also worth mentioning that municipality's institutions and administration do not provide public services. They are provided by budgetary and public institutions, municipality's enterprises, stock companies and other entities.

4 Protection of local authority boundaries

The regulation of protection of local authority boundaries are set in two Laws: Law on Local Self-Government of the Republic of Lithuania and Law on Administrative Territorial Units and their Boundaries.

The Article 37 of the Law on Local Self-Government of the Republic of Lithuania (2020) states that: "Surveys concerning establishment of municipalities, liquidation of the existing municipalities, as well as setting and changing of their territorial boundaries and centres shall be conducted in compliance with the Law on Administrative-Territorial Units and their Boundaries".

There special criteria for establishing new municipalities set in the Law on Administrative-Territorial Units and their Boundaries (1994, No. I-558: 1) at least 20 per cent of the municipal budget without the appropriations from the state budget of the Republic of Lithuania awarded to municipal budgets would be made up of the income tax of individuals of that territory; 2) the total number of residents of the municipality would be not less than 10 000; 3) the number of residents of the centre of the municipality would be not less than 3 000; 4) the centre of the municipality would be 20 km away or farther from the nearest existing centre of the municipality; 5) the municipality would have the boundaries with at least two municipalities (Law on Administrative Territorial Units and their Boundaries, 1999).

The Article 7 of the Law on Administrative-Territorial Units and their Boundaries (1994, No. I-558, last amended in 2014) states that: the municipalities shall be established and the existing municipalities shall be liquidated and the boundaries of their territories and their centres shall be set and changed by the Seimas of the Republic of Lithuania on the recommendation of the Government of the Republic of Lithuania. The Government of the Republic of Lithuania shall prepare and submit to the Seimas of the Republic of Lithuania documents in relation to the establishment of new municipalities and setting of the boundaries of their territories where, in the local population poll of the municipality to be established with the participation of more than half of the residents of the municipality to be established eligible to take part in the poll, more than half of those who

participated voted in favour of establishment of a new municipality (Law on Administrative-Territorial Units and their Boundaries, 2014).

When submitting to the Seimas of the Republic of Lithuania documents in relation to the establishment of new municipalities and setting of their boundaries, the Government of the Republic of Lithuania shall also include the opinions of the municipal Councils of the municipalities the boundaries of the territories whereof are to be changed as well as the opinion of the residents of the new municipality to be established expressed in the local population poll. As well when submitting to the Seimas of the Republic of Lithuania documents in relation to changing of the boundaries of the territories of the municipalities, the Government of the Republic of Lithuania shall also include the opinions of the municipal Councils of the municipalities the boundaries of the territories whereof are changed as well as the opinion of the local residents of the part of the territory to be attributed to another municipality expressed in the local population poll. As in Article 13, “initiative groups of residents and municipal Councils shall have the right to submit to the Government of the Republic of Lithuania proposals in relation to the establishment of new municipalities, liquidation of the existing municipalities, setting and changing of the boundaries of their territories and their centres. The procedure for setting up initiative groups of residents and submitting of proposals shall be established by the Government of the Republic of Lithuania or an institution authorized by it.

Proposals in relation to the establishment or liquidation of municipalities, other territorial administrative units of the Republic of Lithuania, setting or liquidation of residential areas, granting or changing of names of residential areas as well as setting or changing of the boundaries of their territories and the territories of the territorial administrative units of the Republic of Lithuania, granting or revoking of the status of a resort or a resort area shall be examined and opinions on these issues and, where necessary also appropriate draft legal acts, shall be submitted to the Government of the Republic of Lithuania by an institution authorized by it.

The procedure for the local population poll when establishing or liquidating the territorial administrative units of the Republic of Lithuania, setting or changing of the boundaries of their territories and their centres shall be established by the Government of the Republic of Lithuania or an institution authorized by it” (Law on Administrative Territorial Units and their Boundaries, 2014). In 2019 the Law on Local Self-Government has been changed and the procedure of local population polls has been clarified (Articles 36-47).

Thus the Law on Administrative-Territorial Units and their Boundaries provides very detailed description of changing boundaries and consultation with residents. What is important, that both laws (Law on Local Self-Government of the Republic of Lithuania and Law on Administrative-Territorial Units and their Boundaries) are established in accordance with the European Charter of Local Self-Government.

In practice there were mistakes made in 1999-2000, when establishing new municipalities of Pagegiai, Rietavas, Visaginas, etc. The Constitutional Court ruled that the Government had failed to follow procedure of establishing new municipalities, including eliciting the views of the relevant local Councils and conducting an opinion poll (Constitutional Court Case No. 9/2000, of 28 June 2001).

There were some attempts to establish 5 new municipalities in 2005-2007 also. But polling activity of population was very low and the new municipalities in Kaunas, Šiauliai, Vilnius counties were not established (Lazauskienė, 2008: 7).

The recent examples of initiatives to change the boundaries of municipality can be seen in Klaipėda city municipality and Kaunas city municipality. The inhabitants of Klaipėda district municipality initiated changing the boundary, however, this attempt was unsuccessful (Petronytė, 2017). Another unsuccessful case was the initiative of Kaunas city Mayor to connect 13 wards (99 towns and villages) from Kaunas district municipality to Kaunas city municipality in 2019. But this initiative has been opposed by both inhabitants as well as the Kaunas district municipal Council.

5 Administrative structures and resources for the tasks of local authorities

The structure of the municipality administration, regulation of its activities and its funding are to be approved by the municipal Council. Following the provisions of Civil Code, Law on Local Self-Government, Law on Public Administration and other legal acts that regulate the formation and activities of municipal administrations, Municipal Council establishes municipal administration that:

- 1) has legal structure (i.e. legal form – budgetary institution), legal status and legal subjectivity (is a legal entity, has functions, rights and duties determined by legal acts);
- 2) has competence determined by legal acts;
- 3) has determined economic-financial and activity autonomy;
- 4) has appointed manager and defined structure (municipal administration director manages municipal administration that is composed of structural units, officers and employees that do not belong to structural units, subsidiaries (structural-territorial units)).

Municipal administration can be considered as the main municipal institution because according to the law provisions, it organises and controls implementation of decisions of municipal institutions, directly implements the laws, government's resolutions, decisions of Municipal Council. The exceptional function of Municipal Council is to determine the structure of municipal administration. It is a highly important task since the structure of municipal administration has to ensure that institution's aims are effectively implemented under the existing conditions (Vidaus reikalų ministerija, 2010).

The powers of the municipal administration shall not be related to the expiration of the powers of the municipal council (Law on Local Self-Government, 2020). The municipal administration shall have its own seal with the coat of arms and bank accounts. The municipal administration shall:

- 1) in the municipal territory organise and control the implementation of decisions of municipal institutions or implement them itself;
- 2) implement laws and resolutions of the Government, which do not require decisions of the municipal council;
- 3) in the manner prescribed by the law organise the management of accounting of municipal budget income, expenditure and other monetary resources, organise and control the disposal and use of municipal property;
- 4) administer provision of public services;
- 5) through the authorised civil servants, represent the municipality in the management bodies of municipal undertakings and stock companies;
- 6) draw up drafts of decisions and ordinances of municipal institutions;
- 7) provide financial, economic and material services to the secretariat, the mayor, councillors and the municipal controller.

The Law on Local Self-government determines equal functions to all municipalities according to:

- 1) freedom of decision making: a) functions delegated by the state – state functions transferred to municipalities by law referring to citizens' interests and b) independent functions that municipalities perform following the competence determined by the Constitution and laws, obligations to the community and its interests;
- 2) type of activities – functions of local authorities, public administration and provision of public services. Assignment of equal functions to municipalities determines establishment of equal structural units in the structures of municipal administrations, although the scope of implementation of specific functions of municipalities and type and size of structural units that can be established, depend upon the specific conditions of municipalities.

Municipalities determine the structures referring to the requirements of specific legal acts evaluating the situation of their municipality. Practice shows that the structure of municipal administration is usually changed after the elections to municipal councils, formally trying to relate this with a more effective implementation of aims set to municipal administration – to improve service quality, efficiency of activities, to reduce expenses.

While determining structures, financial appropriations for function implementation are important. It is worth mentioning that financing of independent and state (transferred to municipalities) functions is essentially different. While transferring functions to municipalities, state allocates necessary appropriations, therefore, municipalities must

establish structural units or separate positions for the implementation of these functions. Each municipality finances implementation of independent functions from own budget and has competence to carry out them referring to conditions and circumstances of particular municipality, therefore, while relating functions' implementation to determination of structures of municipal administration, it is obvious that municipalities have greater freedom of actions (Vidaus reikalų ministerija, 2010).

Municipal administrations are headed by an executive director (titled "Administrator" from 1995-2003 and "Director of Administration" since 2003), appointed by the municipal Council upon proposal by the Mayor referring to political (personal) trust (Article 29, part 3 of the Law on Local Self-Government, 1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244). Director of Administration is responsible for the internal working of the administration. He also prepares meetings of the Council. The administrator is appointed and dismissed by the Mayor. Director of Administration has Deputy(-ies). This is the body which 'possesses the rights and duties of public administration' and is accountable to the municipal Council.

While implementing its functions the executive authority cannot impose its will and manage the Council, however, it must account for its activities. It must be emphasized that separation of political and executive authorities in Lithuanian municipalities is a conditional phenomenon as mayors often perform not only the functions of city's strategist but also the functions of executive authority. This model has disadvantages: frequent change of administration directors in Lithuanian municipalities while the officers of the lower level like the heads of municipalities' departments or employees have been working longer in the organisations and have more experience. The biggest disadvantage is competition among the members of the Council, politicians and officers regarding the influence while making decisions and the successful municipalities' activities depend upon their ability to agree (Butkevičienė, Vaidelytė, Žvaliauskas, 2009).

6 Conditions under which responsibilities at local level are exercised

In accordance with the Charter, responsibilities at local level shall be exercised under the following conditions: 1. Free exercise of the functions; 2. financial support, i.e. compensations for expenses incurred in the exercise of the office, for loss of earnings or remuneration for work done and corresponding social welfare protection; 3. The legal regulation of functions and activities which are deemed incompatible with the holding of local elective office.

The first condition is guaranteed by the Constitution (1992) and Law on Local Self-Government (1994, at last amended in 2020-06-30, No. XIII-3244) in Lithuania. According to the Constitution's Article 120 and Law's Article 4, part 2, "municipalities shall act freely and independently within their competence defined by the Constitution and laws". Moreover, "it shall be prohibited to persecute the municipal Councilor for the

voting or opinion expressed at sittings of the municipal Council or its committees. The municipal Councilor may be held liable in accordance with the procedure laid down by the law for person's insult or slander, dissemination of information, which is humiliating to person's honor and dignity and not in keeping with the truth" (Law on Local Self-Government, 1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244, Article 22, part 6). However the free exercise of the functions is tied by rules thoroughly prescribed in the laws and other legal acts. For instance, a Councilor must inform the municipal Council about the existing conflict of interest, declare his or her resignation and, if the municipal council accepts the resignation, not participate in any further discussion of the issue at the meeting of the municipal council before considering the issue that causes him or her a conflict of interest (Law on Local Self-Government, 1994, No. I-533, at last amended in 2020-06-30, No. XIII-324 , Article 13, part 10).

Financial support is important condition for effective exercises of responsibilities at local level. The Charter refers to four categories of finances: a) remuneration for work done or b) compensation for loss of earnings; c) financial compensation for expenses incurred in the exercise of the office; d) social welfare protection.

The legal regulation of financial compensation for exercises of responsibilities at local level differs for Councilor and Mayor in Lithuania. Although the Mayor is the member of local Council, the rate of his/her salary is set by national legislation (the Law on Remuneration of State Politicians and Public Officials, 2000, No. VIII-1904, at last amended in 2019, No. XIII-2751) and since 2014 depends on the population of the municipality (the Law on Supplementing the Law on Remuneration of State Politicians and Public Officials, 2013, No. XII-688). These amendments were determined by the adoption of direct Mayoral elections in 2014 (the amendment of Law on Local Self-Government, 2014, No. XII-967). According to the Law on Remuneration of State Politicians and Public Officials, there are 5 coefficients of Mayor's salary: 18 – for Mayor of the municipality with less than 15 000 inhabitants, 18,3 – for Mayor of the municipality with 15 000 – 50 000 inhabitants, 18,6 – for Mayor of the municipality with 50 000 – 100 000 of the inhabitants, 19 – of there are from 100 000 up to 500 000 inhabitants in the municipality and the highest coefficient is 19,1 for Mayor of the municipality with over 500 000 inhabitants. The Mayor may additionally get long-service pay – 1 percent of the salary for each year of working as civil servant, however the additional pay is limited up to 30 percent of the main salary. Nevertheless, „the salary of the Mayor, deputy Mayor shall be approved by the municipal Council in accordance with the ratios established by the law" (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244, Article 9).

The remuneration of the municipal Councilor is regulated by the Law on Local Self-Government (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244, Article 26). While the Mayor gets the salary, the performance of Councilor's responsibilities is remunerated in accordance with worked hours or by '*remuneration for participation*' principle, i.e. the Councilor does not participating in meetings and sittings loses part of

the financial compensation. The remuneration is calculated in accordance with the amount of the average monthly earnings in the national economy (hereinafter referred to as “AMEs”) taking into consideration the actual length of work. The way to relate the salary with real AMEs in national economy is economic and ethical, does not privileging the status of public officer. The actual length of work is counting according to the protocols of Council’s, committees’ and fraction’s sittings plus Councilor’s declared working hours for preparation to the sittings and meetings with electorate. Whereas the latter hours cannot exceed 60 hours per month (some municipalities set less hours), there are lack of transparency and lack of the control of adherence to this working time: in practice the Councilor is not requested to provide documentation or evidences for time he/she spent for the preparation to the sittings or meetings with electorate.

The amount of the remuneration for the performance of the duties of the municipal Councilor shall be fixed by the municipal Council. It should be noticed, that a municipal Councilor has the right to perform Councilor’s duties free of charge. However, in that case, mandatory taxes, state social insurance and mandatory health insurance contributions due under legal acts are not paid too. Thus the Councilor working on voluntary basis shall pay mandatory taxes (e.g. health insurance) by him/herself.

If the Mayor and deputy Mayor may not work in other institutions, establishments, undertakings and organisations and receive any other payment, with the exception of payment for scientific, pedagogical or creative activities,¹ the Councilor may have other direct job and incomes². According to the Law on Local Self-Government (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244), Article 26, part 4, „the Councilor shall be released from his/her direct job or duties in any institution, establishment, undertaking or organisation for the duration of sittings of the municipal Council, committees, as well as in other cases provided for in the rules of conduct“. Theoretically this regulation guarantees the implementation of the Charter's provision about compensation for loss of earnings as important condition for effective functioning of elected representatives. However in practice the Council’s earning per hour are less than loss earnings from direct job. That becomes one more motive to declare maximum allowable but not practically spent hours for preparation to the sittings and meetings with electorate and thus to ‘compensate’ loss earnings from direct duties.

The Law on Local Self-Government also establishes the norms, regulating compensation for expenses incurred in the exercise of the office. This category of the finance covers: a) representation funds; b) other expenses incurred in the exercise of the office such as stationery, post, telephone, internet link, transport expenses.

¹ This provision shall not apply if a deputy mayor holds the position on a voluntary basis. (Law on Local Self-Government, 1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244, Article 19, part 12)

² More about functions and jobs which are incompatible with Council or of the municipality status is written below in this part of the report.

The amount of representation fund, designated to cover the Mayor's expenses relating to representation in Lithuania and abroad, depends on the number of the municipal Councilors and is related to AMEs in the national economy as most recently announced by the Department of Statistics (see the Table No. 1). However, the Mayor's representation fund shall be fixed without exceeding the general funds allocated to represent the municipality.

The Councilor, representing the municipality outside its boundaries, shall, in the manner prescribed by the Government, get financial compensation of his/her expenses related to the business trip only if it was organized according to the Mayor's ordinance (Law on Local Self-Government, 1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244, Article 26, part 3).

The amount of b) category allowance and the procedure for accounting are set in the rules of conduct of municipal Council. The municipalities have different practice in counting this allowance: one municipality relate it to AME, others set exact sum. It is interesting that the amount of this allowance is not related to the size of municipality. For instance, a Councilor of Vilnius city municipality (the biggest municipality) gets 300 Euros allowance for these expenses per month (Rules of conduct of the Council of Vilnius city municipality, 2020), while the Councilor of the smallest municipality in Lithuania – Neringa municipality gets up to 0,4 AME (about to 550 Euros) (Rules of conduct of the Council of Neringa municipality, 2019) however the Councilor of Siauliai city municipality (the 4th biggest municipality) can get only up to 0,25 AME (Rules of conduct of the Council of Siauliai city municipality, 2017).

The social protection issues are not regulated by the Law on Local Self-Government (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244). However salaries of the elected representatives of the municipality are taxed, thus they get the right to free health protection, pension, etc. The only exception is the case when the Councilor is working on the voluntary basis.

Table 1: The regulation of financial conditions under which the responsibilities at local level are exercised

Category of finance		Regulation	Law
Salary	Mayor	<ul style="list-style-type: none"> The coefficient of Mayor's of the municipality with less than 15 000 inhabitants salary is 18; The coefficient of Mayor's of the municipality with 15 000 - 50 000 inhabitants salary is 18,3; when there are 50 000 - 100 000 inhabitants the Mayor's salary coefficient is 18,6; the Mayor of the municipality with 100 000 - 500 000 inhabitants gets 19 salary's coefficient and if there are more then 500 000 inhabitants, the Mayor's salary coefficient is 19,1. 	Law on Remuneration of State Politicians and Public Officials (No. VIII-1904, at last amended in 2019, No. XIII-2751, Annex 1)
	Councilor	<ul style="list-style-type: none"> paid for the working time while performing the duties of the municipal Councilor; such remuneration shall be calculated in accordance with the amount of the AMW, taking into consideration the actual length of work; have the right to refuse this remuneration by submitting in accordance with the procedure laid down in the rules of conduct a request concerning the performance of the duties of the municipal Councilor free of charge (i.e. on a voluntary basis). 	Law on Local Self-Government (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244), Article 26, part 1
Representation funds	Mayor	<ul style="list-style-type: none"> the municipal Council consisting of 41 and more Councilors may each month allocate the sum in the amount of up to 3 AME; the municipal Council consisting of 27-31 Councilors – up to 2 AMEs other municipalities – up to 1 AME 	Law on Local Self-Government (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244), Article 19, part 19

	Councilor	If according to the Mayor's ordinance a Councilor represents the municipality outside its boundaries, the municipal administration shall, in the manner prescribed by the Government, cover his expenses related to the business trip	Law on Local Self-Government (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244), Article 26, part 3
Other expenses	Councilor	Each month an allowance may be granted, subject to accountability at least once in 3 months, to a Councilor to pay for the a) stationery, b) post, c) telephone, d) internet link, c) transport expenses, - related to his activities as the Councilor, to the extent they are not rendered or paid for directly by the municipal administration. The amount of this allowance and the procedure for accounting shall be set in the rules of conduct.	Law on Local Self-Government (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244), Article 26, part 2

The third part of the Article 7 of the Charter, referred to the functions and activities incompatible with the Councilor's and Mayor's position is implemented by several laws: the LR Law on Elections to Municipal Councils, 1994 No I-532, as last amended on 2020-05-28, No. XIII-3001), the Law on Local Self-Government (1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244), the Law on the Elections to the Seimas (1992, No. I-2721, as last amended in 2020-06-30, No. XIII-3214). This issue becomes especially debatable during the elections to the municipality or to the parliament period. The Central Electoral Commission of the Republic of Lithuania, based on some courts' decisions, announced the Clarification about the functions and activities, which are incompatible with the Councilor of municipality responsibilities. Briefly, the activities and functions, incompatible with Councilor of municipality, can be grouped according to the reason of restriction:

- 1) the activities, which according to other legal acts, are incompatible with any other activities, i.e. President, Parliament member, EU Parliament member, the member of the Government;
- 2) the activities, which suppose external control power of the municipality, i.e. county governor or his/her deputy, the representative of the Government in the county, state controller and his/her deputy;
- 3) the activities, which enable to pressure or influence the municipal Council decisions locally, i.e. when the Councilor status would empower to control the agency or institution, where he/she directly works. This category of incompatible activities includes: "the post of a civil servant of political (personal) confidence of the Mayor of that municipality, the office of controller of that municipality or the post of a civil servant of the controller's service of that municipality, the office of director of the

administration of that municipality of a particular term of office and his deputy or the post of a civil servant or an employee working under the employment contract in the administration of that municipality, the office of head of the secretariat of the Council or the post of a civil servant or an employee working under the employment contract of that municipality, the office of head of a budgetary institution the owner or one of the owners is that municipality, the office of single-person head and member of the collegial management body of a public establishment the owner or stakeholder of which is that municipality, an undertaking of that municipality, the office of member of the collegial management body (Council) of a company controlled by that municipality or the office of head of a company controlled by that municipality” (Law on Elections to Municipal Councils, 1994 No I-532, as last amended on 2020-05-28, No. XIII-3001, Article 91, part 1). The Mayor may not be a member of the committees set up by the municipal Council (Law on Local Self-Government, 1994, No. I-533, at last amended in 2020-06-30, No. XIII-3244, Article 20, part 6).

Additionally the Law on Elections to Municipal Councils (1994, No I-532, as last amended in 2020-05-28, No. XIII-3001), commit the Councilor of the municipality to be a resident of the municipality where she/he was elected. If the Councilor leaves this territory for inhabitancy in other municipal territory, she/he will lose her/his mandate.

In 2020 the Law on Local Self-Government (2020) has been amended and remote meetings of the municipal Council were legalized due to any emergency, extreme situation or quarantine (Law on Local Self-Government of the Republic of Lithuania, 2018, Article 11¹). When making decisions of the Council remotely, the identification of a member of the municipal Council and results of his(her) voting must be ensured. Therefore, decisions requiring a secret ballot, can not be taken in such remote meetings.

All these legal restrictions enable to implement the power of external and internal control and ensure the transparent decision making at local level.

7 Administrative supervision of local authorities' activities

Administrative supervision of local authorities is exercised according to procedures and in cases as are provided for by the Constitution of the Republic of Lithuania (1992). Article 123 of the Constitution states that: ‘The observance of the Constitution and the law as well as the execution of decisions of the Government by municipalities shall be supervised by the representatives appointed by the Government’. The same approach is embedded in the Law on the Government of the Republic of Lithuania (2018, Article 35), the Law on Local Self-Government of the Republic of Lithuania (2018, Article 55), and the Law on Administrative Supervision of Municipalities of the Republic of Lithuania (2018, Article 1).

The territory of Lithuania is divided into 10 counties, which are subdivided into 60 municipalities. On the basis of the Law on the Territorial Administrative Units and Their Boundaries of the Republic of Lithuania (1994, No. 60-1183, TAR, 2014, i. c. 0941010ISTA000I-558, Article 2) territorial administrative units can be two types: a municipality as the administrative unit governed by a Council (elected by the community) in accordance with the Law on Local Self-Government of the Republic of Lithuania and other laws, and a county as the higher level administrative unit, where the governance is organized by the Government of the Republic of Lithuania. Article 4 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania (2018) provides that the Government assigns five Representatives of the Government to two counties (Vilnius and Alytus counties, Kaunas and Marijampolė counties, Panevėžys and Utena counties, Klaipėda and Tauragė counties, Šiauliai and Telšiai counties), therefore, the number of supervised municipalities ranges from 10 to 12. Kiuriene (2013: 49) states that the Representative of the Government in a County is the civil servant – the manager of the institution who is appointed for these duties for five years in the competition way, which is organized by the Government. S/he is subordinate to the Government and accountable to the Prime Minister. Article 3 of mentioned law declares special competence requirements for this civil servant: the candidate to this position must hold the university education (not less than master degree) and to have at least five years experience in the field of public administration or to have at least five year's experience in law.

Articles 12 and 13 of the Law declares that the Office of Representatives of the Government is established by the Government. Under the proposal of the Prime Minister, the Government appoints one of already appointed representatives as the Head of the Office of Representatives of the Government (Law on Administrative Supervision of Municipalities of the Republic of Lithuania, 2018). This office consists of five Representatives of the Government and a staff (civil servants and employees) which helps representatives to implement their authorities (powers) and rights. The Representatives of the Government, working in other counties than the location of the Office, as well as civil servants and employees work in remote workplaces (Loizidou, Mosler-Törnström, 2012; Kiuriene, 2014a: 209; Law on Administrative Supervision of Municipalities of the Republic of Lithuania, 2018).

It must be mentioned, that after restoration of independence in Lithuania in 1991 due to some disputes in the society, that the existing concept and system of administrative supervision of local self-government in Lithuania was unsuitable (too restrictive, conflicting with principles of democracy), some reforms were made in the terms of administrative supervision of municipalities. Kiuriene (2015) provides that the Offices of the Representatives of the Government (Services of the Government Representatives in the Counties) were discontinued in 1996 with delegation of their functions to County Governors. 'However, in 1998 the Constitutional Court of the Republic of Lithuania ruled that the institute of administrative supervision of local self-government is provided for in

the top level legal act of the state – the Constitution, therefore abolition of the Offices of the Government Representatives in the Counties is unconstitutional. In addition, the Constitutional Court declared that merging of the independent constitutional institute of administrative supervision of activities of local self-government with another institute, which resulted in direct incorporation of local self-government into local governance, is in conflict with the Constitution of the Republic of Lithuania, therefore supervision of legitimacy of activities of local self-government could not be delegated to County Governor. Consequently, in the light of this ruling, the Offices of the Government Representatives in the Counties could be abolished only by amending the Constitution of the Republic of Lithuania (Kiuriene, 2015: 396). Besides, due to the reform of local government in Lithuania in 2010, the entities of the County Governor and its Administration were abolished and the power of governance in counties was transmitted to the Government (Žilinskas, 2010: 57). Administrative supervision was delegated to ten Representatives of the Government (one representative to each of ten counties), having special offices - Services of the Government Representatives in the Counties. However, in 2019 another reform has been implemented and the Office of Representatives of the Government was established (with just 5 Representatives of the Government, one representative to two counties).

Article 123 of the Constitution states that: ‘The powers of the representatives of the Government and the procedure for the execution of their powers shall be established by law’. This constitutional requirement is embedded in the Law on Administrative Supervision of Municipalities of the Republic of Lithuania (2018, Articles 7-9). The Representative of the Government supervises the ‘legality’, as opposed to the policy content, of local authorities’ decisions (Loizidou, Mosler-Törnström, 2012). The implementation forms of the authority of the Representative of the Government are as follows: advanced supervision of drafts of legal acts of municipal collegial administration entities, reasoned motion, written request, decree, application to the Administrative Court regarding legality of legal act, application to the Administrative Court regarding defending the public interest, claim to the Court of General Jurisdiction regarding defense of public interest, application to the Administrative Court regarding abolition of legal act or regarding obligation to execute the law or decision of Government (Kiuriene, 2013: 50). Article 8 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania (2018) explains that in all cases the Representative of the Government must inform the Mayo (as the manager of the municipality) about any reasoned motion or request for any municipal administration entity. The Mayor must inform members of the Council about it in the nearest meeting. Articles 7-8 of the aforesaid law state that, if a decision of any municipal administration entity is in conflict with the Constitution and/or the laws, the Representative of the Government can suspend, by decree, the enforcement of the local authority decision until the court of the relevant jurisdiction decides on the application or the means of action. On the basis of the mentioned Law, few steps to ensure the ‘legality’ are identified:

- In a case of a reasoned motion:

- Firstly, the Representative of the Government defines that legal act adopted by the municipal administration entity does not comply with laws or the Government's decisions;
- By the reasoned motion proposes appropriate municipal administration entity to discuss the question of the change or the abolition of the legal act;
- The municipal administration entity within the determined time discusses the received motion and informs the Representative of the Government of the adopted decision (to agree or not with motion of the Representative of the Government);
- In the case when the municipal administration entity refuses to abolish or change the questionable legal act, the Representative of the Government appeals for this act to the court of appropriate competence.
- In a case of a written request:
 - Firstly, the Representative of the Government defines that legal act adopted by the municipal administration entity does not comply with laws or the Government's decisions;
 - To the appropriate municipal administration entity submits the written request to implement the law or execute the decision of the Government immediately;
 - The municipal administration entity within the determined time discusses the received request and informs the Representative of the Government about the adopted decision (to agree or not with request of the Representative of the Government);
 - In the case, when the municipal administration entity refuses to execute the request, the Representative of the Government appeals for this act to the court of appropriate competence (Kiuriene, 2013: 50-51).

This leads to the idea that when mentioned powers are exercising, if recommendations of the Representative of the Government are not followed, he/she may appeal to a Court.

As it was mentioned the Representative of the Government is subordinate to the Government and accountable to the Prime Minister. Article 14 of the Law on Administrative Supervision of Municipalities of the Republic of Lithuania (2018) declares that the Representative of the Government must prepare and submit the report about his/her activity to the Head of the Office of Representatives of the Government. The Head of the Office organizes the summarizing of reports and the submission of the activity report of Representatives of the Government to the Government. This report has to be publicized in the official Office's website.

Finally, the Article 8 part 3 of the European Charter of the Local Self-Government emphasizes that Administrative supervision of local authorities should be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect. Article 54 of the Law on Local Self-Government of the Republic of Lithuania (2018) guarantees that

municipalities can protect their rights and due to any violation (according to its nature) they have the right to apply to the Court.

8 Financial resources of local authorities and financial transfer system

Fiscal autonomy of Municipalities in Lithuania is growing. A reform of the Law on Cash Social Assistance was implemented in Lithuania between 2012 and 2015 by changing the function of cash social assistance to the independent function of the municipalities. The decentralisation of cash support was implemented by allocating sufficient financial resources to the municipalities. This reform has been highly successful. By granting more independence and responsibility to the municipalities in the distribution of cash assistance the abuse of social benefits decreased, whilst the motivation and willingness to work increased, which in turn reduced the scale of illegal employment. The local communities also became more active: the municipalities received a number of notifications of illegal employment and cases of possible abuse of social benefits (Association of Local Authorities in Lithuania, 2018). Each municipality has a formally independent budget, which it drafts and approves. Laws governing budgeting and taxation regulate both the state budget and local government budget. Municipalities cannot be insolvent, in that the Council may not approve a deficit budget. Compensation fund, as such, does not exist. If lacking sufficient revenue, the State gives loans.

Municipalities have three major categories of expenditure:

- most costly are primary and secondary education, which account for 60% of total current expenditure;
- municipalities are also in charge of a number of welfare benefits (mostly support to families), accounting for 14%;
- the so-called housing and communal economy accounts for more than 6% of current expenditure. This capital-intensive category encompasses the provision of public utilities and other infrastructure services (district heating, water supply and sewage).

The source of the municipal budget: (i) state subsidies 55%; (ii) distributed taxes (mostly income tax) 33%; (iii) municipalities' own income 12% (Davulis, 2009). First, county tax inspectorates aggregate the tax (more than 80% of tax income is income tax, the other sources being, for instance, pollution tax or gambling tax) paid by residents of each municipality. Next, a certain proportion is deducted for Compulsory Health Insurance and the state budget (which may be as much as 30%-40%), as determined by the Law on the Approval of Financial Indicators of the State Budget and Municipal Budget, for the year concerned. Finally, the inspectorates transfer to the municipal budgets the percentage of income tax of residents, indicated in the Law on the Municipal Budgetary Revenue Estimation Methodology.

Allocation of subsidies is regulated by the Law on the Methodology of Municipal Budget Income Estimation. Subsidies may be purposive or common. Purposive subsidies are

allocated to perform state functions prescribed to municipalities, as well as to realise the programmes approved by the *Seimas* and Government. A common subsidy of the state budget is allocated to equalise differences between income and expenditure structure, determined by factors not dependant on local government. State subsidies, especially the purposive ones, are made conditional on detailed obligations being satisfied and, thus, are a means of control over municipalities. The volume of state subsidies - over half - means that there is a low rate of fiscal decentralisation in the country.

This is the element in respect of which each municipality has discretion as to what rate to fix for each of the types of tax committed to it, by law. In practice, more than 10% comes from property taxes³. The (rather small) remainder comes from the sources stipulated by the Law of Charges, by which a municipality has a right to set local charges in its territory, for giving permissions, for instance to: excavate in its territory; to trade in the public places designated by the Council; or to use car parking sites. Income from local charges comprises a total of only about 1% of all the municipal budget revenue.

Implementing recommendation guidelines of European Council since 1998 the model of municipalities' fiscal (tax) revenues also covering equalization of incomes' needs has been started to be used in Lithuania. In order to equalize municipalities' fiscal resources, the funds that municipality donors transfer to the Treasury account are used. A certain percent of personal tax incomes only from the 7 municipalities, not all the municipalities go to the Treasury. Namely this percentage part of personal income tax of seven municipalities after going to the Treasury account is distributed in order to equalize personal income tax of the rest 53 municipalities and expenses structures that are determined by the factors not depending upon municipalities' activities. These transfers support those municipalities that collect relatively less than the average of personal income tax calculated per person.

Since 2007 municipalities can determine the real estate tax rate, and since 2013 they also can determine the land tax rate. But the rate determination is limited – respectively from 0.3% to 1% and 0.01% to 4%. (*Republic of Lithuania Law on Immovable Property Tax; Republic of Lithuania Law on Land Tax*). Ministry of Finance of the Republic of Lithuania states that: “The following taxes and duties are considered to be the main ones: income tax of individuals; corporate income tax; value-added tax; excise duties; real estate tax; land tax; inheritance tax; and lottery and gambling tax.” Since 1990 and until now municipalities determine the income tax rate for income from activities exercised

³ There is a technical, legal problem here. In contrast with this, Article 127 of the Constitution states that: ‘The budgetary system ... shall consist of the independent State Budget ... as well as independent municipal budget. The State Budget revenue shall be raised from taxes, compulsory payments, levies, income from State property and other income. Taxes, other payments to the budgets and levies shall be established by the laws ...’. The terms of the Constitution complicate the right of municipalities to financial resources of their own, in that it seems to bar the establishment of local taxes as understood in the European context.

under a business certificate. (*Provisional Law of the Republic of Lithuania on Income Tax of Natural Persons; Republic of Lithuania Law on Personal Income Tax*).

Yet, the accumulation system of tax revenues of Lithuanian municipalities ensures neither financial independence nor activities' efficiency. Budget planning according to the volume of calculated expenses refers to the old expenses' level and the order of incomes' concentration is rather eclectic.

The amounts of possible to get incomes, dependently upon calculated expenses, are drafted by the Ministry of Finance. It also calculates the so called "basic" expenses and final amounts of expenses. When determining municipal budget expenses, the Ministry of Finance divides the municipalities into six groups according to the similar infrastructure and functioning conditions.

The standards of dividend taxes (personal income tax), that form an important part of municipal budget incomes, are determined every year for each municipality individually, depending upon calculated expenses. Such order discredits the idea of assignation of taxes to municipalities, as development of fiscal decentralization. In economic sense this does not differ from financial granting. Through financial grants the central government may easily strengthen municipalities' control and supervision, may limit the competences of local authorities regarding financial issues, i.e. increase centralism.

Municipalities' opportunities to influence the amount or base of these taxes are limited by the laws. We may state that the municipalities themselves are not yet interested to collect more incomes since this may cause them disadvantages, when approving the budget of the coming year there is a danger that the standards of dividend taxes might be reduced. The municipalities often find it difficult to plan their budgets credibly and to finance foreseen fields purposefully.

After Lithuania has joined the European Union, the municipalities became competitors when assimilating the sources of structural funds. The Ministry of Finance receives the money from the EU. The municipality presents a project and in this way receives financing. Municipalities' fight regarding various projects is rather complicated since many municipalities lack specialists who would be capable to prepare project applications properly, to administer them, there is a problem of project general financing. Sometimes the support goes to economically stronger municipalities.

From 2017 the amount of the annual net borrowing for 57 municipalities could not amount to a positive rate, i.e. the municipal loan could not increase throughout a year and the municipalities had the right to borrow the amount not exceeding the amount repayed for the loans taken out previously.

From 2018 the mentioned provisions (and threats) on limited borrowing opportunities are applicable to 3 biggest municipalities of the cities of Vilnius, Kaunas and Klaipėda, in accordance with Article 13(1-2) of Law on the Approval of Financial Indicators of the State Budget and Municipal Budgets for 2018 and Article 4(2) of the Constitutional Law on the Implementation of the Fiscal Treaty (Association of Local Authorities in Lithuania, 2018). Upon the request of Association of Local Authorities in Lithuania (ALAL), from 2015 the Central government restored the provisions that were in force until 2011 – the previous procedure of calculation of percentage of Personal Income Tax (PIT) per municipalities has been restored and the forecasted PIT increase due to natural economy growth is shared again by the state and municipal budgets. In December 5, 2017 the Seimas adopted the amendment of the Law on Methodology of Determination of Municipal Budget Revenue referring to which compensation of the general grant from the state budget is declined and it is transferred to 38 municipalities to their PIT as a steady source of revenues, therefore in 2018 the budgets of 38 municipalities have really increased for the first time from the economic crisis.

However, without positive changes of financing, municipalities do not feel financially independent. In the above mentioned revision of law adopted by the Seimas a very inconvenient regulation to the municipalities was legalized – losses of PIT determined by the decisions of Central Government will not be fully compensated. Therefore, municipalities have lost the stability of the base of the main revenue source. It is obvious that the state put the consequences of 2008 crisis under the responsibility of municipalities. At the beginning of crisis, the financing of independent functions reduced by almost 30% has not been fully restored yet, despite of the growth of budget revenues.

Recently main attention is laid on borrowing restrictions. Despite higher municipal budgets in 2018, representatives of local authorities are not fully satisfied with this. Regardless of the regulations of European Charter of Local Self-government, at the end of 2014 Constitutional Law on Implementation of Fiscal Treaty which regulations came into force into 2016 drastically restricted annual net borrowing opportunities for 57 municipalities out of 60. Association of Local Authorities in Lithuania requested Central Government to solve the main problem of municipal budgets and to greatly increase borrowing opportunities for 57 municipalities in 2016 that were significantly reduced – up to 1,5 % of budget revenues. At that time Association of Local Authorities in Lithuania requested to pay attention to the fact that in 2016 a big part of municipalities would have a limited right to borrow and would not be able to proper implement a part of investment projects. For the majority of such projects, the Central Government set the requirements to municipalities to contribute with own essentially borrowed funds. “From 2017 the debt of 57 municipalities could not increase within the year and local authorities were entitled to borrow no more than they would repay previously borrowed loans” - the director of Association of Local Authorities in Lithuania R. Žakaitienė explained the present situation. After this revision, municipalities that were working without debts suffered greatly because at present they do not have any opportunities to borrow«. Municipalities

are trying to restore the previous opportunity (Association of Local Authorities in Lithuania, 2018).

9 Local authorities' right to associate

The right and freedom to join organizations and associations, which are considered as a part of fundamental human rights, have to be embedded in laws and guaranteed by state obligations to the international community (Baronaitė, 2008; Lydeka, 2007). Article 35 of the Constitution states that: 'Citizens shall be guaranteed the right to freely form societies, political parties, and associations provided that the aims and activities thereof are not contrary to the Constitution and laws'.

The Law on Public Administration of the Republic of Lithuania (2017, Article 2 part 4, Article 4 parts 3 and 5) prescribes subjects of public administration including state and municipality subjects as well as associations authorized to perform public administration. Article 4¹ of the aforesaid law presents ways of granting of powers of public administration. It provides that 'associations may be granted the powers of public administration by the following documents: 1) laws, a directly-applicable legal act of the European Union, a ratified international agreement of the Republic of Lithuania, where such a legal act specifies a concrete entity which is functioning or is planned to be set up (where necessary, its name, designation, legal form, liaisons with other entities of public administration, etc.) and defines the concrete powers of public administration for this entity; 2) a legal act adopted by an state or municipal institution authorised by the law where this institution, acting in compliance with the law regulating a general procedure for setting up entities of public administration of a certain field of public life as well as their activities, indicates in the said legal act an entity which is functioning or is planned to be set up (where necessary, its name, those working in the designation, legal form, liaisons with other entities of public administration, etc.) and defines the concrete powers of public administration for this entity'. Vitkutė (2018: 165) emphasize that Lithuania has many special laws (i. e. The Law on Basic Regulations of Association of Local Authorities of the Republic of Lithuania (1995)) where particular associations and their functions are identified, however, none of them directly embedded any association as a public administration subject.

All associations, including field of local self-governance, follow the Law on Associations of the Republic of Lithuania (2017). The Article 2 of this law states that association is 'a public legal person with limited civil liability, whose purpose is to coordinate activities of association members, represent and protect interests of association members, meet other public interests'. The law (Article 7, 8 and 9) establishes guidelines on the management (organizational) structure of an association. The Article 15 declares that all associations can become members of international organizations whose objectives and activities are not in conflict with the Constitution of the Republic of Lithuania and other laws. Therefore it provides the right to belong to an international association of local

authorities or to initiate trans-border co-operation with similar association as it is required by the Charter. 'This possibility exists on the basis of the Madrid Convention on Transfrontier Co-operation, ratified by Lithuania in 1997' (Loizidou, Mosler-Törnström, 2012).

Interests of local self-government (municipalities) in Lithuania are represented by the Association of Local Authorities. It represents members in the Government, other state institutions and international organizations (Law on Local Self-Government of the Republic of Lithuania, 2020, Article 53). The Association of Local Authorities in Lithuania (ALAL) as a non-profit, non-Governmental organization, representing the common interests of its members - local authorities seeks to implement the essential rights of local self-government and to foster its development, by influencing decisions taken by national authorities and international institutions. Article 4 of the Law on Basic Regulations of Association of Local Authorities of the Republic of Lithuania (1995) declares that each municipality Council taking its decision can become the member of this association. Therefore, the ALAL seems to be an active entity whose right to represent all the 60 Lithuanian municipalities is respected by the Government and the Parliament of the Republic of Lithuania.

The Association of Local Authorities in Lithuania has its specific organizational structure. Institutions can be divided to several groups: 1) representative bodies (Congress, meetings of County Mayors); 2) executive bodies (Council, Council and President); 3) single-person management body (Director); 4) control body (Committee of Auditors); 5) Council advisory bodies (Committees) (ALAL institutions, 2018) (see Table 2).

Besides, since 2007 the Association of Local Authorities in Lithuania has the Brussels Representative providing any information about Lithuanian local authorities, their contacts, international and European policies in local government. This is one of possibilities for strengthening international relations, needed as a presumption for international cooperation.

Table 2: Institutions of the Association of Local Authorities in Lithuania

Institution	Functions	Composition
Congress	the highest governing institution of the ALAL, determines the basic activities of the ALAL, elects the President and two Vice-Presidents of the Association, approves and makes changes to regulations, admits and eliminates members, as well as approves the budget.	One representative for every 10 members on municipality's Council, in addition to this quota municipalities with population is greater than 100 000 may elect one additional representative for each additional 100 000 inhabitants
President	represents the ALAL in government institutions, international organizations, co-ordinates adjustment of draft laws related to the municipal activities, signs agreements.	S/he and Vice-Presidents of the ALAL are elected by open voting in the Congress
Council	in between the congresses, the ALAL is governed by it, carries out the functions determined by the Congress, approves the programme of the Association, discusses the draft laws and resolutions submitted by the Council, establishes, reorganizes or liquidates companies and public enterprises of the ALAL	Mayors and vice-Mayors of municipalities, the President and Vice-Presidents (if they are not Mayors)
Council	discusses problems brought forward at Council and Mayor meetings, offers solutions, makes suggestions on self-government related laws to government institutions, establishes work tasks for the administration, and approves the list of committees.	Representatives of Mayors of counties' local authorities, elected at a meeting of county Mayors, President and Vice-Presidents of the Association, and Mayor of the capital (if he is not President/ Vice-President or county Mayor representative)
Administration	organizes and co-ordinates activities of the ALAL, acts in accordance with the resolutions of the Association's institutions and orders of the director.	
Director	organizes activities of the ALAL,	

	deals with organizational, economic and financial issues, leads the Administration.	
Committees	The main function is the advisory for the Council.	Members of municipalities Councils, Mayors or Mayors' authorized vice-Mayors and administrators, ALAL administration employees, municipalities' civil servants.

Source: authors conducted in accordance with ALAL institutions, 2018.

Activities of the ALAL are oriented to achieve few main objectives: to implement the provisions of the European Charter of Local Self-Government in Lithuania, to organize and coordinate activities of its members in the areas of investment attraction, development of municipal economies, improvement of legislature, business support, public security, culture, education, science, health care, social care and protection, improvement of local services, as well as relations with international organizations and municipalities abroad (Statute of the Association of Local Authorities in Lithuania, 2015). One of its tasks is to monitor the implementation of the provisions of the European Charter of Local Self-Government.

The ALAL is working for the international cooperation. It (and its members) participates in the implementation of international projects on local level too. The ALAL is the member of CEMR (Council of European Municipalities and Regions) since 2001. It actively participates in CEMR structures, including Twinning coordinators' network, ELAN (European Local Authorities Network) and other groups' activities.

The Article 52 of the Law on Local Self-Government of the Republic of Lithuania (2020) provides that ALAL must be invited to give its opinion on drafts of Laws (whether primary or secondary) related to local government activities. Article 50 defines the participation of the ALAL in discussions with the Government about any changes in municipalities' functions, income or expenditures of municipalities, projects with financial calculations. A bilateral commission is formed for the coordination of interests and positions between the Government and the Association of Local Authorities in Lithuania within the agreement of parties.

Lithuania has 545 wards. Elders are managers of wards. Article 31 part 14 (Law on Local Self-Government of the Republic of Lithuania, 2020) states that 'the Association of Elders of Local Authorities in Lithuania can be established to represent interests of elders in state institutions and the Association of Local Authorities in Lithuania'. Association of Elders of Local Authorities in Lithuania (AELAL) was legally registered on the 22nd of June, 2001 and got the legal status of non-profit organization. In the beginning of 2020, the AELAL has 443 members. Members of this association can be elders, vice-elders or former elders. This association has its organizational structure too (Table 3). The mission of AELAL is to solve common problems of its members, to represent common members'

interests, to coordinate targeted members' activities in sharing the experience, qualification upgrading, legal defence and strengthening the local self-governance. This association follows such principles of acting: members' autonomy, decentralization of government, collegiality, legitimacy, democracy, transparency and responsibility (Association of Elders of Local Authorities in Lithuania, 2018).

Table 3: Institutions of the Association of Elders of Local Authorities in Lithuania

Institution	Functions	Composition
Congress	the highest governing institution of the AELAL, approves and makes changes to regulations, determines the basic activities of the ALAL, elects the President, 10 Vice-Presidents, the Reviser of the Association and representatives in municipalities for two years, determines and modifies the size of contributions and fees of members of the Association, as well as the payment procedure.	Elders are represented by delegates in addition to quotas.
President	co-ordinates activities of the AELAL, represents the AELAL in national and local government institutions, NGOs, international organizations, international NGOs.	S/he and Vice-Presidents of the AELAL are elected in the Congress
Council	in between the congresses, the AELAL is governed by it, accepts new members.	It consists of the President and 10 Vice-Presidents.

Source: authors conducted in accordance with Association of Elders of Local Authorities in Lithuania, 2018.

AELAL coordinates and encourages partnerships of Lithuanian wards, represents them and defends, strengthens the mutual understanding and partnerships between local government, the business sector and non-governmental organizations, promotes active citizen participation in local government decision-making, strengthens the development of community activities; submit proposals and participate in the preparation and consideration of draft laws and other legal acts related to activities of wards and communities; organizes trainings for elders. The association cooperates with organizations representing the common interests of other entities. The association cooperates with various institutions, entities, organizations and associations in Lithuania and abroad, it looks for partners all around the Europe and the world.

Besides, Lithuanian representatives (mayors and councils' members) are members of the European Committee of the Regions (9 full members and 9 alternate members) as well as members of the Congress of Local and Regional Authorities of the Council of Europe (full members and alternate members).

Finally, it must be emphasized that some municipalities have departments of international relations. In some fields (such as business development, investments, social care, culture and tourism) they implement some international projects and have joint budgets. Frequently, these mostly involve cross-border co-operation with neighbouring districts in Poland, Russia, Latvia and Belarus (Loizidou, Mosler-Törnström, 2012). So, it can be stated that municipalities attach importance to international collaboration. This right is guaranteed by the European Charter of Local Self-Government and enabled by local self-government entities in seeking of the socio-economic welfare of local community.

10 Legal protection of local self-government

“Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation” (Loizidou, Mosler-Törnström, 2012). The Article 122 of the Constitution (1992) states: ‘Municipal Councils shall have the right to apply to court regarding the violation of their rights’. Thus, the basic law of the Republic of Lithuania explicitly establishes “the possibility for local self-government legal entities to defend their rights and legitimate interests in court” (Urmonas, Novikovas, 2011: 1023). Article 54 part 1 (Law on Local Self-Government of the Republic of Lithuania, 2020) repeats the same provision.

In a case of legal procedures (hearing a case in a Court) the Mayor represents the municipality by himself or authorizes other person to represent the municipality in accordance with the procedure established by the Regulation (Law on Local Self-Government of the Republic of Lithuania, 2018, Article 20 part 2).

The Article 54 part 3 declares that ‘entities of state administration are prohibited from restricting or limiting powers and rights of municipalities, except in cases established by law’.

Loizidou and Mosler-Törnström (2012) noticed two main points: 1) municipalities do have the right to appear before Courts; 2) the Association of Local Authorities in Lithuania has standing to represent all municipalities in governmental and administration institutions, other entities. Article 2 (part 2.2.4) of the Statute of the Association of Local Authorities in Lithuania (2015) establishes the ALAL ‘represents common members’ interests in state power and governmental, other institutions’. The Article 5 of the Constitution (1992) states: ‘In Lithuania, state power shall be executed by the Seimas, the President of the Republic and the Government, and the Judiciary’. However this issue does not clarify if the ALAL has any certain means to represent all municipalities before a Court. Loizidou and Mosler-Törnström (2012) explained that the reason why the ALAL should have such standing is because, ‘if any particular municipality(-ies) might fear, whether reasonably or not, victimisation if they were themselves to take a case and so might prefer to leave it to the Association’. It was highly recommended that ‘the law be

amended to make it clear, beyond any doubt, that the ALAL does have the appropriate standing'. Analyzing the Statute of the Association of Local Authorities in Lithuania (2015) and the Law on Local Self-Government (2018) it seems that this recommendation was not taken to account what encourages to be repeated in 2018.

Finally, Urmonas and Novikovas (2011: 1023) state that this requirement of the European Charter of Local Self-Government is 'incorporated to the national law system and its implementation causes the least problems'.

11 Future challenges of the implementation of the European Charter of Local Self-Government in country legislation

Administrative supervision of municipalities. According to Ruling of the Government of the Republic of Lithuania on the Approval Program for the Development of Public Governance 2012-2020 (2015), it has been emphasized that 'to ensure the balance between the municipalities' freedoms of activity and accountability to the state and society in forwarding or assigning functions and rights for the municipalities, the responsibility of municipal entities for the appropriate execution of these functions must be determined, and the supervision of the municipal activities must be improved – the competence of the Government Representative has to be increased in this field' (Kiuriene, 2013: 44).

Reduction of administrative burden in municipalities. Due to viable changes in the public governance, on November 8, 2012 the Parliament of the Republic of Lithuania adopted the Law on Administrative Burden Reduction of the Republic of Lithuania (2013) to eliminate the unreasonable and disproportionate administrative burden, having a negative impact on the country's economy. The aim of this Law is to ensure the harmonious process in reducing administrative burden, focused on private, commercial and public interests as well as cost-effective achievement of legislative goals. The Law provides principles, means of administrative burden reduction and ways of its application. Program for the Development of Public Governance 2012-2020 (Ruling of the Government of the Republic of Lithuania on the Approval Program for the Development of Public Governance 2012-2020, 2015) emphasizes that those public governance institutions which act on the national level must take measures to reduce the administrative burden to citizens and economic entities. Kiuriene (2014b: 172) noticed that initiatives to reduce the administrative burden on the local level (in municipalities) are still not implemented: requests of the Representatives of the Government 'to implement the Law on Administrative Burden Reduction, which have been sent for municipalities' Councils in the beginning of 2014, just confirm that changes of public governance in municipalities do not take the as fast the public or business entities would like'.

Local authorities' right to associate. The problematic issues are rising out of 'legal regulation, case law and legal doctrine related to possibilities for certain associations to

perform public administration functions in Lithuania. Therefore it is suggested that two separate categories of associations should be clearly distinguished: 1) fully voluntary associations and 2) associations, establishment and functions thereof, are determined by special laws, i.e. by legislator. This would allow to more properly validate attribution of public administration activities to the latter group of associations' (Vitkutė, 2018: 176). It would be more clear understanding of legal status of the ALAL and the AELAL as associations acting the field of local self-government.

Legal protection of local self-government. To this moment the Association of Local Authorities in Lithuania has standing to represent all municipalities in state governmental and administration institutions but not before a Court (Loizidou, Mosler-Törnström, 2012). The amendments of the law could guarantee such an appropriate standing enabling more secure and free exercising of their powers as it is required by the European Charter of Local Self-Government.

The size of tax revenue which the municipalities have the right to regulate is below 10 per cent in the revenue structure of the municipalities (Article 9, paragraph 3 of the the European Charter of Local Self-Government is weakly implemented).

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Local Self-Government in Romania

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Abstract The present chapter addresses the topic of local autonomy in Romania from the perspective of the provisions and principles enshrined into the European Charter of Local Self-Government. It examines compliance with the main provisions of the Charter and explores future challenges. Romanian Constitution and laws consecrates local autonomy and decentralization as the foundation of local self-government in Romania and for the most part the national legal framework is in accordance with the Charter. Slight discrepancies occur for example in the area of consultation of local bodies by the central government. Interesting developments have taken place in the area of cooperation among local authorities as a way to counter weak administrative capacity and fragmentation. Financial autonomy is also a topic for debate in the chapter, given the fact that recent regulations have decreased the autonomy enjoyed by local self-government and have created the premises for greater financial dependency on the central government. The main conclusion of the chapter is that Romania has come a long way, following a period of absolute centralization during the communist regime.

Keywords: • decentralization • autonomy • local government • subsidiarity

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1 Introduction and history

Starting with the medieval period, the territory of nowadays Romania (more or less) had been divided into three principalities: Transylvania in the center, Moldavia to the East, and Valahia or the Romanian country to the South. Three big international powers/empires had exercised their influence over time upon the three principalities: Ottoman Empire, Hungarian and Polish Kingdoms. The political and administrative organization of the three principalities during this historical period is rather diverse, depending upon the international power under which each principality was placed (Papacostea, 1999). The complicated and troubled history of the three principalities is marked however by one common aspiration – unification under one Romanian ruler.

Only starting with the 19th century we can discuss about the emergence of preoccupations regarding the territorial and administrative organization of the Romanian state. This coincides with the unification of two of the Romanian principalities under ruler Al. I. Cuza in the mid-1800s. Following the 1848 revolution, which was unsuccessful from the perspective of uniting the three kingdoms into one modern state, the Paris Convention from 1858 established the foundation for numerous constitutional and administrative reforms. Paris Convention can be described as a fully-fledged constitution imposed by the international powers of the time upon Romania. From an administrative perspective, Paris Convention included one provision regarding local autonomy, namely the establishment of local governments with legal personality/status. Thus, in article 46, Paris Convention states that municipal institutions, both from rural and urban areas, will gain all the development which can be inferred from the provisions of the Convention. This provision will represent the juridical framework for the drafting of the administrative laws from 1864 (Popa, 1999, p. 123).

After the coup d'état from 1864, and the adoption of a Statute based on the Paris Convention, two main laws regarding the administrative organization were adopted: Law for the establishment of county councils and Communal law. As already mentioned, both counties and communes were given legal personality as well as their own patrimony. Both counties and communes were governed by bodies elected based on the citizens' vote (censorship vote). The executive bodies were represented by the prefect at county level and the mayor at the commune level. These two positions were representing at the same time the state and the will of the local citizenry. We can see at this time an interesting mixture between the early seeds of decentralization coupled with a relatively harsh interference of the state. The majority of the decisions and acts by the local authorities were supposed to be controlled by the ruler or the legislative assembly (Dissescu, 1891). The Constitution from 1866 further developed the decentralization framework. Article 4 of the 1866 Constitution states that the territory is divided into counties, the counties are divided into *plăși* (no translation into English is available) and *plăși* are divided into communes. These divisions can be changed only thorough law. Following the 1866 Constitution, it was decided that special laws on administrative decentralizations should be drafted (article 13(1)) (Onișor, 1930, p. 157).

The 1923 Constitution introduced the election of local bodies by all citizens. Starting with 1929, the prefect becomes the representative of the state at county level. The period from 1858 until 1940 is marked by timid attempts to instill the principle of decentralization. However, these attempts were hindered by the constant desire of the central governments to be able to control the local level.

During the communist period, the model implemented in Romania was called *democratic centralism* (Deleanu, 1980, p.343), a contradiction in terms, following the Soviet model. Even if elections were organized at local level, only party members were able to run (Gliga, 1957, p. 5) for office. At this time the state and the party were intertwined. Local administrative bodies were subordinated both horizontally and vertically to the central political power. Local bodies were supposed to propose local development plans in accordance with the national plan. In theory, the popular councils had large autonomy; however political interference was tremendous (Popa, 1999, p. 141). For example, even if local communities had their own budget, this was part of the national budget. Local authorities therefore did not have their own patrimony; they were rather administrators of the national patrimony.

The revolution from 1989 signified transition to a democratic regime. One of the early preoccupations after the fall of the communist regime has been the adoption of a new Constitution to consecrate the new regime. With regard to the organization of the state and the administrative division of the territory, the provisions from the first democratic Constitutions after 1989 reflect some of the concerns of the era. First, Romania was established as a unitary state and this form of organization cannot be changed following a revision of the Constitution. Second, the territorial divisions are listed expressly, namely communes (rural), cities and municipalities, and counties. The latter go back to the 1960s reforms initiated by the communist regime. This provision currently creates enormous challenges – for example regions cannot be established as administrative units due to the fact that a revision of the Constitution is needed (complicated process, it cannot be accomplished without a very comfortable Parliamentary majority – 2/3 of the total members of the senate and Chamber of Representatives). As mentioned before, the express listing of the administrative divisions of the territory were due to concerns that creation of regions may lead to ethnic separation from Romania of the territories with a majority of Hungarian population.

Decentralization has represented from the very beginning a significant component of the public administration reform in Romania. Though significant progress has been made in this area, certain challenges still exist. Throughout the years, the focus of the reform has shifted, following the general evolution of the Romanian political and administrative system and the democratization process. In the early stages, immediately after revolution, decentralization was focused more on the devolution of tasks and responsibilities to local governments coupled with the establishment of mechanisms for the direct election of local representatives and for public participation in local decision-making. In the following stages, as the first steps toward creating local bodies directed elected by citizens

and accountable to them was accomplished, the focus shifted toward increasing efficiency in the provision of public services at the local level. Another significant development during this stage regarded the increase in the number of policy areas/fields placed under the responsibility of local governments such as healthcare, education, and local police. At this stage occurred the first concerns pertaining to weak administrative capacity and the need to increase it by a variety of means. Weak administrative capacity was addressed through a variety of strategies, including proposals for asymmetric decentralization, cooperation among local units/consolidation of fragmented local governments, training of public servants, as well as the creation of new positions aimed at increasing efficiency and capacity such as the city manager. More recently, decentralization reforms have targeted two different aspects: a) Territorial decentralization, with a focus on creating regions which will have elected bodies, fiscal autonomy and a broad range of competences; b) Service decentralization with a focus on efficiency – cost and quality standards for local governments, provision of public services at metropolitan level in order to achieve economies of scale, etc.

Legal framework

Decentralization is recognized as a principle for the organization of local public administration in the Constitution of Romania. Additionally, there were several laws on decentralization in place over the years (the last one is Law no. 195/2006), as well as a law on local public administration (Law no. 215/2001). Most of these laws have been replaced in 2019 by the Administrative Code (OUG¹ 57/2019). The main purpose of the Code was to bring together multiple pieces of legislation concerning the entire administrative structure in a comprehensive and coherent manner. Changes concerning decentralization are minimal to none (in relation to existing regulation in Law no. 195/2006). Although the Administrative Code faced several invalidations by the Constitutional Court, it was finally deemed constitutional in May 2020.

From a regulatory perspective, decentralization (as a principle of organizing the local public administration) is firmly and clearly defined and has legal support both in the Constitution and in organic and regular laws. However, there are high discrepancies concerning the application of such regulations, especially concerning service delivery which is highly dependent on the financial and administrative capacity of local authorities (which varies significantly).

Fiscal decentralization

Romania has reached by now a relatively stable and sound legislative framework regarding fiscal decentralization. This is coupled with more predictable rules on inter-governmental transfers and redistribution of taxes. Additional legal framework on the bankruptcy of local authorities has also been implemented, due to a high increase of the level of local debt. One significant progress has been achieved in the last years in the area

¹ OUG stands for Government Emergency Ordinance

of fiscal autonomy - the increase of local governments' own revenues (generated at the local level). In the case of large municipalities, the share of own resources into the local budget can go as high as 70%-80%. As of 2017, several fiscal reforms of the central government have created challenges in this area, especially in the case of municipalities, leading to a loss of own revenues, but starting with 2020 the situation has been remedied.

Local economic development

In addition to fiscal decentralization, the wellbeing and the prosperity of local communities depend on the efforts of local governments to promote sound local economic development. More and more often, local authorities are forced to move away from the support of traditional economic activities which generate income toward a more innovative approach, such as the support of creative industries, partnerships with the IT sector and the universities, services, etc. Such a shift requires a change of paradigm in how local governments operate – a precondition for this shift is represented by sound strategic planning processes at the local level.

Local government capacity to carry out responsibilities

Romania is an interesting example in this area because the 2006 framework law on decentralization as well as the Administrative Code acknowledge that administrative capacity is critical for a successful decentralization process. Thus, the law acknowledges that tasks and responsibilities should be carried out as close to the citizens as possible; however, the law also states that local bodies should be made responsible for carrying out these tasks only if their capacity is properly developed. The law creates the possibility for the intermediary level to temporarily carry out certain tasks until proper capacity is developed at the local level. Despite this innovative legal framework, in practice differences still exist with regard to how certain levels and units of administration carry out their responsibilities. Important differences occur between urban and rural communities, the latter (especially the small ones - below 2,000 inhabitants), are constantly at risk of not being able to financially sustain their daily operation (an important increase in public sector employees wage level also added significant pressure on local budgets in recent years). As a response to these challenges, the Romanian government, using EU structural funds, created a special operational program for the development of administrative capacity at local level. This program was implemented for both programming cycles 2007-2013 and 2014-2020.

Administrative capacity is an essential factor in the effectiveness of the decentralization process - in general, smaller, rural communities have major difficulties especially concerning the fiscal decentralization, or put in another way, they face a challenge in being financially autonomous, which in turn, eliminates most of the benefits brought by decentralization and actually creates operational and functioning problems.

Citizen awareness and engagement in local governance

Though the election of local governments has been in place for 25 years, the active involvement of citizens in local governance is still a challenge, especially in communities where civil society organizations are weak. While in the early stages of the democratization process local authorities were more concerned with complying with the mandatory requirements from the law, currently they are involved in developing innovative mechanisms for actively engaging their citizens. One of the most innovative tools currently used by various communities is participatory budgeting. Citizens are given the opportunity within the framework of a complex participatory framework to decide which the priorities are in their community in terms of financing and to work together with the local authorities toward the financing and implementation of those projects. Cluj-Napoca was the first city in Romania in 2013 to implement such a participatory budgeting process.

2 Constitution and legal foundation for local self-government

After the fall of the communist regime in 1989, Romania has undertaken significant efforts in order to establish and consolidate its democratic regime, local autonomy and decentralization. The Charter of Local Autonomy was ratified by the Romanian Parliament in 1997, through Law no. 199/1997; however, implementation and recognition of the rights regulated by the Charter into the national legislation has been marked over the years by numerous inconsistencies.

The 1991 Constitution of Romania (with subsequent amendments) states for the first time one of the principles of the Charter, namely local autonomy. The principle is not defined in any way; it is just listed among other key principles for the organization of public administration. The Administrative Code brings a more detailed description of the principle. Article 3(1) of this law defines local autonomy as “the right and the ability of local authorities, within the limits of the law, to solve and manage the public affairs under their own responsibility and in the interests of the local communities they represent”. The national provision is rather similar with the one from the Charter. Starting with 2019, this was maintained from the previous law (215/2001) in the Administrative Code however, no significant changes were brought to the legal regime of local autonomy (for definition see art. 5(j) of the Code).

Both Law no. 215/2001 and the Code regulate specifically and in a limited manner the representatives of local public administrations through which local autonomy is exercised, namely: local councils, mayors, county councils, and the presidents of the county councils, which are freely elected by secret ballot on the basis of direct, equal, and universal suffrage. Mayors and local councils can be found at the level of rural communes and cities, while the county councils and the presidents of the county councils are placed at county level. The Constitution lists all the territorial divisions which enjoy local autonomy – counties, cities, and rural communes. Also, both laws state that local

autonomy is just administrative and financial, therefore excluding the political dimension. This means in the Romanian legal doctrine that local authorities cannot gain legislative competences. Directly elected authorities at local and county level coexist with the possibility to carry out local referendums. This is the most common strategy included for the direct consultation of citizens with regard to local matters.

Local authorities do not enjoy absolute freedom with respect to managing their local communities. Both the Constitution and the Administrative Code state that supervision is carried out by the prefect, which is a representative of the central government at county level. The control of the prefect regards only the legality of the acts issued by the local councils, county councils, mayors and presidents of the county councils. The control by the prefect is described as rather weak, at least in theory. The prefect cannot veto in any way the actions of local authorities. If the prefect suspects that a breach of the law occurred, then he/she will lodge a complaint with the administrative court. It is the court and not the prefect who will decide if a breach of the law really occurred. Even though the national regulation of the administrative control by the prefect was based on the principles laid down by the Charter, aiming at ensuring a European democratic framework for the principle of local autonomy, neither the constitution, nor the law took into account the principle of proportionality, which, in article 8(3) of the Charter states that "administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect". Contrary to the European legal norm, the principle of proportionality is not acknowledged either in the Constitution or in the Administrative Code (it is only mentioned in reference to public contracts).

Local authorities are supposed to be consulted in respect to matters which pertain to the transfer of competences from the central to the local level. Consultation is only mentioned in the Romanian legislation specifically in connection with the process of decentralization (Art. 76-Art. 80, Administrative Code) but is not mentioned as a specific, independent principle of the process (similar to subsidiarity for example). The actual process is a classical top down approach where the central government through its ministries or central agencies does an impact analysis of what competencies are going to be transferred and how. Indeed, the Code mentions that through the entire process the central government must consult the associative bodies of local authorities (such as the association of mayors, or association of County Councils) (art. 78, letter e) but no additional provisions or information are given regarding this. This offers the central government the possibility of a very broad understanding of the "consultation" process which indirectly reduces the influence that local authorities have concerning the matter. The second mentioning of the same (ambiguous) consultation principles refers to the associative representative bodies of the local administration being part of the Technical Committee that is organized under the coordination of the Ministry of Administration.

As an expression of local autonomy, the European Charter, in article 10, gives the right to the authorities of local public administration to cooperate. This recommendation was

implemented by the Romanian legislator through article 11 from Law no. 215/2001, according to which two or more territorial-administrative units have the right to cooperate and to become associated, in accordance with the provisions of the law, by forming associations for intercommunity development, which enjoy legal personality, are subjects to private law, but of public utility. A similar provision is currently included in the 2019 Administrative Code under article 89. This type of voluntary cooperation is however very weak, and it is undermined by the lack of trust local authorities have in each other and by the lack of a tradition which promote cooperation as a means to solve local problems.

3 Scope of local self-government

The Romanian Constitution sets up a two tier local public administration (art. 121, 122, 123), represented through local and county councils as local deliberative authorities and mayors and presidents of the county council as the executives along with central government representatives at the local level (Prefect and deconcentrated services) while also specifying the essential principles for the organization and the functioning of the local public administration (art. 120): decentralization, deconcentration and local autonomy. The first distinction is made between types of authorities functioning at local level: decentralized (local and county councils, as well as the mayor and the president of the county council) vs. deconcentrated (local representatives of the central government – Prefect and deconcentrated services and agencies). This is relevant as the two categories vary with respect to purpose, role, organization and actual functioning. While the ECLSG² defines the concept of local self- government as *the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population*, which reflects the activity of both decentralized and deconcentrated authorities, it specifically states that this right and ability should be exercised by *elected authorities* which in this refers only to decentralized local authorities (local and county councils, the mayor and the president of the county council). The Administrative Code (Title 5) takes the previous regulations from Law no. 215/2001 on local public administration provides further guidance on what local authorities are responsible for, how they organize and function. The organization of the local public administration is based on 5 (art. 75, Administrative Code): decentralization, deconcentration, local autonomy, legality, eligibility and consultation of citizens on local issues of interest. *Local autonomy* is defined basically identical as in the ECLSG (art. 3) with the addition that local autonomy refers only to administrative and financial matters (not political). The principle of *decentralization* is defined by the Administrative Code (art. 5), as the *transfer of competence from central to local authorities* and should be done by respecting the principles of *subsidiarity, financial soundness* - providing the resources necessary for the exercise of the decentralized competence, *responsibility* – use of quality standards local public services, *stability and predictability* of the process, *equity* – equal access of all citizens to public services and *budgetary constraints* – impossibility to use national

² European Charter on Local Self Government.

financial resources to cover local public deficits. The responsibilities of local decentralized authorities are divided into three categories: exclusive, shared and delegated competence. The first category (exclusive competence) is rather wide, including public utility services (gas, water, sewage, garbage disposal), local transportation infrastructure, urban planning, public transportation, public property management, child protection, assistance in case of domestic abuse, public lighting, etc. The second category (shared with central authorities) includes household heating provided through the centralized heating infrastructure (no. of users has reduced significantly in the last 10 years, and it remained viable only in Bucharest, where economy of scale allows for efficient supply of the service), social housing, pre-university education, public order and safety, social assistance, disaster management, social and medical assistance to social cases, primary assistance for people with disabilities, local transport infrastructure (towns), census and population record services. The third category (delegated) refers to allowance payments for pupils and people with disabilities. It's worth noticing that transport infrastructure features in both categories (exclusive and shared competencies), but the shared competence applies in rural areas mainly because of low administrative capacity of these authorities. This offers the necessary legal support for transfer of resources from central levels for specific public interest projects without braking the principle of local self-government. Another element worth mentioning is that the central government can transfer competencies from local to county government (for a determined time period) if local authorities display low administrative capacity. Administrative capacity is evaluated by the Ministry of Internal Affairs and Public Administration and the evaluation report represents the legal grounds for such a decision. The criteria used for administrative capacity evaluation are: strategic planning capacity, financial management capacity, human resource management capacity, project management capacity and legality of action

4 Protection of local authority boundaries

According to the local public administration law (Law no. 215/2001) and the Administrative Code, the limits of each administrative unit (at both local and county level) are established by organic law (adopted by the Parliament) while any modifications to these limits need to be first approved by the residing populations through a local referendum. Thus, local authorities benefit from a high level of protection for their boundaries as any modification needs to be approved first by the population and then by the political representatives. One element that should be mentioned is the high fragmentation of authority especially in rural areas. At present there are 320 towns and cities and 2861 communes (rural area) with most of the second category having trouble generating enough revenue to cover their expenses, leading to an overly high financial dependence on the central government, in spite of legal decentralization and local autonomy.

An important point of discussion concerning the high level of protection of local authorities' boundaries deals with its overall impact on the effectiveness of local

government. While Romania sits at the top of the EU countries in this respect (EU self-rule index) along with Lichtenstein and the Czech Republic, it is noteworthy to discuss how the existing constitutional provisions which offer such high protection to legal authorities influence their activity. Because of the specific constitutional reference and listing of all types of local authorities, any change concerning this (types of local authorities) means basically a constitutional revision process, which (as expected) is quite complex and difficult to do. In 1991 when the first Constitution³ was adopted, the legislator introduced an exclusive list of local authorities (mentioned earlier) to avoid any potential risk of separatist movements in the regions of the country where the Hungarian minority was dominant (for more on this, see Salat, 2013). Today, the political and administrative landscape is very different and the challenges the country faces are also of a different nature. As the last constitutional revision from 2003 did not bring any changes concerning this, any kind of change towards introducing a new level of local government or changing the actual structure would need a constitutional reform. This translates into high levels of rigidity in creating any other forms of local entities, with the most obvious examples being the Development Regions and the different forms of associations between local authorities (metropolitan areas, regional service provision agencies) which have very limited authority mostly because of the existing constitutional provisions concerning local administration⁴. There are several critiques regarding the overall effectiveness of these forms of associations mainly lack of transparency and accountability (not being elected bodies), slow and ineffective decision making, limited financial resources, overlap of responsibilities with other local public authorities (Hinteă, Neamțu, 2014). This indirectly led to a new approach (starting with 2008) toward local development by the central government focused around growth poles which had mixed results mostly because of a poor understanding of the concept but also because of the actual set up and functioning of the newly formed associative structures around big cities that had limited results (Hinteă, Neamțu, 2004).

In conclusion, the current situation concerning the protection of local authorities can be seen as a double edged sword: on the one side, local authorities have high levels of protection against any arbitrary decisions by the central government but on the other hand, this also bring a high levels of rigidity concerning the institutional architecture of local government, making any reform movements hard to implement.

5 Administrative structures and resources for the tasks of local authorities

The local authorities right to adopt their own internal administrative structures as well as ensuring effective management of local public services, along with the responsibilities and limits of exercising their authority are regulated through the new Administrative Code (taken from the previous law on local public administration, Law no. 2015/2001) . Title

³ We refer to the first Constitution after the fall of the communist regime in 1989.

⁴ The issue is analyzed thoroughly in section 9 of the chapter.

V of the Administrative Code is dedicated entirely on the organization and functioning of the local public administration. More specifically, the Code defines everything from the election, creation, functioning of the Local Council and City Hall, as well as the main responsibilities and limits of their authority. Those tasks regard the organization and functioning of the special apparatus of the mayor and of public institutions (154-158), services of local interest (including companies and autonomous agencies of local interest) (art. 130), the economic and social development of the administrative unit, the administration of public and private property, the delivery of public services to citizens, and the inter institutional cooperation (both internal and external) (art. 129).

The local council approves, under the terms of the law, at the proposal of the mayor, the organization chart, the staffing schedule, (the number of personnel and the organization and functioning regulations) of the own/mayor specialty apparatus, of the institutions and public services, as well as reorganization and staffing schedule of the autonomous agencies⁵ of local interest; In this matter, the provisions of Romanian legislative framework comply with article 6 of the Charter, as long as the local councils can adopt their own regulations on their organization and operation and adapt the rules to their specific needs. As long as one of the initial tasks of the local council consists of approving the council's charter and the regulations for the organization and operation of the council, the mayor apparatus and other local public institutions, it is clear that the county councils' decisions govern the organization and operation of the local authorities.

More recently, we have started to witness interesting “innovations” at the local level in terms of establishing new types of structures. Thus, at the level of the capital city, Bucharest, numerous public companies were created, which are meant to perform tasks which in the past were contracted out (energy, sustainable development, etc.). It is not clear if this trend will be followed by other public authorities.

Romania adopted a civil service statute. The regulations on civil service are governed by Law no. 188/1999. The legal framework on organization and development of civil servants' career is completed by Government Decisions no. 611/2008 and no. 761/2017. The institutional framework on recruitment includes The National Agency of Civil Servants (ANFP), institution which was established with the purpose of ensuring the management of civil service and that of civil servants. Through its attributions, ANFP monitors and controls the law enforcement regarding civil servants and establishes criteria for public civil servants' evaluation. Another important institution in the national framework is the National Institute of Administration (INA) (re-established by Government Ordinance no. 23/2016, under the coordination of the Ministry of Regional Development and Public Administration) with attributions on public civil servants and contract staff (also employed by local authorities) training. Through law, ANFP and INA collaborate on establishing the specific themes for public administration staff training.

⁵ In the Romanian language these agencies are named *regii autonome*.

Staff training is undergone at local level also through specific short-term training programs provided by private institutions.

The number of staff that may be employed by the Romanian public authorities is settled through Law no. 13/2011 on the approval of Government Ordinance 63/2010 which modifies and complete the Law no. 273/2006 on local public finance.

Regarding the remuneration conditions, since 2017 there is a new Framework Law no. 153/2017 on publicly funded personnel salaries which ensured an important increase in the level of wages in local public administration. At the level of the Romanian society there is an important debate over the fact that through the law (article 11) the base wage level of local civil servants and contract staff are established through local council's decision. This lead to unsustainable personnel expenditure levels, especially at the level of small communities' local authorities which were covered through central government transfers, and lead the way towards increasing dependency on central government allocations.

6 Conditions under which responsibilities at local level are exercised

As mentioned, Romania has a two tier (non-hierarchical) local public administration with county and local level authorities - art. 121 of the Romanian Constitution states that “the authorities of the public administration, through which the local self-government is carried out in communes and towns are the elected local councils and the elector mayors, in the conditions set out in the law”. Art 121 continues and defines the main responsibilities of these authorities as follows “the local councils and the mayors operate, according to the law, as autonomous administrative authorities and deal with the public affairs in the communes and towns” while the next article (art. 122) defines the role of the county councils: “the county council is the public administration authority responsible for coordinating the activities of the local councils in towns and cities, with the purpose of delivering public services at county level”. The principle of separation of powers is maintained, with the councils representing the deliberative authority while the mayors the executive one. The Romanian Constitution also includes the Prefect in the section of local public authorities but it defines its specific role as central government's representative at the local level. It is directly appointed by the government (through an order of the Prime Minister) and heads the services offered by central authorities at local level. Thus, the Prefect does not fall under the definition of the ECLSG article 3. With respect to the free exercise of the function for local elected representatives, Law no. 393/2004 provides the specific situations in which the elected officials' mandate ends⁶ with very few differences between mayors and local or county councilors, while otherwise they are offered protection, with free exercise and liberty of expression during their mandate is guaranteed by law – according to art. 21 (Law no. 393/2004): “elected officials are not legally accountable for opinions expressed during their term”. Furthermore, any actions taken by

prosecutors against them (retention, arrest, start of a penal inquiry) are communicated to both the Prefect and to the corresponding local authorities in a maximum of 24 hours. Financial compensation is specified by Law no. 153/2007) with an average increase or approx. 30% (compared to 2016) in salaries for personnel working in the local public administration, including elected officials. All local public elected officials enjoy social welfare with recent attempts to introduce them also into the special pension system (military, judiciary, members of parliament). Initially deemed unconstitutional by the Constitutional Court (decision no.581/2016), the new Administrative Code of 2019 allows the mentioned benefits for elected local public officials (but the implementation was postponed by the government for 2021). Besides the salary, local elected officials in an executive position (mayor/vice mayor, president of county council/vice president of county council) have the expenses linked to exercising their function covered separately from the budget of the institution. Lastly, spending for professional development programs are also covered through the institutional budget.

With respect to the regulations on incompatibilities, the law provides a set of special working conditions for local elected public officials. First of all, once elected, the previous labor contract is suspended throughout the entire term (local councilors are exempted from this), the only exceptions being holding a teaching position, journalist with professional accreditation, researcher or working in the field of art and culture (art. 28, Law no. 393/2004). The law requires that all elected officials declare any situation where one's personal interest conflicts with the general public interest, and in the case of councilors, if that interest is not patrimonial, they are still allowed to vote on that particular matter (art. 47, Law no. 393/2004). The law also defines a situation where one has a personal interest as (art. 75): "local elected officials are considered to have a personal interest in a matter if they can anticipate that a decision of the public authority from which they are part of, could generate a benefit or a disadvantage to them personally, spouse or member of family, grade I and II relatives, any person or firm they have a contract with, another public authority they are part of, any firm to which they own are paid by, are an administrator to, and NGO or Association to which they are part of. Thus elected local officials have to submit a personal statement of interest, when taking office, which has a public character and can be accessed publicly.

Another important prerequisite of the law is that local elected officials cannot sign contracts with any public or private companies for service delivery if they also serve as: president, vice president, director, administrator, member on the boards of administration or any other executive function in the company.

7 Administrative supervision of local authorities' activities

Administrative supervision over the local public administration is done by the Prefect, the central's government representative at the local level. The legal support for this is given both by the Constitution (art. 123) which establishes both the procedure of

appointing him/her⁷, relations with the other authorities (no subordination relations with the other local authorities) and the main responsibilities of the Prefect – heading central government’ services at the local level and administrative supervision. In 2004, the adoption of Law no. 340/2004 redefined the position of the Prefect (and Deputy Prefect) as a Senior Civil Servant with the main purpose of reducing the political influence over them. However, according to several reports (Frecon, 2011; AMR, 2017) this political influence of the central government over prefects, and indirectly over local authorities, is still high.

Administrative supervision over the local authorities (or administrative tutelage or guardianship as it is called in the Romanian literature) can be exercised according to law by two institutions: The Prefect and the National Agency of Civil Servants (NACS). Law no. 554/2004 defines this right for the two types of institutions as follows (art. 3): “the Prefect can bring in front of the administrative courts any administrative acts issued by elected local authorities⁸ if she or he considers them illegal” and “the National Agency of Public Servants can bring in front of the administrative courts any administrative acts issued by central and local authorities which go against (don’t respect) existing legislation regarding civil service”. In both cases, until the courts take a decision, the administrative act that was attacked in front of the courts is automatically suspended. Until 2007, the procedure implied an initial request for re-analysis of the administrative act by the issuing authority with the purpose of rectifying the legality problem (modification or recalling) before the actual referral of the administrative court with over 80% of the issues being resolved at this level without administrative referral. In spite of this, this part of the procedure was eliminated from the legislation starting with 2007 (Canepa et. al. 2011). Thus, from this perspective, the provisions of art.8 paragraph 1 of the ECLSG are fully respected.

With respect to the scope of the Prefect’s supervisory activity, it is limited to legality of the administrative acts (not the opportunity) – in other words the only condition in which the Prefect can exercise this function is if she or he deems the act as not legal. However, the implications of this provision are the following: besides the situations in which local authorities adopt acts that are considered illegal by the Prefect and thus brought up before the administrative court, the Prefect can also exercise this supervision upon the *actions* of the local authorities (Canepa et. al.2011): situations of *administrative silence* – situations in which local public authorities do not respond to a petition formulated in accordance with the law, in the due period specified by law (30 days) or the *unjustified refusal to resolve a petition* – situations in which authorities refuse to respond to solution the problem signaled through a petition without offering the legal mandatory motivation for the refusal, in accordance to the law, for the specific situation signaled by the petition.

⁷ At the proposal of the Minister of Administration and the Interior, the government appoints a prefect in each county and in the municipality of Bucharest (Law no. 340/2004).

⁸ Mayor, Local and County councils

In light of all this, we consider the administrative supervision exercised by the Prefect over local authorities as proportionate, as the only basis for this supervision is the legality of the adopted acts, not their opportunity.

8 Financial resources of local authorities and financial transfer system

Decentralization is a complex and multi-dimensional process which implies, along accountability, a high level of financial autonomy. The concept of decentralization is tightly connected with responsibilities and authority transfer for civil service, from the central to the local level.

In the case of local public finance, decentralization means, along the high degree of independence, a proportional increase of local authorities' responsibilities in obtaining and managing resources. In the case of Romania, the level of public services provision by local authorities has increased continuously since 1989, but a lack of appropriate level of resources, that threatens the proper functioning of public services provided to citizens, continues to exist. An efficient use of public resources is vital, and identifying multiple innovative financing instruments for local authorities is necessary.

An important problem regarding central-local relationship, with important implications on decentralization is the lack of a clear set of objectives that should be attained over time, which is a source of instability in intergovernmental relation, and of an ineffective supply in the case certain public services.

Legal framework modifications

Post-communist Romania legislative framework regarding the functioning of local public administration was established almost two years after the fall of the communist regime with Law no. 69/1991, which set the functioning rules and distinct attributions for the first elected local administrative bodies next year after the law was enacted. Through this act, four principles of functioning were set: local autonomy, decentralization, eligibility of local public administration authorities and consultation of the citizens in particular/special interest issues.

The law designed the system of local public administration budgets, and set the type of revenues that were at the local authorities' discretion, which institutions could dispose freely of, in order to properly organize their activities and provide public services to citizens. Another part of them (an important one) were actually earmarked or special destination transfers from the central budget. In the same year (1992) through an ordinance, the Romanian Government established the main exclusive type of financing sources for local budgets, which consisted especially on property taxes. At that time those type of revenues were not actually own revenues, as the collection was in the hands of Finance Ministry's representatives. In 1994 through the Law no. 27 on local taxes, those types of revenues were settled as local public administration own revenues.

The real financial decentralized system of the Romanian public administration was put in place starting with the enactment of Law no. 189/1998 on local public finance, which set the rules on the collection and management of financial resources (by creating the framework for own local bodies that established controlled and collected the taxes that were set up in the following years), and enacted the competencies and responsibilities regarding local public finances. This act allowed for a higher degree of financial autonomy, and its implementation led to an important increase of the local taxes collection rate - with almost 10% in the first year of functioning of the local tax authorities' units. Ten years later, the collection rates increased by more than 20%, recently the average rate being settled around 85%.

The legislative framework evolved later on, and a new act regarding local public administration – Law no. 215/2001 was enacted, which complemented the four previously set principles (in 1991) with the legality principle. In 2006 the law was amended, introducing the principle of deconcentration of public services.

The year 2004 was another milestone in increasing the level of financial autonomy, once the Fiscal Code manage to unite all provisions into a unitary set of rulings, and the Government Ordinance no. 45/2003 on local public finance came into force increasing the level of local financial resources and financial autonomy by including the share of the personal income tax collected at local level in the own revenues category, and by establishing an equalization procedure in distributing several central type of revenues (especially VAT) at local level.

The reform of local finances was completed in 2006, when a package of laws on the reform of local public administration was promoted, which contained a new law of local public finances (Law no. 273/2006), a framework law of decentralization (no. 195/2006) and a law that amended the Law no. 215/2001 on local public administration.

The new law on local public finance refined the previously settled equalization system of distributing central revenues at the local level (VAT) and part of the income tax, with the main aim at supporting those administrative units that were in a difficult financial position.

The introduction by the new law of an algorithm through which the funds were distributed based on transparent and objective criteria, so that an important part of political discretion was eliminated in the process of distribution of the funds from the central and county level and also manage to create supplementary control levers on enforcing legal provisions for the local authorities.

In the latter period (starting from 2015 on) we are witnessing an important setback in local financial autonomy and objective distribution of financial resources.

The equalization procedure has been changed since 2005 (initially through Governmental Decision no. 14/2015), and since then, the distribution is made through yearly National

Budget Law. The new procedure (adopted without previous notice or any consultations with local representatives) imposed a minimum revenue level per administrative unit, and had an important effect on multi-annual projects of local authorities, as there were reported cases of 50% variations in allocations for several administrative units (Nalas, Levitas, 2016, p.108).

Moreover, successively, the share of the personal income tax (that constituted a direct own revenue of the local budgets) decreased over time – from 2006 to 2017. Another measure that affected local budgets (especially in the case of urban areas) was the change of the national income tax rate, from 16% to 10%, announced at the end of 2017. This type of income amounted for almost 40% of total local revenues, and in several cases of large municipalities a drop of 25% in own revenues was recorded. At the time, insufficient efforts of the government were made by the central government - a small percentage increase in the shared tax quota - but that measure was only a small patch on the bleeding wound created. Since 2020, the central government policy on personal income tax has changed allowing for this type of revenue to be entirely distributed at local level (county and local budgets)

The introduction of The National Local Development Plan, through which the central government financed local development projects, decreased the appetite of local governments for EU financed development projects, and also increased the level of dependency for central funds which, in the case of this program, were distributed based on political preference, and not on clear objectives and criteria.

Post-New Public management theories draw the attention on the issue that decentralization could have unanticipated and unintentional effects. Excessive authority and discretionary power of local elected officials in program implementation and funds use lead, in many cases, to inequitable and inefficient fund allocation, unjustified expenditure and corruption (the case of several Romanian public officials at local and county level).

The allocation system of shared income tax is (probably) not the most efficient from the perspective of addressing the needs of the local communities with a lower level of economic development. A study developed by Public Policy Institute ascertains that “after the introduction of income-tax shared quota, and after receding progressive taxation system, an interesting and unplanned by central level planners and decision-makers phenomena took place: the disparities between localities have increased even more, as the income tax is collected especially from urban areas” (IPP 2010 (1), p. 15).

On the issue of local authorities borrowing for capital investment, Law no. 189/1998 on local public finance was the first one which enacted a clear set of rules on that matter. Through the provision of that and subsequent law on public finance, the local and county councils were allowed to approve the contracting and guaranteeing of internal or external

loans on short, medium and long term to carry out public investments of local interest and refinance debt.

Several changes to the legal regime of local borrowing in Romania were made over time: the debt limit was set at 20% from own revenues, further on modified to 30%, nowadays being set at 30% of a mean of own revenues minus revenues from asset sale. Other changes, such as the prohibition of access to loan resources for local governments registering arrears or insolvency of administrative-territorial units are seen as inappropriate "In those global perspective shows that the accumulation of budgetary arrears, meaning more important real local deficits, has triggered, to a certain extent, a vicious circle, on the one hand the access to local borrowing being limited if there were premises of insolvency, but, on the other hand, the removing of those premises (the payment of arrears) depending on the possibility of local authorities to borrow" (Oprea, 2015, p. 8).

As a conclusion, the evolution of local public finance legislation in the post-communist era, and post-adoption of the Law no. 199/1997 for ratification of the European Charter of Local Self-Government lead to an improving situation regarding the financial situation and position of local authorities.

The architecture of local budgets revenues has been developed, taking into consideration the need of adequate financial resources.

The situation is far from being perfect in terms of correlating the revenues with the legal responsibilities of local public administration; several former central responsibilities were transferred toward local budgets in areas such as education, social assistance and health system, without a proper financial support.

In terms of type of revenues, the funding sources have diversified over time. Although the tax rates are set by the national authorities, the local authorities have the right to increase the local tax rates with as maximum 50% (since 2016, until then with 20%). The consultation process between government officials and representatives of municipalities, communes, and county councils' associations was fairly consistent over time, with specific moments in time, when several measures were taken without any consultation (see the change in equalization mechanism).

Even though the conclusion was drawn in 2001, it is still a reality nowadays: „the degree of decentralization increased in the last years, several services administration being transferred from central towards local level. The implementation of decentralization has many times been made without a previous assessment of local conditions, which would have allowed for a better approximation of the necessary number of decentralized tasks and time period" (IPP(1), 2001, p.35).

In conclusion we can observe several obstacles in the process of decentralization that occurred over time, such as:

- Financial resources that are insufficient in the context of decentralizing services (especially in the case of education, social assistance and health services' management transferred to local authorities);
- Unclear allocation and use of central level resources, which is often not based on objective criteria, but discretionary allocation, based on political party membership (the case of Government-funded specific development programs – National Local Development Plan);
- The lack of a professional body of public servants to deal with the increasing number and scope of tasks transferred to local authorities;
- Unclear objectives and standards in decentralizing services.

9 Local authorities' right to associate

The legal framework on local public administration structures functioning was regulated through primary legislation - Law on local public administration, no. 215/2001 (through its initial form and following subsequent modifications), but also through secondary legislation - Law no. 195/2006 on decentralization, public utilities and services, Law no. 51/2006, Law on local public finance no. 273 / 2006, Law no. 554/2004 of the review of administrative acts (and the Law no. 262/2007, which modifies Law no. 554/2004), Law no. 351 of 6 July 2001 on the approval of the spatial planning of the national territory (Section IV Human Settlements Network), and Law no. 96/2006 for adopting the government Ordinance 53/2002 on framework starts of administrative units. Other issues on cooperation between local governments are the subject of Law no. 246/2005 for approving Government Ordinance no. 26/2000 on associations and foundations, but also in Law no. 315/2004 on regional development in Romania.

In the current legislative framework (Administrative Code, art. 89), the local public administration authorities have the right, in the limit of their competencies, to cooperate and to associate with other Romanian or foreign local public administrations / local governments. The legal framework allows local governments to adhere to national and international associations, in order to protect and promote their common interest, and to establish partnerships and to participate in initiating and accomplishing regional development programs: „Local and county councils from border administrative units have the right to establish trans-border partnership agreements with similar authorities from neighbor countries, in the limits of the law”(former article 11 of the Law of local public administration no. 215/2001, now article 89 of the Administrative Code).

The law also settles the way can take part at the association: „Local autonomy is characterized also through the right of local councils to decide on participating with capital or property, in the name, and in the interest of local communities which they represent, to constituting companies or to establish local or county public services”.

The principles stated in article no. 10 of the Charter are of maximum importance for the Romanian local governments on several directions: regionalization, cooperation with national and foreign local governments in influencing public policies and implementing common development projects and provision of certain public services through common development projects.

First association forms used by Romanian local governments were used to create representative bodies which aimed at collaborating with national government and parliament in the processes of public policy making and in the procedure of consultation of legislative initiation:

1. „National Union of County Councils in Romania (UNCJR) is a non-governmental organization comprising on free consent the County Councils, as authorities of local public administration. UNCJR represents the interests of county councils, both in the relation with the executive power and in the relation with the legislative power, supports the direct participation to legislative initiatives and it is present whenever necessary in the consultation process for public policy making. .
2. Association of Municipalities in Romania (AMR), created in 1990, comprises the towns that were declared municipalities, respectively 103 members. It is a dialogue partner for Government and Parliament of Romania to support the interests of local authorities and common interests of local communities related to central public administration, non-governmental organizations and third parties.
3. Association of Towns in Romania (AOR), represents the interests of 210 small towns in Romania. It was set up in 1994 in view to improve the role of local authorities related to central administration, formulating proposals to change or complete actual legislation.
4. Association of Communes in Romania (ACoR) represents unitary the interests of communes in Romania related to any entity, governmental or non-governmental, organized at national, regional, county or local level. It has the right to legislative initiative of some drafts for normative deeds and to formulate proposals in the process of elaborating drafts for normative deeds.
5. Federation of Local Authorities in Romania represents the member association structures (AMR, AOR, ACoR) in relations with the Government, Parliament of Romania and other public authorities and institutions. It represents the interests of the local authorities in the context of the present national political system, the joint interests of local communities in the relations with central public administration, non-governmental organizations and third parties on domestic and international level” (Matei, 2009, p. 11).

Regionalization

Through the Law no. 199/1997, Romania ratified the European Charter of Local Self-Government, with the exception of article 7, paragraph no. 2 and declares that the notion of regional authorities is ”translated” into county local public administration authority, according to the legal framework in act. (Law no. 199/1997). Shortly after the adoption

of this law, the Romanian legal framework on regional development was completed with Government Decision no. 761/1997 which settled the institutional framework which will promote the national regional development policy until the adoption of a specific law. The forecasted regional development law was prone to establish the institutional framework, the principles, the objectives, and the specific instruments of Romania regional development policy.

In today's Romania, the implementation of local as well as regional development projects is a difficult task due to the high degree of administrative fragmentation. This issue commonly leads to a division of resources and economic development funds (Săgeată, 2013, p.18)

Shortly after a specific law concerning regional development and the creation of "regions" was adopted - Regional Development Law no. 151/1998 which set the basis for a voluntary cooperation of Romanian counties to create 8 development regions according with the NUTS 2 classification. Later on, the institutional framework for the regional policy has been completed through Law no. 315/2004. Implementing regional development projects is a difficult task due to the high degree of administrative fragmentation and the overall lack of legal authority of the regions. The 8 regions lack legal status which means that they are not considered to be real administrative-territorial units; they are actually a framework for the establishment, implementation and evaluation of regional development policies, and collection of statistical data. Although legislative created a new institutional network for the regions (the National Council for Regional Development (NCRD), the Regional Development Councils (RDCs) and the Regional Development Agencies (RDAs)) this did not solve the initial issue of legal authority. Benedek and Bajtalan (2015, pp. 26-26) identify two basic problems that arise from the implementation of Law no. 315/2004: "first, the criteria for area designation are heterogeneous and not consequently applied... The second main problem is related to the fact that the development regions in Romania do not have financial and legislative competencies. They fulfill two main functions: a statistical function and an implementation function for the EU cohesion policy. It means that they have no executive or legislative powers, and are subordinated to the governmental level which distributes the financial resources to them. The regionalization was top-bottom oriented and it is the result of consulting a very limited number of actors".

Intercommunity associations / Metropolitan areas

One specific aim of the modification of the legal framework on local government associativity is intercommunal cooperation set through the means of creating development units – such as Intercommunity Development Associations and Metropolitan Areas.

The Law no. 351/ 2001 (on the Approval of the Spatial Planning of the National Territory) and Law no. 215/2001 on public administration are the laws through which metropolitan

areas were established based on free association. The partnerships made voluntarily between the big urban settlements (all cities considered county seats⁹) and the urban and, as well, rural localities around the urban center, assuming cooperation relations on multiple levels.

Metropolitan areas were initially organized as entities without legal personality, but were able to function on a perimeter which is independent on the limits of territorial administrative units, established on common agreement by local public administrations (Dumitrică and Dinu, 2013, p. 126).

Today's context and legislative framework is considered one that is actually not substantially supporting the real development of metropolitan areas (MAs). There is an important number of issues that arise, and situations that hinder the implementation of territorial and urban projects. The main issues are mentioned in a document designed as a part of the Romanian Territorial Development Strategy:

- “The lack of clarity of the role, competence and responsibilities between the MA administrations, the local public administration and the county public administration;
- The relation and support of the MA with the decentralized institutions of the national public administration at local level;
- The limited number of financial opportunities for MAs;
- The limited number of management and implementation instruments (MRDPA, 2013 p. 12).

Intercommunity Development Associations (IDA) were further regulated through Law no. 286/2006 (for amending and completing the Law on local public administration no. 215/2001). Being, at first, a type of entity created by the association of local administrations governed by public law, the intercommunity development associations have been qualified as private law structures that possess public utility status. Also, through Law no. 554/2004 (on the review of administrative acts) the development associations were assimilated to public authorities. This form of association is used on a large scale in providing public utilities services like waste management, waste water treatment and water provision and in implementing other large scale development projects.

In practice, over time there have been many legal issues concerning these associative structure (MAs and IDAss), mainly due to the lack of or improper regulations on territorial design. In many cases the development associations excluded certain localities from the support and influence area of the first-rank-city, which lead to the diminishment of the capacity of the associations to constitute a powerful and attractive development pole. In fact, many partnerships are initiated for solving specific problems and not as a result of sharing a common integrated vision. (MRDPA, 2013 p.12).

⁹ Informal classification referring to the biggest city in the county considered the counties capital city

The issue was addressed in the Administrative Code, and since 2019 Metropolitan Areas, as well as Urban Agglomerations are regulated as IDA's with legal status.

Trans-border

Regarding the issues of trans-border association, Romania, through Government Ordinance no. 120/1998 ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid, 1980, 21st of May). The Romanian local authorities' right to associate and the conditions applicable to their associations were laid down in Law no. 215/2001, in the sections 11 to 17 (currently, sections 9-16 of art. 89 of the Administrative Code).

On the issue of the association of local governments through the section 12(2) of Law no. 215/2001, the government allowed the associations of administrative-territorial units. This permission was given in the context of national development programs which were financed on an annual basis from the state budget by means of a separate allocation, in accordance with the law on local public finances.

The Romanian local administration needs well-grounded solutions regarding the issues of administrative units' fragmentation. Even though significant progress was made, administrative units' associations must be further stimulated with a more clearly legislative framework. One such case is the one of IDAs (Intercommunal/Intercommunity Development Associations). The main problems appear when after such an association launches common projects and one or several of the members decide to leave the structure. There is no clear path to be followed in such cases, so important community projects are suspended, because of a lack of clear responsibilities. The legislation could also be amended in the sense of allowing local administrations to use their financial resources in a wider area of projects than the ones allowed at this time.

The issue of financial autonomy of local administration could be tackled based on association approach – an important issue of local public administration in Romania is a high degree of dependency on central funding, especially for the budgets of small communities such as communes and small cities. A low level of financial resources affects, as well, the capacity of funding development projects and community services, whose integration could increase the multiplication effects on local economy or solve long lasting local problems.

10 Legal protection of local self–government

The implementation of article 11 in the Romanian legislation is not straightforward, but steps have been made once the Law no. 554/2004 on the review of administrative acts with its subsequent changes was enforced.

A report of the Congress of Local and Regional Authorities drafted in 2011 evaluates the implementation of article 11 of the Charter into Romanian legislation, situation that is unchanged since that time:

- „Romanian legislation does not grant the local authorities a right to lodge a legal remedy in order to secure the free exercise of the right to local self-government. Nonetheless, the local authorities can take legal action, before the ordinary courts, to demand compliance with the provisions of the Constitution and/or domestic legislation that affect them directly.
- The local communities, the administrative-territorial units and the local or county authorities do not have their own right to lodge a complaint before the Constitutional Court, but administrative-territorial units can address the Constitutional Court by filing a plea of unconstitutionality. There are a number of examples of decisions in which the Constitutional Court has ruled in the local authorities' favor.
- Similarly, the local communities, the administrative-territorial units and the local public authorities defend their right to self-government, which is understood to be an individual right, before a court (administrative tribunal or court of law). The only remedies available to certain local public authorities concern their composition and their internal organization. These local public authorities can be considered an aspect of administrative self-government, in the sense given by the institutional law to this concept. However, these remedies do not constitute effective legal protection for self-government within the meaning of the Charter” (Frecon, J-C, 2011).

11 Future challenges of the implementation of the European Charter of Local Self-Government in Romanian legislation

In the last 30 years, Romania's administrative system has seen major changes and has come a long way towards a modern European administrative system. Although the change process was slow, at present the existing administrative framework is in line with its western European counterparts. This does not mean that there aren't still areas open for improvement.

Several elements stand out from our analysis on the topic¹⁰:

1. *Decentralization and local autonomy* have been a central element of local public administration reform. The two concepts have developed along the lines of the Charter's prescriptions, with a few observations: (1) although the essence of the concept of self-government is well covered in the Romanian legislation, the actual autonomy local governments have is limited to financial and administrative matters, not political (avoiding any secessionist possibility). Furthermore, when looking distinctively at local autonomy, compared to other European states, Romania finds itself in the middle of the group, but with a significant jump compared to 1990 () (Ladner, Keuffer, Baldersheim, 2015).

¹⁰ Part of these conclusions are also published in *Lex localis - Journal of Local Self-Government*, special issue/2018

2. Consultation mechanisms between central and local authorities are not sufficient and clearly implemented in the national legislation. While there are legal provisions concerning this process (when establishing standards of cost or standards of quality for local public services), the actual process of decentralization – specifically transfer of competence – is centrally driven. Local authorities have the possibility to make suggestions, the suggestions can be piloted and then a decision is made, but the overall architecture offers more of a power position to central government. This issue is highlighted by the lowly place occupied by Romania in EU rankings concerning access of local authorities to central government decisions – the capacity of local authorities to influence central government decisions that directly affect them or be consulted on such matters (Ladner, Keuffer, Baldersheim, 2015).
3. *Legal protection of local authorities* (art. 5 of the charter) is fully adopted and endorsed, placing Romania on the highest position together with the Czech Republic and Lichtenstein, regarding this matter. The downside of this high level of protection is rigidity – any real reform concerning the local government would involve also a constitutional revision.
4. In the matter of local government financing, Romania has made important steps in increasing and diversifying the sources that allow local authorities to reasonably provide local public services, however there is still a shortage in providing appropriate level of resources to local governments, issue that negatively influences the quality of public services provided to citizens (especially in communities with a lower level of economic development). The level of financial autonomy of local governments was truly settled in 2003-2005 when the level of local financial resources increased significantly due to the inclusion of a share of the personal income tax collected at local level in the own revenues category, and by establishing, and further developing an equalization procedure in distributing a traditional central type of revenue - VAT at local level, procedure that was settled on transparent and objective rules. In the later period we were facing a setback – instead of continuing the initial positive trend, central government authorities were trying to reverse the process, but for the following period there are important signals that the situation will positively change. For a period, due to poor performance of central authorities in creating the institutional framework for absorption of 2014-2020, allocations European development funds have decreased in importance – those sources being replaced with funds distributed through National Local Development Plan (an instrument that did not use clear objectives and criteria in selecting projects, but political preference / influence). Future challenges in the matter of financing of local authorities are related with increasing the level of financial autonomy, restoring the system that has proven to be functional, and reducing the discretion level of central authorities in distributing resources at local level. Another challenge is connected with accepting that, in certain cases, the actual administrative framework is not efficient (several rural local authorities do not have the financial capacity to cover operating expenditure with own revenue). The consultation process between government officials and representatives of municipalities, communes, and county councils should take place, as several measures were taken without any consultation

of local representatives (see the change in equalization mechanism, and income tax rate). Compared to other EU countries, Romania ranks low, with a score of 1 (scale 0-3) on fiscal own reliance of local authorities, with overall mean of own revenues of local authorities not going beyond 25% out of the total local budget. This has important effects on the actual capacity of local authorities to influence their own development. High dependence on national funds has generated high levels of corruption, low effectiveness of public investment and increased influence of political factors in fund allocation and decision in general (for more on this matter see EFOR, 2018).

5. Administrative supervision is rather limited and regards only the legality condition – all administrative acts issued by local authorities need to be in line with national legislation. The Prefect is the institution responsible for this with the final decision on legality being the responsibility of administrative courts.

In the case of the right to associate important steps have been made in providing the adequate legal framework. Associations of local administrative units are granted and formally supported, but the legislation does not fully support such entities. Therefore, all associative type entities should be further regulated in the sense of providing necessary authority to make a significant impact at local level concerning local development and overall governance (whether it is regions, metropolitan areas or intercommunity development associations). Over time a complex system of local governments associations was created – representative bodies of local authorities and intercommunity associations. The challenges in that respect are to further open the legal and constitutional framework to allow an efficient and effective functioning of metropolitan areas and the development regions. In the case of development regions, no efforts have been made lately to consecrate them as real administrative-territorial units. In the future, in order to respect the provisions of the Chart, the Romanian authorities should take a decision either they will make regions truly functional, or not. In order to make them functional, development regions should be given the executive and legislative powers which they lack at this time, and a funding framework should be put in place, as, at this time they are subordinated to the governmental level which distributes the financial resources to them. The same efforts must be undertaken at intercommunity associations like metropolitan areas, who now lack the real ability to pursue development programs.

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Local Self-Government in Slovakia

DANIEL KLIMOVSKÝ & JURAJ NEMEC

Abstract This chapter analyses the situation of local self-government in Slovakia from the point of view of its conformity with the principles of the European Charter of Local Self-Government. The current system of local self-government in Slovakia was established in 1990, immediately after the Velvet Revolution in November 1989. Municipalities received extra competencies and resources as the result of the decentralization reform from 2000 to 2005. Today, the situation of local self-government complies with all principles of the charter, as confirmed by the Council of Europe monitoring report which was approved in early 2016. The last core remaining challenge is extreme fragmentation. There is no political will for the necessary amalgamation, and, moreover, the modes of inter-municipal cooperation are not effectively supported from the central level. Another challenge for Slovak municipalities is improving participation, improving the involvement of stakeholders, and increasing co-creation.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Slovakia

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1 Introduction and history

Local self-government is a fundamental part of the public administration system of any democratic state. Local authorities are one of the main foundations of any democratic regime, because on this level the right of citizens to participate in the conduct of public affairs can be most directly exercised, and the existence of local authorities with real responsibilities can provide an administration which is both effective and close to citizens (European Charter of Local Self-Government).

The goal of this chapter is to summarize the developments of the local self-government system in Slovakia and evaluate the conformity of its current status with the principles of the European Charter of Local Self-Government. Our research was supported by the Slovak Research and Development Agency under Project APVV-15-0306: Collaboration Activities of Local Self-Governments and Measuring their Effectiveness and Efficiency.

The Slovak Republic was established as an independent state on 1 January 1993 as the result of the friendly breakup of former Czechoslovakia into two independent states. The history of local self-government (LSG) in Slovakia is therefore connected with the existence of predecessor states:

- from the 11th century to 1918 the territory of Slovakia was part of the Kingdom of Hungary and later the Austro-Hungarian Empire,
- from 1918 to 1939 the territory of Slovakia was part of the first Czechoslovak Republic,
- from 1939 to 1945 the territory of Slovakia was part of the first (wartime) Slovak Republic,
- from 1945 to 1992 the territory of Slovakia was part of the post-war Czechoslovak Republic, switching from 1948 to a socialist regime.

After the fall of Great Moravia and the foundation of the Kingdom of Hungary in 1000, the territory of Slovakia became part of Poland until 1029, when it was re-incorporated into the Kingdom of Hungary. Initially the Hungarian state was a centralized monarchy and all powers were held by the king. The first territorial structure of this period – *comitatus* (Kútik and Karch, 2011) – was introduced in the early 11th century by Stephen I, a member of the Arpad dynasty. *Comitatus* were larger administrative areas within the system of castles, which were further broken down into castle districts. In Slovakia the *comitatus* of Bratislava, Komárno, Esztergom, Nitra, Tekov, Hont, Novohrad, Zvolen, Gemer, Spiš, Turany, Abov, Šariš, Zemplín, and Už were formed, headed by county heads who were royal officials. In 1231 special institutions, called “credible places” (*loca credibilia*), were created; there were three *loca credibilia* in Slovakia (the Chapter of Bratislava, the Chapter of Nitra, and the Chapter of Spiš) as well as five convents: Turčiansky Convent, Zoborský Convent, Svätobeňadický Convent, Jasovský Convent, and Leleský Convent (Mesiková, 2008). In the 1230s, royal counties gradually turned into noble counties (Kútik, Karch, 2011). The main body of the county government was the General Congregation, which made decisions on all important issues (approving statutes, announcing provincial laws and regulations of the monarch or central Hungarian or court offices, electing deputies to the Diet, managing county officials and checking on

their activities, and negotiating important economic, administrative, political, and military issues). A county was led by a county head (*comes*), and from the 15th century onwards by the main county head, who was appointed by the monarch. However, deputy county heads, not the county head himself, were the real administrators of the county. After the expulsion of the Ottomans in the 17th and 18th centuries, and internal unrest caused by attempts to preserve freedoms for the Estates, the Habsburgs managed to consolidate their power and exercise a centralization policy, thus significantly strengthening their dominant position. The policy of centralization continued under Maria Theresa and Joseph II. It was Joseph II who attempted to do away with the self-government of the nobility and make it subordinate to the state administration. The country was divided into ten districts (*dištrikty*) led by royal commissioners. Three districts were formed in Slovakia: the districts of Nitra, Banská Bystrica, and Košice. The Hungarian army suffered a crushing defeat at the Battle of Mohacs in 1526, and after this battle Slovakia was incorporated into the Habsburg Monarchy. The Habsburg policy of centralization focused on diminishing local powers; for example, Joseph II attempted to do away with the self-government of the nobility and make it subordinate to the state administration. During his period, three districts were formed in Slovakia: the districts of Nitra, Banská Bystrica, and Košice. After the adoption of the Hungarian Constitution (also the March Laws) in March 1848, important changes were introduced at the level of local government. Standing committees with executive powers were established on the “*stolice*” (county) level. Changes also affected towns and villages (Janas, 2007). Royal free cities were divided into three categories: cities (above 30,000 citizens), medium-sized towns (from 12,000 to 30,000 citizens), and small towns (up to 12,000 citizens). Cities were headed by the city council and the mayor, who was elected by city residents. Villages also received their internal self-government system composed of a Municipal Executive and Municipal Council headed by a mayor (*richtár*). However, in 1849 the *stolice* system was abolished and replaced by a centralized county system. The *stolice* system was renewed again in 1860 (Šutaj, 2003). After the Austro-Hungarian Compromise of 1867, *stolice* were renamed “*župy*” (Volko and Kiš, 2007).

The local self-government system was significantly affected by the collapse of the Austro-Hungarian Empire and the establishment of the Czechoslovak Republic in 1918. On 1 January 1923, Slovakia was divided into seventy-nine districts and six counties: Bratislava County (centre in Bratislava), Nitra County (Nitra), Považská County (Martin), Pohronská County (Zvolen), Podtatranská County (Liptovský Mikuláš) and Košice County (Košice). Districts (*okresy*) were headed by Chief District Officers. In addition, there were district committees that performed activities similar to those at county level, and their members were elected by citizens. In villages and towns, a notary performed state administration tasks, whereas self-government tasks were carried out by the municipal office, executive, council, and mayor (Mesíková, 2008). In 1928 the territorial structure changed, and Slovakia was divided into seventy-seven districts, 3476 municipalities, and two autonomous cities (Bratislava and Košice). Districts were headed by district chiefs. District “governments” were composed of both elected and appointed members, and some of them fulfilled their role in district committees. Municipal bodies,

which were the lowest units, were represented by a municipal executive, a municipal council, and a mayor.

During the Second World War, a two-level subnational system of government was established in 1940 based on a system of counties and districts. Slovakia was divided into six counties: Bratislava, Nitra, and Trenčín (named after their location), Pohronská County (centred in Banská Bystrica), Tatra County (centred in Ružomberok) and Šariš-Zemplín County (centred in Prešov). On a local level (Mesíková, 2008), administrative matters were within the competencies of the municipal administration, which was led by a government commissioner who was assisted by an advisory board whose members were appointed by a county head. The category of statutory towns was abolished at the municipal level. During the Slovak National Uprising in 1944, local-, municipal-, and district-level national committees that performed the role of the state and its administration were established on “free” territory.

The system of national committees became the base for subnational administration and self-government in Czechoslovakia from 1948. National committees on regional, district, and local levels were established. Collective bodies, such as the plenary, councils, and commissions worked within each national committee (Koišová, Masárová, and Habánik, 2017). The number of districts and regions changed several times between 1945 and 1989. Even though national committees possessed some self-government features via this system, they were primarily authorities of state power and administration which were subordinate to the bodies of the Communist Party. In practice, the whole system was directly controlled by the Communist Party of Czechoslovakia in accordance with the constitution, which defined the state as “a socialist state, founded on the lasting union of workers, farmers and intelligentsia, under the leadership of the working class,” and the Communist Party as “a leader of society and the state”. The system of “nomenclature appointments” and “party cells” guaranteed that all institutions of public administration and all public officials (both elected and non-elected) were obliged to follow the directions and resolutions of the Communist Party.

After the Velvet Revolution in 1989, the processes of gradual transition to pluralistic democratic structures in the civil service started in Czechoslovakia. Most tasks of formal restructuring according to Western standards were implemented in the early stage of the transition period. The first proposal of the reform of public administration in Czechoslovakia defined the following tasks as the most important for revitalizing democracy:

- creating real self-government institutions
- dividing executive and legislative power on all levels
- creating a new organization of civil service with two levels of administration
- changing the territorial structure of Czechoslovakia
- restructuring the central government and the system of control of the civil service

The first democratic elections were held in June 1990 and became the basis for most of the changes in the public administration system in Czechoslovakia. The system of national committees was abolished and replaced in the area of state administration by thirty-eight general state administration offices at district level and 121 general state administration offices at sub-district level. Together with this, many institutions of local specialized state administration were created at the same stage of the reform, including school offices, environmental protection offices, and fire departments. This process split the whole system of state administration into many separate and relatively independent cells. This inappropriate atomization and fragmentation of the state administration was soon recognized as an ineffective solution, creating many complications in the delivery of effective, efficient, and economical public services (Berčík, 2003).

The self-government of municipalities with a high level of independence has been re-established. Under Act 369/1990 on Municipal Administration, local self-government was made up of municipalities as territorial and administrative units. Pursuant to this act and Act 518/1990 on the Transition of the Founding Function of National Committees towards Municipalities, Central State Administration, and Local State Administration, the rights and obligations of the local national committees in designated areas were transferred to the municipalities themselves, and the basic functions of municipal self-governments were defined. The Act on Municipal Administration made municipalities equal to each other (excluding Bratislava and Košice). This means that regardless of their size, municipalities had to fulfil the same tasks, causing problems particularly in small villages in terms of personnel, organization, and finances. The first municipal elections were held in 1990. Municipalities became independent self-governing units which were not subjected to state bodies, but their activities could only be performed within their own budget, and a substantial part of their revenue was made up of the proportionate amount of collected taxes allocated to them by the central government (Koišová, Masárová, and Habánik, 2017).

Very soon after the Velvet Revolution, it became apparent that developmental trends in the Czech and Slovak parts of the common federative republic were different in many aspects. The Slovak Cabinet and National Council were given more and more responsibilities, and in 1992 the process of the democratic split into two independent sovereign states became inevitable.

From 1990 to 2000, nothing important happened on the local level in Slovakia. Slovakia signed the European Charter of Local Self-Government as late as in 1999 and only then with reservations. In accordance with Article 12 of the charter, Slovakia declared itself to be bound by the provisions of the charter as follows: Article 2; Article 3, paragraph 2; Article 4, paragraphs 1, 2, 4, and 6; Article 5; Article 6, paragraph 1; Article 7, paragraphs 1, 2, and 3; Article 8, paragraphs 1, 2, and 3; Article 9, paragraphs 2, 3, 4 and 8; Article 10, paragraph 1; and Article 11. The next step forward was taken as the result of the adoption of the Strategy of the Public Administration reform of the Slovak Republic in 1999 and the subsequent adoption of the Concept of Decentralization and Modernization

of Public Administration in the Slovak Republic in 2000. During reforms undertaken from 2000 to 2005, the government continued in decentralizing and deconcentrating the state administration and committed itself to reconsidering the organization of local state administration. The processes were aimed at strengthening the role and responsibilities of local self-government in providing services to citizens by decentralizing public finances, strengthening the tax revenues of municipalities, and establishing functioning higher territorial self-government units. The goals were to strengthen the autonomy of local government authorities through the transfer of state competencies, introduce a new system of financing and strengthen the financial independence of local self-governments, and increase the accountability of self-governments for the efficient operation of public administration and regional policy. Having implemented this phase of public administration reform, Slovakia became a decentralized state with a horizontal division of power and vertical division of competencies (Nižňanský, 2005).

Slovakia accepted all principles of the charter in two steps. On 31 July 2002, Slovakia declared that it considers itself to be bound by Article 6, paragraph 2, and on 16 May 2007 Slovakia declared that it extends its obligations and considers itself bound by the remaining charter provisions: Article 3, paragraph 1; Article 4, paragraphs 3 and 5; Article 9, paragraphs 1, 5, 6 and 7; and Article 10, paragraphs 2 and 3. The charter was incorporated as an “acceptance of an international treaty”, and, according to the Slovak constitution, international treaties were to be approved by Parliament and would supersede domestic laws. The most recent Council of Europe monitoring visit to Slovakia took place in 2015, and in its monitoring report, entitled “Local and Regional Democracy in the Slovak Republic” and which was approved on 24 March 2016, the council expressed satisfaction with the overall positive situation of local and regional democracy in Slovakia. The findings of this report are one of the core inputs for our analysis.

2 The constitution and the legal foundation for local self-government

The core legal base for the existence of LSG in Slovakia is the Constitution of the Slovak Republic. Chapter 4 of the constitution, entitled Territorial Self-Administration and including Articles 64–71, provides all of the main principles for the organization of territorial self-government as follows (where possible, the text on regional self-government has been deleted):

Article 64

The basic unit of territorial self-administration shall be the municipality. Territorial self-administration shall be composed of a municipality and a higher territorial unit.

Article 64a

A municipality is the independent territorial and administrative units of the Slovak Republic, associating individuals permanently residing therein. A law shall lay down the details.

Article 65

- (1) A municipality is the legal persons, which manages their own property and their financial means independently, under the conditions laid down by a law.
- (2) A municipality shall finance their needs primarily from their own revenues and also from state subsidies. It shall be laid down by a law, which taxes and fees are to be a municipality's revenue and which taxes and fees are to be a higher territorial unit's revenue. State subsidies can be claimed only within the limits laid down by a law.

Article 66

- (1) A municipality shall have the right to associate with other municipalities for securing matters of common interest. A law shall lay down the conditions.
- (2) The unification, division, or cancellation of a municipality shall be regulated by a law.

Article 67

- (1) Municipality inhabitants' assemblies shall realize a territorial self-administration by local referendum, by municipality authorities. The manner of carrying out the local referendum shall be laid down by a law.
- (2) The duties and limitations in realization of territorial self-administration may be imposed on a municipality and a higher territorial unit by a law and on the basis of an international treaty according to Art.7, para. 5.
- (3) The State may intervene in the activities of a municipality only by means laid down by a law.

Article 68

For securing the tasks of self-administration provided by a law, the municipality may issue generally binding regulations.

Article 69

- (1) Municipal authorities are
 1. the municipal representation,
 2. the mayor of municipality.
- (2) Municipal representation shall consist of representatives of municipal representation. The municipality inhabitants permanently residing therein elect the representatives for a four-year term. Elections of the representatives are performed on the basis of universal, equal, and direct suffrage by secret ballot.
- (3) The mayor of a municipality shall be elected by the municipality inhabitants permanently residing therein on the basis of a universal, equal, and direct suffrage by secret ballot for a four-year term. The municipality mayor shall be the executive authority of the municipality; the mayor shall perform municipality administration, and shall represent the municipality externally. Reasons for and manner of recalling a mayor before expiration of his electoral term shall be laid down by a law.

Article 70

A law shall lay down the terms and means of declaring municipality a town; it shall also regulate the designations of the town authorities.

Article 71

(1) The exercise of the certain powers of local self-administration may be delegated on municipality by a law. The costs of the delegated exercise of state administration shall be covered by the State.

(2) When exercising the powers of state administration, a municipality may also issue generally binding regulations within their territory upon authorization by a law and within its limitations. Exercise of state administration transferred to a municipality by a law shall be directed and controlled by the government. A law shall lay down the details.

Another core legislative source for local self-government in Slovakia is Act 369/1990 on Municipalities as amended, which is the main legislative source for municipal level government. This law provides most of the details on how to execute constitutional provisions in LSGs. Other important legal sources associated with the main duties and responsibilities of self-governments include Act 138/1991 on Municipal Property, Act 303/1995 on Budgetary Rules, Act 211/2000 on Free Access to Information, Act 416/2001 on Decentralization, Act 42/1994 on Civil Protection, Act 54/1994 on the Citizen Registry, Act 50/1976 on Territorial Planning and Building Control, Act 222/1996 on the Organization of Local State Administration, Act 263/1999 on Public Procurement, Act 346/1990 on Local Government Elections, Act 552/2003 on Public Service, Act 502/2001 on Financial Control and Auditing, Act 400/2009 on the Civil Service Code, and Act 523/2004 on Budgetary Rules for Public Administration.

Taking all of the above into account, it is possible to state that constitutional arrangements are framed by all the necessary legislation, and therefore the Council of Europe monitoring visit concluded that “it can be said that the requirements of Art. 2 of the charter are satisfied by the present legal and constitutional situation of the Slovak Republic.” The visit only recommended drawing up legislation which would clearly define the exclusive fields of the competencies of the regional and the local levels respectively to avoid any overlapping of responsibilities, and elaborating a legislation allowing local authorities to take initiatives when the corresponding competencies have not been expressly attributed to them and when this is not explicitly prohibited by the law.

3 The scope of local self-government

Within the limits set by the law, municipalities have their own budgets and assets. Local governments may issue ordinances that bind all individual or corporate bodies within their jurisdiction. Only parliamentary acts can supersede or invalidate these ordinances. Any modification of the powers of local authorities must be decided by Parliament. Barring statutory exceptions, local authorities are independent of state supervision. All valid decisions made by municipalities and state authorities are reviewable by the courts in

application of the “cassation” or repeal principle. Local key bodies are elected directly by the electorate. Elected mayors head the municipal offices.

Since the decentralization reform of 2000 to 2005, municipalities in Slovakia have been especially equipped with a comprehensive set of responsibilities, and they also execute delegated state administrative functions. Municipalities manage their own movable property and real estate as well as any state-owned property that had been temporarily ceded to the municipality by the state under law. Municipalities also compile and approve municipal budgets and final accounts, and may promote public discussions on these issues. They administer local taxes and fees. They guide economic activities in the municipality, including investments and the use of local resources. They also control new business activities and issue positions on business plans if they affect the interests of the municipality’s population. They create and protect healthy living and working conditions; they promote environmental protection and provide conditions for education, culture, artistic hobbies, exercise, and sports. Municipalities also approve territorial planning and zoning documents.

Municipalities establish, incorporate, cancel, and control their own budgetary sub-units and bodies as well as other local legal entities in compliance with special regulations. They also provide an array of services, including police, fire fighting, local public transportation, construction, the maintenance and management of public space, local roads, parking places, green areas, public lighting, market places, cemeteries, local water resources and wells, water purification plants (in small municipalities), sewerage, construction, the maintenance and management of local cultural establishments, health service establishments, leisure and tourist establishments, infant homes, basic social services (day care), nature and heritage protection, culture, and artistic hobbies.

The Transfer of Competencies Act provided municipalities with new responsibilities in several areas including roadways, water management, citizen registration, social care, environmental protection, education (primary schools and similar establishments), physical education and sports, theatres, health care (primary and specialized ambulatory care), regional development, and tourism. Several of these competencies were reallocated from central ministries (e.g., hospitals and education).

Municipalities also enjoy transferred or delegated state competencies in the following areas: registry offices, construction, public order, schools, and environmental protection. These tasks are performed according to sectoral legislation.

The monitoring report states that the requirements of Article 4 of the charter are respected in Slovakia, with one (already indicated) reservation; it states that “the Slovak system lacks a residual powers clause or a clause *générale de compétence* (as French Law depicts it) in favour of local authorities, which is common in other European countries”.

Legal experts in particular feel that it is actually the other way around, since if a certain competency or responsibility is not expressly allocated to the municipal level of government, the power is understood to be allocated to the state administration. However, Article 4 of the Act on Municipalities states that municipalities independently decide and act in all areas related to municipal administration, except for areas directly given to the state of physical persons by the act. In any case, more explicit formulations of the “general competence” principle in Slovak legislation would help.

4 The protection of local authority boundaries

The general constitutional statement on the protection of boundaries of municipalities is specified in the Act on Municipalities. Paragraph 2 of the act clearly states that changes in this area can be made only if approved by the involved municipality: for example, the merging or splitting of several municipalities requires a positive result from a preceding referendum (in all the municipalities concerned in the case of a merger) and an agreement between the municipalities concerned. Officially, this kind of change is subject to approval by the local state administration and is implemented by means of directives from the central government.

There is no case connected with the violation of this principle in practice, and the monitoring report states that “the Slovak Republic complies with Art. 5 of the Charter.”

5 Administrative structures and resources for the tasks of local authorities

The core principles determining the structures and resources of LSGs in Slovakia are set by the Act on Municipalities, but implementation details are to a large extent left in “local hands”. As indicated, the municipal council and the mayor are elected by a direct election. The number of council members as defined by the act is as follows:

- Up to 40 inhabitants: 3 councillors
- 41 to 500 inhabitants: 3 to 7 councillors
- 501 to 1000 inhabitants: 5 to 7 councillors
- 1001 to 3000 inhabitants: 7 to 9 councillors
- 3001 to 5000 inhabitants: 9 to 11 councillors
- 5001 to 10,000 inhabitants: 11 to 13 councillors
- 10,001 to 20,000 inhabitants: 13 to 19 councillors
- 20,001 to 50,000 inhabitants: 15 to 25 councillors
- 50,001 to 100,000 inhabitants: 19 to 31 councillors
- More than 100,000 inhabitants: 23 to 41 councillors

The number of election areas and other details connected with municipal elections are decided by the acting municipal council.

The division of responsibilities between the council and the mayor is also defined by the act and could be described as follows:

The core responsibilities of the mayor/lord mayor:

- calling and leading the meetings of the municipal council, and signing the minutes of the meeting
- performing public administration in the municipality
- representing the municipality in dealings with the state and legal and private entities
- deciding on all municipal matters, except those reserved by law or by the municipal ordinances for the municipal council

The core responsibilities of the municipal council:

- defining the rules of municipal financial management, the management of municipal ownerships, and the management of state property used by the municipality; approving all major actions concerning municipal ownership
- approving the municipal budget and its amendments, and controlling the use of municipal funds; approving the final budgetary accounts and the emission of communal bonds, and deciding on credits and guarantees
- approving the territorial plan for the municipality, or a part of it, and establishing priorities in the development of all areas of municipal life
- establishing or abolishing municipal taxes and municipal fees, and other tax-related aspects
- calling a municipal referendum and public meetings
- issuing municipal ordinances
- approving international cooperation agreements and the membership of the municipality in international bodies
- defining the structure of the municipal office
- establishing the post of municipal auditor/comptroller and deciding on the salaries of the mayor/lord mayor and the municipal auditor within the framework provided by law (minimum salaries are defined)
- deciding on all major aspects of municipal life, except for issues delegated to the state by the act

The Act of Municipalities also defines the general principles governing the internal structure of the municipal office and the organization of its administrative departments as well as the responsibilities and relationships among these offices. The municipal office primarily performs the following tasks:

- a) It prepares expert materials and other background information for the meetings of the executive bodies.
- b) It prepares a written record of all the municipality's administrative decisions.
- c) It executes all the decisions of the municipal council and the mayor or lord mayor.

Local authorities may establish their own budgetary and internal organizations, or transfer some tasks to the private sector. In larger municipalities, the municipal office may be run

by a “principal” appointed by the municipal council upon the proposal of the mayor. This person is responsible to the mayor. Municipal offices consist of different categories of employees (civil servants, public servants, and labour-code regulated employees) who are responsible for the administrative and organizational aspects of municipal life as well as for other activities of municipal bodies.

This means that, as a rule, Slovak local authorities are able to determine their own internal administrative structures with due respect to general legislation. Municipalities in Slovakia are quite independent in the field of human resources, and they can freely appoint and remove their own employees. The performance of local employees is evaluated by the head of the municipal office, but there are no fixed rules for this process. Municipalities also appoint an internal auditor/comptroller, usually elected for a six-year term by the council, as an independent and impartial employee. The comptroller is accountable to the councillors but not to the mayor.

The salaries of most municipal employees are pre-determined by law. The act sets the specific basic salaries for all employees with the status of civil or public servant. Mayors and municipal comptrollers are entitled to a minimum salary. The way this salary is calculated is strictly regulated by national legislation (main factors are the gross average salary nationwide and the number of inhabitants of the municipality). For mayors, this “fixed” remuneration may be increased by the local council by up to 70% depending on the performance of the mayor, additional responsibilities, special commitment, and so on. Apart from this main “remuneration”, mayors may receive allowances and other types of compensation for expenses incurred in the fulfilment of their tasks. The salaries of the main municipal representatives are competitive in the light of the overall national economic situation and salaries that are paid in the public and private sectors. The monitoring report concludes that “the requirements of Article 6 of the Charter are met by the Slovak Republic”.

6 Conditions under which responsibilities at the local level are exercised

In this part, we only deal with the situation of elected members of the municipal council (full-time positions were dealt with in the previous part). The conditions of office of elected local representatives provide for the free exercise of their functions. According to the Labour Code (paragraph 136), the employer shall provide them with necessary free time to be able to perform all duties, responsibilities, and activities connected with their position (the public interest clause). All municipalities pay appropriate financial compensation for expenses incurred in the exercise of the public office in question and remuneration for specifically ordered work which is carried out. Most big and some middle-sized municipalities also pay compensation for loss of earnings and corresponding social welfare protection. In larger municipalities, many deputies are members of municipal companies and receive benefits connected with their position.

The list of functions and activities which are deemed incompatible with the holding of local elective office is determined by law. However, the list of such limitations is rather short. A municipal councillor cannot be simultaneously a municipal employee, or the head of a municipal budgetary organization, and his position is also incompatible with a few top or specific public administrative posts (like judge, prosecutor, and ombudsman). However, the same person may sit in the municipal and regional councils as well as in Parliament.

Consequently, the monitoring report concludes that the current Slovak system complies with the requirements of Article 7 of the charter.

7 The administrative supervision of local authorities' activities

The administrative control of the state over local authorities is aimed solely at ensuring compliance with the law and with constitutional principles. This positive situation is guaranteed by the existing legal system, protecting municipalities from unnecessary administrative interventions by the state and its bodies. The constitution guarantees that duties and restrictions to self-governments can only be imposed by parliamentary legislation. Prosecutors and the ombudsman can request that local decisions and measures be revised, but they cannot issue orders revoking such decisions and measures.

An exclusive role in the control or oversight of municipalities is played by the General Prosecutor's Office (*Prokuratúra*), which is an independent body established by the constitution (Articles 149 to 151) and governed by Act 153/2001 on Prosecution. Among other things, the office also supervises the legality of decisions, measures, and binding regulations adopted by local authorities. The office acts either on request or on its own initiative (*ex officio*). The control exercised by the Prosecutor's Office over local self-government bodies is only the control of legality and "*ex post facto*". The office cannot cancel or quash any decision by a local authority. Under no circumstance can the office order a local authority to do something or refrain from doing something. The office cannot suspend a local body's decision either. If the findings of the office show that the activity of a local body is not in conformity with the law, then the office can issue warnings or protests addressed to the local authority. The local body has the duty to answer within thirty days, accepting or rejecting the office's concerns. If the local authority refuses to amend or modify its decision or measure, then the office may lodge an appeal in court within two months asking for the annulment of the contested decision. Such cases are very rare; local decrees and decisions are usually drafted with care from the legal point of view, and sometimes the office itself is consulted on a preliminary basis, as noted above.

Starting in 2006, the National Audit Office (NKÚ) was given the right to audit local authorities, including in areas where these bodies have exclusive responsibility. The NKÚ delivers both compliance and performance audits on a local level. All local authorities must cooperate with the NKÚ to provide support for its activities, deliver the necessary

information or materials on time, provide explanations, and conduct “ordered” audits and inspections of all bodies within their sphere of responsibility. The NKÚ has the right to direct access to any information system used by self-government bodies.

Concerning the area of delegated responsibilities, sectoral legislation foresees the possibility to appeal a measure or a decision adopted by a local authority before the local state administration body. This happens especially in the area of construction, urban planning procedures, roads, and transportation. This form of inter-administrative control is anticipated in the constitution (Article 71.2) and does not contradict the principles of the charter, because in those cases the municipalities perform the delegated administrative functions financed by the state.

Consequently, the monitoring report concluded that the current Slovak system fully complies with Article 8 of the charter.

8 The financial resources of local authorities and the financial transfer system

Finance represents one of a number of complicated issues concerning compliance with the principles of the charter. The following principles deserve attention concerning Slovak legislation and practice:

- Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own; local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- At least part of the financial resources of local authorities shall be derived from local taxes and charges, which they have the power to determine the rate of within the limits of the statute.
- The protection of financially weaker local authorities calls for the institution of financial equalization procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and the financial burden they must support.

The issue of “adequate” financial resources and their commensuration is rather problematic, as, for example, the wording “adequate” cannot be transposed to any specific and generally acceptable figure. There is no doubt that municipal representatives and the Association of Towns and Communities (ZMOS) always claim that the total amount of disposable resources is not enough, and that the spending power of local authorities is still small compared to that of the state. On the contrary, the state argues that the financial situation of municipalities is healthy. On this issue, the monitoring report states: “The relevant ministries claim that the current arrangement is fair and adequate. The Ministry of Finance considers that the level of financial autonomy of local authorities is satisfactory and that the principle of commensurability of local finances (as proclaimed by the Charter on local self-government and by Article 71 of the Slovak Constitution) is fully respected. Furthermore, the Ministry claims also that the amounts of transfers (to

finance delegated tasks) have been sufficient over the last years. As an evidence of this assertion, it seems that in 2012–2014 the territorial self-governments showed a budget surplus or balanced budget. The crisis in 2008–2010 resulted in the decrease [in] funds from the personal income tax and for that reason the Government granted an additional transfer to the municipalities of €100M in 2009 and €72.5M in 2010.”

Existing studies by ZMOS representatives argue that delegated competencies are only partly financed by the state, in contradiction to the constitutional requirements. For example, Balážová and Dienerová (2002) published very negative calculations (Table 1). However, such calculations are only based on assumptions and simplifications. Municipalities only recently started to use accrual accounting and none of them uses real full-cost (cost centres) accounting. Without appropriate cost evidence, it is impossible to estimate real costs for any internally delivered municipal service. Moreover, comprehensive and transparent benchmarking schemes are not used, and municipalities do not try to compare their cost data in a regular and open way (see, for example, Nemeč, Medveď, and Šumpíková, 2005; and Nemeč, Ochrana, and Šumpíková, M., 2008).

Table 1: The level of financing selected delegated competencies by the state

Registry	39.48%
School office	14.37%
Specialized building office	25.02%
General building office	31.75%
ŠFRB (housing) agenda	12.04%
Environment	57.10%
Total	20.70%

Source: Balážová and Dienerová, 2002

From the point of international comparison, Slovak municipalities spent approximately 7% of GDP (at the central level approximately 30% of GDP). Despite a strong decentralization process in 2002, Slovakia remains a centralized country from the perspective of local government spending. The level of LSG spending is half of the OECD average of unitary countries.

In terms of the secondary aspects (the structure of revenues), municipalities complain that a great part of money still comes from the state and that the system of local taxes is not satisfactory. We will first briefly summarize the developments concerning this issue.

Financing local governments after 1990 and before 2005 was mainly based on shared taxes (personal income tax, legal entities' income tax, and road tax) and transfers. Since the state budget is usually approved each year in the late autumn, the local governments prepared their own budgets under very uncertain conditions and had to wait for approval of the state budget in order to be able to plan their own revenues. Locally determined

revenues were rather marginal, and the only significant local tax was the “real estate” tax. An important role was also played by various state grants and transfers.

The abovementioned situation significantly changed after 2005, when fiscal decentralization was implemented. Some fees became local taxes, whereas in terms of shared taxes only personal income tax remained in this category. All these measures led to an improvement in the local governments’ capacity to predict and determine their own revenues and in the overall enhancement of local policy making.

This position about the effective structure of LSG revenues depends on the angle of investigation. Table 2 provides data as officially presented, and, if accepted, the situation is only positive (state subsidies are connected with delegated responsibilities, especially elementary schools). However, Table 3 shows that the situation may be more complicated than that. The major percentage from “own taxes” is actually redistributed income tax, which is collected and reallocated on the basis of a formula by the central government. Is this really one’s own local revenue?

Municipalities may also benefit from several EU funds as many operational programmes include eligible activities in fields related to municipal life. However, these revenues are not at all stable (see Table 6 with extreme total municipal expenditures in 2014 – the last year of the previous programming period) and depend on a large series of factors, especially the design of the specific programme. The absorption capacity significantly differs, smaller municipalities in particular do not have their own capacity to draft projects and may outsource this.

Table 2: The structure of LSG revenues (%)

Source of funding/revenues	Share of total revenue in 2012	Share of total revenue in 2013	Share of total revenue in 2014	Share of total revenue in 2015
Own revenues, of which	62%	65%	67%	68%
Tax revenues	48%	48%	50%	51%
Non-tax revenues	14%	17%	17%	17%
State subsidies	38%	35%	33%	32%
Total revenues	100%	100%	100%	100%

Source: Ministry of Finance and own calculations

Table 3: A detailed structure of LSG revenues (euros)

Revenue	Reality 2015	Plan 2016	Amended plan 2016	Reality 2016
Total tax revenues	1,973,877,282.79	2,027,106,294.37	2,122,980,430.80	2,191,840,047.43
Income taxation	1,467,679,393.79	1,517,209,673.94	1,607,062,397.89	1,668,980,011.24
Centrally collected income tax	1,467,650,507.63	1,517,209,673.94	1,607,062,397.89	1,668,980,011.24
Property taxation	324,053,220.91	327,330,030.21	331,133,562.00	336,364,053.29
Property tax	324,053,220.91	327,327,330.21	331,127,147.00	336,359,082.29
- land	83,139,623.74	85,878,207.72	87,899,402.37	86,082,547.54
- buildings	223,732,335.29	224,422,332.23	225,891,249.15	232,256,295.66
- housing	17,181,261.88	17,026,790.26	17,336,495.48	18,020,239.09
Taxation of goods and services	182,011,653.38	182,515,278.22	184,689,513.92	186,310,992.53
Taxation of services	181,459,630.24	182,058,603.36	184,043,498.30	185,750,880.97
Taxation of goods	468,394.28	439,223.86	468,936.27	476,109.98
Other	16,277.80	17,451.00	9456.35	15,041.85
Sanctions	132,956.95	51,312.00	94,555.99	184,589.67
Total revenues	3,546,529,018.38	3,271,802,960.14	3,562,237,970.63	3,747,306,208.73

Source: Ministry of Finance

Table 4: The structure of transfer for delegated responsibilities (thousands of euros)

	2014	2015	2016
General public services	35,523	31,643	19,325
Security	3896	3200	1509
Economic functions	114,993	292,166	55,056
Environment	72,543	107,704	26,397
Housing	54,856	53,858	94,869
Health care	734	3340	868
Recreation, culture, sports	6285	6410	5,103
Education	714,735	760,683	796,447
Social protection	52,178	52,573	60,150
Total	1,055,743	1,311,577	1,059,724

Source: Ministry of Finance

Last but not least, the final issue to be discussed here is equalization. The formula for the redistribution of income tax back to municipalities is defined by law and includes equalization elements: namely the altitude of a location, population size, the number of pupils, and the number of retired people. Such a selection of equalization indicators is insufficient to guarantee effective horizontal and vertical redistribution (redistribution for

a different revenue capacity and for different expenditure needs). Under current conditions, small municipalities allegedly receive a minimum amount of money for the functioning of their administrative apparatus (some of them spend up to 90% of revenues to cover fixed administrative costs). However, the real question is whether very small municipalities should be specifically supported or forced by financial instruments to amalgamate (see the last chapter). The issue of the formula for the redistribution of income tax is a subject of permanent discussion in the Slovak political landscape.

In terms of other requirements for municipal finance, the situation is positive. Municipalities are free to draft and approve their own budgets and need only respect the budget structure established by law. Municipalities with more than 3000 inhabitants also prepare programme performance budgets. The local council is the competent authority to approve the budget. Local authorities are free to decide what they will spend their own revenues on, and the central government or other state authority cannot interfere with this. The most important expenditure area for most municipalities is primary education, a combined original and delegated competency which is financed dominantly by transfers from the central level using formula-based financing (the number of pupils is the core factor of the allocation formula). The structure of municipal expenditure according to COFOG classification is shown in Table 5, and the structure according to budgetary rules is shown in Table 6.

Table 5: The structure of municipal expenditures: COFOG (thousands of euros)

	2015	2016
General public services	977,369	989,655
Defence	1139	765
Security	68,628	67,750
Economic functions	476,016	369,442
Environment	364,737	283,690
Housing	471,399	328,603
Health care	9037	5711
Recreation, culture, sports	231,507	231,023
Education	1,554,355	1,576,244
Social protection	180,600	175,809
Total	4,334,787	4,028,692

Source: Ministry of Finance

Table 6: The structure of municipal expenditures: budgetary classification (euros)

	2014	2015	Plan 2016	Reality 2016
Salaries	1,200,679,058.14	1,170,020,292.19	1,245,367,061.93	1,234,950,059.20
Social contributions	436,445,224.35	423,475,384.56	452,657,844.09	448,110,560.83
Goods and services	1,081,396,796.20	1,005,570,498.90	1,154,010,109.17	1,154,370,511.81
Current transfers	446,056,494.42	419,479,378.28	447,848,105.68	440,081,832.06
Credit recovery	22,662,388.07	24,519,630.41	22,394,591.40	19,917,820.05
Current budget total	3,187,239,961.18	3,043,065,184.34	3,322,277,712.27	3,297,430,783.95
Capital expenditure	872,341,213.91	611,113,134.50	668,269,693.08	436,811,211.84
Capital transfers	21,228,529.43	27,625,909.00	34,523,123.75	28,568,551.69
Capital budget total	893,569,743.34	638,739,043.50	702,792,816.83	465,379,763.53
Fiscal operations	253,976,819.61	203,393,882.56	273,241,401.49	265,881,535.31
Total	4,334,786,524.13	3,885,198,110.40	4,298,311,930.59	4,028,692,082.79

Source: Ministry of Finance

Municipalities are free to borrow or issue bonds, the law just sets some specific limits to prevent fiscal problems, such as: (a) loans which can only be used for capital purposes; (b) total debt stock which cannot exceed 60% of the budget of the previous year; and (c) annual debt payments which may not exceed 25% of the budget of the previous year. Slovak municipalities have their own property, goods, and assets and they can manage them freely.

The text above shows certain limitations in the area of financial resources of municipalities, and there is no surprise that the evaluation of the monitoring report was as follows: “In the light of the above, the Slovak Republic meets the basic standards enshrined in Art. 9 of the Charter.”

9 Local authorities' right to associate

In Slovakia, the right of local authorities to associate is recognized directly by the constitution, and this right is also executed without any problem. The most important professional associations connected with municipalities in Slovakia are as follows:

- The Association of Towns and Villages of Slovakia (ZMOS). The foundation of the association dates back to January 1990, and ZMOS members currently include 95% of all cities and towns in Slovakia. The association acts as a local interlocutor with the government and lobbies in favour of the vigorous territorial decentralization in the country.
- The Union of Towns and Cities of Slovakia (UMS) founded in 1994. Currently, the UMS has sixty-three *de jure* members (“cities”) in total. It is possible for a city to be both a member of UMS and of ZMOS.

- The “K8 Association”, which is the Association of the City of Bratislava and the seven regional capitals of Slovakia
- The Association of Historic Towns and Cities of Slovakia
- The Association of Municipal Finance Officers of the Slovak Republic
- The Slovak City Managers’ Association
- The Association of the Chief Controllers of Towns and Cities of the Slovak Republic
- The Club of the Mayors of Slovak Towns and Cities
- The Slovak Association of IT Experts Working in Self-governing Institutions: supporting government implementation on a regional self-governing level

The most important form of associating is inter-municipal cooperation, especially necessary for smaller municipalities (see also the final part of the chapter). Generally, municipalities can cooperate by means of the following types of contracts/agreements: (1) an agreement on the performance of tasks, (2) an agreement on the establishment of a joint municipal office, (3) an agreement on the establishment of a municipal association, (4) an agreement on the establishment of a legal entity, and (5) an agreement on the establishment of an association of legal entities. Table 7 lists the core forms of inter-municipal cooperation.

Table 7: The core forms of inter-municipal cooperation in Slovakia

Form of IMC	Legal entity	Number	Most typical (sector) areas of cooperation	Source of income
Joint municipal office	No	233	Exclusively for delegated state administration	State provides grants for the performance of their tasks
Micro-region	Yes	220 (the number of active micro-regions might be different)	Development planning, project cooperation, environmental protection, and tourism	Municipal budgets and own fundraising, EU funding
Euro-region	Yes (according to some registers: 19)	12	Development planning, project cooperation, cross-border cooperation, experience transfer, mutual promotion, and tourism	EU funds; small region

Form of IMC	Legal entity	Number	Most typical (sector) areas of cooperation	Source of income
Local action groups	Yes	29	In Slovakia, the programme was implemented only in the area of Diversification of Rural Economy and Quality of Life	EU funds; small contributions from the members of the LAGs
Joint municipal company	Yes	NA (estimation: high number)	Waste management, water sewage, bakeries, local tourism	Income from the sale of services as well as subsidies from local budgets
Contract on IMC for a particular task	No	NA (estimation: common in the past)	Public transport, waste management	Payment of one local government to another plus fees for delivered services
Project cooperation	No	NA (estimation: high number)	Organization of events (e.g., sports and cultural events)	EU funds and other funds, own municipal resources, income from entrance fees

Source: Klimovský, 2014; modified by the authors

In terms of international partnerships, Slovakia has signed and ratified the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities as well as two of its protocols. This provides for a robust legal and political basis for engaging in trans-border cooperation.

Taking all the above into the account, the monitoring report states: “Consequently, the present situation of the right of association is fully in compliance with the requirements of Art. 10 of the Charter”.

10 The legal protection of local self-government

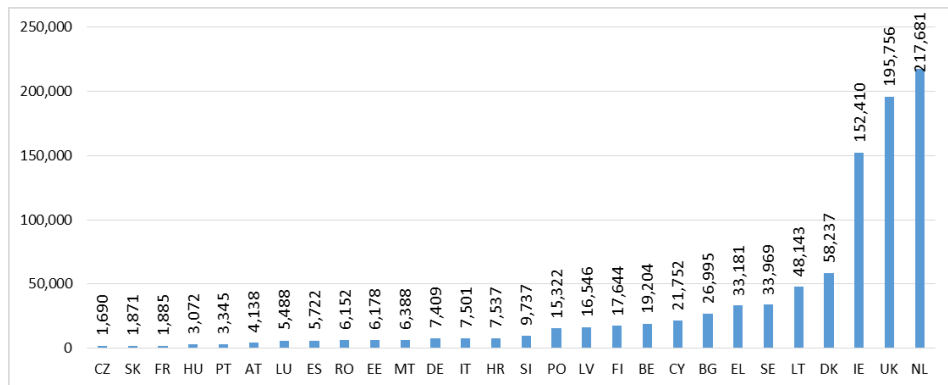
Slovak local authorities have the right of recourse to a judicial remedy (including litigation in the Constitutional Court) in order to secure the free exercise of their powers and respect for such principles of local self-government just like any other legal entity in Slovakia. (Administrative courts do not exist in the country.) The frequency of this type of action is very small. The monitoring report suggests that “the Slovak Republic meets the basic standards enshrined in Art. 11 of the Charter”.

11 Future challenges in the implementation of the European Charter of Local Self-Government in Slovak legislation

Two core challenges are discussed in this part: fragmentation and partnerships. The issue of there being many very small municipalities, as already indicated, is one of main concerns of international organizations, including the Council of Europe.

The territory of Slovakia has always been highly fragmented in terms of the number of municipalities. For instance, there were 3473 municipalities in 1921 or 3237 in 1947. The lowest total number of municipalities (2669 municipalities) in Slovakia was in 1989, but this number increased to 2891 (city parts not counted) over the following decades (Klimovský, 2014).

Figure 1: Average population per local government entity in the EU



Source: Thijs, Hammerschmid, and Palaric, 2017

The average municipality population size in Slovakia is only 1870 inhabitants, and the average Slovak municipality has an area of approximately 17 km². Only two cities, Bratislava and Košice, have a population size over 100,000 inhabitants (approximately 430,000 in Bratislava and 250,000 in Košice). According to the last general census (2011), only seven other towns/cities have a population of over 50,000 inhabitants. Almost 70% of all Slovak municipalities have fewer than 1000 inhabitants, but only slightly more than 16% of the total population of Slovakia lives in them. Furthermore, several years ago the smallest municipality, Prikra, had only seven inhabitants, (nowadays it has 12); however, according to the relevant legal provisions, it has the same competencies as the largest Slovak municipalities (Klimovský, 2015).

Three steps relating to decentralization have been planned in Slovakia since 1989: (1) devolution, (2) fiscal decentralization, and (3) territorial consolidation. However, after the implementation of the first two steps, no central government had any interest in

continuing with these processes and all of them preferred the status quo (Klimovský, 2015).

To conclude we may state that local self-government capacities are legally very well defined and secured; Slovakia is sometimes called a “decentralization champion” (Klimovský, 2015). However, the positive impact of such a situation is limited by too high fragmentation. There is no doubt that some municipalities are simply too small to execute a full set of their original and delegated responsibilities. This issue is not addressed and probably will not be addressed in the near future (Klimovský, 2015). Two core and many small barriers block such changes. The core political issue is strong political opposition, especially at the municipal level (independence has a much higher value for mayors than efficiency – see Buček and Nemeč, 2012). The implementation barrier is connected to the fact that there are no comprehensive data available for the preparation of such a change. There is no optimum size of a municipality, and, according to existing academic research, economies of scale (savings thanks to a larger size) cannot be confirmed for the full block of municipal services; according to Matějova et al, 2017, the economic optimum really differs for different services or does not exist at all. In such a situation, poor political decisions about a minimum size could lead to massive mistakes: see the examples of other Central and Eastern European countries, such as Georgia, which revisited its amalgamation very early after implementing it. In such situations, the central government, and especially the Ministry of Finance and the Ministry of the Interior, should promote all forms of municipal cooperation much more effectively, especially the establishment of joint municipal offices for delegated competencies. It might be possible to follow the Czech example of different categories of municipalities from the point of view of delegated responsibilities.

11.1 Partnerships

Existing research clearly documents the fact that the will of all levels of government in Slovakia to involve stakeholders in decision making and the service delivery process is rather limited. This fact can be documented in research by Vitálišová (2015). She mapped the level of cooperation/non-cooperation of municipalities with stakeholders. Despite the fact that the answers of municipal representatives are certainly positively biased, half of the municipalities claim that they do not cooperate with universities. (Universities are located in all parts of the country, so this is not a problem of territorial availability.) Only about 60% of municipalities cooperate with local businesses, and only 70% clearly showed the will to cooperate with local non-governmental organizations.

Nemeč, Mikušová Meričková, and Svidroňová (2015a,b) analysed the participation of different stakeholders in public service provision at the level of local self-government and on different types of co-creation. The authors selected five examples of co-creation in the welfare sector and five cases in the environmental sector (Table 8).

Table 8: Selected cases of co-creation at the local government level

Case	Goal of co-created initiative	Main actors/stakeholders
1. Conciliation councils	Help citizens to solve any kind of conflicts, especially ethnic conflicts	Citizens, PDCS (NGO), C.S. Mott Foundation, municipalities in given areas
2. Kojatice Social Housing	Provide social housing for Roma with a certain maintenance guarantee thanks to Roma co-financing and co-building	University students, Roma citizens, local self-government and its mayor, ETP Slovakia (NGO)
3. Godmothers	Provide material and non-material support to young mothers in social need for their inclusion in society	Šanca pre nechcených (NGO), SPP Foundation, VUB Foundation, Orange Foundation, municipalities that decided to support the project
4. Electronic Guard	Improve the lives of elderly disabled citizens with telecare and related assistive technologies	Involved local governments, YMS (private IT company), Orange (private telecommunications company)
5. Martin Relaxation Path	Improve the lives of elderly citizens by building an accessible public relaxation infrastructure: a nature path	Municipality of Martin, several citizen initiatives (Joga v dennom živote, Diamart – a club of people with diabetes and the Martin Pensioners Club)
6. Green Patrol in Bratislava	Increase citizen participation and responsibility for clean green areas; a better quality urban environment	Green Patrol citizens' initiative, municipality of Bratislava and its local boroughs, inhabitants of Bratislava
7. Green Patrol Interactive Portal	Improve and maintain the quality of the urban environment; improve collaboration among citizens, participating organizations, and the city	Green Patrol citizens' initiative, the City of Bratislava, citizens in social networks
8. Trash Out	Improve the physical environment and collaboration among all sectors	Involved local governments, environmental NGOs (Greenpeace, Let's do it, Enviweb cz, Emerald Planet, Priatelia Zeme, Greenoffice.sk), waste management companies, Ministry of Environment of the Slovak Republic, the Environmental Fund of the Slovak Republic
9. Mobile City	Facilitate citizen participation and improve the physical environment	Datalan (a private company), municipalities in the Bratislava self-governing region and their inhabitants

10. PrieStory

Complete low-cost physical infrastructure investment projects undertaken by volunteers living in the area; improve collaboration among sectors	The Ekopolis Foundation, citizens, participating municipalities, ČSOB Bank, local companies (as sponsors providing additional funding)
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Source: Nemeč, J., Mikušová Meričková, B., Svidroňová, M., 2015b.

Based on an analysis of the investigated cases, the authors summarized the roles of the different participating actors based on the three different phases of co-creation: Initiation (marked as 1), Design (2), and Implementation (3) in Table 9.

Table 9: The role of different actors in co-creation based initiatives in different stages of the co-creation

Role Project	Citizen initiative(s)			Formalized NGOs			Private sector			Local government		
	1	2	3	1	2	3	1	2	3	1	2	3
Conciliation councils	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	No	Partly
Kojatice	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Partly	Partly	Yes
Godmothers	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	No	No	Partly
Electronic Guard	No	Yes	No	No	No	No	Yes	Yes	Yes	No	Yes	Partly
Martin Relaxation Path	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	No	Yes	Yes
Green Patrol BA	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Partly
GP Interactive Portal	Yes	Yes	Yes	No	No	No	No	No	No	No	No	Partly
Trash Out	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Partly
City Mobility	No	No	Partly	No	No	No	Yes	Yes	Yes	No	Yes	Partly
PrieStory	No	Yes	Yes	Yes	Yes	Yes	No	No	Partly	Partly	No	Partly

Source: Nemeč, J., Mikušová Meričková, B., Svidroňová, M., 2015b

The collected data indicate that local governments usually do not initiate co-creation and are not very active in the design and implementation phases. In the analysed cases, none

of the local governments fully participated in the initiation of co-creation; only two municipalities were even partly involved. In the design stage, the situation is similar although slightly better; at least half of the municipalities participated in the co-design of an innovative public service solution either fully (four municipalities) or partly (one municipality). In the implementation of social innovation, two local governments participated fully and eight were partly involved.

The actors who initiate co-creation in Slovakia can be divided into two types: the private sector and formal or informal third-sector structures (NGOs or citizens). The private sector is especially active in the area of information technologies, as the implementation of co-created initiatives in that field also improves their sales and profit. Normally, local governments are expected to cooperate with stakeholders (one of the core governance principles), but this does not work in Slovakia. Veselý (2013) indicates that a lack of accountability may be one of the core factors in this situation.

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Local Self-Government in Spain

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Abstract In Spain, as in other European countries, local governments face new and complex challenges regarding demands for more and better local democracy, more transparency, expenditure accountability and designing and introducing local public policies as well as offering public services which guarantee the validity of the Welfare State. The present situation of financial austerity and cutbacks in resources means that local autonomy has come to play a vital role in ensuring that local governments are able to satisfy the demands and pressures put upon them. Spain was one of the first countries to ratify the European Charter of Local Autonomy, and its principles have gradually been incorporated in the Spanish legal system. The aim of this work is to explain how those principles have effectively taken shape in Spain since the approval of the 1978 Constitution (Articles 137, 140 and 142 acknowledge local autonomy) up to present day where local autonomy is in the centre of the debate due to the economic crisis and austerity policies which deeply affect the local public sector.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Spain

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1 Introduction and history

In the last four decades Spain has undergone an important process of territorial decentralisation which has also led to an increased local autonomy. Therefore, local autonomy in Spain has come to be acknowledged through the approval of the 1978 Constitution and, one decade later, the Spanish State's ratification of the European Charter of Local Autonomy, just a few years after the Law of Bases of the Local Regime (from now on LBRL) was approved in 1985. Even though Spain was one of the first countries to ratify this Charter, in 1988, the scope of local autonomy is based on legal and historical tradition which have determined its shape. In this context, and not without difficulties and setbacks, important progress has been made in local autonomy in Spain. However, it is still not fully effective as local autonomy depends on local governments interacting with other levels of government, mainly the regional governments of the Autonomous Communities and central government as both possess important decision-making powers regarding local financing and its legal capacity.

Local government in Spain is situated in the country's multilevel and quasi-federal system of governance which is made up of Central Government and 17 Regional Governments (Autonomous Communities). They have been assigned general powers by Central Government and some other specific ones that may be assigned to them by their Autonomous Community's Statute of Autonomy. One of the local government characteristics in Spain is the legal uniformity which has been imposed on settlements in vast areas and heterogeneous in size which vary from millions of inhabitants to just a few dozen. Another peculiar feature of local governments in Spain is the fact that they are composed of two levels, the municipalities and the provinces. In some Autonomous Communities, especially in Catalonia, there is a third level, the shires, which include several municipalities of the same province and are created and function according to autonomic laws.

The two-tier local government system includes, on the one hand, 8.119 municipalities with huge territorial and socio-economic differences in terms of geography, population, transport infrastructure, unemployment, social inequalities and family income, among others; and, on the other hand, 52 provinces which are mainly responsible for coordinating and offering economic and technical support to small municipalities (less than 5,000 inhabitants) which account for 80% of the total number of municipalities. Therefore, in the Spanish local System there is an enormous contrast between a very small number of densely populated municipalities which are constantly growing and a large number of scarcely populated and aging municipalities, most of which are in rural areas. Those small local governments have limited institutional capacity to be able to effectively carry out their general responsibilities as their low financial capacity is not in keeping with their formal levels of autonomy. They therefore strongly depend on higher levels of government and intermunicipal cooperation. Excessive local fragmentation means it is not unusual to find many municipalities whose population is so low that they are unable to provide the minimum services imposed upon them by law. Moreover, in large

metropolitan areas, social and economic problems are not restricted to political and administrative borders and need to be solved through collaboration.

In the European context, local government in Spain belongs to the category of Napoleonic tradition (Kuhlmann/Wollmann, 2014; Bouckaert/Kuhlman, 2016) and has been shaped as time has elapsed by the combination of elements retrieved from previous times and endowed with a new administrative political dimension and other new principles mainly originating from French politics and administration. It is precisely from the first Spanish liberal Constitution in 1812 that all settlements, even the smallest, take the shape of local councils. This decision led to wide spread of democracy to all areas of the State, more so considering that during the Old System, previous to the above-mentioned Constitution, municipal positions were exclusively appointed by the King. This was therefore the reason for very small municipalities existing which, however, do not possess sufficient resources to carry out their duties (Canales & Pérez Guerrero, 2002:15).

As in other European countries, local tradition in Spain goes back to Medieval times. In the eleventh century, most Spanish cities were governed by closed councils composed of some local dignitaries. At first, the mayor, whose main job was to give justice in the name of the King, was elected, although it was a position occupied by one of the neighbors with high economic and social status. However, it was a position which gradually became one that was sold to the local elite in exchange for money for the Crown. During the following centuries, up till the Habsburg dynasty, the sale of municipal positions, together with the appointment of royal servants (correctors) who represented the Crown and with powers to collect taxes, public works, health and safety and security, in fact meant that local power was centralised in favour of the king. This centralisation reached its peak in the eighteenth century, with the Bourbon dynasty reigning in Spain, and it took the French administrative system as a model. This system was in favour of one professionalised administration for the whole the country. With Napoleon's invasion in 1808, this centralised model became widespread and was also adopted by the first Spanish liberal Constitution in 1812. Likewise, the following constitutions reinforced the central executive as opposed to the councils which were given less powers and could be suspended at any time by the central power. The political chief or provincial governor was above the councils and their mayor. The former had direct control of all the municipalities of that province and was directly appointed by the mayors from the municipal areas with least inhabitants. Thus, the mayor was mainly in charge of guaranteeing order and public safety as well as public health and promoting the local economy by creating markets and organising fairs. However, he also had an important political task as he was responsible for organising the elections for the national Parliament and also for guaranteeing results in accordance with the instructions given by the governing party at State level. Precisely a state law in 1845 had gave the Mayor the power to appoint council members, call meetings and establish the order of the day, as well as being responsible for the municipal budget in accordance with the central government's laws and priorities. Equally, he also had the power to appoint and dismiss staff working for the municipal corporation and, as a central government delegate, he could collect

certain taxes, manage municipal properties, including hospitals, hospices and charity homes for the poor. This regime remained practically unaltered until the advent of the Republic in 1934, which promoted local democracy and gave new powers to local governments under federalising principles, for the first time in Modern Spain. However, this change did not last for long as, after the Civil War in 1939 and under Franco's Dictatorship, a new local regulation came into force and left the local governors with no autonomy. Centralisation was reestablished and the central governor appointed all the members of the commissions in charge of managing local government. Thus, councils and provincial deputations were mere administrative agencies, the mayors were mere representatives of the central administration in the municipality and appointed by central government. In the provincial capitals and all those municipalities with more than 10,000 inhabitants, appointments were made by the Government minister; in all the others, by the respective provincial civil governor, having previously informed the minister. The position of mayor was for an indefinite period and the minister decided when it should be terminated. The other councilors were elected through elections; however, they constituted a democratic simulation. After the end of the dictatorship and at the beginning of the current democratic system, with the legalised political parties, the first democratic elections which took place in Spain in April 1979 were at a local level.

In 1985, when the Law regulating the basis of local government was passed (LBRL), the legal classification of local entities was defined in the Spanish legal system in order to be in line with the Constitution's acknowledgement of local autonomy. This law was of a decentralising nature, giving powers to local governments which, before the 1978 Constitution, had belonged to central government. In the 1990s and the first years of the new century, the aims were to strengthen local autonomy by providing it with additional financial resources and additional powers, as well improving the processes of citizen participation. This took place in a context of economic expansion which lasted until the end of that same decade and therefore thwarted the aspirations of local governments to obtain more financial resources and powers. Thus, the Local Pact, The Law of Large Cities and the White Book for the reform are attempts to restructure local power. These attempts were made by the social democratic and conservative governments which succeeded one another in central power, together with the Spanish Federation of Municipalities and Provinces (FEMP), the Spanish Municipality Association at state level.

This trend was broken in 2013, when, in the context of the Great Recession, the Spanish Central Government established the Law on Sustainability and Rationalisation of Local Government, arguing it in budgetary needs to control the public deficit and debt imposed by the European Union and the financial markets. This law constitutes a sharp regression in the decentralisation process as central government reinforced its control over local governments. By introducing it, the central government notified the European authorities that savings of €9,000 million would be made and contemplated reducing the number of municipalities. It could be thought, moreover, that this law pursued an exemplary effect for public opinion and European authorities, but not effective nor necessary, because the

Local Governments in Spain have in general no problems of deficit nor debt, and its weight in public spending is actually quite small. Therefore, as of this law enforcement, central government took charge of the financial control of local entities and thus reinforced the role of national civil servants to control decisions made by those in local elected positions. In conclusion, this new law aimed at strengthening the mechanisms and tools used by central government to control the local entities' budget and economy, constituting a resource at the service of recentralisation. At the present day, several postulates of this law have been questioned by the Constitutional Court for affecting local autonomy and some of its Articles have even been declared as unconstitutional. So, the future of its development is not clear, nor is the expansion of Local Self-Government in Spain.

2 Constitution and legal foundation for local self-government

The local government system in Spain can be classified within the Napoleonic tradition model, where the local institution has deep constitutional roots (Kersting and Vetter, 2003). As mentioned in the previous epigraph, autonomous local governments did not exist in Spain prior to the 1978 Constitution. Therefore, it is precisely that Constitution which comes to introduce and guarantee local autonomy in Articles 137, 140 and 141 of the Constitution. Moreover, Article 142 of the EU specifies the constitutional guarantee and emphasises that the above-mentioned autonomy must be adequately supported financially. However, what these Articles do is activate a sequence of laws, varying in rank and origin and aimed at defining, shaping, modulating and progressively proclaiming the concept of local autonomy established in the Constitution in such a way that local autonomy is guaranteed. However, the final level of local autonomy will come from the autonomy statutes, international treaties and the laws which define the scope, boundaries and guarantee of local autonomy established in the Constitution.

By having constitutionalised local power in Spain, the issue of resources can be laid before the Constitutional Court by the actors who have been given legal capacity to do so, amongst whom are obviously the very local entities, with the aim of safekeeping local autonomy, as reflected in the 1978 Spanish Constitution, which establishes the State's territorial organisation in Municipalities, Provinces and in whichever Autonomous Communities are constituted. All these Entities enjoy autonomy to manage their respective interests, which is what a representative government does which has been freely elected by its citizens, neighbours from that place. The existence of these territorial entities is guaranteed constitutionally by virtue of it being expressly acknowledged in the mentioned Articles 127, 140 and 141 in the constitutional text, which acknowledges local autonomy, leaving it to be developed by subsequent legislation. This development is carried out by the 1985 Local Government Basis Law. This Law specifies and broadens the constitutional precepts, where local autonomy, in Article 3.1 is defined as the right of local entities to participate in decisions which affect them. The characteristic function of the LBRL has been to lay the foundations for local government (in its basic aspects) always respecting the "minimum standards" of local autonomy established by the

Constitution and labelling the new Autonomous Communities with the highest “standard” levels of local autonomy. The LBRL, which can be considered a Law of local autonomy as it is embedded in the Articles of the Constitution which refer to local autonomy. This embedment has repeatedly been acknowledged by the Spanish legal system being placed in the block of constitutionality. The LBRL’s special position does not prevent the Autonomous Communities’ Statutes from also legislating on local government since Article 147.2 of the Constitution allows these Statutes to regulate municipal autonomy in their area. Therefore, almost all the 17 Autonomous Communities’ Autonomy Statutes contain provisions which affect local governments and, in particular, defend their autonomy. However, the minimum levels of municipal autonomy guaranteed by the Constitution cannot be restricted by the Autonomy Statutes or any other law originating from the Autonomous Community.

Thus, in Spain and from a legal point of view, municipal autonomy is developed and guaranteed by a heterogeneous set of laws, from the Constitution to the different 17 Autonomous Communities’ Autonomy Statutes, and the international Treaties which Spain has adhered to, including the European Charter of Local Self Government, as well as local, autonomic and state regulations. Needless to say, all these laws conform to and respect the constitutional guarantee of local autonomy. Apart from that, the definition, concision and guarantee of this autonomy has been subsequently developed by numerous decisions made by the Spanish Constitutional Court which guarantees minimum levels of autonomy which, in any case, can be extended by each Autonomous Communities’ Autonomy Statutes. However, this does not only pertain to constitutional law but also ordinary law, together with the former they shape and set the contents of local autonomy established in the Constitution. Above all, they do not permit other public powers to influence the legal system nor management of the municipalities’ own interests. In this respect and on some occasions, the constitutional law will give the same treatment to the municipal autonomous order in Article 140 EU as to the local autonomy required by Article 3 of the 1985 European Charter of Local Autonomy. This acknowledgement of local autonomy indicates the power which municipalities have to act legally to defend themselves.

Obviously, the municipal autonomy which acknowledges the previously mentioned set of laws implies an autonomy with legal capacity, thus municipalities have the power to act in all those areas which are considered of local interest. Political autonomy is above the latter autonomy since both municipalities and provinces (the two levels of local government) must be managed by representative authorities elected by citizens and therefore they are responsible to the same degree and scope for political autonomy inherent in a democratic system. The institutional guarantee of local autonomy amounts to a political management capacity to manage and administrate local interest determined by an electoral majority pronouncement which guarantees the existence of a representative government with sufficient autonomy to carry out local public policies adapted to their territorial area. Both these local autonomy elements in Spain will be dealt with in the next epigraph.

Apart from that, an order is inherent in the local autonomy constitutional guarantee which stipulates that all public powers must act favourably in order to preserve and promote local autonomy and this is optimised by granting municipalities maximum capacity to act as long as they use their powers in a way which does not contradict other constitutional principles.

As some author has pointed out (Velasco, 2007), municipal autonomy, which the Constitution guarantees, has a twofold content. On the one hand, each municipality, regardless of size, is guaranteed minimum levels of autonomy and, on the other hand, local governments have the power to act to legally defend their autonomy if it is threatened by other political powers. It is precisely through the constitutional law that the local autonomy concept has been given content, as stipulated in the 1978 Constitution, establishing minimum standards. One of the first has to do with the legislation control which other territorial powers can exercise over the laws and decisions approved at a local level. This however does not imply a position of dependency on or subordination to these very powers. In this way the deliberative power of municipalities in all issues and matters of municipal interest is safeguarded. Thus, if conflict arises with other territorial powers, the constitutional and ordinary law interpret municipal autonomy in the most favourable way for all those matters related to local interest.

A vital element of local autonomy is the availability of financial resources in order to make that autonomy effective. As regards this aspect, the constitution refers to the fact that local governments will have sufficient resources at their disposal. However, they largely depend on transfers from the State and the Autonomous Communities, since, as can be seen in the section related to financial resources, their own resources are very limited. On the other hand, autonomy does exist regarding local governments' ability to spend as, once the budgets have been approved, they have full autonomy to take decisions regarding what the funds are spent on.

As mentioned in the previous epigraph, the approval of the 2013 Law of Sustainability and Rationalisation of Local Administration has an important effect on local autonomy and leads to it being reduced and, for that reason, the Constitutional Court has already pronounced itself regarding several of its precepts which have been annulled. This Law, which is the response from central government to satisfy different requests from the European Union regarding public deficit reduction, is in line with the reform of Article 135 of the Constitution, of a purely economic nature, as well as the Organic Law 2/2012, 27 April, of Financial Sustainability and Budgetary Stability. Its objectives are explained in the reasons given in the following way: "With this aim this reform is laid out to achieve several basic objectives: clarify municipal powers in order to avoid duplicating powers belonging to other Administrations so the principle of one Administration one power is put into effect, rationalise the organisational structure of local Administration in accordance with the principles of efficiency, stability and financial sustainability, guarantee a more rigorous financial and budgetary control and favour private economic initiatives avoiding excessive administrative interventions". The aim therefore is to

reorganise the local system and it affects its powers, supports the merging of municipalities and, above all, it has a recentralising objective which greatly affects municipal autonomy. Due to this situation, numerous appeals of unconstitutionality have been presented to the Constitutional Court which have been resolved opposing what this Law intended and thus reaffirming the municipal autonomy principle.

3 Scope of local self-government

In Spain local governments' powers and responsibilities are implicitly protected by the local autonomy principle supported by the 1978 Constitution. However, the constitutional text does not specify the nature nor the scope of its powers and responsibilities. This scope has been developed through different ordinary laws on local government, and particularly as of 1985, with the approval of the Local Government Basis Law, which, in its original version, contemplated the area of local self government powers in Articles 7, 8, 36, 37 and 38. This law and other subsequent ones related to local government have been delimited, at the same time, by the Autonomous Statutes of different Autonomous Communities (of higher rank), as well as by other sectorial laws approved by the former in areas of powers attributed to them by the Constitution, together with the delimitation set by the Constitutional Court laws. All these laws (which has meant the LBRL text had to be modified on more than 20 occasions) gave local governments (municipalities) relatively ample and clear effective powers, based on the criteria of maximum proximity to citizens. However, these powers have been applied in very different ways depending on the population and territorial size of the municipality, its financial capacity and the Autonomous Community where it is situated. In actual fact, during these years many local governments have experienced a serious problem, that of having to assume responsibility for rendering services through delegation, or complementary ones (to cover voids or emergencies), which come under the legal responsibility of Autonomous Communities or of central Government (amongst these services, some in such relevant areas as education, culture, promoting women, housing, health and protecting the environment). The lack of means to cover these services is due to two main reasons: one, the scarce legal margin possessed by the councils to increase their own resources: the other, cutbacks in financial transfers from the regional and central Government to cover services which, although rendered by the councils, do not constitute part of their responsibilities (Villar, 2014).

Local government reform carried out in 2013 by the central State through the Local Administration Law of Sustainability and Rationalisation (LRSAL), in the context of the economic crisis, particularly affected the area of local self-government powers. As mentioned in previous chapters, this reform was carried out without political consensus, at no territorial level, and in actual fact led to serious rejection and enormous controversies on the part of local governments, autonomous communities, political parties, social agents and even amongst a large number of experts in local government. It came into force thanks to the support which the Popular Party (PP) received from two other small conservative parties. However, the institutional and political actors were

consulted and could express their differences, thus contributing to modifications in some aspects of the first drafts of the new law.

The main objective of the reform was, supposedly, to clarify local powers and avoid duplicities and, by doing so, avoid excessive costs in rendering local services. It was also argued, moreover, that it was necessary to bring local laws in line with the principles of efficiency, budget stability and financial sustainability established in the new version of Article 135 of the Constitution (modified in 2011 as required by Troika), and in the 2/2012 Organic Law, which developed the new constitutional precept.

The LRSAL reduces and limits responsibilities corresponding to local governments and delimits them according to population segments and limits them to a series of listed areas in Articles 25.2 and 26. They are entrusted to a law that should determine them and guarantee based on its financial viability through different administrations, but especially provincial deputations (intermediary governments formed through indirect representative legitimacy). Therefore, it subordinates municipalities with regard to other levels of government. Likewise, it establishes a tutelage system for exercising powers different to its own and to those attributed through delegation in such a way that they would only be accepted after previous and binding reports being drawn up by other administrations. By contrast, the LRSAL strengthens provincial deputations' powers through two main mechanisms which in short are: (1) coordinating the rendering of minimum services in municipalities with less than 20,000 inhabitants, in a direct way or using any other formula, including outsourcing to private companies; and (2) attributing new responsibilities related to rendering services, cost tracking and control and also granting them very active participation in drawing up and tracking local government financial-economic plans. Lastly, it indicates a series of minimum responsibilities which municipalities could carry out through autonomous communities delegating them but also with a strong economic tutelage system. It basically adds up to an update of complementary responsibilities which had previously been attributed to the municipalities and which are now attributed to the autonomous communities, especially in such decisive matters for citizens such as health, social services and education.

The above-mentioned regulations are the result of intense debate during the first drafts of the law. Some of the initial proposals were toned down mainly at the request of or suggested by the Council of State, the Spanish Federation of Provinces and Municipalities (FEMP) and the amendments made by political parties during the parliamentary process. However, even considering the modifications which the law underwent until it was passed, there is a common conviction that behind the reform lie two undeclared objectives on the part of central government: to limit local public expenditure (despite constituting a minimum amount of total public expenditure and despite the fact that the majority of councils did not have deficit or debt problems); and to take advantage of the economic crisis as an excuse to centralise powers due to lack of trust in local governments and also to favour private initiatives in the rendering of local services (amongst many other authors who have expressed this opinion: Ferre, 2014; Villar, 2014).

After the LRSAL was passed, it has rarely been applied because it was brought into force without consensus and was a sole initiative by central government. There were numerous appeals of unconstitutionality on the part of autonomous communities and local governments. These appeals have led to six sentences from the Constitutional Court, which correct critical aspects of the law, especially those related to powers. Amongst the most severe corrections is that of annulling powers attributed in relation to health, education and social services. It is considered that these powers correspond to the autonomous communities not to central Government. Moreover, and even before the Constitutional Court's amendments, the autonomous communities have passed laws and norms which hinder applying the reform of powers established by the LRSAL in their territories.

Part of this centralising insistence on the part of the central Government can be observed from the weak arguments used in the preamble to the LRSAL to justify the reform, as well as in the review of the structural principles related to the area of municipal powers (Villar, 2014). Thus, after the reform, Article 2 of the LBRL maintains the principle of "decentralisation", but it substitutes the principle of "maximum proximity of administrative management to citizens" for the less ambitious principle of "proximity" and adds new principles of "efficacy, efficiency, budgetary stability and financial sustainability". With these and other changes, such as considering "local autonomy" of municipalities to be the same as the capacity of "coordination" of provinces (Article 10.4 of the LBRL), it is clear that local autonomy was being attacked, "stripping the term municipal of its essence by comparing it with the term local, and that of provincial with municipal" (*ibidem*). And, as is peculiar to Spain, municipal government has a direct representative democratic legitimacy, whereas provincial government has an indirect representative democratic legitimacy. Another eloquent change related to the central legislator's aims is that of no longer encouraging citizen participation, which was an objective of the responsibilities to be delegated and which was previously contemplated in Article 27.1. That same Article referred to "the own interests" of municipalities as an evident reason which justified delegating responsibilities belonging to other levels of the state. In the specific case of "autonomic and state control of improper powers, Villar (2014: 5) maintains, a couple of years before the Constitutional Court began to pass sentences on the numerous appeals presented against the 2013 Law, which was to do with a control referred to as "extreme and contrary to the constitutional guarantee of local autonomy due to its preventive and opportunist nature and because all binding reports constitute an assumption of power sharing".

Despite the measures which attempted to deplete local powers, and therefore local autonomy of municipalities, the 2013 Law has had an incomplete and limited result in its declared objective, and failed to be applied (Forcadell, 2015), whether it be due to the Constitutional Court sentences, or to alternative laws drawn up by autonomous communities and opposing what was established in the LRSAL. The reform has been successful in controlling local government expenditure as well as encouraging

privatisation of services. Both these aspects doubtlessly affect the exercise of local government powers and hinders it.

Although the limitations on councils' powers have proved to be less than the 2013 Law set out to achieve, this law has generated uncertainty which, for the majority of mayors, represented by FEMP, can only be resolved by derogating the law and promulgating a new one (Caballero, 2016b). A judgement which is certainly shared by experts, many of whom accept that a new integral regulation of the local government system in Spain is necessary, one which gives coherence to all the jurisprudential and legal updates and alterations which have been made up until now and which paves the way for an effective rationalisation and modernisation of local government (Forcadell, 2015; Martínez Pallarés, 2014). For the majors represented by FEMP, the repeal of the 2013 Law would be the first step to recover a genuine local self-government, together with financial self-sufficiency and the institutional recognition of the municipalities and provinces as powers of the state in equal conditions to the central and regional government (Caballero, 2016a)

4 Protection of local authority boundaries

In general, local government boundaries (municipal and provincial) are well protected by Spanish laws and jurisprudence. This protection is deduced from the constitutional guarantee regarding local autonomy, but in actual fact it has been acknowledged since the promulgation of the 1985 Local Government Basis Law (LBRL). The Constitution is deliberately very scarce in all that is related to local government (Parejo, 2017) and only alludes, in Article 141, to the basic structure of the territorial organisation of the State. Its basic local entities are the province and the municipality. In Article 148, moreover, the constitutional text states that powers which change municipal boundaries and the State's responsibilities in local governments belong to the autonomous communities and expressly permit the modification of provincial boundaries, as well as groupings of different municipalities from the province, but it does not specify any further and makes no allusion to local entities neither inferior nor superior to municipalities.

The administrative and territorial structure of local governments is determined and developed through the 1985 Law and autonomic laws, which differ from one another as regards the way they legally protect and consider local bodies inferior and superior to municipalities (different to the provinces). The common local law considers municipalities, provinces and the Islands (Balearic and Canary Islands) as basic local bodies, but it also adds other local bodies expressly acknowledged: the *shires* or other supra-municipal entities different to provinces which the autonomous communities decide to institutionalise, as well as metropolitan areas and the municipalities' *associations* (Article 3 of the LBRL).

The procedures for creating and suppressing municipalities, as well as changing boundaries, are contemplated in Article 13 of the LBRL, since it was passed in 1985. Its legal precision depends on the Autonomous Communities. After the 2013 reform, this

Article has been modified profusely and has also been extended and given more detail, on the part of central Government, mainly due to two economic reasons: (1) to impede the creation of new local entities smaller than municipalities; and (2) to reduce municipal fragmentation. This is due to the fact that 6 of every 10 Spanish municipalities have less than 1,000 inhabitants, and 8 out of 10, less than 5,000 inhabitants, in a context of aging populations, increasing depopulation and a boom in seasonal residence linked to leisure or second homes. On the other side, that means that there are few, but big and even huge, Spanish municipalities, highly populated, with very different circumstances and problems to face. That was the reason for the approval of the Large Cities Law, in 2003. But even this law has been clearly insufficient to solve the problem regarding big as small municipalities.

Until the 2013 Law of Reform, the smallest local entities were acknowledged as such and had legal form. However, new local entities created after that date are not considered as such and neither do they have legal form. They are perceived as mere entities of the councils' deconcentrated administration (new Article 3.2, 45 and 24.bis of the LBRL reformed by the 2013 LRSAL). Although the initial proposal of this law of reform attempted to completely suppress local entities smaller than municipalities, in the end it still acknowledges them institutionally and their legal form, which they were constituted with before the reform, but only if they satisfy expenditure accountability in a timeframe and form determined by the new law. (4th and 5th transitory dispositions of the LRSAL). This reduced legal and political significance of local entities smaller than municipalities has not contemplated neighbour participation mechanisms or consultation with the entities which have been affected to determine their new legal consideration. It is also important to mention that the 2013 Law of Reform also aimed to suppress a supra-municipal entity: the *association's* services, to favour provincial deputations. In the end they were contemplated by the Law as local entities with legal form because during the discussions about the draft of this law it was clear that the regulation of the former depends on the Autonomous Communities and are likewise supported by the right of municipalities to associate with one another guaranteed by the European Charter of Local Autonomy. The Council of State also stated this fact when the law was being drawn up. However, despite being preserved, the reform limited the *associations'* capacity to act as their responsibilities were oriented to carrying out works and public services.

As regards the decrease in local fragmentation, the 2013 reform uses two basic mechanisms. On the one hand, it limits the creation of new municipalities. The new conditions being territorial areas with at least 5,000 inhabitants and financially sustainable. Both regarding the creation and suppression of municipalities, the reform contemplates the need to maintain provincial boundaries and likewise maintains the hearing process for the affected municipalities, the report from the Executive Committee or Autonomy and the obligation of informing the central Administration, but it adds a new control: the report from the Administration which acts as financial tutelage.

On the other hand, the reform aims to reduce local fragmentation through specific measures which encourage neighbouring municipalities to merge through legal and economic incentives, regardless of their population. The economic incentives for mergers include subsidies and financial aid such as the direct public contributions and the possibility to create a fund with no legal form. The legal incentives involve drawing up a merger agreement amongst equals, which is approved without having to consult the affected population and is approved through the municipal plenary representatives with a simple majority. Likewise, it includes an element of supervising and coordinating the merger which is carried out by the provincial deputations, which reinforce them in detriment to the municipalities' local autonomy.

After four years since the Law of Reform was passed, neither experts nor those affected have sufficient information at their disposal to make firm conclusions about the effects related to territorial organisation, particularly, regarding this Law's aim to reduce fragmentation and limit infra and supra-municipal local entities. The general impression is that the reform has not solved the underlying problems because its aim was merely economic. In Spain, the basic problems of a municipal nature are still the same (Martínez Pallarés, 2014; Forcadell, 2015; Pizarro, 2017).

As regards local boundaries (municipal and provincial), it can be concluded that they are well protected from a legal point of view, and both municipal groupings and the formation of new ones are allowed since the minimum population limits seem sensible. However, the same cannot be said of local entities smaller than municipalities nor of supramunicipalities different to provinces, which the reform attempted to suppress and, in the end, accepted, but weakened. Weakening these institutions can be interpreted as an attempt to hinder the maximum proximity principle which the European Charter of Local Autonomy expresses as a fundamental criterion for functioning. In any case, the most evident lack of legal form regarding the protection of boundaries is that local decision-making mechanisms regarding the latter do not contemplate previous consultation with citizens through a referendum, and decisions taken by the representative municipal councilors only require a simple majority (particularly in the case of mergers with neighbouring municipalities within a province). Likewise, it is remarkable that the modifications carried out by the 2013 Law of Reform are only based on economic reasons, without taking into consideration, nor attempting to favour in any respect, an effective citizen participation in an aspect as important as local autonomy. This lack of concern is especially grave in the case of minor local entities, which are unable to access channels which allow them autonomous decision capacity and legal acknowledgement to manage their neighbours' interests. These decisions show that central Government is at present insensitive to local autonomy and prefers centralisation in order to control local expenditure rather than decentralisation which favours direct participation from citizens in matters which concern them most.

5 Administrative structures and resources for the tasks of local authorities

The functional and material scope of local autonomy not only depends on the capacity of each municipality and the inter-administrative and inter-governmental relationships which are established with other territorial powers within the State, but also on the personal and material resources which it reasonably has at its disposal to carry out that autonomy. In this respect, the internal organisational autonomy of local governments, which, above all, includes having appropriate staff to adequately address those responsibilities. This is guaranteed by the 1985 Law which acknowledges that municipalities, provinces and islands, amongst others, have legal and self organisation powers, financial and tax powers, as well as that of programming and planning municipal organisation. Acknowledging their power of self organisation is applicable to all the independent municipalities regardless of size. However, in practice, it is a formal acknowledgement in the case of small municipalities which have minimum capacity to organise due to the lack of resources. Designing and introducing local public policies requires complex, specific and sectorial knowledge to develop activities, for example, housing, social policies, infrastructure, transport, etc. And the small municipalities in Spain, which are most of them, do not possess sufficient resources to maintain administrative staff to take charge of these activities.

Apart from that, it can be clearly deduced from the local Spanish government regulations already mentioned that the government is responsible for local politics, but local public managers take care of municipal management with the appropriate resources at their disposal. In any case, the Mayor is at the top of the executive and is also the Administration head and therefore has the capacity to manage the administration and thus determine the municipal organisation tasks and structures.

This original acknowledgement of self organisation power was endorsed and extended by a new law in the year 2003, called Modernisation Law or Large Cities Law and established a specific organisation system for large cities, in the legal text known as “densely populated municipalities” and which include: “a) municipalities with over 250,000 inhabitants b) provincial capital municipalities with over 175,000 inhabitants. c) those municipalities which are provincial capitals, autonomous capitals or centres for autonomous institutions and d) municipalities with over 75,000 inhabitants with special cultural, historical, social or economic circumstances.” This Law set two main objectives: to strengthen local government’s executive capacity and, at the same time, strengthen the Plenary’s power to control an executive granted important management capacity. Thus, this Large Cities Law introduces the separation of administrative and executive structures, on the one hand, and the Plenary or representative body, on the other. Its regulations are approved separately through the procedure stipulated in the law. Although the Modernisation Law lays out the general guidelines which municipal organisation must adhere to, it is through the internal regulations, using the regulatory power as regards self organisation, which determines how each Council’s organisation will be shaped and regulated.

Thus, in large cities municipal administration is organised to function in areas of Government, called Municipal Delegations, which can be managed by Councillorships or non-elected members of the Local Executive Committee. The Mayor is responsible for determining the structure of Municipal Delegations. The latter will assume the responsibilities granted to them as well as those the Local Executive Committee decides to transfer at any time. In any case, Municipal Administration organisation adheres to the principles of task division in Municipal Delegations and decentralised management is contemplated in the Districts and it is here that citizen participation in management and improving municipal matters in neighbourhoods is promoted and developed.

The Mayor and Local Executive Committee delegate their responsibilities in the councillors. The Mayor determines their number, the type and scope of responsibilities to be delegated. Therefore, the councillorships have capacity and responsibility in specific areas of intervention. They carry out government actions in their area in accordance with the guidelines set by the Mayor and the agreements reached by the Local Executive Committee. By means of dividing tasks, each Councillorship is given one or several homogeneous sectors related to administrative activity. The Councillorships' structure is based on General Instructions which are also determined by the mayor. The Executive Committee also appoints management staff proposed by the mayor. These positions are held by State, Autonomous Community, Local Entity civil servants or those from local administration with capacity to do so at a national level. Despite the aforementioned, and as regards special tasks related to area managers or general managers, which include advice, direction, study, management and implementation, in conclusion, however many initiatives and projects correspond to the area or areas, all these tasks are an inherent part of management. The Executive Committee can appoint non-civil service staff proposed by the mayor.

It's necessary to take a look at how local public civil service is regulated and organised as it affects local autonomy. Firstly, it's important to mention that some state civil service bodies exist in the Spanish municipal tradition, those who can act at a national level. They are in fact in charge of controlling the locally elected members but the reason for their existence is justified by the fact that they ensure that certain tasks are carried out in all local governments, thus guaranteeing "that certain sets of tasks are carried out and developed correctly" which are considered to be of greater interest than just locally. These tasks are, on the one hand, the secretary's, in charge of legality control and certifications and, on the other hand, the supervisor's, mainly in charge of internal fiscal matters related to the council's budget and economic-financial management. In most of the small municipalities the latter carries out the management tasks.

As regards the rest of the local public employees, the capacity of self organisation which local governments have, also includes that of regulating the civil servants. However, this is done within the framework of autonomous and state legislation. Thus, a state law, the Basic Statute of the Public Employee stipulates in Article 3 that "with regard to local autonomy, local entity civil servants are affected by whatever state and autonomous

community legislation is applicable and which this Statute forms part of. This said, as regards civil servants, the local autonomy demands that the autonomous and state legislators respect the local autonomy through acknowledging legal and management spaces belonging to the local entities. Thus, the latter are forced to not exceed the use of legislative power and must abstain from legislative monopoly when it comes to local public employment system, thus impeding local powers being exercised. In practice, this triple system of local, autonomous and state sources means that local laws related to civil servants are very limited due to the state basic legislation and the autonomous community's legislation which can never be contradicted.

With the passing of the 2013 Law of Local Administration Sustainability and Rationalisation, which, as we have previously mentioned, mainly came about due to budgetary and economic issues, the state recuperates local civil service powers through a double manoeuvre. Firstly, the local employment dual system, made up of civil servants and non civil servants, which reserves certain tasks for civil servants, thus central power duplicated tasks for civil servants and non civil servants arguing that in recent decades too many non civil servant employees have been hired and this allowed political positions to appoint those employees at their discretion but, by doing so, neither merit nor capacity were priority principles. Secondly, the new law introduces new mechanisms aimed at controlling the number of local public employees. Therefore, local governments are obliged to periodically publish the number of job posts within the local public sector which can be taken by temporary staff. The Mayor must also inform the Plenary about this. Temporary staff is appointed freely by those elected based on political confidence and one of the objectives of the 2013 Law is to reduce the number of this type of staff, limiting it to the number of inhabitants in the municipality. Lastly, control tasks carried out by national level civil servants have been extended and strengthened, which affects local autonomy.

Therefore, as regards self organisation and, especially, local public employment, the measures taken to save and contain local public expenditure have led to a recentralisation in favour of the State, with the subsequent negative effect on local autonomy, all this in a context where the majority of Spanish municipalities lack the conditions required to carry out their responsibilities (Mellado, 2015).

6 Conditions under which responsibilities are exercised at local level

In general terms, Spanish law amply protects the free exercise of responsibilities related to local elected representatives. This is so considering both the economic compensation they receive for costs incurred through carrying out their responsibilities and also the safekeeping of their job and work conditions outside the council and the system of incompatibilities. Therefore, it can be said that in general local elected representatives possess the necessary legal instruments in Spain to carry out their positions freely and unaffected by any interest other than political ones, even their own party interests.

The legal protection of mayors and councilors is stipulated in a specific Statute, within the 1985 Local Government Basis Law (Articles 73 to 78) (LBRL), which has been modified on 8 occasions, especially in the nineties and the beginning of this century's first decade. The Statute has only been modified in order to broaden and satisfy the needs which were detected during the first decades of Spanish democracy (Torres, 2014). The Statute was last updated due to the 2013 Law of Local Administration Sustainability and Rationalisation (LRSAL), for economic reasons: to set economic limits for elected positions' salaries and also the number of representatives which can work full time (Domingo, 2014).

Particularly Articles 74 and 75 develop the economic and welfare guarantees stipulated in Spain by the Statute of local entity members. These guarantees not only cover the elected positions but also include non-elected members from the Local Executive Committee, if there are any. Article 74 deals with the specific case of public employees, whereas Article 75 develops all the other guarantees and economic incompatibilities which are applied to all Assembly (Plenary) members and also those of Local Government (Executive Committee surrounding the mayor). The specific guarantees depend on the positions' level of involvement: (1) full time, (2) part time and (3) neither of the aforementioned. These three systems amply protect the exercise of these positions from an economic point of view, but in different ways.

In the first case, the council provides a full salary and also pays the employee's National Insurance contributions, however, in exchange, these positions cannot receive income from any other entity, neither private nor public, except in certain cases determined by the Law of Personnel Incompatibilities Serving Public Administrations (Law 53/1984). In the second case, the council provides a partial income, in accordance with what has been agreed on regarding part time involvement, which has to sufficiently compensate the loss of income caused by the time involved in public activity. In this case the council also covers the corresponding part related to the National Insurance contributions which would correspond to the company or employer administration.

In the third case, the council only covers expenses for attending sessions of the professional bodies which he belongs to.

In all the above-mentioned situations, the Local Executive Committee's councillors, mayor and non-elected positions have a right to claim expenses derived from the exercise of their position, which have to be clearly specified.

Article 75 also stipulates basic rules on incompatibilities and transparency regarding the Executive Committee's local representatives' and the non-elected positions' financial or patrimonial and work situation. In actual fact, the latter have to declare any possible incompatibilities or activity which might provide them with income and also declare their financial and patrimonial possessions. These declarations form part of three different local registers (Interests, Activities and Patrimonial Possessions) and are made before

taking possession of the position, once it is left and whenever their circumstances vary. Both Local Executive Committee representatives and non-elected members can, if they desire, also declare any risk related to their personal safety or that of their possessions or businesses, as well as that of their family, business partners, employees or anyone who they are related to economically or professionally. Finally, this same Article sets a two-year limitation for those in positions with executive responsibilities as regards the private activities they may be involved in in areas related to their council work. However, in exchange, economic compensation is provided during this period if they receive no other income.

Developments in this law allowed an ample margin for these positions to decide on their own specific income for local positions, in accordance with the principle of local autonomy. However, this ample power led to many striking situations and even contradictory ones in relation to the population reality of the represented municipality. The 2013 Reform Law attempted to classify income through Article 75 bis by stipulating a maximum income scale (for all the concepts) for representatives and municipal executive positions, linking them to the population rate of their municipality and taking as a reference for all of them the annual income of a Secretary of State (equivalent to a vice minister from local Government). In accordance with this scale, local positions from the largest municipalities (more than 500.000 inhabitants) can earn the same as a Secretary of State, whereas, at the other end, local positions from small municipalities (between 1.000 and 5.000 inhabitants) can earn a maximum of 60% less than the Secretary of State. Local positions in municipalities with less than 1.000 inhabitants cannot be involved full time and only in exceptional cases are they allowed to be involved part time. Another limitation stipulated by Article 75 bis is that claiming expenses for attending professional bodies will only be applied to positions which are neither full time nor part time. However, each council is allowed to determine the amount for expenses. The 2013 Law of Reform introduces a second significant change related to the conditions in which local positions carry out their responsibilities: limiting the number who can be involved full time. Here again, a maximum limit is set in relation to the size of the municipalities' population. In the smallest ones, the possibility of full time involvement in municipalities with less than 1.000 inhabitants is eliminated; and a maximum of three are allowed in municipalities with less than 10.000 inhabitants. Strangely enough, the population segments used to set the maximum number of full time elected positions or executives are not the same as those used to determine the number of councilors who can be elected in each council. Generally, this lack of proportionality decreases as the size of the municipality increases, but with leaps. By means of an approximate comparison, municipalities with between 3.000 and 10.000 inhabitants are allowed 20-25% involvement, whereas the two largest municipalities, Barcelona and Madrid, are allowed 80%, and in the case of the majority of municipalities with 50.000 and 100.000 inhabitants, 60%.

Despite the economic restrictions stipulated by the 2013 Law of Reform (especially those referring to the limit on the number of full time positions), the real effects of which are

still not known, income and compensations guaranteed by this law for local elected positions and executives are ample in Spain. However, it is true to say that there are numerous cases of malpractice regarding ethics and corruption, normally based on intertwined interests which link local positions, party financing needs and businesses, especially during the real estate boom years (Ramió, 2015). In conclusion, apart from legal protection, a serious rethink about the circumstances which lead representatives to stray from the interests of those they represent is necessary.

7 Administrative supervision of local authorities' activities

The Spanish constitutional framework acknowledges government autonomy both for local (municipalities and provinces) and regional (Autonomous Communities) governments. However, although the Constitution amply regulates the Autonomous Communities, especially in the area of its powers and its relationship with other powers (territorial and central), local powers are regulated very little. This lack of development and clarification of local autonomy in the constitutional text lead to doubts from the beginning regarding the real scope of power which was acknowledged for municipalities and provinces, as is the case with the relationships they should establish with other state territorial levels (Parejo, 2017). Apart from this striking fact, there is another exceptional one: the Spanish Constitution does not grant local governments legislative autonomy. Rather, central Government and the Autonomous Communities governments possess legislative power. In fact, these two powers regulate local governments. The central State is mainly responsible for setting the foundations of local government, whilst the Autonomous Communities are in charge of delimiting local autonomy in a broad range of sectorial laws. Therefore, the Constitution left the real development of local autonomy in hands of the future relationship of powers within the superior legal organisations, central and autonomic, thus initiating what is known as the “bifront nature” of local government in Spain (Parejo, 2017). These relationships were clarified in a very favourable way for local governments due, on the one hand, to the jurisprudence of the Constitutional Court, which has repeatedly shown to defend local autonomy. On the other hand, due to the fact that the majority of the Autonomous Communities Statutes and the autonomic legal development have been equally favourable to local self-government, granting ample margins of action to the councils (more than to the provinces).

In conclusion, although the Constitution acknowledges local governments' autonomy, in practice it treats them like an administration which renders services, rather than a level of government channeling citizen participation. However, the subsequent legal developments and jurisprudence have proved to be coherent for three decades, with the idea that local governments, as well as rendering services, are a genuine state power, a vehicle of representative democracy in the area closest to citizens, despite the Constitution not having granted them with legal capacity. In accordance with this idea, administrative supervision of local activities, although complex and with striking regional differences, turned out to be extremely respectful towards local self government up till the beginning of this decade. The general tendency was for autonomic supervision, with municipalities

having ample margins of action to decide on local matters. However, during the present decade, and in the context of the economic crisis, the central State has gone backwards, as regards its central nature, creating new mechanisms to control local powers. This regression is expressed above all in the 2012 Organic Law of Financial Sustainability and Budgetary Stability (LOEPSF, of maximum rank) and in the 2013 Local Administration Law of Sustainability and Rationalisation (LRSAL). Both took the change of Article 135 of the Constitution, approved in September 2011, which forces public expenditure cut backs, by limiting the deficit and favouring the use of other budgetary items to pay off financial debt.

The 2012 LOEPSF greatly conditions local governments, as well as other levels of government, because they cannot decide freely how to use their budgetary resources nor the amounts. This is achieved through two mechanisms: one, budgetary stability, which involves forcing public administrations' costs to be lower than their incomes (except payment of debt); and, two, rules on expenditure which do not allow public administrations with surplus to use it at their own will. A non financial expenditure limit is set for certain items, taking the previous year expenditures as a reference and increasing it by a small percentage, which is determined by central Government each year based on its forecast of the GNP increase for the whole of Spain. The liquid assets remnants must be used for paying off debt or for investments with pay off periods of over a certain number of years, thus councils are unable to contemplate expansive budgets even when they have sufficient resources of their own to be able to do so.

The rule on expenditure has been applied by central Government in a discretionary way and has led to numerous problems. The most striking of all was in 2017 when the Treasury intervened Madrid city government's tax administration (which enjoyed a surplus) so the latter could not use its surplus for unauthorised items such as short-term investments in infrastructure or investments in social services. No doubt this was an exemplary measure, precisely against a local government composed of a coalition of parties which arose from the 15-M Movement and which opposed the central Government's austerity measures. Controlling surplus has led to significant political confrontation amongst councils and the central State, which, in February of 2018, appeared to be temporarily resolved. The Spanish Federation of Provinces and Municipalities (FEMP) achieved, as an exception and not susceptible to being consolidated, the beginning of an agreement with the Treasury so that the latter allows Spanish councils to reinvest the 5.000 million which they accumulated in 2017 in items different to that of paying off debt. This agreement, which has not yet been approved, only contemplates the possibility of reinvesting this surplus up till the municipal elections in 2019, and in conditions which have not yet been clarified. That is to say, it is an opportunist and circumstantial decision which is based on the idea of a discretionary application of the law on behalf of central Government.

Apart from these practical restrictions on local autonomy, the 2013 Law of Reform includes other obstacles for municipal governments. First of all, the strengthening of

intermediary governments (provincial deputations) which are assigned new supervision and coordination tasks, especially of small municipalities. Secondly, a system of quasi subordination for municipalities which take on delegated responsibilities and an extremely tutelaged exercise related to responsibilities different to their own and to those which have been delegated (Martínez Pallarés, 2014), which, moreover, are linked to financial sustainability and to less costs. Thirdly, direct control mechanisms of local budgets are introduced, as well as management of public services on the part of central Government. It requires binding, perceptive and previous reports from the Treasury and Controllers and the State also attributes itself powers regarding local civil services posts for those able to work nationally. The result of these and other measures is “an opportunist, generic and preventive tutelage assumption which situates the Local Entity in a subordinate position and dependent on the State. This position is contrary to the constitutional guarantee of local autonomy”, this is a “state tutelage under financial pretexts which already constitutes a fundamental pillar for systemising and regulating Spanish local entities” (Villar, 2014:10).

The changes which have occurred since 2012 have in short led to the central State increasing supervision of local governments. To be more precise, they mean “a setback in local autonomy (...) and even worse is the fact that Municipalities are treated or are tried to be treated like autonomous bodies dependent on the State General Administration, which comes into conflict with its condition of representative public entity granted autonomy” (Villar, 2014:14). In this case, central Government’s territorial policy would now be guided, not by the aim of guaranteeing local governments autonomy regarding the Autonomous Communities, but by a new aim of impeding a closer relationship between the former and the latter (*ibidem*).

8 Financial resources of local authorities and financial transfer system

The exercise of local autonomy depends on the existence of sufficient financial resources. The percentage of public expenditure in which local governments in Spain incur adds up to about 13% of total public expenditure. The weight of local public debt on the GNP is about 3%. Financial autonomy is contemplated in Articles 137 and 140 of the Constitution and Article 142 stipulates that “Local Treasuries will need to have sufficient resources at their disposal in order to carry out their responsibilities which the law attributes to the respective entities. Their main source of income will be their own taxes and also from participating in those of the autonomous communities and the State.” This constitutional ruling, apart from establishing the principle of sufficient financial resources for local governments, explicitly refers to a mixed system of resources, made up of their own taxes and income from transfers made by the Autonomous Communities and the State. Thus, it is acknowledged that local entities participate in their tax income. This explicit constitutional acknowledgement means that both the State and the Autonomous Communities are obliged to bring into being the principle of financial sufficiency of local entities. Moreover, the Spanish Constitutional Court has acknowledged in several sentences that local entity autonomy is therefore closely related to financial sufficiency

since it requires that the local entities, with no undue conditioning and in its full extent, have financial resources at their full disposal in order to carry out the responsibilities which have been legally granted to them.

Therefore, the State is responsible for determining the model for financing local entities, by virtue basically of its exclusive power over the general treasury and is consequently mainly responsible for guaranteeing local governments' financial sufficiency. Thus, the local financing system is regulated in a 1988 state law which is supposed to bring into being the constitutional principles of sufficiency and autonomy, allowing local governments to determine their own taxes. However, this is not the case of provincial governments which depend on central government. The local financing structure is sustained by the existence of a mixed system of resources made up of their own taxes and transfers from the Autonomous Communities government and central government.

As regards their own taxes, the most important is Property Tax, which provides the councils with stable tax collection as the annual amount can be forecasted and, in global terms, it represents a quarter of the total income from local taxes. Apart from those taxes, the local Treasury is also made up of fees and special taxes. Each municipality decides on the fees and special taxes. They are used to finance the cost of services created by the Municipality. Public prices for the rendering of certain municipal services would also have to be contemplated. In total, the fees and public prices amount to about 25% of the total municipal income. Marginally, local governments can also participate in budgetary items from the European Union in the framework of Common Rural Policy or financing projects. However, procedures are controlled by central government and, moreover, co-financing is usually required and very few local governments, especially those in rural areas, have capacity to participate in co-financing.

Apart from its own taxes, local governments in Spain also have financial resources at their disposal from transfers which they receive from the State and the Autonomous Communities governments. The annual amount is determined by rules which are common to the regional governments. These transfers are divided into two types: unconditional and conditional, depending on what they are used for. Conditional ones are designed to satisfy the aims of whoever offers the subsidy, whereas the unconditional ones can be used freely by the local government. Naturally, most of the transfers usually have a condition, which restricts autonomy as local government cannot determine the use of these funds.

In this context of dependency regarding resource transfers, the way the state legislator interprets the principle of budgetary stability constitutes a significant limit on local financial autonomy as regards budgets. This does not mean to say that the State can intervene directly in annual budget decision making by each government. This State regulatory capacity has been acknowledged by the Constitutional Court which points out that whatever financial sufficiency pretenses there might be are recognised under "possible reserve", depending on the resources which actually exist and can be used at

each instance and depending on the economic situation and financial adjustments required by economic cycles. Thus, in the current context of financial crisis, particularly virulent in several south European countries, the Spanish government, urged by the European Union, proceeded to reform Article 135 of the Constitution in 2011, thus forcing all Public Administrations to act in accordance with the budgetary stability principle. In order to comply with this constitutional Article, the 2/2012 Organic Law of Financial Sustainability and Budgetary Stability was passed. It requires local governments to maintain budgetary balance and they are not allowed to incur in any structural deficit, however the State and Autonomous Communities are allowed to do so.

Therefore, local governments cannot get into structural deficit since a state law requires they maintain a balanced position or budgetary surplus. This law is extremely strict with local governments in comparison to autonomous and central governments. Whilst the latter are allowed to maintain structural deficit adjusted to the economic cycles, local governments are required to maintain an annual budgetary balance with excessive control from central government to verify they fulfill this requirement. This situation is worse in the case of small municipalities as they have experienced drastic cutbacks in both unconditional and conditional transfers and, therefore, find themselves in difficulties to satisfy citizens' demands.

In conclusion, in the current austerity context, the financial laws do not guarantee autonomy nor stability as regards municipal financial resources. This means many councils have difficulties and therefore local autonomy has decreased. On the one hand, local governments have not participated in the drafting of these laws which require they introduce austerity policies and, therefore, with the financial resource restriction, the municipalities are unable to offer the services requested or they have to resort to privatisation which, in many cases leads to a reduction in the quality of services rendered.

9 Local authorities' right to associate

In Spain, the right of association of local entities is reflected, on the one hand, by the existence of intermunicipal cooperation tools for exercising responsibilities and offering services and, on the other hand, by acknowledging the creation of autonomous or national associations to promote and defend local government interests before other territorial powers.

Creating associations for intermunicipal cooperation is a necessity due to the fact that more than eighty per cent of municipalities have less than five thousand inhabitants. This level of fragmentation is a threat to any attempts at functioning in public resources management and creates distortions which are difficult to overcome in local financial mechanisms (Alba & Navarro, 2003). As has occurred in other European countries, a solution to this problem could be obligatory groupings of municipalities to better allocate resources. Due to different historical, political and social reasons, it has not been possible to bring about a territorial policy in Spain aimed at suppression or obligatory mergers.

Therefore, in order to optimise resources and accomplish aims which, on its own, each municipality would not achieve, the alternative has been for municipalities to group together. Traditionally, in Spain, the local authorities' right to associate is a mechanism to reform Local Government. Due to historical traditions which have resulted in strong local identities, amalgamations in search of economic efficiency are problematic, not only because the two major parties are well rooted in each place and radical territorial reforms will be penalised politically (electoral system: rural vote is overvalued, proportional system, etc.) but also because the merging of small municipalities would have no significant impact on individual local budgets. In this context, promoting associations has always figured as part of the laws regulating local governments in Spain, not only supporting relationships between the two levels of local government, the municipalities and the provinces, but also with other territorial administrations. Although of a voluntary nature, creating associations has also arisen from the need to comply with European Union requirements in order to benefit from their structural Funds. During the last decade and due to austerity measures imposed on Spain by the European Union and the International Monetary Fund, the need to associate has become more acute as cutbacks in transfers from Autonomous Communities and central government force the municipalities to create associations to jointly draw up public policies and render local public services.

In any case, the problem of small municipalities in Spain was already observed by state legislators in the nineteenth century, who in the 1870 Municipal Law foresaw the creation of Municipal Associations as a way to solve their problems. However, these groupings have always been of a voluntary nature and are an alternative to municipal mergers (amalgamations). Its obligatory nature has always been contemplated as a threat to local autonomy. However, the first regulatory law on local associations came about in 1955 with the approval of the named local consortiums which, possessing a legal form, allow different municipalities to group together to accomplish certain aims. The local consortium is made up of municipalities but, unlike *associations*, it is also composed of other public entities of a different nature to manage common services shared amongst several places. This figure also permits private entities to form part of the consortium but with no profit making in mind and with the sole aim of pursuing aims of public interest. The association figure of the consortium as a means of cooperation has a new reason for existing when the 1978 Constitution came into force with its concomitant legislation regarding local government. Thus, the 1985 Local Government Basis Law acknowledges the consortium as a means of cooperation for managing public affairs of common interest and contemplates two formulae: the first and simplest contemplates municipal communities. They are entities with no legal form and are for enhancing intermunicipal cooperation. The second, forming *associations* with the aim of rendering joint services or exercising joint responsibilities. Both options are based on the need to voluntarily gather resources and efforts. However, the best means for intermunicipal cooperation in Spain are the municipalities' *associations* as an alternative to obligatory groupings (amalgamations). The municipalities' *associations* are public law entities and of a territorial nature and mainly aim to carry out works and render public services that are

necessary so that the municipalities which it is composed of can exercise their responsibilities granted them by the State basic legislation. Thus, the *associations* play a vital role as they allow their municipalities to guarantee social and territorial cohesion, especially in those small sized or rural municipalities, which in Spain are the vast majority.

The *associations* are public law entities and, as such, adhere to their own statute and have legal capacity and form to accomplish their specific aims which are normally related to jointly carrying out works and services for the municipalities which form part of the former. However, under no circumstances do they take on all the responsibilities of any of these municipalities. Municipalities which do not belong to the same province can form part of the *association* and they do not have to be neighbouring areas. The Statutes ensure regulation of the scope of action as well as their government bodies where the Councils forming part of the *association* need representation. They have the power of self organisation and have their own resources at their disposal. Therefore, financing is covered by the members' fees as well as establishing special taxes for financing works or services in the municipalities which form part of the *association*.

There are a total of 1,012 *associations*, 785 of which (78%) are made up of small municipalities and 227 (22%) of large municipalities (FEMP, 2012). Out of the 8,119 municipalities, 6,010 participate in *associations*, which vary in size, in the number of municipalities taking part, the legal system and the range of services rendered. Thus, these figures show that municipal associations are a necessary means to promote intermunicipal cooperation so that small municipalities can render basic services which would otherwise be impossible to offer.

All types of shared service experiences exist in Spain, from those that have a real content and a positive way of working to those that constitute a formal mechanism but hardly function. Apart from that, there is no information about results as regards effectiveness. However, it is known that there are cases of inefficiency and overlapping. There are also matters which have not been solved related to transparency, accounts and democratic quality since their bodies are not directly elected by the neighbours.

It should also be mentioned that the "comarcas" and metropolitan areas form part of intermunicipal cooperation. In some autonomous communities, especially Catalonia, these entities have been shaped to carry out decentralised responsibilities which belong to the autonomous community.

As regards metropolitan areas, they have been created to respond specifically to problems inherent in large urban areas. These are contemplated in the 1985 Local Government Foundation Law. They are governed by their own statutes and can have their own resources at their disposal. However, as is the case with *associations*, there is no information about their efficiency and they do not function well as regards transparency

and democracy as although mechanisms exist in some cases to allow for citizen participation, they have no real content.

Finally, local governments are being allowed to associate in order to promote and defend their interests. There is a national association for this (The Provincial and Municipal Spanish Federation, FEMP). Several Autonomous Communities have also formed associations at a regional level. The FEMP has 7,324 local entities as members which represent more than 90% of the total local governments in Spain. It also forms part of the Council of European Regions and Municipalities. As FEMP express at its website, it aims to “promote and defend Local Entities’ autonomy; represent and defend Local Entities’ general interests before other Public Administrations; develop and consolidate the European spirit at a local level, based on autonomy and solidarity amongst Local Entities; promote and favour relationships based on friendship and cooperation with Local Entities and their organisations, especially in the European, Ibero-American and Arab areas; render all types of services either directly or through companies or entities to Local Corporations or to entities dependent on these and any other aim which may directly or indirectly affect members of the Federation” (www.femp.es).

10 Legal Protection of local self government

Local governments in Spain enjoy an ample and satisfactory organic structure of special courts of maximum rank (especially the Constitutional Court) and also consultants or consultation boards (Executive Committee, Autonomous Communities Social and Economic Board, Ombudsman, etc.) which they can appeal to in order to ensure free exercise of their powers and respect of local self government principles, when they consider they have been violated. In fact, local autonomy took its first steps in Spain despite the content of the Constitution not having been developed and before the Local Government. Basis Law (LBRL), thanks to a sentence passed by the Constitutional Court in 1981. Even after this Law was passed in 1985 and also after Spain signed the European Charter of Local Self Government in 1988, the Constitutional Court has continued to pass numerous sentences through different procedural channels related to local autonomy and conflicts amongst local, regional and central powers.

The first reason why the Constitutional Court has had to resolve so many sentences related to local autonomy and other conflicts is due to the fact that the Constitution looks in detail at the precise content of local autonomy and power. The 1985 Local Government Basis Law and the passing of the European Charter of Local Self Government in 1988 are those which amply develop local government, together with the sectorial laws passed by the Autonomous Communities. Precisely a frequent reason for legal dispute has come about from the fact that local issues are shared between central Government and the Autonomous Communities. This has produced repeated conflicts and appeals between the latter and central Government, as well as amongst Autonomous Communities, central Government and councils. The predominance of Autonomous Communities in local

matters has moreover led to a very varied range of relationships, dependencies and, in the end, conflicts between regional and local powers.

Local autonomy in Spain has greatly benefited from the Constitutional Court's case law. Tens of sentences have been passed by this court between 1981 and 2017, some openly posing the problem of local self government, and others indirectly, due to other conflicts posed between territorial powers and central Government (Parejo, 2017). One very relevant point in this period was the 7/1999 Organic Law (maximum degree of legal protection), which opened a specific legal appeal channel to ensure free exercise of local powers and attributions before the Constitutional Court, through a special procedure to attend to the, as denoted by this law, "conflict in defense of local autonomy (Pomed, 2006). The justification for the inclusion of this special channel through an organic law in the Constitutional Court procedures was precisely due to the fact that the European Charter in Article 11 defends legal appeals. The aim of this innovation is precisely what is not allowed by the Spanish legal system: active legitimisation in a appeal of unconstitutionality. It is worth highlighting that many of the appeals which have arisen due to this conflict have come about from a background of construction interests and area planning (*ibidem*), a fact which is very congruent with the outstanding role played by the councils and Autonomous Communities in the real estate boom of the first years of the last decade.

After the 2013 Law of local Reform, a new wave of appeals of unconstitutionality (nine) appeared and a conflict in defense of local autonomy, due to different initiatives, but, essentially, from the Autonomous Communities and municipalities and provinces through their Federation (FEMP). Basically, in their sentences, the Constitutional Court has maintained a large part of the reform, especially changes in economic issues, except some very striking ones such as attributing to the Treasury the task of controlling the cost of rendering certain services prior to their existence. A large part of the modifications which the reform made regarding territorial organisation has also been maintained as this model is considered a central Government issue, although it is applied by the Autonomous Communities. However, the Constitutional Court also pronounced itself against central Government on several issues of reform, such as the modifications related to responsibilities which, in its judgement, should have been legislated by the Autonomous Communities instead of central Government.

In conclusion, and regardless of the outcome of the Constitutional Court's sentences, the experience of four decades allows us to conclude that, whether it be through the special channel of "the conflict in defense of local autonomy" or resorting to the appeal of unconstitutionality, local governments can exercise their right to legal tutelage clearly and effectively.

11 Future challenges related to the implementation of the European Charter of Local Self-Government in Spanish Legislation

Spain was one of the first signatories of the European Charter of Local Autonomy in 1988 and, since then, has been used as a parameter to interpret and shape the development and implementation of the local autonomy principle contained in the Constitution and developed in subsequent laws. In a way, the 1985 basic legislation on local government which refers to the Charter in the reasons it puts forward, was influenced by the latter. Moreover, numerous laws of different rank approved afterwards also refer to the Charter and the case law has also referred to it in numerous sentences since its precepts can be invoked before the courts. However, the local autonomy principle and its correlation of financial sufficiency contemplated in the Constitution is basically of a formal nature and although state laws exist which broaden and give content to the constitutional precepts, this law is not of a constitutional rank, therefore, the real content of local autonomy is left to the decisions of other territorial powers and highlights not only the institutional weakness of local governments but also the fact that there is no uniformity as regards local services rendered and received by citizens and it depends on the area they live in.

This institutional weakness which affects local autonomy is evident in the limited decision-making power which local governments possess in Spain in order to develop public policies related to the Welfare State such as education and health. Both of these are in the hands of the Autonomous Communities in which local governments play a residual role since the principle of subsidiarity is not explicitly included in the Autonomous Communities statutes of autonomy. In this context, and despite the fact that the basic state laws, especially the 1985 law, grant local governments capacity to exercise certain powers it depends on sectorial laws which means delegation is abused. This therefore results in the delegating powers exercising obligatory power and has the local autonomy in check. In any case, the problem of clarifying local powers is linked to a territorial policy whereby in the process of territorial decentralisation, which began with the approval of the Autonomy Statutes, the autonomous communities have taken on powers from bilateral negotiations with the State and this problem will continue until the Senate is converted into a true chamber of territorial representation where, as well as representing the interests of autonomous communities, a system of inter-administrative and inter-governmental relationships amongst the latter and local governments is contemplated, more so when the local governments in the 17 autonomous communities differ in historical tradition, geography, size, population and other socioeconomic variables.

Perhaps such a reform would permit a more effective solution, from autonomic areas, to the problem of infra-municipalities through groupings (amalgamation) looking, through economic incentives, for local integration which facilitates economies of scale, effective exercise of powers and better rendering of services in such a way that integration could be perceived as beneficial for its neighbours. Half the Spanish municipalities are at risk of disappearing with many negative implications which are not only to do with territorial

imbalance but also with risks of depopulation, being this matter one of the biggest challenges expressed by the mayors through their national organization (FEMP, 2017).

Doubtlessly, one of the other main pending challenges is to achieve financial and fiscal autonomy which is consubstantial to local autonomy and, in order to give the latter content, it is necessary to reform local financing in Spain, one that contemplates its own fiscal system and unconditional transfers from central government and the autonomic governments, especially taking into account the diversity of municipalities as mentioned previously, in such a way as to guarantee maximum uniformity in the rendering of services to citizens. But a serious fiscal reform which addresses the problem of financial insufficiency of local governments must be made from a global perspective involving all territorial powers, the State, Autonomous Communities and local governments to determine a local financing system. And this is so because one of the pillars of local financing, as occurs in other European countries, should contemplate the participation of local governments in common taxes such as tax on individuals and VAT, without altering the legal capacity which would reside in the State but in a way that the three territorial powers, State, Autonomous Communities and municipalities participate together in collecting and managing taxes.

In Spain, the economic and financial crisis has been affecting public policies for a decade. These policies are closely linked to the Welfare State, a Welfare State which Spain arrived late at and is weaker in comparison with other European States (Navarro, 2006; Moreno, 2013; Pino & Rubio, 2013). In fact, the basic support of Welfare in Spain has fallen especially on families, who are a fundamental network of social welfare in Spain (Moreno, 2001; Navarro, 2006). The financial objectives imposed on Spain by the European Union and the International Monetary Fund have led to a loss in national sovereignty in which local autonomy has also been seriously affected as central government has promoted a series of laws aimed at reducing public administration's deficit. This set of laws focuses on reforming the economic system and redesigning municipal autonomy in terms of recentralisation in accordance with plans imposed by the EU of a purely financial nature (Martínez de la Casa, 2016). Without going to say that the capacity of local governments to influence the approval of all these laws which affect autonomy has been minimum as, although its interests are represented in the Committee for Local Issues, an associated body made up of representatives from central government, autonomous communities and local government, the latter has little influence. In this context and although some precepts of the 27/2013 Law of Local Administration sustainability and rationalisation, limiting local autonomy, have been declared unconstitutional and, in global terms, local autonomy has decreased. For example, as regards their debt capacity and public expenditure and even autonomous organisation. In conclusion, austerity measures imposed by the EU and IMF have urged Spain to reform its local government. Central Government reform measures include not only the reduction of transfers from the central, regional and provincial governments but also the recentralisation of powers to those same territorial governments and the reduction of local expenditures through the rationalisation of local organisational structures and the joint

provision of local services and policy coordination. Of course, local governments are exercising great organized resistance to the recentralizing policy of the current Spanish central government. In fact, the Spanish Federation of Municipalities and Provinces (FEMP) has clearly expressed the intention of repealing the current 27/2013 Law as a priority objective for Spanish mayors in order to reinforce del Local Self-Government in Spain (Caballero, 2016b). This purpose, expressed by the nowadays president of the FEMP, coincides with the access of new parties and citizen candidacies to the Spanish municipal governments, including those of the two main cities, Madrid and Barcelona. Being political expression of the mobilizations and citizen protests (worldwide known as Movement 15-M, or Movement of the Indignados) these local governments seek to recover lost self-government and have also become municipalities platforms to promote economic and social policies different from those imposed by the Spanish central government and the EU (Pradel & García, 2018).

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The Charter of Local Self-Government in Sweden

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Abstract Sweden ratified the European Charter of Local Self-Government in 1989 and committed itself to following all its articles. Sweden regarded itself as fully complying with all the Articles of the Charter, but emphasised that it was more relevant for other countries in Europe and the world. However, two monitoring reports from Congress, in 2005 and 2013, had been critical about implementation of the Charter. The Swedish government responded by gradually making further adjustments which generally increased the scope of local self-government. These included a major constitutional revision and changes in the Local Government Act. Changes have been largely inspired by the Charter but some essential features of the Swedish legal system, such as a lack of a significant judicial remedy have remained unaffected despite the demands of the Charter.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Sweden

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1 Introduction and history

Local government in Sweden consists of two tiers – 290 municipalities and 21 regions, each corresponding to the area of a county¹. They have a key role as providers of the welfare services that are relevant for individual citizens which, in the Nordic welfare system, are relatively generous. Municipalities are responsible for social services, care of the elderly and childcare and for primary and secondary education. They also provide water and sewerage, parks and recreation, and fire protection. Regions are in charge of primary healthcare and hospitals, but also of care of the disabled, regional culture and regional public transport. In addition, they are also responsible for regional development in their county.

Modern local government was established with the Local Government Ordinances in 1862. Based on a parish structure with roots in medieval times, four types of local government were introduced – rural municipalities, cities and small towns; the fourth type was a second-tier local government, the county council. In 1862 there were about 2,500 first tier municipalities. These were amalgamated twice, first into around 800 in 1952 and a second time in 1974 so that only 276 municipalities remained. In parallel, local government was given substantive responsibility for welfare tasks. De-amalgamations have subsequently increased the number to the present 290 municipalities.

Due to the extensive responsibility for welfare services, local government is relatively strong in Sweden. Of total public expenditure in Sweden, 49 percent concerns the local government sector, which is the second largest in Europe. Only Denmark, where local government has an additional function as provider of pensions, has a higher share². Another sign of the relative importance of Swedish local government is that 83 percent of all public sector employees are employed in local government, which is the highest in Europe (Dexia, 2008). Indeed, this crucial position in the national welfare system could be seen as reflecting central government trust in local government.

Swedish municipalities and regions are also held in high esteem by the citizens. A survey carried out by the Eurobarometer indicates that 65 percent have high trust in local and regional government, which is among the highest in the EU and exceeded only by Denmark and Luxembourg (Eurobarometer, 2012). Additional studies suggest that local autonomy in Sweden is among the strongest in Europe. A recent attempt to establish a composite index of local autonomy identifies Sweden as having one of the most autonomous local governments in Europe, after Switzerland and Finland (Ladner, Keuffer & Baldersheim, 2016).

¹ Regions were county councils before 2019. The first regions were set up in 1998 and the other county councils have gradually received status as regions. Gotland is both a municipality and a region.

² OECD Fiscal Decentralisation Database : Consolidated government expenditure as percentage of total general government expenditure (consolidated) [Table 5: 1969 - 2012]
<http://www.oecd.org/ctp/federalism/oecdiscaldecentralisationdatabase.htm>

For all these reasons, it would be easy to conclude that the Swedish system of local government is among the best in the world and that there is no need for improvement. Indeed, this also seems to have been the understanding of the Swedish government when the European Charter of Local Self-Government established by the Congress of Local and Regional Authorities of the Council of Europe was ratified in 1989. In the Government Bill, the minister in charge emphasised that the Charter “should be seen as a part of a pursuit for strengthening and developing local self-government and democracy in Europe and the world. Of course, Sweden as a nation should support these pursuits” (Regeringens proposition 1988/89:119, p. 7–8). With regard to Sweden, the minister stated that local self-government has a long tradition and therefore “the principles expressed in the Charter have for a very long time been integrated into the Swedish legal system and its general principles of public administration” (Regeringens proposition 1988/89:119, p. 8). Hence, the understanding was that this charter would help other countries to improve their systems and that Sweden would support such efforts. However, Sweden would not really be affected since the country already met all the criteria of the Charter. Sweden was a role model, rather than a learner.

This chapter aims to provide an overview of the implementation of the Charter in Swedish legislation and how this has changed from the time of the ratification. The assumption of the minister at that time, that the Swedish system of local self-government met all demands of the Charter and that the country had very little to learn, will be scrutinised on the basis of the comments and suggestions of the reports from the two monitoring missions that have been carried out and the changes in the position of local self-government that has occurred over the years. This connects to a more general question of whether the Charter has functioned as a standardising device only for new and less well-functioning democracies or if it has also had an impact on well-established democracies.

The decision to ratify The European Charter of Local Self-Government was taken by the Swedish Parliament on 10th May 1989. There was no debate on the matter and the decision was unanimous. The Charter would be applied to both municipalities and county councils (i.e. current regions). It had already been signed by the Swedish government on 4th October 1988 about one month after the Charter came into force. At that time, the Charter had already been signed by 16 of the 22 member states and ratified by seven. Hence, Sweden was not among the pioneers. After the decision in the Parliament, the Charter was ratified on 29th August 1989 and entered into force on 1st December 1989³. As mentioned, the Government claimed that the Swedish legal system fully complied with the demands of the Charter. Therefore, a Swedish ratification would not require any changes of laws. The Charter allows member states to abstain from ratifying certain articles, but Sweden decided not to use that option. Hence, Sweden is bound by all provisions of the Charter.

³ It should also be noted that Sweden on the 5th of May 2010 signed the Additional Protocol on the right to participate in the affairs of a local authority, which came into force on the 1st of June 2012.

In the Swedish legal tradition, international agreements are as such not part of the internal Swedish hierarchy of norms. Instead, they have to be transformed into domestic legislation. After the Government has concluded the agreement and the Swedish Parliament approved it, such transformation can be carried out in two ways. Most commonly, the normative substance of the agreement is transformed into Swedish law, for example by adding new provisions to an existing act or ordinance or by enacting a new act or ordinance, which transforms the substance but not necessarily the wording of the international agreement. Alternatively, transformation can be achieved by explicitly deciding that the agreement shall be in force as Swedish law. In this case the text or texts of the agreement, and, if necessary, a translation of the text into Swedish is annexed to the transformation act. This method was used in 1994 for the transformation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the transformation of the Law of the European Union into internally applicable law.

As the Swedish government at the time of the approval of the European Charter of Local Self-Government in 1989 claimed that the 1977 Swedish Local Government Act and other regulations of local government were in line with the Charter, no substantial changes were considered to be necessary in Swedish legislation. The Charter and the Explanatory report were added as an appendix in the travaux préparatoires. However, as some adjustments were made in the 1991 Local Government Act as a result of the transformation (see below) it could actually be seen as being incorporated into the domestic legal system. However, it is difficult to find ‘hard’ evidence for this transformation apart from the Parliament’s approval of it and in references to the Charter and its Explanatory report in the preparatory works. But on the other hand, Swedish travaux préparatoires are usually viewed as vitally important for the interpretation of the enacted text – they are usually followed, not because they are formally binding but because it is the Swedish legal tradition.

However, despite being ratified, the European Charter of Local Self-Government seems to have no legal status in the courts. This is indeed the situation in all countries that lack systems for formal incorporation of charters into the domestic legal order and Sweden is no exception. These member states are bound to comply with the European Charter of Local Self-Government provisions under international law but have not adopted the treaty into national law. For this reason, the (very few) attempts by local governments to rely on its guarantees in court have failed (Boggero 2018).

As previously mentioned, the question of transfers of resources between municipalities was a controversial matter before the most recent revision of the Instrument of Government. Many municipalities argued that such transfers were unconstitutional and violated local self-government. Whether this was the case has never been tried or examined by the Swedish courts, since both the Supreme Court and the Supreme Administrative Court, when asked to try cases dealing with this issue⁴, decided that the

⁴ The references for these cases are in the Supreme Court case NJA 1998 s. 656 II and the Supreme Administrative Court case RÅ 2000 ref. 19.

complaining municipalities were not permitted to have their cases heard before those courts.

With regard to the case tried in the Supreme Court, the municipality of Vellinge first appealed the decision of the Fiscal Authority to transfer money from the municipality as part of the equalisation system, claiming that approximately 42 million SEK should be transferred back to the municipality. After the appeal had first been rejected by the Government, the municipality next turned to the Supreme Court. As part of the argument, the municipality claimed that Article 11 the European Charter of Local Self-Government applied, which said that “(l)ocal authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation”. The Supreme Court stated that the European Charter of Local Self-Government had not been adopted into Swedish law and therefore the Charter was not of any relevance for the question of whether the court could try the case, since, with reference to the Explanatory report, it was possible for the municipality to have recourse to an extraordinary remedy for reopening of proceedings (*resning*) in the Supreme Administrative Court. Therefore, an administrative decision could not be tried by a general court based only on the grounds that a plaintiff claimed that the decision was in contradiction with the constitution.

The second case was tried in the Supreme Administrative Court and was initiated by the municipality of Täby. The municipality first appealed to the Government, but after having been rejected, it turned to the Supreme Administrative Court. The municipality referred to the extraordinary remedy for reopening of proceedings, and argued that the law was in contradiction with the Constitution and the European Charter of Local Self-Government. The Supreme Administrative Court found that the constitutional right for local government to levy taxes in order to manage their tasks on behalf of the citizens (Chapter 1, Article 7, The Instrument of Government) was of a general character and that it was not obvious that the system of financial equalisation between local authorities was violating the Constitution. Therefore the appeal was rejected.

Since formally being components of the State, the municipalities were also unable to bring their cases to the Strasbourg Court. It has been said that “(f)rom many points of view, it is regrettable that the courts refused to deal with the case in a manner that would, for the total effect considered, even amount to a kind of *déni de justice*” (Nergelius, 2011:95).

However, reference has been made to the Charter in proceedings in the Swedish Parliament. The Standing Parliamentary Committee on the Constitution (Riksdagens konstitutionsutskott) explicitly referred to the Charter as a reason for suggesting that a proposal from the government on interventions in how local government carried out responsibilities of public procurement should be rejected. This was seen as an infringement of Article 6, paragraph 1 of the Charter, on the right for local authorities to

determine their own internal administrative structure (Konstitutionsutskottets yttrande 1993/94:KU3y). This contributed to the Parliament deciding to reject the proposal.

During the first decade of the existence of the Charter, the compliance by its signature states was investigated on an ad hoc basis and in particular when something had been brought to the attention of the Congress of Local and Regional Authorities of the Council of Europe that made it relevant to initiate a monitoring activity. However, the number of countries investigated were small and mainly concerned newer democracies. In order to avoid stigmatising individual countries but also to make it more comprehensive, a systematic monitoring system was introduced from around 1997 according to which all states would be monitored on a regular basis (Himsworth, 2015).

Sweden's compliance with the Charter has been monitored twice. The first monitoring visit took place in 2004, headed by the rapporteurs Dr. Ian Micallef (EPP/SD), Malta, and Karsten Behr (EPP/CD), Germany. They were assisted by Professor John Loughlin, Cardiff University, from the Group of Independent Experts on the European Charter of Local Self-Government. The recommendations based on the report were adopted by the Congress in June 2005 (Council of Europe, 2005).

Although recognising that Sweden on the whole complied with the Charter, they highlighted a number of issues that caused concern. For example, they criticised the tendency to introduce too much detailed regulation, that more legislation granting rights to citizens may reduce the scope for local self-government and that Sweden lacks a good way for local government to challenge national decisions that may threaten to limit local self-government. With regard to financial matters, the visiting mission was concerned with examples of tax capping, a partly unclear tax equalisation system and the increase of ear-marked grants.

The second monitoring visit was carried out in 2013 with Luzette Wagenaar-Kroon (L, EPP/CCE) from the Netherlands and Gudrun Mosel-Törnström (E, SOC), Austria, as rapporteurs. These were supplemented by Professor Renate Kicker, from the Group of Independent Experts. The report was submitted in early 2014 and was adopted by the Congress in March 2014 (Council of Europe, 2014).

In their report, the rapporteurs acknowledged that Sweden responded to the criticism from the first report in several respects. For example, it introduced a principle of proportionality within the frame of a new and separate chapter of the Constitution specifically devoted to local government. The proportionality principle calls on Parliament to be restrictive when limiting the scope of local self-government and when doing so, it must give the reasons for doing so. The report also noted that principles in the tax equalisation system had been clarified and that responsibilities for regional development functions had been gradually transferred to regional self-governments. In addition, and in contrast to many other European countries, local government in Sweden seems to have escaped financial cuts in connection to the 2008–2009 economic crisis. However, there were also points of

criticism in the report. For example, it recommended that the principle of subsidiarity should be strengthened, that a formal consultation procedure between state and local government was established and that state grants should be indexed.

Nevertheless, even if the rapporteurs had some points of criticism, and noted risks of infringements, their overall conclusion was that the Swedish system of local government now complied with the Charter.

The remainder of the chapter consists of an article-by-article review of how the Charter has been implemented in Swedish legislation. This also includes an overview of the major points of criticism from the monitoring visits and how Swedish legislation has been revised in areas where it has been criticised for not fully complying with the Charter.

2 Constitution and legal foundation for local self-government

The second article of the Charter establishes that the principle of local self-government must be protected through national legislation and if possible also in the constitution. At the time of the ratification, the Swedish government emphasised that the country's regulation complies with the Article through, in particular the first paragraph of the main constitutional document, the Instrument of Government (*Regeringsformen*)⁵. Here, it is stated that democracy in Sweden is realised through a representative and parliamentary form of government and through local self-government.

Local and regional self-government was first written into the Swedish Constitution in 1974, after a major constitutional reform. Before that, Sweden had a constitution dating from 1809. It was modern when it was established but gradually became obsolete. However, rather than changing it, it was reinterpreted in order to harbour the major political reforms of the 19th and early 20th centuries, such as the introduction of democracy, parliamentarianism and local self-government. There was no explicit mention of local self-government in the 1809 Constitution.

After a general agreement among all major political parties was reached on establishing a new and modern constitution, gradual reforms were carried out that eventually led to the 1974 Constitution. Right in Chapter 1, Article 1, it was stated that Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage. This is realised through a representative and parliamentary polity and through local self-government and is carried out within the laws. In Chapter 1, Article 7, the Constitution stated that Sweden has local authorities at local and regional levels and that they are governed by elected councils. This paragraph also included a right for local government to levy taxes in order to manage their tasks (Gustafsson, 1996).

⁵ Sweden has four constitutional laws, of which the Instrument of Government (*Regeringsformen*) is the most important. All further references to the Swedish Constitution in this text concern the Instrument of Government.

Hence, the principle of local self-government is one of the fundamental principles of the Swedish democratic system, and its constitutional regulation forms the basis of activities undertaken by the municipalities and regions. The inhabitants of each local authority elect their representatives to an assembly every fourth year through direct elections. In this way, inhabitants can influence how their elected councils fulfil their mandate.

Apart from the Constitution, local self-government is further regulated by the Local Government Act (*Kommunallagen*) and by various additional pieces of legislation. These include laws and ordinances covering specific areas of local and regional government responsibilities, e.g. the Social Services Act, the Planning and Building Act, the Education Act and the Health and Medical Services Act. Within the framework of these and a large number of other acts the municipalities and regions have significant freedom to organise their activities as they see fit.

At the time of the ratification of the Charter, the Local Government Act in force was one that had been adopted in 1977. The principle of local self-government was emphasised in Chapter 1, paragraph 4 which stated that municipalities and county councils had the right to manage their own affairs (Gustafsson, 1977). A new and revised Local Government Act came into force in 1991 following a revision aiming at further decentralising responsibilities. Perhaps the most important change was that local authorities were given greater leeway to set up their internal organisation. The principle of self-government was written into Chapter 1, paragraph 1 of the Act, which stated that the municipalities and county councils attend to the matters indicated in the Act or in special regulation and proceedings on principles of democracy and local self-government. The latest Local Government Act (*Kommunallagen* (2017:725)) was adopted in 2017 and came into force January 1st 2018. It is basically a modernised version of the 1991 Local Government Act. The constitutional basis of local self-government became a concern in 1995, in a political debate on the constitutionality of the Swedish system of tax equalisation. As the constitution states that local taxes can only be used for local purposes, it was questioned whether central government had the constitutional right to transfer local tax resources from one municipality to another. This led to the setting up of a parliamentary committee with the task of reviewing the constitutional protection of local self-government (*Självstyrelsekommittén*, 1996). In its report, the committee referred to the newly ratified Charter and emphasised that any changes in the Constitution would need to be in line with the Charter. The committee suggested some changes in the constitution but these were not implemented. Instead, they were included in a larger revision of the Swedish Constitution (see below).

The constitutional foundations of local self-government in Sweden was also addressed by the first monitoring report of Sweden's compliance with the Charter in 2005. One point of criticism was that the specification of the tasks and functions of local government in the Constitution was seen as being too ambiguous as it only states that these should be carried out "within the laws". Although this creates flexibility, a simple majority in the Parliament could too easily restrict local self-government. Instead, the committee

suggested that the government should consider introducing more specific regulation in the constitution as a means of protecting local autonomy. However, despite this point of criticism, the rapporteurs concluded that Sweden complied with the second Article of the Charter.

In parallel, the pressure to review the Constitution continued. In the beginning of the 2000s the Swedish political parties had come to an agreement that the 1974 Constitution needed to be revised and updated. A parliamentary committee was set up in 2004 with the task of preparing such changes. The committee was not explicitly commissioned to review the constitutional protection of local self-government, but it had the right to take own initiatives beyond those specified in its directives. The debate on the constitutionality of the tax equalisation system had continued but in addition, the issue of whether temporary tax caps were in line with the constitution was also a matter of controversy. These events contributed to the committee's decision to include the protection and regulation of local self-government in its review (*Grundlagsutredningen*, 2008). The committee appointed an expert sub-committee with the specific task of looking into how the constitutional protection of local self-government could be strengthened.

In the report from the sub-committee, the points of views of the parliamentary committee from 1996 on the constitutional protection of local self-government, together with the monitoring report from the Council of Europe on Sweden and the government's response to this were taken into consideration. The suggestion from the rapporteurs to clarify the tasks and functions of local government, for example by adding a list of functions to the constitution, was rejected as making regulation too inflexible. However, the sub-committee and later the major Parliamentary committee suggested a number of other changes that would underline the importance of local self-government in the Swedish polity (*Grundlagsutredningen*, 2007). Many of these were subsequently enacted in the new Constitution that came into force in 2011.

A symbolic change was that most constitutional regulation of local and regional governments was collected in one chapter – Chapter 14 of the Constitution, which was seen as a way of enhancing the position of local self-government. It follows from Article 1 of that chapter that the decision-making power in the municipalities is exercised by elected assemblies and it follows from Article 2 that the municipalities attend to the matters indicated in special regulations and proceedings on principles of democracy and local self-government. Article 3 states that the legislator needs to take into account the principle of proportionality if there are any changes proposed that may affect local self-government and Article 4 provides a constitutional right to taxation. The previously controversial question of inter-municipal financial equalisation is regulated in Article 5, where it is stated that local government can be obliged, through an ordinary law, to contribute to cover costs in other municipalities, if this can be justified as a means of creating equal financial conditions. Article 6, finally, clarifies that the principles of local government border changes are regulated in ordinary law.

The second monitoring report, carried out in 2013, noted with satisfaction the many constitutional changes that had occurred. However, the rapporteurs were still critical of the constitution for not explicitly mentioning the principle of subsidiarity (see further below in connection to Article 3). Nevertheless, and on the whole, the Swedish government was seen as complying with Article 2 of the Charter.

3 Concept of local self-government

Article 3 of the charter states that local self-government has the right to manage a substantial share of public affairs and that this should be carried out by elected councils. At the time of the ratification, the Swedish government claimed that the Swedish legal system fully complied with this article as these matters were guaranteed by the constitution and by ordinary legislation such as the Local Government Act and through the law regulating elections.

The first monitoring report had no remarks on the Swedish implementation of this article and regarded Sweden as fully complying with it. This was also the conclusion of the second report although it pointed at tendencies of centralisation and the growing use of legislation that gave rights to clients, that potentially could limit the scope of local self-government (further discussed below in connection to Article 4).

4 Scope of local self-government

The scope of local self-government is regulated in Article 4, which consists of six paragraphs that specify a number of conditions about the tasks and responsibilities of local government that need to be met in order to safeguard the scope of local self-government. This includes having basic powers and responsibilities, that the powers should be full and exclusive and that responsibilities should be carried out as close to the citizens as possible. The article also emphasises the right for local authorities to be consulted on all matters that concern them directly. At the time of ratification, the Swedish government stated that local government in Sweden has a position that fully complies with the article. Most of its paragraphs correspond to regulation in the Constitution or the Local Government Act, for example the legal protection of local government to carry out its functions and its general competence. However, paragraph 3 on decision-making as close to the citizens as possible, and paragraph 6 on the right for local government to be consulted, were seen as being in line with the Swedish administrative tradition, rather than any specific law.

The first monitoring report in 2005 was critical of how Sweden complied with this article. As has already been mentioned in connection to Article 2, the rapporteurs were concerned with the arbitrariness of the regulation of the tasks and functions of local government. They also had a number of specific points of criticism that were seen as examples of unjustified central government interference in local matters.

Some of the examples dealt with highly politicised issues, where the Social Democratic government had imposed stricter controls over local councils with a non-socialist majority that wanted to carry out policies that the government could not accept. The government had decided to reduce general grants to the local authorities that sold off municipal housing, which would reduce the stock of housing for the less well-off. According to the rapporteurs, this was seen as interfering with paragraph 4 of Article 4, stating that powers to local authorities should be full and exclusive. Other examples were a new law ordering local government to set up a housing agency service and a law restricting the right of county councils to sell off acute care hospitals. In all these cases, the monitoring mission criticised the government for unduly interfering in local affairs.

The rapporteurs were also concerned with the increasing use of “rights legislation” that gives specific clients the right to particular services. This started back in the 1980s where the Social Services Act and legislation on disabled persons provided undisputable rights to certain services, independent of the resources available to local government. Although recognising that it was important to safeguard that people in vulnerable position receive the services that they are entitled to, the rapporteurs thought that this type of legislation might limit the scope of local self-government. Nevertheless, and despite their points of criticism, the rapporteurs concluded that the Swedish system of local government complies with Article 4 of the Charter.

The sixth paragraph of Article 4, about the right for local government to be consulted on matters of their concern was not explicitly addressed as a problem in Sweden in the first monitoring report. When the Charter was ratified, the government claimed that existing channels, for example the system of referrals (remiss) gave local government sufficient opportunities to give their view on matters that were relevant for them. Despite this, there were demands within Swedish public debate to strengthen the consultation process, in particular from the local government associations. A formalised process had existed during the 1980s and at the beginning of the 1990s but this had been abolished. It was now suggested that formal consultations should be reintroduced, as a way of strengthening the municipal influence over central policy-making. With direct reference to Article 4, paragraph 4 of the Charter, the sub-committee of experts reviewing how the new constitution could better protect local self-government discussed different ways to formalise a consultation procedure. It ended up suggesting that the constitution should explicitly mention the right for local government to be heard by the government. This has subsequently been included as part of Chapter 7, Article 2 of the Constitution.

The second monitoring mission, carried out in 2014, acknowledged this change in the Constitution. However, referring to the views of the Swedish Association of Local Authorities and Regions (SALAR)⁶, it noted that there was still no formalised process and also that there was no time frame within which consultations should take place. The government had claimed that the regulation in the Constitution was sufficient as it allowed

⁶ SALAR was established in 2007 through an amalgamation of the separate local government associations for municipalities and county councils.

for a flexible and non-formalised process. SALAR is invited to follow the work of those parliamentary committees which prepare proposals for new reforms affecting local authorities, and sometimes SALAR may be asked for their opinion on suggested policy changes (the “referral system”).

The rapporteurs also noted that a principle of proportionality had been introduced in the revised Constitution but it was not pleased with how it had been applied and interpreted with regard to the scope of local self-government. It is entirely up to the State to determine which level of government is the most appropriate for a particular task. There is no principle of subsidiarity within the Swedish political system that would ensure that local functions are carried out by local government. They were critical of what they saw as a centralisation tendency and urged the government to add the principle of subsidiarity to the Constitution. The rapporteurs had identified several cases where local autonomy had been restricted by central government, for example in the regulation of the social sector, working conditions, healthcare and in particular the regulation of education and public procurement. Although the rapporteurs concluded that there is a risk that Article 4 of the Charter is infringed, their overall assessment was that Swedish law and practice in general complies with the article.

5 Protection of local authority boundaries

Article 5 emphasises that changes in the boundaries of local authorities require that affected local communities are consulted beforehand, if possible through referendums. At the time of the ratification, the Swedish government could refer to a law adopted in 1979 that made consultations mandatory, which meant that the Swedish legislation complies with the Article.

Before this law came into force, and during the last amalgamation reform in 1974, such consultation was not legally required. The law on boundary changes (originally from 1919) put the burden on affected local governments to protest if they were displeased with suggested border changes, but this could still be overridden by the government if it had good arguments. It is unlikely that the old law would have complied with Article 5.

In Chapter 14, paragraph 6 of the new Constitution, it is stated that the principles for border changes are regulated in law. Although this was also the case before the new constitution was enacted it means that such principles cannot be set up by the government without the approval of the Parliament.

Both monitoring missions have come to the conclusion that Sweden complies with this article of the Charter.

6 Administrative structures and resources for the tasks of local authorities

This article deals with the scope for local government to decide on its own administrative structure and to recruit high quality personnel. The Swedish government regarded both these conditions to be fulfilled at the time of the ratification, in spite of special regulation making six municipal committees mandatory. These committees included a School board and a Building and Planning board. The government referred to the Explanatory report of the Charter which stated that a limited number of mandatory committees were acceptable.

However, not long after the ratification, the Local Government Act was revised in a way that gave local government much more leeway in setting up its own political organisation. In the 1991 Act, only the executive committee and a committee with responsibility for election administration remained mandatory. Hence, if there were any doubts that the Swedish system would comply with Article 6 of the Charter, these were now removed. However, the changes were not motivated with reference to the Charter, but from experience of the “Free Commune Experiment”, which allowed selected local authorities to be exempted from central regulation on an experimental and temporary basis (Baldersheim & Ståhlberg, 1984).

The two monitoring missions had no complaints with regard to the implementation of this article in Swedish legislation.

7 Conditions under which responsibilities at local level are exercised

Article 7 deals with the conditions for elected representatives, specified in three paragraphs. Local politicians should be able to freely exercise their functions and should receive appropriate financial compensation. Also, any condition that disqualifies the holding of elected office must be regulated in law.

In all three respects, the Swedish government regarded Swedish regulation to correspond with the requirements. The conditions for local politicians are relatively good in Sweden. They have the right to freely exercise their tasks and to be remunerated. The conditions were further strengthened in the 1991 Local Government Act where it was stipulated that local politicians had a right to be compensated for loss of income.

Both monitoring reports came to the same conclusion. Sweden complies with Article 7 of the Charter.

8 Administrative supervision of local authorities' activities

This article is about administrative supervision of local authorities by other levels of government. It emphasises that this should be carried out according to the law, that it should normally concern legality and not expediency and that any check should be in proportion to the interest it aims to protect, and with respect to local self-government.

When the Charter was ratified, the Swedish government argued that this kind of supervision, through checks prior to decisions and through approval of municipal decisions by upper levels of government, is very rare in Sweden. Swedish legislation was regarded to comply with the Charter in this respect.

As already been mentioned in connection to Article 4, the government introduced a principle of proportionality in the new Constitution from 2011 which can be seen as further strengthening Sweden's compliance with this article. None of the monitoring reports had any complaint with regard to how Sweden complies with this article.

9 Financial resources of local authorities and the financial transfer system

Article 9, on financial resources of local authorities consists of eight paragraphs on requirements for financially self-governing local authorities. These include the right to sufficient resources, that some of the resources should come from local taxes, the need for financial equalisation and that central government grants should be general rather than specific.

The Swedish Government regarded the system of financing local government in Sweden as being in line with all these provisions. The right to taxation is guaranteed by the Constitution and there are no limits on how high the tax can be. Although there were, at the time, a large number of specific grants, the government expressed an aim to replace them with more general grants, although it noted that the Charter allows for a small proportion of specific grants.

However, shortly after the ratification of the Charter, a number of revisions were made, which can be seen as further adjustments to the demands of the Charter. From 1993, twelve special grants were replaced by one general grant. At the same time the "funding principle" (finansieringsprincipen) was adopted by the Parliament, meaning that if central government allocate a new task to local government, it must also specify how it should be funded (Svenska kommunförbundet och Landstingsförbundet, 2003).

Nevertheless, the first monitoring report had several critical remarks on how Sweden complied with this article. Although it acknowledged that there was a move in the early 1990s towards general grants, as time went by the number of specific grants had begun to increase again. One example, that has already been mentioned, concerns the decision to withdraw grants to municipalities that sell off municipal housing. The rapporteurs were

also concerned with the financial consequences of the “rights legislation”, already mentioned in connection to Article 4 and how it corresponds with the funding principle. As the legislation implies that responsibilities are imposed on local government there may be a risk that the funding principle is breached if adequate resources are not provided. Evidence given by the local government associations during the monitoring visit suggests that this is the case, but the view of the Government is that funding is sufficient. A problem, according to the rapporteurs, is that the Parliament is the final arbiter and that local government has no say over how the funding principle is interpreted. For this reason, the rapporteurs, and subsequently also the Congress, recommended that there should be an institutionalised way of evaluating the actual costs for providing right based services, perhaps an independent audit commission.

Another point of criticism of the rapporteurs concerned the introduction of temporary caps on the local government tax. Although the right to taxation is guaranteed by the constitution, the government introduced a moratorium on local government tax increases during the financial crisis in the years 1991–1993. Although the Standing Parliamentary Committee on the Constitution regarded a temporary capping to be acceptable, the rapporteurs thought that the conditions for limiting the right to taxation needed to be clarified, as new tax caps could be imposed in the future.

Finally, the monitoring report was also critical of the system of financial equalisation between local authorities. It was noted that the Charter, in Article 9, paragraph 5, allows for an equalisation system, but that the system in Sweden may be unconstitutional. Before the constitutional revision in 2011, tax levied in a local authority could only be used that local authority for its own purposes. Hence, transferring money from one local government to pay for services in another would not be allowed. Therefore, the rapporteurs suggested the Swedish authorities review the regulation in order to safeguard both that equalisation is constitutionally possible and that infringements on local autonomy are minimised. The best solution, they argued, was that funding for equalisation came from central government, rather than as transfers between municipalities.

In its reply to the monitoring report, the government stressed that there had been a move from special to general grants and that this perhaps was a less relevant issue in Sweden, where 70 percent of local government funding came from their own taxes. It was not deemed necessary to further regulate the right to local taxation as no tax caps were planned. The system of equalisation was under review, and the system that was considered at the time would have significantly reduced transfers between local authorities, hence being in line with the recommendation of the Congress (Grundlagsutredningen, 2007).

The second monitoring report, in 2014, also made a thorough review of how Sweden complied with Article 9 of the Charter. It noted that local government in Sweden had largely escaped the 2008–2009 financial crisis and that there had been no further tax caps. In addition, the principle of proportionality, that circumscribes Parliament in limiting the

scope of local self-government, seems to have contributed to strengthening local autonomy. They also acknowledged that financial equalisation is now regulated in the Constitution.

However, the rapporteurs were concerned with the adequacy of the financial resources available to local government, and the extent to which this corresponds to the requirements of Article 9, paragraph 1 of the Charter. Their first concern was that state grants were not indexed, i.e. do not increase with the rate of inflation. This will gradually undermine the financial basis for the local government services that are funded by state grants. Their second point of criticism is that local authorities are not involved in assessing the cost implications of new reforms which sometimes means that not all cost related factors are being taken into account. As the funding principle states that new tasks given to local government should be accompanied by sufficient resources this has led to situations where reforms are underfunded. Although the rapporteurs are critical of these matters, and this has been confirmed by the Congress, they still concluded that “all-in-”, Sweden complies with Article 9 of the Charter.

10 Local authorities' right to associate

Article 10 is about the right of local government to associate – with other local authorities, in national associations and through international cooperation. When Sweden ratified the Charter, the government argued that Swedish legislation was fully in line with these requirements. Local government in Sweden has the right to cooperate and to form the types of associations that are stipulated by the Charter.

The two monitoring missions had no remarks in this respect. In the second report, it was noted that although membership in the Swedish Association of Local Government and Regions is voluntary, all municipalities and regions are members.

11 Legal protection of local self-government

Article 11, on the legal protection of local self-government emphasises that local government should have a right to a judicial remedy if local self-government is violated. The Swedish government acknowledges that this provision is debatable from a Swedish point of view as there is no general provision for local government to bring an issue to a court in order to test its legality. Nevertheless, the government still regards Sweden as complying with the article as there is, as a final resort, a provision for a closed case to be re-opened if granted by the Supreme Administrative Court. This alternative is explicitly mentioned in the Explanatory report of the Charter as being in accordance with Article 11 of the Charter. However, the strength of this right may be rather weak if the Supreme Administrative Court does not change its view from 2000 when it, in response to a challenge from the municipality of Täby, turned out to be unwilling to re-open closed cases (see further discussion in the introduction).

The issue of the legal protection of local self-government through some kind of judicial remedy was also discussed in the report by the first monitoring mission in 2005. Although the rapporteurs acknowledged that local self-government had a constitutional protection, they suggested that this should be strengthened in several ways. One way could be to make it mandatory for the Parliament to refer to the Charter in all legislative matters that concern local self-government. Another would be a system of redress to a legal body to which local government could refer cases that they considered to be in conflict with the principle of local self-government, using the Charter as a benchmark. Although a Constitutional Court could be an appropriate body for such cases, the rapporteurs understood that this would lack political support in Sweden and was not even favoured by the local authorities themselves. Nevertheless, there is a need to even out the balance of power between Parliament and local authorities, not least in questions of funding. Therefore, the rapporteurs suggested the establishment of a Standing Parliamentary Committee on local self-government that could hear both sides, i.e. both the state and local government.

The rapporteurs also recommended that the then-newly set up committee on the revision of the constitution consider ways of improving the legal protection of local self-government. The committee followed the recommendation and various ways of achieving this objective were discussed in the expert sub-committee on constitutional protection of local self-government. The sub-committee considered the alternatives proposed by the rapporteurs but ended up with a weaker suggestion, namely to give The Council of Legislation (Lagrådet), a legal advisory body attached to the Parliament, an additional task of assessing how new laws affect local self-government. This was also later included in the revised Constitution (Chapter 8, Article 21).

The second monitoring mission, in 2014, was generally satisfied with the changes that had been made. The new function of the Council of Legislation was sufficient to please the rapporteurs and the Congress. It was also acknowledged that local government has a right to turn to the Supreme Administrative Court in case of violation of the “funding principle”, i.e. the rule that central government should provide the necessary funding when giving local government new obligations. Therefore, Sweden was now seen as fully complying with Article 11 of the Charter.

12 Lessons learned from Sweden’s compliance with the European Charter of Local Self-Government

When Sweden ratified the European Charter of Local Self-Government in 1989 the Government claimed that the legal system and the system of local self-government in the country were fully in line with the requirements of the Charter and all its articles. Hence, there was nothing to learn from the Charter that could improve the position of local government in Sweden. However, it was still important that Sweden ratified the Charter as this would help the development of local self-government and democracy in the rest of Europe and the world. This chapter has provided an overview of the Swedish

implementation of the Charter, and how this has gradually been modified through policy changes and in the light of the analyses carried out by two monitoring reports.

The initial claim that Sweden had nothing to learn from the Charter can be questioned. Some of the original grounds for ratification were clearly shaky, for example the requirement in Article 6 that local government should be able to determine its own internal structure which was seen as fulfilled by Sweden, despite the requirement of six mandatory committees in every municipality. The Explanatory report that the Swedish government referred to permitted “certain committees” to be compulsory, as long as they did not “impose a rigid organisational structure”. These six committees made up the majority of the committees in most municipalities. It was also far from obvious that Sweden had the type of protection of local self-government through a judicial remedy that is described in Article 11. Further, the paragraphs in Article 4 stating that decision-making should be as close to the citizens as possible and that local government had a right to be consulted, were seen as corresponding to the Swedish administrative tradition, rather than any specific law.

However, following ratification, a number of changes have taken place that have brought the Swedish legal system more in line with the Charter. Indeed, there is a clear path of gradual improvement of the legal position of local self-government in Sweden over the last 40 years. Actually, some of the improvements took place even prior to the ratification. For example, before 1974, there was no constitutional protection of local self-government. Also, consultations in connection with border changes became mandatory in 1979, which was a requirement for ratification of Article 5.

In many of the changes of the position of the system of local self-government in Sweden, the Charter has had an important explicit or implicit role. Perhaps the constitutional revisions are the most striking example of where explicit reference is made to the Charter. However, the widening of local self-government that came with the revision of the Local Government Act in 1991 also increased Sweden’s compliance with the Charter, although reference was not explicitly made to the Charter in the Government Bill. In 1993, compliance was also increased with Article 9 on the financing of local government, when a number of specific grants were replaced by one general grant and the “funding principle” was introduced by Parliament, meaning that allocation of new tasks to local government must be followed by a specification of how they should be funded.

Hence, the overall conclusion is that the Charter has contributed to adjusting the Swedish system of local self-government to a European standard, as expressed by the Charter. In this way, the Charter has had an important role as a standardising device, establishing convergence around fundamental principles of local self-government that is not only relevant for new democracies, but also for a well-established democracy such as Sweden. Although Sweden in many ways can be seen as a role model in terms of local democracy and self-government, it is definitely also a learner.

Although the European Charter of Local Self-Government lacks the status of a law in the Swedish legal system, its impact on changes in Swedish legislation is indisputable. It remains highly esteemed and references to the Charter are frequently made in the general debate and in policy documents on local self-government. There is no reason to expect that this will change in the near future. Neither are there any signs of further adjustments of the Swedish system in a way that could make it comply even more strongly with the Charter, for example by introducing a Constitutional Court.

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