

**JUDIT SIKET**

**TERRITORIAL AND LOCAL ADMINISTRATIVE SYSTEM IN HUNGARY**

**V. European Charter of Local Self-Governments. Questions of local autonomy, the legal nature of the Charter. Monitoring system of the Charter.**



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## CHAPTER V

### EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENTS. QUESTIONS OF LOCAL AUTONOMY, THE LEGAL NATURE OF THE CHARTER. MONITORING SYSTEM OF THE CHARTER.

#### Content of the Chapter

1. Council of Europe: aim, structure and important agreements
2. The European Charter of Local Self-Government in general, parts of the Charter
3. Legal nature of the Charter
4. Monitoring system of the Charter

The aim of the Chapter: This Chapter contains an attempt to determine the theoretical foundations of local self-governance, the potential sources of right to local self-government. It briefly summarizes the European models and to explore the meaning and relevance of European Charter of Local Self-Government.

**Estimated reading time: 20-25 minutes**

#### 1. COUNCIL OF EUROPE: AIM, STRUCTURE AND IMPORTANT AGREEMENTS

The most important *aim of Council of Europe*, to protect democracy and human rights and to promote European unity by fostering cooperation on legal, cultural, and social issues.<sup>1</sup> The council is headquartered in *Strasbourg*, France.

The Council of Europe was founded on May 5, 1949.<sup>2</sup> From the 1950s to the 1980s, these original members were joined by 13 others.<sup>3</sup> As a result of collapse of communist regimes throughout Eastern Europe at the end of the 1980s, the council significantly expanded its membership.<sup>4</sup> The Council of Europe addresses issues of common concern to its members, including human rights, crime prevention, drug abuse, environmental protection, bioethical

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<sup>1</sup> Statute of the Council of Europe signed at London on 5 May 1949, Article 1.

<sup>2</sup> The Founders: Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden, and the United Kingdom.

<sup>3</sup> Austria, Cyprus, Finland, West Germany, Greece, Iceland, Liechtenstein, Malta, Portugal, San Marino, Spain, Switzerland, and Turkey

<sup>4</sup> Between 1990 and 2007, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, the Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, North Macedonia, Moldova, Montenegro, Poland, Romania, Russia, Serbia, Slovakia, Slovenia, and Ukraine were admitted to the Council of Europe. In addition, the principalities of Andorra and Monaco joined in 1994 and 2004.

issues, and migration. To manage these affairs, the Council has devised more than 160 international agreements, treaties, and conventions that have replaced literally tens of thousands of bilateral treaties between various European states.<sup>5</sup>

Among the most important of its *agreements* are<sup>6</sup>

- (1) the European Convention on Human Rights (1950),
- (2) the European Social Charter (1961),
- (3) the European Charter of Local Self-Governments (1985),
- (4) the Framework Convention for the Protection of National Minorities (1995).

After the regime changes in eastern and central Europe in 1989–91, the Council aided the countries of the region to democratize their political systems.

The Council of Europe is composed of *four principal bodies*:

- (1) the Committee of Ministers, meets twice a year, is composed of the foreign ministers of all council members. It decides the council's budget and its program of activities based on recommendations made to it by the Parliamentary Assembly and various expert committees,
- (2) the Parliamentary Assembly, meets four times a year, is a deliberative body consisting of representatives from national parliaments,
- (3) the *Congress of Local and Regional Authorities of Europe* is a consultative body that represents local and regional (subnational) governments within the council and
- (4) the Secretariat, with a staff of about 1,000, serves the other three main organizations within the council.

Beyond the before mentioned bodies, the *European Courts of Human Rights* and the *Commissioner for Human Rights* play crucial role in the field of human rights protection.

The Council of Europe also has established a number of special bodies and expert committees over the years, such as the European Committee on Crime Problems, the European Commission of Human Rights, the European Court of Human Rights, the Cultural Heritage Committee, the Council of Europe Social Development Fund (formerly the Council of Europe Resettlement Fund), the European Committee on Legal Cooperation, and the *Steering Committee on Local and Regional Authorities*.

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<sup>5</sup> Complete list of the Council of Europe's treaties: <https://www.coe.int/en/web/conventions/full-list> (Accessed: 15/09/2020).

<sup>6</sup> Florence Benoît-Rohmer- Heinrich Klebes: Council of Europe Law. Towards a pan-European legal area. Council of Europe, Strasbourg, 2005. p. 31., 94., 111-126.

Identify the most important organizations specified in the structure of Council of Europe.

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## 2. THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT IN GENERAL, PARTS OF THE CHARTER<sup>7</sup>

As it was mentioned in point 1., the Congress of Local and Regional Authorities is one of the most important bodies of Council of Europe. Its responsibility is to review and assess currently the situation of local and regional democracy in the 47 member states. Its primary role is to strengthen and monitor developments in local and regional democracy. In this context, it monitors member states' implementation of the European Charter of Local Self-Government – the first legally binding instrument, adopted in 1985.

The European Charter of Local Self-Government was drawn up within the Council of Europe by a committee of governmental experts under the authority of the Steering Committee for Regional and Municipal Matters on the basis of a draft proposed by the Standing Conference of Local and Regional Authorities of Europe.

It was opened to signature as a convention by the member states of the Council of Europe on 15 October 1985.<sup>8</sup>



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<sup>7</sup> This part of the Chapter based on: European Charter of Local Self-Government. Congress of Local and Regional Authorities of the Council of Europe. Council of Europe, October 2013. p. 33-42.

<sup>8</sup> Signatures and ratifications: [https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/122/signatures?p\\_auth=3fC9isL8](https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/122/signatures?p_auth=3fC9isL8) (Accessed: 15/09/2020).

States party to the Charter ([https://en.wikipedia.org/wiki/European\\_Charter\\_of\\_Local\\_Self-Government#/media/File:European\\_Charter\\_of\\_Local\\_Self-Government.svg](https://en.wikipedia.org/wiki/European_Charter_of_Local_Self-Government#/media/File:European_Charter_of_Local_Self-Government.svg))

In the table below, the dates of signature, ratification and entry into force are shown in certain member states.

Country	Signature	Ratification	Entry into Force
Belgium	15/10/1985	25/08/2004	01/12/2004
France	15/10/1985	17/01/2007	01/05/2007
Germany	15/10/1985	17/05/1988	01/09/1988
Hungary	06/04/1992	21/03/1994	01/07/1994
Poland	19/02/1993	22/11/1993	01/03/1994
Russian Federation	28/02/1996	05/05/1998	01/09/1998
Spain	15/10/1985	08/11/1988	01/03/1989
Turkey	21/11/1988	09/12/1992	01/04/1993
United Kingdom	03/06/1997	24/04/1998	01/08/1998

Discover the curiosities which may be highlighted analysing the dates of the table.

1. ....
2. ....
3. ....

The purpose of the European Charter of Local Self-Government is to establish common European standards and values for measuring and safeguarding the rights of local authorities, which are closest to the citizen and give him the opportunity to participate effectively in the decision-making processes affecting their everyday life.

The Charter consists of three parts, as follows

(1) *Part I* contains the substantive provisions setting out the principles of local self-government. It specifies the need for a constitutional and legal foundation for local self-government, defines the concept and establishes principles governing the nature and scope of local authorities' powers.

Further articles are concerned with protecting the boundaries of local authorities, ensuring that they have autonomy as regards their administrative structures and access to competent staff and defining conditions for the holding of local elective office. Two major articles aim at limiting administrative supervision of the activities of local authorities and ensuring that they have adequate financial resources at their disposal on terms which do not impair their basic autonomy. The remaining provisions in this part cover the right of local authorities to co-operate

and form associations and the protection of local self-government by the right of recourse to a judicial remedy.

(2) *Part II* contains miscellaneous provisions relating to the scope of the undertakings entered into by the parties. In accordance with the intention of securing a realistic balance between the safeguarding of essential principles and the flexibility necessary to take account of the legal and institutional peculiarities of the various member states, it permits the parties specifically to exclude certain provisions of the Charter from those by which they consider themselves bound. It thus represents a compromise between, on the one hand, acknowledgement of the fact that local self-government affects the structure and organisation of the state itself, which is a basic concern of government, and, on the other hand, the objective of protecting a minimum of basic principles which any democratic system of local government should respect. Moreover, the commitments of the parties can subsequently be added to, whenever the relevant obstacles have been removed. Potentially, the principles of local self-government laid down in the Charter apply to all the levels or categories of local authorities in each member state, and to territorial authorities at regional level. However, to allow for special cases, the parties are permitted to exclude certain categories of authorities from the scope of the Charter.

The Charter *does not provide for an institutionalised system of control of its application*, beyond a requirement for parties to supply all relevant information concerning legislative or other measures taken for the purpose of complying with the Charter. Consideration was indeed given to setting up an international system of supervision analogous to that of the European Social Charter. However, it was felt possible to dispense with complex supervisory machinery, given that the presence within the Council of Europe of the CLRAE with direct access to the Committee of Ministers would ensure adequate political control of compliance by the parties with the requirements of the Charter.

(3) *Part III* contains final provisions consistent with those customarily used in conventions drawn up under the auspices of the Council of Europe.

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### **3. LEGAL NATURE OF THE CHARTER**

The European Charter of Local Self-Government is a *multilateral legal instrument*. The purpose of the Charter to define and safeguard the principles of local autonomy

The Charter *commits* the parties to applying basic rules guaranteeing the political, administrative and financial independence of local authorities.

The Charter has become a *landmark treaty* for safeguarding the rights of local and regional authorities. It ensure the basic conditions to local autonomy, such as the right to self-

government, the right to elect their local bodies, to exercise their own powers, to have administrative structures and financial resources, and the right to take court action in the event of infringement by other organs of government.

Through its monitoring activities, the Congress ensures that the Charter is correctly applied and helps to maintain healthy local and regional self-government in Europe.

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#### 4. MONITORING SYSTEM OF THE CHARTER<sup>9</sup>

The Congress carries out regular monitoring visits to the 47 member states, which aim the verification of specific aspects of the Charter and observation of local and regional elections.

Following its monitoring visits, the Congress draws up reports which are adopted by the Monitoring Committee. This committee also approves recommendations which, once adopted by the Congress, are addressed to member states.

In 2010, as part of its reform process, the Congress adopted rules governing the organisation of its monitoring procedures.<sup>10</sup> In order to improve the quality of its monitoring, the Congress decided to

(1) conduct *more regular and systematic monitoring* of countries that have signed and ratified the Charter (approximately *every 5 years*) and introduce a strict and consistent method for the appointment of rapporteurs in order to ensure the total impartiality of the delegation responsible for monitoring;

(2) supplement this process by means of a *post-monitoring procedure* based on political dialogue with the national authorities so as to put forward, jointly with the country concerned, the most appropriate solutions to the problems identified by the delegation and to ensure the speedy and effective implementation of the recommendations made by the Congress in a “road map” submitted to the government.

In this way, the Congress helps achieve, at local and regional level, the fundamental aims of the Council of Europe, which are to strengthen democracy in the light of the European Charter of Local Self-Government and its Additional Protocol on the right to participate in the affairs of a local authority.

Choose the correct answer.

1. The Council of Europe is headquartered

- a) in Brussel
- b) in Luxemburg

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<sup>9</sup> This part of the Chapter based on: European Charter of Local Self-Government. Congress of Local and Regional Authorities of the Council of Europe. Council of Europe, October 2013. p. 33-42.

<sup>10</sup> Resolution 307 (2010), revised in 2013 (Resolution 307 (2010) REV2).

- c) in Strasbourg.
- 2. The European Charter of Local Self-Governments is
  - a) a legal binding agreement
  - b) a decision of Council of Europe
  - c) an agreement, which contains recommendations for the parties.
- 3. The purposes of the European Charter of Local self-Governments are
  - a) to establish a European protection system in the European Union for local self-governments.
  - b) to establish common European standards and values for measuring and safeguarding the rights of local authorities
  - c) to establish a human right protection system.
- 4. The European Charter of Local Self-Governments was opened to signature
  - a) on 1 November 1985
  - b) on 15 October 1985
  - c) on 15 October 2000
- 5. The Charter does not provide for an institutionalised system of control of its application.
  - a) true
  - b) false
- 6. The European Charter of Local Self-Governments provides, the right to local self-governments has to be laid down in the constitution of member state.
  - a) true
  - b) false
- 7. It is a consultative body that represents local and regional (subnational) governments within the council
  - a) the Council
  - b) the Committee of the Region
  - c) Congress of Local and Regional Authorities of Europe
- 8. Council of Europe has
  - a) 47 member states
  - b) 27 member states