

JUDIT SIKET

TERRITORIAL AND LOCAL ADMINISTRATIVE SYSTEM IN HUNGARY

**VII. Examples from the examination of local and regional democracy
by the practice of the Congress**



This teaching material has been made at the University of Szeged, and supported by the European Union. Project identity number: EFOP-3.6.2-16-2017-00007

CHAPTER VII

EXAMPLES FROM THE EXAMINATION OF LOCAL AND REGIONAL DEMOCRACY BY THE PRACTICE OF THE CONGRESS.

Content of the Chapter

1. The Monitoring Committee
2. Implementation of the Charter
 - 2.1. Comparative analyses
 - 2.2. Recurring issues

The aim of the Chapter: This Chapter presents the functionality of the Monitoring Committee. The Committee plays crucial role in the implementation of the European Charter of Local Self-Government, because it time to time controls the consistency between the Charter and the practice of national local self-government systems. This Chapter analyses some of European local self-government system and highlights those issues, which could lead to incompliance of the requirements of the Charter.

Estimated reading time: 15-20 minutes

1. THE MONITORING COMMITTEE

As it was mentioned in Chapter VI., the core mission of the Congress of Local and Regional Authorities is the effective monitoring of the situation of local and regional democracy in member States. One of the most important activities of the Congress is the monitoring of the application of *European Charter of Local Self-Government*. European Charter of Local Self-Government was adopted in 1985; it was opened for signature on 15 October, 1985. The Charter was ratified by all members, the 47 Member States of the Council of Europe.

Countries which have ratified the Charter *are bound* by its provisions. The Charter requires compliance with a minimum number of rights, which form the European bedrock of local self-government. The Congress of Local and Regional Authorities ensures that these *principles are observed* through its monitoring activities.

The *Monitoring Committee*¹ is responsible for monitoring the application of the European Charter of Local Self-Government and its additional Protocol on the right to participate in the affairs of local authorities by Council of Europe Member States that have ratified these legal instruments.

It organises monitoring visits and drafts reports and recommendations on the state of local and regional democracy in the Member States concerned and also examines specific issues related to local and regional democracy. Through post-monitoring political dialogue, it ensures that its recommendations shall be followed up by the Member States.

The Monitoring Committee particularly:

- carries out a general regular country-by-country monitoring mission to each Member State approximately every 5 years;
- examines from a particular aspect of the Charter, by decision of the Bureau or the Commission;
- contributes fact-finding missions to examine, by decision of the Bureau, specific cases of concern.

2. IMPLEMENTATION OF THE CHARTER

The Congress regularly examines the situation of local and regional democracy, related areas of the implementation of the Charter. From this activity of the Congress, to discover the most important findings, two documents are worth for further consideration:

- (1) Comparative analysis on the implementation of the European Charter of Local Self-Government in 47 member States on the basis of the recommendations on local and regional democracy in member States adopted by the Congress,²
- (2) Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010-2016).³

2.1. COMPARATIVE ANALYSIS

The synthesis report of the Congress of Local and regional Authorities gives an overview on the implementation of the Charter, in all member States. It is based on monitoring reports and recommendations. The synthesis report laid down in general, that

¹ Detailed information on of Monitoring Committee may be found: <https://www.coe.int/en/web/congress/monitoring-committee>

² <https://rm.coe.int/16806fb970> (Accessed: 06/16/2020)

³ <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168070405b> (Accessed: 06/16/2020)

- a) the decentralisation was an ongoing process in most countries in the examined period.
- b) it was a common and persistent failure, that State authorities did not involve local self-governments to the decision making process that directly affected them.

The *implementation report* focused on Articles of the Charter, and analysed the core findings of country reports Article by Article. In the following sections some important considerations may be highlighted, such as

- (1) the principle of local self-government (Art. 2.),
- (2) the concept of local self-government (Art. 3.),
- (3) the scope of local self-government (Art. 4.),
- (4) administrative supervision of local authorities' activities (Art. 8.), and
- (5) financial resources of local authorities (Art. 9.).

Article 2. Principle of local self-government.

The Congress laid down in general, that in most member States the principle of local self-government is enshrined in the constitution. Important constitutional changes strengthening local government were introduced in several countries (e.g. France (2003), Italy (2001), Sweden (2011)).

According to the report, in Hungary, the principle of local self-government is neither explicitly enshrined in the Cardinal Act on Local Government nor in the Fundamental Law. Similar remarks were made in the case of Netherlands, the Congress observed that the principle of local self-government is not explicitly or directly recognised neither in the applicable domestic legislation nor in the Constitution as required in Article 2 of the Charter.

The case of the United Kingdom is worth for mention, because the principle of ultra vires was prevailing for a long time and only the Localism Act of 2011 led to change. However the Congress noted that Constitutional or legislative recognition and entrenchment of the right to local self-government does not exist, and the introduction of a general power for local authorities does not go far enough in satisfying the spirit of the Charter.

Article 3. Concept of local self-government

The question about the exact meaning of the *right and the ability to regulate and manage a substantial share of public affairs under their own responsibility* arises in all countries party to the Charter. In many countries an important part of municipalities are facing lack of resources and instruments are simply too small and weak to cope with their responsibilities. Therefore, the Congress often recommends amalgamations, strengthening inter-municipal cooperation in order to increase local capacity to act and deliver services. The aim of the Charter is to reach a high level of decentralisation in all member States and for the benefit of all local governments.

The notion of “*substantial share of public affairs*” is a vague legal term.

The most countries fully comply with the requirements, but there is also an important share which is partially complying. There were also seven cases where violations of the Charter were found and pertinent recommendations formulated.

In Hungary, the Congress recommended the Hungarian authorities to strengthen the position of counties.

In Italy, the violation of the right of local authorities to manage a substantial share of public affairs under their own responsibility was reported and in particular the constitutional provisions on local autonomy were not adequately implemented. The Congress called on the Italian authorities to guarantee the maintenance of a substantial share of public functions for local and regional authorities, which should be full and exclusive.

Article 4. Scope of local self-government

The scope of local government lays down the general principles on which the responsibilities of local authorities and the nature of their powers should be based. Based on this provision, the Congress encouraged and supported decentralization processes in many European countries. According to the Charter, local authorities shall have full discretion to exercise their initiative with regard to any matter within their competences. Such competences shall normally be full and exclusive. In principle, the basic responsibilities of local governments shall be sufficiently rooted in either the Constitution or legislation to ensure clarity and legal certainty. Therefore municipal tasks should not be assigned to them on an ad hoc basis.

Article 8. Administrative supervision

According to the Charter, any administrative supervision of the activities of the local authorities shall normally aim only at a control of legality and must be proportionate.

In face of the tradition of *tutelle* that used to prevail in many countries, the Charter provides for some important rules and principles restraining state supervision and promoting local autonomy.

The evaluation of monitoring reports and recommendation showed that the most common problem is the disproportionate intervention of supervision authorities, with insufficient counteract remedies for the local and regional authorities.

Article 9. Financial resources

Financial autonomy is an essential part of local autonomy. The Charter provides that local governments shall be entitled to adequate and sufficiently diversified financial resources of their own. Lack of financial autonomy may lead to economic and political dependency on the government.

An evaluation of the findings showed that Charter violations are particularly frequent. The Congress identified the following concerns, either alternatively or concomitantly:

- over-centralised system of financing of local authorities (part. Art. 9.1);
- inadequacy of financial resources freely available to local and regional authorities to exercise their powers (Art. 9.1.);
- lack of concomitant financing for delegated tasks (Art. 9.2);
- limited level of own income, particularly through setting of tax rates by local authorities (Art.9.3);
- lack of transparent and predictable financial equalisation mechanisms (Art. 9.5);
- lack of appropriate consultation on local finance matters (Art. 9.6.).
- tendency to stricter government control over local finance (especially concerning borrowing)
- in several countries that went through transition, the issue of municipal property, an important asset of local autonomy is still pending.

The synthesis report concluded, that the most countries are generally complying with the Charter, the violations or failing of the compliance were found mostly in Caucasus area.

The other importance stressed the need of more detailed criteria for monitoring reports and recommendations.

2.2. RECURRING ISSUES

The monitoring and post-monitoring reports, which formed the basis of the findings, emerged from 2010-2016, overall 44 reports, summarized those issues, which may be considered as characteristic features of European democracies.

The Congress in its Resolution 413 (2017) on the comparative analysis on the implementation of the Charter of Local Self-Government in 47 member States identified the *key points at issue*:

- a) the absence of direct applicability of the Charter in the field of local and regional democracy,
- b) inadequacy of financial resources for local and regional authorities,
- c) the restricted definition, allocation and exercise of local competences,
- d) the lack of consultation with regard to central government.

The *evaluation of key points* showed, that the following symptomatic trends may be identified:

- a) the broader trend towards (re)centralization, which emerges different forms
 - aa) legislative nationalism
 - ab) refusal of some courts to apply directly a number of Council of Europe Conventions

b) the absence of flexibility granted to local governments in budgetary matters.

The Congress stressed that the Charter, ratified by 47 member States of the Council of Europe, as an international treaty has legal force and should be directly applied in member States, each according to its legal tradition.

The Congress pointed out that it has committed itself to engaging in post-monitoring and post-electoral dialogue with national authorities in order to follow-up on the key issues and, more generally on recommendations and resolutions related to country-specific monitoring and election observation reports as well as transversal reports on electoral matters.

The Congress has also drawn the attention of the Committee of Ministers to invite the authorities of the members States

(1) to take all necessary measures to ensure direct applicability of the European Charter of Local Self-Government within their domestic legal systems and hence

(2) to ensure the full implementation of the ratified provisions of the Charter in particular as regards the identified recurring issues.

Choose the correct answers.

1. Is the Charter a legal binding convention?

- a) yes
- b) no

2. The compliance of principles of the Charter are observed by the CoR.

- a) true
- b) false

3. Local self-governments generally are involved to the decision making processes which are affected them.

- a) true
- b) false

4. In Netherland the principle of local self-government is neither explicitly enshrined in the Local Government nor in the Constitution.

- a) true
- b) false

5. The Congress weakened the effectiveness of decentralization processes in many European countries.

- a) true
- b) false

6. The most common problem is the proportionate intervention of supervision authorities in the field of administrative authorities

- a) true
- b) false

7. Monitoring and post-monitoring reports showed the absence of direct applicability of the Charter.

- a) true
- b) false

8. Monitoring and post-monitoring reports showed that local self-governments generally have adequate financial resources.

- a) true
- b) false

9. The Congress often recommends amalgamations, strengthening inter-municipal cooperation to avoid the problems emerged from efficiencies of scale.

- a) true
- b) false

10. The Charter provides that local governments shall be entitled to adequate and sufficiently diversified financial resources of their own.

- a) true
- b) false