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European Charter of Local Self-Government

AND EXPLANATORY REPORT

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European Charter of Local Self-Government

and explanatory report

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and explanatory report

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Introduction

The spectacular advance of local and regional democracy was the main innovation of 20th century democracy. The recognition of local democracy by the Council of Europe member states led to the elaboration of the European Charter of Local Self-Government – the first internationally binding treaty that guarantees the rights of communities and their elected authorities. This text, which affirms the role of communities as the first level for practising democracy, has become the benchmark international treaty in this area.

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 (CLRAE), predecessor of the Congress of Local and Regional Authorities. It was opened for signature as a convention by the Council of Europe member states on 15 October 1985, and entered into force on 1 September 1988. As of 1 January 2010, the Charter had been ratified by 44 of the 47 Council of Europe member states.

The Charter requires that the principle of local self-government be embedded in domestic law or in the Constitution in order to guarantee its effective implementation. It lays down the principles of the democratic functioning of communities, and is the first treaty to establish the principle of the transfer of competences to local communities, which must be accompanied by a transfer of financial resources. This principle, known as the principle of subsidiarity, allows for the decentralisation of power towards the level closest to the citizen

The Charter guarantees the conditions of office of local elected representatives, and their ability to exercise their functions freely. It

establishes a number of safeguards to protect the rights of local communities: boundaries cannot be changed without community agreement, and the supervision of local authorities' activities must be defined by law, with the possibility of judicial recourse.

States undertake to respect a core of basic principles to which no reservation is possible, such as: the right of citizens to participate in managing public affairs; the key rights of communities to enjoy autonomy and self-government, elect their local bodies and to have their own competences, administrative structures and financial resources; or the right to judicial recourse in case of interference from other levels. Through these core principles, the Charter seeks to ensure the compatibility of the diverse structures of local communities in the Council of Europe member states. However, the final aim remains the respect of all of the Charter's provisions.

The countries which have ratified the Charter are bound by its provisions. The Charter requires compliance with a minimum number of principles that form a European foundation of local democracy. The Congress of Local and Regional Authorities makes sure that these principles are observed.

European Charter of Local Self-Government

Preamble

The member states of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that one of the methods by which this aim is to be achieved is through agreements in the administrative field;

Considering that the local authorities are one of the main foundations of any democratic regime;

Considering that the right of citizens to participate in the conduct of public affairs is one of the democratic principles that are shared by all member states of the Council of Europe;

Considering that it is at local level that this right can be most directly exercised;

Convinced that the existence of local authorities with real responsibilities can provide an administration which is both effective and close to the citizen;

Aware that the safeguarding and reinforcement of local self-government in the different European countries is an important contribution to the construction of a Europe based on the principles of democracy and the decentralisation of power;

Asserting that this entails the existence of local authorities endowed with democratically constituted decision-making bodies and possessing a wide degree of autonomy with regard to their responsibilities, the ways and means by which those responsibilities are exercised and the resources required for their fulfilment,

Have agreed as follows:

Article 1

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

Part I

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

Article 3 – Concept of local self-government

1. Local self-government denotes 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.

2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

2. 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.

3. Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

4. 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.

5. 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.

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

Article 5 – 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.

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.

2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.

2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 – Administrative supervision of local authorities' activities

1. 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.

2. 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.

3. 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.

Article 9 – Financial resources of local authorities

1. 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.

2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

3. 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.

4. 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.

5. 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.

6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

7. 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.

8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each state.

3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other states.

Article 11 – 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.

Part II – Miscellaneous provisions

Article 12 – Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:

- Article 2,
- Article 3, paragraphs 1 and 2,
- Article 4, paragraphs 1, 2 and 4,
- Article 5,
- Article 7, paragraph 1,
- Article 8, paragraph 2,
- Article 9, paragraphs 1, 2 and 3,
- Article 10, paragraph 1,
- Article 11.

2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.

3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

Article 13 – Authorities to which the Charter applies

The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party. However, each Party may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Charter or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Charter by subsequent notification to the Secretary General of the Council of Europe.

Article 14 – Provision of information

Each Party shall forward to the Secretary General of the Council of Europe all relevant information concerning legislative provisions and other measures taken by it for the purposes of complying with the terms of this Charter.

Part III

Article 15 – Signature, ratification and entry into force

1. This Charter shall be open for signature by the member states of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date on which four member states of the Council of Europe have expressed their consent to be bound by the Charter in accordance with the provisions of the preceding paragraph.

3. In respect of any member state which subsequently expresses its consent to be bound by it, the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 16 – Territorial clause

1. Any state may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Charter shall apply.

2. Any state may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Charter to any other territory specified in the declaration. In respect of such territory the Charter shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 17 – Denunciation

1. Any Party may denounce this Charter at any time after the expiration of a period of five years from the date on which the Charter entered into force for it. Six months' notice shall be given to the Secretary General of the Council of Europe. Such denunciation shall

not affect the validity of the Charter in respect of the other Parties provided that at all times there are not less than four such Parties.

2. Any Party may, in accordance with the provisions set out in the preceding paragraph, denounce any paragraph of Part I of the Charter accepted by it provided that the Party remains bound by the number and type of paragraphs stipulated in Article 12, paragraph 1. Any Party which, upon denouncing a paragraph, no longer meets the requirements of Article 12, paragraph 1, shall be considered as also having denounced the Charter itself.

Article 18 – Notifications

The Secretary General of the Council of Europe shall notify the member states of the Council of Europe of:

a. any signature;

b. the deposit of any instrument of ratification, acceptance or approval;

c. any date of entry into force of this Charter in accordance with Article 15;

d. any notification received in application of the provisions of Article 12, paragraphs 2 and 3;

e. any notification received in application of the provisions of Article 13;

f. any other act, notification or communication relating to this Charter.

In witness whereof the undersigned, being duly authorised thereto, have signed this Charter.

Done at Strasbourg, this 15th day of October 1985, in English and French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member state of the Council of Europe.

Explanatory report

The text of the explanatory report was prepared on the basis of the discussions of the Steering Committee for Regional and Municipal Matters and submitted to the Committee of Ministers of the Council of Europe. This report does not constitute an instrument providing an authoritative interpretation of the text of the Charter, although it may facilitate the understanding of its provisions.

Origins of the Charter

The European Charter of Local Self-Government is the culmination of a series of initiatives and many years of deliberation within the Council of Europe.

The protection and strengthening of local autonomy in Europe by means of a document expounding the principles subscribed to by all the democratic states of Europe is a longstanding ambition in local government circles. Moreover, it was recognised at an early stage that such a text should aim at securing the adherence of those whose actions are primarily at issue in any defence of local autonomy, namely governments.

The Council of Europe, as the custodian of human rights and the upholder of the principles of democratic government, was the obvious framework within which to draft and adopt such an instrument; all the more so because, as long ago as 1957, it showed its appreciation of the importance of local authorities by establishing for them a representative body at European level which has since become the Standing Conference of Local and Regional Authorities of Europe (CLRAE).[1]

It was indeed the CLRAE which, in its Resolution 64 (1968), proposed a Declaration of Principles on Local Autonomy and called upon the Committee of Ministers of the Council of Europe to adopt it. This initiative was supported by the Consultative Assembly, which in its Recommendation 615 (1970) presented to the Committee of Ministers a text closely based on that of the CLRAE and drafted jointly by the two bodies. The proposed declaration was, however, of a

1. As from 14 January 1994 the Standing Conference was transformed into the Congress of Local and Regional Authorities of Europe, as a recognition of its political significance.

rather too general and sweeping character for any firm action to be taken on it.

The new initiative of the CLRAE in 1981 was therefore based on a more flexible approach. But the view was also taken that a mere non-binding declaration of principles could not do justice to the importance of local autonomy or to the nature of the threats to which it is exposed. Rather, governments must be asked to enter into binding commitments. The necessary flexibility to take account of the differences between national constitutional arrangements and administrative traditions was to be built in, not by excessively diluting the requirements of the new instruments but by allowing governments a degree of choice with regard to the provisions by which they would consider themselves bound.

The logical outcome of this approach was the submission to the Committee of Ministers, in CLRAE Resolution 126 (1981), of a draft European Charter of Local Self-Government with the request that it be adopted with the status of a European convention.

The Committee of Ministers decided to transmit the CLRAE's proposals to the Steering Committee for Regional and Municipal Matters (CDRM) with a view to their being discussed at the 5th Conference of European Ministers responsible for Local Government (Lugano, 5-7 October 1982). In their conclusions, the ministers present at Lugano

> "...consider that this draft charter constitutes an important step towards a definition of the principles of local autonomy, while noting the reservations of some ministers about the need for a charter in the form of a binding convention and about some aspects of the content of the charter;
>
> ask the Committee of Ministers of the Council of Europe to instruct the Steering Committee for Regional and Municipal Matters (CDRM), in contact with the Conference of Local and Regional Authorities of Europe, to make the necessary changes to the draft European Charter of Local Self-Government in accordance with the comments concerning

the form and the substance made during the conference, so that it may be submitted to them for approval at their next conference..."

The Committee of Ministers so instructed the CDRM, which thereupon carried out a thorough revision of the draft charter. In application of the conclusions of the Lugano Conference, representatives of the CLRAE participated in the discussions.

The text of the draft charter as revised by the CDRM was finally submitted to the 6th Conference of European Ministers responsible for Local Government, which met in Rome from 6 to 8 November 1984. After examining this text, the ministers expressed their unanimous agreement on the principles contained in it. With regard to the legal form which the Charter should take, a majority of ministers expressed themselves in favour of a convention.

In the light of the opinions of the Consultative Assembly and the Rome Ministerial Conference, the Committee of Ministers therefore adopted the European Charter of Local Self-Government in the form of a convention in June 1985. In recognition of the fact that the initiative for the Charter had originally come from the Standing Conference of Local and Regional Authorities of Europe, it was decided that the convention should be opened for signature on 15 October 1985 on the occasion of the CLRAE's 20th Plenary Session.

General remarks

The purpose of the European Charter of Local Self-Government is to make good the lack of common European standards for measuring and safeguarding the rights of local authorities, which are closest to the citizen and give him the opportunity of participating effectively in the making of decisions affecting his everyday environment.

The Charter commits the parties to applying basic rules guaranteeing the political, administrative and financial independence of local authorities. It is thus a demonstration, at European level, of the political will to give substance at all levels of territorial administration to the principles defended since its foundation by the Council of Europe, which considers its function to be the keeping of Europe's democratic conscience and the defence of human rights in the widest sense. Indeed, it embodies the conviction that the degree of self-government enjoyed by local authorities may be regarded as a touchstone of genuine democracy.

The Charter is in three parts. The first part 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.

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 indeed also, *mutatis mutandis*, 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.

The last part of the text contains final provisions consistent with those customarily used in conventions drawn up under the auspices of the Council of Europe.

The European Charter of Local Self-Government is the first multilateral legal instrument to define and safeguard the principles of local autonomy, one of the pillars of democracy which it is the Council of Europe's function to defend and develop. It may be hoped that it will thus make a substantial contribution to the protection and enhancement of common European values.

Commentary on the Charter's provisions

Preamble

The preamble provides an opportunity for a statement of the basic premises underlying the Charter. These are, essentially:

- the vital contribution of local self-government to democracy, effective administration and the decentralisation of power;
- the important role of local authorities in the construction of Europe;
- the need for local authorities to be democratically constituted and enjoy wide-ranging autonomy.

Article 1

Article 1 expresses the general undertaking of the parties to observe the principles of local self-government laid down in Part I of the Charter (Articles 2-11), to the extent prescribed by Article 12.

Article 2

This article provides that the principle of local self-government should be enshrined in written law.

In view of the importance of the principle, it is further desirable that this should be achieved by including it in the fundamental text governing the organisation of the state, that is to say, the constitution. However, it was recognised that, in those countries in which the procedure for amending the constitution required assent by a special majority of the legislature or the assent of the whole population expressed in a referendum, it might not be possible to give a commitment to enshrine the principle of local self-government in the constitution. It was also recognised that countries not having a written constitution but a constitution to be found in various documents

and sources might encounter specific difficulties or even be unable to make that commitment.

Account must also be taken of the fact that, in federal countries, local government may be regulated by the federated states rather than by the central federal government. For the federal states, this Charter in no way affects the division of powers and responsibilities between the federal state and the federated states.

Article 3

This article lays down the essential characteristics of local self-government as they are to be understood for the purposes of the Charter.

Paragraph 1

The notion of "ability" expresses the idea that the legal right to regulate and manage certain public affairs must be accompanied by the means of doing so effectively. The inclusion of the phrase "within the limits of the law" recognises the fact that this right and ability may be defined more closely by legislation.

"Under their own responsibility" stresses that local authorities should not be limited to merely acting as agents of higher authorities.

It is not possible to define precisely what affairs local authorities should be entitled to regulate and manage. Expressions such as "local affairs" and "own affairs" were rejected as too vague and difficult to interpret. The traditions of member states as to the affairs which are regarded as belonging to the preserve of local authorities differ greatly. In reality most affairs have both local and national implications and responsibility for them may vary between countries and over time, and may even be shared between different levels of government. To limit local authorities to matters which do not have wider implications would risk relegating them to a marginal role. On the other hand, it is accepted that countries will wish to reserve certain functions, such as national defence, for central government.

The intention of the Charter is that local authorities should have a broad range of responsibilities which are capable of being carried out at local level. The definition of these responsibilities is the subject of Article 4.

Paragraph 2

The rights of self-government must be exercised by democratically constituted authorities. This principle is in accordance with the importance attached by the Council of Europe to democratic forms of government.

This right normally entails a representative assembly with or without executive bodies subordinate thereto, but allowance is also made for the possibility of direct democracy where this is provided for by statute.

Article 4

As was explained in the comments on Article 3, it is not possible, nor would it be appropriate to attempt, to enumerate exhaustively the powers and responsibilities which should appertain to local government throughout Europe. However, this article lays down the general principles on which the responsibilities of local authorities and the nature of their powers should be based.

Paragraph 1

Since the nature of local authorities' responsibilities is fundamental to the reality of local self-government, it is in the interests of both clarity and legal certainty that basic responsibilities should not be assigned to them on an *ad hoc* basis but should be sufficiently rooted in legislation. Normally, responsibilities should be conferred by the constitution or an Act of Parliament. However, notwithstanding the use of the word "statute" in this paragraph, it is acknowledged that in certain countries some delegation by parliament of power to assign specific responsibilities, particularly in respect of details or of matters requiring implementation as a result of European Community directives,

may be desirable for the sake of efficiency, provided parliament retains adequate powers of supervision over the use of delegated powers. Furthermore, an exception applies in the case of member states of the European Community insofar as Community Regulations (which under Article 189 of the Treaty of Rome are directly applicable) may stipulate application of a specific measure at a given level of administration.

Paragraph 2

In addition to the responsibilities assigned by legislation to specific levels of authority, other needs or possibilities for action by public bodies may present themselves. Where these fields of action have local implications and are not excluded from the general competence obtaining in most member states, it is important to the conception of local authorities as political entities acting in their own right to promote the general welfare of their inhabitants that they have the right to exercise their initiative in these matters. The general rules under which they may act in such cases may, however, be laid down by law. In certain member states, however, local authorities must be able to adduce statutory authority for their actions. A wide discretion beyond specific responsibilities can be given to local authorities under such a system, whose existence is to that extent comprehended by Article 4, paragraph 2.

Paragraph 3

This paragraph articulates the general principle that the exercise of public responsibilities should be decentralised. This principle has been stated on a number of occasions within the context of the Council of Europe and in particular in the Conclusions of the Lisbon Conference of European Ministers responsible for Local Government in 1977. This implies that, unless the size or nature of a task is such that it requires to be treated within a larger territorial area or there are overriding considerations of efficiency or economy, it should generally be entrusted to the most local level of government.

This clause does not imply, however, a requirement systematically to decentralise functions to such local authorities which, because of their nature and size, can only accomplish limited tasks.

Paragraph 4

This paragraph is concerned with the problem of overlapping responsibilities. In the interest of clarity and for the sake of avoiding any tendency towards a progressive dilution of responsibility, powers should normally be full and exclusive. However, complementary action by different levels of authority is required in certain fields and it is important that in these cases the intervention by central or regional authorities takes place in accordance with clear legislative provisions.

Paragraph 5

The administrative structures of local authorities and their familiarity with local conditions may make them appropriate bodies to implement certain functions, the ultimate responsibility for which falls to supra-local authorities. It is important, however, in order that recourse to such delegation does not excessively impinge on the sphere of independent authority of the local level, that the latter should, when possible, be allowed to take account of local circumstances in exercising delegated powers. It is recognised, however, that in respect of certain functions, for example the issue of identity papers, the need for uniform regulations may leave no scope for local discretion.

Paragraph 6

Whilst paragraphs 1 to 5 deal with matters which come within the scope of local authorities, paragraph 6 is concerned both with matters coming within the scope of such authorities and with matters which are outside their scope but by which they are particularly affected. The text provides that the manner and timing of consultation should be such that the local authorities have a real possibility to exercise influence, whilst conceding that exceptional circumstances may override the consultation requirement particularly in cases of urgency.

Such consultation should take place directly with the authority or authorities concerned or indirectly through the medium of their associations where several authorities are concerned.

Article 5

Proposals for changes to its boundaries, of which amalgamations with other authorities are extreme cases, are obviously of fundamental importance to a local authority and the citizens whom it serves. Whilst in most countries it is regarded as unrealistic to expect the local community to have power to veto such changes, prior consultation of it, either directly or indirectly, is essential. Referendums will possibly provide an appropriate procedure for such consultations but there is no statutory provision for them in a number of countries. Where statutory provisions do not make recourse to a referendum mandatory, other forms of consultation may be exercised.

Article 6

Paragraph 1

The text of this paragraph deals not with the general constitution of the local authority and its council but rather with the way in which its administrative services are organised. Whilst central or regional laws may lay down certain general principles for this organisation, local authorities must be able to order their own administrative structures to take account of local circumstances and administrative efficiency. Limited specific requirements in central or regional laws concerning, for example, the establishment of certain committees or the creation of certain administrative posts are acceptable but these should not be so widespread as to impose a rigid organisational structure.

Paragraph 2

In addition to the appropriate management structures, it is essential to the efficiency and effectiveness of a local authority that it is able to recruit and maintain a staff whose quality corresponds to the authority's responsibilities. This clearly depends to a large degree on

the local authority's ability to offer sufficiently favourable conditions of service.

Article 7

This article aims at ensuring both that elected representatives may not be prevented by the action of a third party from carrying out their functions and that some categories of persons may not be prevented by purely material considerations from standing for office. The material considerations include appropriate financial compensation for expenses flowing from the exercise of functions and, as appropriate, compensation for loss of earnings and, particularly in the case of councillors elected to full-time executive responsibilities, remuneration and corresponding social welfare protection. In the spirit of this article, it would also be reasonable to expect provision to be made for the reintegration of those taking on a full-time post into normal working life at the end of their term of office.

Paragraph 3

This paragraph provides that disqualification from the holding of local elective office should only be based on objective legal criteria and not on *ad hoc* decisions. Normally this means that cases of incompatibility will be laid down by statute. However, cases have been noted of firmly entrenched, unwritten legal principles which seem to provide adequate guarantees.

Article 8

This article deals with supervision of local authorities' activities by other levels of government. It is not concerned with enabling individuals to bring court actions against local authorities nor is it concerned with the appointment and activities of an *ombudsman* or other official body having an investigatory role. The provisions are above all relevant to the philosophy of supervision normally associated with the *contrôles 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.

Paragraph 1

Paragraph 1 provides that there should be an adequate legislative basis for supervision and thus rules out *ad hoc* supervisory procedures.

Paragraph 2

Administrative supervision should normally be confined to the question of the legality of local authority action and not its expediency. One particular but not the sole exception is made in the case of delegated tasks, where the authority delegating its powers may wish to exercise some supervision over the way in which the task is carried out. This should not, however, result in preventing the local authority from exercising a certain discretion as provided for in Article 4, paragraph 5.

Paragraph 3

The text draws its 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.

Since access to judicial remedies against the improper exercise of supervision and control is covered by Article 11, precise provisions on the conditions and manner of intervention in specific situations have not been felt to be essential.

Article 9

The legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out.

Paragraph 1

This paragraph seeks to ensure that local authorities shall not be deprived of their freedom to determine expenditure priorities.

Paragraph 2

The principle in question is that there should be an adequate relationship between the financial resources available to a local authority and the tasks it performs. This relationship is particularly strong for functions which have been specifically assigned to it.

Paragraph 3

The exercise of a political choice in weighing the benefit of services provided against the cost to the local taxpayer or the user is a fundamental duty of local elected representatives. It is accepted that central or regional statutes may set overall limits to local authorities' powers of taxation; however, they must not prevent the effective functioning of the process of local accountability.

Paragraph 4

Certain taxes or sources of local authority finance are, by their nature or for practical reasons, relatively unresponsive to the effects of inflation and other economic factors. Excessive reliance on such taxes or sources can bring local authorities into difficulties since the costs of providing services are directly influenced by the evolution of economic factors. It is recognised, however, that even in the case of relatively dynamic sources of revenue there can be no automatic link between costs and resource movements.

Paragraph 6

Where redistributed resources are allocated according to specific criteria set out in legislation, the provisions of this paragraph will be met if the local authorities are consulted during the preparation of the relevant legislation.

Paragraph 7

Block grants or even sector-specific grants are preferable, from the point of view of local authority freedom of action, to grants earmarked for specific projects. It would be unrealistic to expect all specific project grants to be replaced by general grants, particularly for major capital investments, but excessive recourse to such grants will severely restrict a local authority's freedom to exercise its discretion with regard to expenditure priorities. However, the part of total resources represented by grants varies considerably between countries, and a higher ratio of project-specific grants to more general grants may be considered reasonable where grants as a whole represent a relatively insignificant proportion of total revenue.

The second sentence of Article 9, paragraph 7, seeks to ensure that a grant for a specific purpose does not undermine a local authority's freedom to exercise discretion within its own sphere of competence.

Paragraph 8

It is important for local authorities that they have access to loan finance for capital investment. The possible sources of such finance will, however, inevitably depend on the structure of each country's capital markets; procedures and conditions for access to these sources may be laid down by legislation.

Article 10

Paragraph 1

This paragraph covers co-operation between local authorities on a functional basis with a view in particular to seeking greater efficiency through joint projects or carrying out tasks which are beyond the capacity of a single authority. Such co-operation may take the form of the creation of consortia or federations of authorities, although a legal framework for the creation of such bodies may be laid down by legislation.

Paragraph 2

Paragraph 2 is concerned with associations whose objectives are much more general than the functional considerations of paragraph 1 and which normally seek to represent all local authorities of a particular kind or kinds on a regional or national basis. The right to belong to associations of this type does not however imply central government recognition of any individual association as a valid interlocutor.

In a Council of Europe instrument of this type, it is normal that the right to belong to associations at national level should be accompanied by a parallel right to belong to international associations, a number of which are active in the promotion of European unity along lines which accord with the aims laid down in the statute of the Council of Europe.

However, Article 10.2 leaves to individual member states the choice of means, legislative or otherwise, whereby the principle is given effect.

Paragraph 3

Direct co-operation with individual local authorities of other countries should also be permitted, although the manner of such co-operation must respect such legal rules as may exist in each country and take place within the framework of the powers of the authorities in question.

The provisions of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (21 May 1980, ETS No. 106) are particularly relevant in this respect, although some forms of co-operation need not be restricted to frontier areas.

Article 11

By recourse to a judicial remedy is meant access by a local authority to:

a. a properly constituted court of law, or

b. an equivalent, independent, statutory body having the power to rule and advise on the ruling respectively, as to whether any action, omission, decision or other administrative act is in accordance with the law.

An instance has been noted in one country where, although administrative decisions are not subject to an ordinary appeal to a court, it is possible to have recourse to an extraordinary remedy called an application for reopening of proceedings. This judicial remedy, which is available if the decision is based on a manifestly incorrect application of the law, is in accordance with the requirements of this article.

Article 12

The formulation of the principles of local self-government laid down in Part I of the Charter had to try to reconcile the wide diversity of legal systems and local government structures existing in the member states of the Council of Europe. Nevertheless, it is recognised that individual governments may still face constitutional or practical impediments to subscribing to particular provisions of the Charter.

This article accordingly adopts "the compulsory nucleus" system first established by the European Social Charter, by providing that the Parties to the European Charter of Local Self-Government are required to subscribe to at least twenty of the thirty paragraphs of Part I of the Charter, including at least ten from a nucleus of fourteen basic principles. However, as the ultimate aim remains compliance with all the provisions of the Charter, the Parties are specifically enabled to add to their undertakings as and when this becomes possible.

Article 13

In principle, the requirements set forth in Part I of the Charter relate to all categories or levels of local authority in each member state. They potentially apply also to regional authorities where these exist. However, the special legal form or constitutional status of certain

regions (in particular the member states of federations) may preclude their being made subject to the same requirements as local authorities. Furthermore, in one or two member states there exists a category of local authorities which, because of their small size, have only minor or consultative functions. To take account of such exceptional cases, Article 13 permits the Parties to exclude certain categories of authorities from the scope of the Charter.

Article 14

This article is intended to facilitate the monitoring of the application of the Charter, by the individual Parties, by creating an obligation for the latter to supply relevant information to the Secretary General of the Council of Europe. Especially in the absence of a specific body responsible for supervising the implementation of the Charter, it is particularly important that information should be available to the Secretary General concerning any changes of legislation or other measures which have a significant impact on local autonomy as defined in the Charter.

Articles 15 to 18

The final clauses contained in Articles 15 to 18 are based on the model final clauses for conventions and agreements concluded within the Council of Europe.

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