

RAPPORT DE MONITORING

OF THE EUROPEAN CHARTER OF LOCAL AUTONOMY

Country : Poland

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Chapter VII of the Constitution is devoted to “Samorząd terytorialny” (Territorial self-government). The key provision is Article 165, according to which: “1. Units of local government shall possess legal personality. They shall have rights of ownership and other property rights. 2. The self-governing nature of units of local government shall be protected by the courts”.

The Polish Constitution expressly uses the word “self-government” (samorząd) or “self-governing nature” of the local government units. The same expression is used to translate in Polish the title of the Charter (Europejska Karta Samorządu Terytorialnego).

Moreover, the word “self-governing” or “autonomous” is also used in the legislation as an adjective to refer to local “self-governing authorities” (samorząd lokalny, in the case of gminy and powiaty) and “self-governing region” (samorząd regionalny or województwo).

Local self-government is thus recognised at the domestic level, both in the Constitution and in legislation, in an “open” and “express” manner. Consequently, it is possible to initiate legal challenges against statutes or regulations approved by parliament or the national government, that could potentially infringe upon local autonomy.

Therefore, the rapporteurs consider that the requirements of Article 2 of the Charter are fully satisfied in Poland.

Article 3.1

Concept of local self government

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.



Poland [Article ratified - Report adopted on 2 April 2019]

The main question that must be addressed under this heading is whether, in the present situation, Polish municipalities and districts regulate and manage a “substantial share of public affairs under their own responsibility and in the interests of the local population”. This provision requires an assessment which takes into account the rather “subjective” and relative nature of such concepts as “ability”, “a substantial share of public affairs”, “under their own responsibility” and “in the interests of the local population” since no official or universal method of measuring such substantial character has yet been developed. The question must be addressed considering the historical evolution, the culture and the constitutional traditions of the country under analysis. It is also closely linked to the assessment of the compliance with other parts of the Charter, such as Articles 4, 8 and 9.

In order to assess compliance with this provision, both legislative and factual aspects should be taken into consideration.

In Poland, Article 166.1 of the Constitution states that «Public duties aimed at satisfying the needs of a self- governing community shall be performed by units of local government as their direct responsibility». This principle is echoed by the Article 2 of the Law on Municipal Self-Government, according to which “1. The municipality performs public tasks on its own behalf and on its own responsibility”. And Article 2 of the Law on Powiat Self-Government: “The county performs public tasks specified by law on its own behalf and on its own responsibility”. The functions of the municipalities and powiaty are divided into own (autonomous) functions and delegated functions, in accordance with the principle of freed decision-making.

Another indicator of the “importance” or the political and social role of local government in a country is the local government expenditure in the national general government consolidated budget, especially in comparison with other EU countries. In Poland, as previously indicated, the self-government authorities manage 31.3% of the total public expenditures.

Nevertheless, during the monitoring visit, the delegation was informed of a recent process of re-centralisation that affected several competences already transferred to local and regional authorities. Very often, it takes the form of the creation of State authorities, with the justification of the implementation of EU directives. The local representatives’ concerns are twofold. On one hand, they complain about the fact that those acts have been passed without being reviewed within the Joint Committee (see infra, sub Article 4). On the other hand, they consider the re-centralisation process unjustified and in violation of the principle of local self-government.

Among the previously local and regional competences that have gradually been re-allocated to the State, they especially mentioned:

- Centralisation of the agricultural advisory centres (dealing with farmers' support);
- Centralisation of the environmental protection funds (distributing EU funds);
- Centralisation of water management, including the authorities against flood;

- Centralisation of sport installation financed by the Lotto;
- Centralisation of competences on veterans;
- Centralisation of competences on management of schools;
- Centralisation of competences in the field of family benefits, parental benefits and a one-off childbirth benefit.

In its written replies to the rapporteurs' questionnaire, the Ministry of the Interior and Administration pointed out some of the reasons for the centralization of the competences, focusing on the need to implement EU directives and rationalize public services to equalize standards of living. It concluded that the proposed legal solutions have been in the end adopted by Parliament in a vote. The same line of reasoning to justify the centralisation of certain competences was followed by the government during the consultation procedure. It negated the recentralisation as such and referred to it as building uniform standards of access to services and benefits of the welfare state or minor corrections in relation to the scale of self-government activities.

The rapporteurs are aware that it is not possible to define precisely, in Article 3.1, "what affairs local authorities should be entitled to regulate and manage" and that "the traditions of member states as to the affairs which are regarded as belonging to the preserve of local authorities differ greatly". Consequently, they consider that the article must be read in light of the tradition of each Member State.

They also took note of the justifications provided for the takeover of competences by the Polish government, although the fact that the amendments have been adopted by the Parliament cannot be considered as a valid justification for violating the Charter.

However, considering the historical and successful decentralization process put in place in Poland since the 1990s and, consequently, the high level of autonomy enjoyed by Polish local authorities, taking into account also the interferences of central government within local competences as pointed out under Article 4.4 and Article 8.3, the rapporteurs express their concern vis-à-vis the process of re-centralization of competence that is ultimately undoing some of the achievements of Poland's well-functioning and decentralised local and regional governance.

For these reasons, the rapporteurs conclude that Article 3.1 of the Charter is only partially respected in Poland.

Article 3.2

Concept of local self government

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.



As for Article 3, paragraph 2, the right to self-government is exercised in Poland by elected bodies. According to Article 169 of the Constitution, “1. Units of local government shall perform their duties through constitutive and executive organs. 2. Elections to constitutive organs shall be universal, direct, equal and shall be conducted by secret ballot. The principles and procedures for submitting candidates and for the conduct of elections, as well as the requirements for the validity of elections, shall be specified by statute”.

As previously indicated, the representative governing body at municipal level is the municipal council, while the municipality’s executive organ is the mayor. Both of them are directly elected by citizens, for a term of five years (since 2018).

Although the council cannot remove the mayor, since a municipal referendum is necessary, especially after the passing of the 2018 amendments to the Law on Municipal Self-Government it exerts a control over the mayor.

The 2018 law has strengthened the council’s control powers over the mayor, as well as the direct popular participation. Among the new provisions, we could mention the duty of the mayor to present to the council every year, before the 31 of May, a report on the state of the municipality (Article 28aa). The report must include a summary of the municipality’s activities in the previous year, and especially the implementation of policies, programs and strategies, resolutions of the municipal council and the civic budget. In the debate on the report on the state of the municipality, councilors take the floor without time limits.

After the debate on the report on the state of the municipality is over, the municipal council, in a resolution, decides whether to grant or withhold a vote of confidence in this respect (Article 18.2, 4a). A successful resolution granting a vote of confidence to the mayor of a municipal council must be supported by the absolute majority of votes of the statutory composition of the municipal council. Failure to adopt a resolution granting a vote of confidence to the mayor of a municipality is tantamount to passing a resolution withholding the confidence to the mayor of a municipality. As already provided by the previous legislation, if a vote of confidence is not granted to the mayor of a municipality for two subsequent years, the municipal council may adopt a resolution to hold a referendum for the recall of the mayor.

Another new provision entrusts the council with the role of addressing citizens’ complaints. According to Article 18b, “The municipal council examines complaints about actions of the mayor of a municipality and municipality organizational units; applications and petitions from citizens; to this end, it sets up a committee of complaints, applications and petitions”.

In the case of powiaty, the basic institutional organisation includes the council and the executive board. According to Article 9 of the Law on powiaty, “The district council is the district’s governing and controlling body”. According to Article 27, “1. The district council elects a district executive board in the number of 3 to 5 persons, including the starosta and deputy starosta”. The executive body is accountable to the council, which can dismiss it by voting a no-confidence motion, by a 3/5 majority, at the request of at least 1/4 of the statutory members of the council (Article 31).

In addition, it should be mentioned that Poland constitutes also an example of a country where a number of institutions allowing citizens a more direct involvement in decision-making processes exists and that the number of such institutions has been significantly increased in recent times. Therefore, to a certain degree, a shift from representative democracy to participative and

deliberative democracy can be observed, especially in large, urban municipalities.

In conclusion, the rapporteurs consider that the requirements of Article 3.2 are satisfied in Poland.

Article 4.1

Scope of local self government

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 4, paragraph 1 of the Charter requires that the basic powers and responsibilities of local authorities are prescribed by the constitution or by statute.

Although the Constitution contains only some basic principles (in Articles 163 and 164.3), the general laws on municipalities and powiaty contain a detailed and substantive list of autonomous competences of local authorities (as previously indicated).

Therefore, Article 4, paragraph 1, is fully respected in Poland.

Article 4.2

Scope of local self government

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.



Poland [Article ratified - Report adopted on 2 April 2019]

As for Article 4, paragraph 2 of the Charter, according to which “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 Polish Constitution establishes a general residual clause of competence.

According to Article 163 of the Constitution, “Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities”; according to Article 164.3, “The commune shall perform all tasks of local government not reserved to other units of local government”. In the legislation, a general residual competence clause does exist for municipalities (Article 6.1 of the Law on Municipal Self-Government), whereas powiaty only have

enumerated competences.

It should also be mentioned that Article 87.2 of the Constitution states that «Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments».

Despite this ambitious constitutional and legislative framework, the actual practice is significantly different. The delegation was informed that, absent an express assignment of competence by the law, it is possible for acts of municipalities to be challenged by the voivodes.

An example was presented by the Capital City of Warsaw, concerning the issue of the sterilisation of cats and dogs. The City started a free program of sterilisation not limited to stray cats and dogs, but also open to owners of house pets. The voivode stopped this program, with the argument that according to the law, free sterilization and castration should be limited to homeless animals. Warsaw authorities challenged the decision of the voivode in court but lost in the first instance. They then appealed to the Supreme Administrative Court, which overruled the judgment of the court of first instance and the supervisory decision of the voivode, stating that “It can be [...] considered that the commune should undertake any measures preventing the homelessness of animals as part of the implementation of the obligatory task of maintaining cleanliness and order in communes”. However, in the meantime, the Law on the Protection of the Animals was amended. A new provision was introduced in Article 11.1, according to which “Preventing the homelessness of animals and providing care to homeless animals and catching them falls within the municipality's own tasks”. It was also specified that this task may include a plan for the sterilisation or castration of animals in the municipality, in full respect of the rights of the owners of the animals or other persons entrusted with the care of the animals.

In fact, the example from the Capital City of Warsaw exemplifies a wider issue: notwithstanding the general residual clause, municipalities cannot exercise competences that are not expressly assigned by law. Therefore, the rapporteurs consider that Article 4, paragraph 2 of the Charter is not satisfied in practice in Poland.

Article 4.3

Scope of local self government

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 4, paragraph 3 of the Charter articulates the general principle of subsidiarity. It establishes that “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”.

In Poland, the principle of subsidiarity is entrenched at constitutional level in the Preamble to the Constitution, according to which the Constitution shall be based on “on the principle of subsidiarity in

the strengthening the powers of citizens and their communities”.

However, in practice, this principle is not fully implemented. Local authorities’ representatives at all levels of territorial government complained that more and more competences have been re-centralised, without the centralisation being justified for reasons of efficiency and economy (see supra, sub Article 3.1).

This is especially the case of the reform of education, which affected the competences of municipalities and districts. The reform strengthened the role of the school superintendent, who is now in charge of approving the school network plan, giving opinions on work plans, issuing binding opinions on the possible liquidation of schools by the local government, and participating in the process of selecting the school head.

During the consultation process, the government opposed the expressed views, in particular as regards the focus on recentralisation of certain competences related to the reform of education. It reiterated, once more, its position that the reported re-centralisation should be considered as building uniform standards of access to services and benefits of the welfare state or as introducing minor corrections taking into account the scale of self-government activities in Poland.

The rapporteurs do not share this attitude in general and the reference to minor corrections specifically, taking into account the significance of the educational part in the local self-government share of responsibilities.

Therefore, the rapporteurs consider that Article 4, paragraph 3 of the Charter is not fully respected in Poland.

Article 4.4

Scope of local self government

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 4, paragraph 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”.

During the monitoring visit, all the local representatives met by the delegation complained about the violation of the principle of Article 4.4, as in several matters the powers given to local authorities are not full and exclusive. Legislation, government and ministerial regulations contain very detailed provisions that do not leave to the local authorities the possibility to adapt them to local conditions. The Association of Polish Cities underlined that the issue is not new, as it was also mentioned in the 2015 Report, but over the last few years the problem has worsened. Education, social assistance, spatial planning are the fields in which the national regulation is so detailed that local authorities are left without any discretion.



During the consultation procedure, the government agreed that the issue of reducing freedom of task implementation system is not new in the Polish local self-government system, but the State must ensure some minimum access to public services and benefits. It further contested the reported limitation of the freedom of local self-government in adaptation of standards resulting from laws and government regulations to local conditions.

However, two very special cases were mentioned to the rapporteurs by local interlocutors which hold significant symbolic value: they are concerned with the competences of the municipal councils on monuments and streets' names.

The representatives of the Capital City of Warsaw informed the delegation of the decision taken by the government allegedly in name of national security to localize the monument to commemorate the 2010 Smolensk air crash (in which the then President of the Republic, his wife and several other Polish high level officials died) in the main central square of Warsaw, in spite of a different previous decision of the municipality. The municipality considered this decision as intruding upon its competences on land use and planning and management of public places. The complaints that have been filed by the municipality have not been examined yet by the prosecutor and by the administrative courts.

The delegation was also informed of the dispute opposing several municipalities to the government as a consequence of the application of Law of 1 April 2016 on "de-communisation" of names. Applicable from 2 September 2016, the Law requires the competent authorities of local government units to change such names within 12 months from the date of its entry into force. In the event of failure to fulfill this obligation by the appropriate bodies of the territorial self-government units, in accordance with Article 6.2 of the Law, the voivode issues a replacement order, in which (s)he assigns the name pursuant to Article 1 of the Law.

Since there are currently political disputes about which of the names of historical figures amount to propagation of communism in practice, the delegation was told that voivodes abused the right to issue replacement orders. The orders were then challenged by the municipalities before the administrative courts, which, in some cases ruled the acts of the voivodes to be invalid.

To conclude, the rapporteurs would like to underline that notwithstanding the governments' legitimate interest in ensuring the basic service standards in the areas which have a major impact on the lives on citizens, the overall matter of improvement and development should be a responsibility for local self-government and for partnership between the local and central level, and not one-way top-down relations.

Therefore, the rapporteurs consider that Article 4, paragraph 4 of the Charter is not fully respected in Poland.

Article 4.5

Scope of local self government

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 4, paragraph 5, refers to delegated responsibilities, establishing that local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

During the monitoring visit, the delegation heard many complaints of local authorities, which claimed to have been left without any discretion in the exercise of those competences. They pointed out that they are becoming only paying agencies for the central government. This situation also has negative consequences at the financial level, since, as we shall see further infra (sub Article 9), the financial resources transferred for the exercise of those competences are not adequate. Furthermore, the Supreme Audit Office (NIK) criticized this system, pointing out that local authorities in the exercise of delegated competences only act as spending agencies for the central government. The NIK proposal was to change them into own competences of local authorities.

Therefore, and notwithstanding the government’s view to the contrary, the rapporteurs consider that Article 4, paragraph 5 of the Charter is not fully respected in Poland.

Article 4.6
Scope of local self government

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Finally, Article 4 paragraph 6 of the Charter provides that “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”.

On this matter, as pointed out by the 2015 Report, the Polish Joint Committee represented a positive example of inter-governmental consultation, also in comparative perspective.

The legal framework has remained unchanged in the last few years, but in practice, the mechanism does not seem to provide any more for an appropriate consultation process. During the monitoring visit, the delegation heard recurrent complaints on the fact that an increasing number of decisions concerning local interests are taken at the central level without appropriate consultation of local authorities.

Especially emphasized was the practice to submit governmental proposals in the form of private bills lodged by members of the parliamentary majority, in order to avoid the obligation to consult with the Joint Committee. The delegation was informed that this procedure has become the “normal procedure”. Several examples of this practice were presented, including the Law on the protection of

the environment, liberalising the logging of forests, and the Law that affected agricultural advisory centres.

Furthermore, several pieces of secondary legislation have been adopted by the government without any prior consultation of the Committee. One example that was mentioned by the Association of Polish Cities is the Regulation of the Council of Ministers of 15 May 2018, establishing the minimum and maximum remuneration for elected local representatives. In other cases, the delegation was informed that governmental projects have been submitted to the Committee, but the remarks of local authorities have not been taken into consideration by the government and the reasons for rejecting some comments were not communicated to local authorities.

During the consultation process, the government presented a different assessment of the situation, pointing out that during the current term of the government the Joint Committee has met 34 times, around 1209 legislative proposals were submitted for opinion to the Joint Committee, and only 3% of them have not been discussed with self-governments. The government maintains that the Joint Committee and its particular Task Forces have considered a wide range of issues. The government also pointed out that Joint Committee's self-government representatives can participate in consultations held within the Sejm parliamentary committees when proposals are submitted by MPs.

Given that consultation and participation of local self-government authorities has become a matter of contention between the central and subnational authorities, the rapporteurs are especially concerned with this negative change in central-local relationships in Poland, which represents a significant regression compared to the previous *acquis* (achievements). Consequently, they encourage Polish authorities to restore those good practices based on collaboration and dialogue that used to characterise Poland's experience in the past.

Therefore, the rapporteurs consider the requirements of Article 4, paragraph 6, are not respected in Poland.

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.



Poland [Article ratified - Report adopted on 2 April 2019]

This Article requires that local communities should be consulted in case of changes of local authorities' boundaries.

Article 15.2 of the Constitution states that «The basic territorial division of the State shall be determined by statute» but does not specifically refer to the right of consultation of local communities when changes in local boundaries are decided. The requirement of the prior consultation of local communities was also absent from the original text of the Law on Municipal Self-Government and of the Law on Powiat Self-Government. It was introduced in the legislation after

Recommendation 120 (2002).

According to the existing legislation, the Council of Ministers may create, merge and dissolve gminy/powiaty. It also defines the boundaries of municipalities and districts by way of regulations. Revisions and changes in local government units are made by the Council of Ministers upon its own initiative, or on a motion by the local bodies themselves. In either case, the changes require an opinion of the organs of local self-government units and are subject to the public consultation of the residents of the area affected by the change.

Alternatively, the creation, merger, or division of municipalities as well as the re-definition of their boundaries may also be initiated by residents in a referendum, the results of which can form the basis for a motion by the local council.

Determination and change of municipal boundaries is made in a way that ensures that the territory of the resulting local body: (a) is as uniform as possible in terms of the settlement pattern and spatial arrangement; (b) takes into account social, economic and cultural ties; and (c) ensures that the local body is able to carry out its tasks.

Therefore, although the legislation requires consultation of the residents, in Poland the change of the boundaries may also happen against the residents' will.

Changes in municipal boundaries have generated in the last few years a significant volume of controversies. The delegation was informed that a prospected change in the area of the Capital City of Warsaw, which would have affected several neighbouring municipalities, was abandoned. A change of the borders of the City of Opole, that were enlarged to include parts of the territory of neighbouring municipalities, against the will of the councils of the affected municipalities and against the will the residents as expressed in public consultations, was implemented by the Council of Ministers, and generated a conflict that ended up - although without an answer - before the Constitutional Court.

A very special case is the abolition of the Ostrowice municipality. On 5 July 2018, the Sejm adopted the Law on special solutions for the Ostrowice municipality in the West Pomeranian Voivodeship, establishing that the Council of Ministers, by regulation, would abolish the municipality of Ostrowice. According to the explanatory statement to the bill, the municipality of Ostrowice is one of the most indebted municipalities in Poland, with no financial prospects to carry out investments for many years and no financial means to repay the debt. The abolition of the Ostrowice municipality and the inclusion of its area to the neighboring municipalities will take place through the regulation of the Council of Ministers issued after consultations with residents (as provided by Article 1 of the Law). The consultations will be carried out by the authorities of the concerned municipalities.

According to the explanatory statement of the bill, "the advice of the councils is not required, in accordance with the European Charter of Local Self-government, which only provides for consultation with residents (Article 5)". Changes in the territorial division related to the abolition of the Ostrowice municipality will take place on 1st January 2019.

The rapporteurs would like to point out that changes in boundaries and mergers of local authorities are very often a source of tensions and political conflicts. Although a more detailed procedure, with a more substantive consideration of the will of the residents could help in smoothing conflicts and tensions, the rapporteurs consider that the requirements of Article 5 are globally met in Poland.

Article 6.1

Appropriate administrative structures and resources for the tasks of local authorities

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 6, paragraph 1 of the Charter provides that local authorities shall be able to determine their own internal administrative structure.

Polish local authorities are endowed by the Constitution and the law with a fair degree of autonomy in the field of internal organisation. According to Article 169.4 of the Polish Constitution, «the internal organizational structure of units of local government shall be specified, within statutory limits, by their constitutive organs».

Each local authority adopts its own charter (“statut gminy”, Article 3 Law on Municipal Self-Government; “statut powiatu”, Article 2 Law on Powiat Self-Government), which, within the limits of State legislation, defines the internal organization and the mode of operation of the local authority (Article 22 Law on Municipal Self-Government, Article 19 Law on Powiat Self-Government).

However, during the monitoring visit, the representatives of local authorities claimed that internal administrative structures are increasingly determined by the central government, which imposes overly rigid organisational structures on municipalities and powiaty. Paradigmatic examples of this approach that were mentioned include the centres for social assistance that each municipality is required to establish, without the possibility to associate with other municipalities. A concern was also expressed by some local authorities about the impact on the functioning of local government of the recent reform aimed at strengthening participative democracy (especially the obligation to set up a committee of complaints, applications and petitions: Article 18b Law on Municipal Self-Government; Article 16a Law on Powiat Self-Government). A similar claim was presented also during the 2014 monitoring visit.

The rapporteurs, underlying once again the importance of self-organisation autonomy, consider that, notwithstanding some difficulties, Polish local authorities are able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management. Therefore, the requirements of Article 6.1 are complied with in Poland.

Article 6.2

Appropriate administrative structures and resources for the tasks of local authorities

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.



Poland [Article ratified - Report adopted on 2 April 2019]

It is worth mentioning that according to that Law, the category of “self-government employees” includes in Poland elected representatives, appointed representatives and contracted employees. In this report we will deal with elected and appointed representatives further infra, sub Article 7 of the Charter.

As for employees with a contract of employment, the Law (Article 37) assigns to the Council of Minister the power to determine: the list of positions, the minimum qualification requirements, the conditions and manner of remuneration for local government employees, the conditions for granting and paying an allowance for long-term work; the conditions for determining the right to the jubilee award and its payment. The Council of Minister must take into account: 1) the type of tasks carried out and the nature of the activities performed with regard to individual positions; 2) the need for a local government employee to have professional skills and necessary experience; 3) the number of inhabitants of a local government unit.

The Congress delegation was not made aware of any complaint from Polish local authorities on this matter. The claim presented by the Association of Polish Cities refers to the remuneration of elected and appointed representatives and will be dealt with further infra, sub Article 7. Therefore, the rapporteurs consider that requirements of Article 6.2 are satisfied in Poland.

Article 7.1

Conditions under which responsibilities at local level are exercised

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



Poland [Article ratified - Report adopted on 2 April 2019]

The purpose of Article 7, paragraph 1, is to guarantee the free exercise of their functions by elected representatives. This was not an issue during the 2014 monitoring visit, which pointed out that “Poland is an advanced, democratic country”. Unfortunately, during the 2018 monitoring visit, the delegation heard many concerns and received many complaints by local authorities’ representatives about a change in the factual situation. Many mayors mentioned the excesses in prosecutions and anticorruption investigations, with the purpose to instil in the citizenship a feeling of distrust in local authorities.

As the free exercise of the functions requires both legal and factual accommodations, the rapporteurs would like to point out the importance of stability in office and the need for a judicial decision to suspend or remove mayors from office.

Having said that, the rapporteurs consider that, for now, Article 7.1 is not violated in Poland.

Article 7.2

Conditions under which responsibilities at local level are exercised

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 7, paragraph 2, refers to an appropriate financial compensation for elected representatives.

As for the financial compensation of local representatives, council members receive no salary but an allowance for their work, which is on a part-time basis and considered to be an “additional” position. The extent of the allowance depends on the number of residents of the gmina or powiat. The council sets the remuneration of its members by means of a resolution, within the framework of national regulation. The remuneration of the mayor and the starosta (which legally are considered in Poland local government employees) follows similar rules, since the council decides on their salary, which is also capped by the national regulation and depends on the population. They receive a special duty allowance, which is also dependent on the population of the community.

The delegation was informed that on 15 May 2018 a new Regulation of the Council of Ministers was adopted (according to Article 37 of the Law on Self-Government Employees of 21 November 2008), establishing the minimum and maximum of the remuneration and of the special duty allowance. The new Regulation reduced the maximum and minimum by 20%. The Association of Polish Cities submitted to the delegation a legal opinion supporting the claim which points out, among other elements, that the reduction is not supported by a transparent justification and that there was a lack of consultation, as the draft was not submitted to the Joint Committee. The written reply of the Ministry of the Interior and Administration to the questionnaire underlines that there is a social expectation by the public opinion that remunerations must be reduced since the general perception is that politicians’ salaries are too high. In its reply, the Ministry also emphasised that the adopted solution is based on the amendment to the Law on the exercise of the mandate of Deputy or Senator, adopted by the Sejm on 10 May 2018 which provides for a 20% reduction in the salaries of members of parliament.

The rapporteurs would like to express their concerns regarding this trend, especially as the 20% reduction does not happen as a consequence of a financial crisis, and is actually implemented at a time of economic growth. For now, the rapporteurs do not consider the reduction as a measure sufficient to determine a violation of Article 7.2, but they maintain that the situation must be closely monitored in the future.

Article 7.3

Conditions under which responsibilities at local level are exercised

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



Poland [Article ratified - Report adopted on 2 April 2019]

As for Article 7, paragraph 3, according to which “Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles”, in Poland the incompatibilities are determined by several legal provisions. In addition to the Law on Municipal Self-Government and the Law on Powiat Self-Government, the Law of 21 August 1997 on Restricting Business Activity by Persons Performing Public Functions is aimed at limiting the plurality of functions performed by, among others, heads of gminy (mayors, city presidents) and their deputies, members of powiat boards, members of voivodeship boards, treasurers, secretaries.

Recently, the amendments introduced by Law of 11 January 2018 are aimed at adding more and more functions or activities that cannot be combined with the office of an elected representative at local level. The Association of Polish Cities claimed that this tendency, combined with the lowering of remuneration for elected representatives, could exclude entire categories of people from the access to elective mandates.

The rapporteurs share these concerns and believe that the issue has to be closely monitored, as it can severely harm pluralism and local democracy. However, for now, they do not consider Article 7.3 to be infringed in Poland.

In conclusion, the requirements of Article 7 are, at present, complied with in Poland. Nevertheless, the rapporteurs consider that the situation requires a closer monitoring in the future.

Article 8.1

Administrative supervision of local authorities' activities

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.



Poland [Article ratified - Report adopted on 2 April 2019]

According to Article 8, paragraphs 1 and 2, any administrative supervision of the activities of local authorities can only aim at ensuring compliance with the law and constitutional principles. Administrative supervision may, however, be exercised by higher-level authorities with regard to expediency in respect of the tasks delegated to local authorities. Another important requirement that can be inferred from the Charter provisions is that the law should precisely define the administrative authorities empowered to exercise legal supervision over municipalities.

In line with the requirements of the Charter, in Poland the rules governing central control over local authorities and the powers of the central authorities concerned are determined by the Constitution and by the law.

According to Article 171 of the Polish Constitution, “1. The legality of actions by a local government shall be subject to review. 2. The organs exercising review over the activity of units of local government shall be: the Prime Minister and voivods and regarding financial matters - regional audit chambers. 3. On a motion by the Prime Minister, the Sejm (Parliament) may dissolve a constitutive organ of local government if it has clearly violated the Constitution or a statute”.

The legislation, as previously indicated, carefully defines the authorities, procedures, and cases in which the supervision, that is limited to the control of the legality of the acts, is exercised. If the voivode eventually overrules a local body decision, then both the local authority and the citizens may challenge the voivode’s decision, by lodging a complaint with the Regional Administrative Court, where a public hearing will then take place. The judgment may be appealed to the Supreme Administrative Court. Therefore, the judiciary is responsible for ensuring that the administrative supervision of State authorities is carried out with due respect to the grounds and procedures established by the law.

Therefore, they consider that the requirements of Article 8, paragraphs 1 and 2, are complied with in Poland,

Article 8.2

Administrative supervision of local authorities' activities

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Consult reply indicated at article 8.1

Article 8.3

Administrative supervision of local authorities' activities

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 8, paragraph 3, deals with the way in which the supervision is exercised in practice, and requires compliance with the principle of proportionality.

During the visit, the Congress delegation was informed of several interferences carried out by the supervisory bodies. Whereas in the past most of the cases of disagreement between the local body and the voivode were resolved by informal cooperation, in the last 3 or 4 years the voivodes have shown the tendency to overuse their supervisory power well beyond the relevance of the interest to be protected.

Another aspect of the aforementioned confrontational attitude of the supervisory authorities is the misuse of the voivodal power to ensure the publication of the local decisions and regulations in the best delay, which led in some cases to the unjustified postponement of the publication.

During the consultation process, the government provided some statistics data from the Ministry of Home Affairs and Administration, according to which the percentage of local self-government resolutions found invalid by voivodes and those appealed against to the administrative courts has been maintained at a stable low level in relation to all the resolutions examined by the voivodes and even a certain downward trend could be observed in 2016-2017.

The rapporteurs do not consider those data could invalidate the findings of the monitoring visit.

Therefore, they consider that the requirements of Article 8, paragraphs 1 and 2, are complied with in Poland, whereas those of Article 8, paragraph 3, are not met.

Article 9.1

Financial resources of local authorities

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.



Poland [Article ratified - Report adopted on 2 April 2019]

According to Article 9, paragraph 1 of the Charter, local authorities should have adequate financial resources of their own, of which they may dispose freely within the framework of their powers. Financial autonomy is an essential component of the principle of local self-government and an important condition for the exercise of a wide range of responsibilities in the field of local public affairs. These elements are cumulative and not alternative, which means that all the conditions laid down in Article 9, paragraph 1 of the Charter are mandatory. Another basic principle, established in Article 9, paragraph 2, requires that local authorities should have sufficient financial resources in proportion to the responsibilities assigned to them by law.

In Poland, local authorities manage a substantial part of financial resources, which account for up to 31.3% of public expenditures. Their revenues correspond to 13% of the GDP (4.1% of the tax revenues, 7.5% of grants and subsidies; 1.3% of other revenues). The true question, however, is whether they are allowed to dispose freely of those resources and whether these are proportional to the level of local responsibilities.

The issue was already raised during the 2014 monitoring visit. Recommendation 373 (2015), which reiterated the previous Recommendation 120 (2002), invited Polish authorities to assist the devolution of powers with the transfer of adequate financial resources and to find a new compromise



for concomitant financing.

It should also be mentioned that according to the OECD, in 2016 only 35.7% of total public investment was carried out by subnational governments in Poland compared to an OECD average of 56.9%. The share of public investment carried out by subnational governments in Poland is among the lowest among OECD countries.

Notwithstanding the fact that Poland has experienced in the last few years a remarkable economic growth, the issue concerning the availability of adequate financial resources, that are commensurate with the responsibilities of local authorities, remains unchanged. During the visit, the delegation heard complaints raised by the Association of Polish Cities and by many local authorities' representatives.

The Ministry of Finance pointed out that the financial resources of local authorities experienced a steady growth over the last years, including their own income.

The local authorities' representatives raised three main complaints. Firstly, the resources are considered to be insufficient. Since the amendments to the Law on the Personal Income Tax of 2005-2006, the financial soundness of municipalities have been weakened without any compensation and without any decrease in the scope of local tasks. Secondly, the State is establishing higher standards for local services without transferring extra resources, thereby asking local authorities to make up for the difference in expenditures. Thirdly, the State is transferring new competences to local authorities, without adequate financial resources.

The powiat seems to be the weakest level of government. The powiaty' representatives pointed out the financial difficulties that they are experiencing, which, in turn, generate an excessive debt. The improvement in standards in social assistance, retirement homes, orphanages, centres for troubled youth, safe houses for disadvantages people generate additional expenses that are not covered by the State through transfers of resources and must therefore be paid for with their own resources.

Education is a problem for both municipalities and powiaty. The negotiation on teachers' salaries is carried out at national level, but the salaries must be paid by the local authorities. Subsidies for education increased by 1%, compared to a 5% of increase in education expenditures.

During the consultation procedure, the government expressed totally opposite views and underlined that the local self-government incomes had been growing, in particular as a result of the recently adopted legislation and recovery actions. The government presented the detailed data from the Ministry of Finance on the financial situation of self-governments in the period 2014-2017 to further underline a generally positive financial standing of local self-government, despite a small deficit in 2017. It also argued that the financial resources available to subnational government are adequate since, according to the data it presented, the level of asset-related expenditure of local self-government units is high and the high number of self-governments has operational surplus in the period of 2014-2017. The government also argued that the subsidies for education have always constituted one of the sources of financing the education and that there were no significant changes from 2014 to 2016 in the ratio between the local government current expenditures on education and the state budget current transfers (educational part of general subsidy and special grants for education tasks).

Notwithstanding the growth in financial resources of local authorities pointed out by the government, the rapporteurs are especially concerned by the fact that the cost of the improvement in the quality of services and salaries - that is part of a policy carried out at national level - is de facto charged to

local authorities. In addition, data elaborated by independent academic research teams suggests that the growth in 2016-2017 is misleading, in the sense that it is to a huge extent a result of the new social protection programme (so called 500+ programme) which is implemented by local governments, acting as agent of central government, whereas there was a slight decrease of powiat revenues and sharp drop of regional revenues.

Therefore, the rapporteurs consider that the requirements of Article 9, paragraphs 1 and 2, are only partially respected in Poland.

Article 9.2

Financial resources of local authorities

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



Poland [Article ratified - Report adopted on 2 April 2019]

Consult reply indicated at article 9.1

Article 9.3

Financial resources of local authorities

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 9, paragraph 3, requires that at least part of the financial resources of local authorities must derive from local taxes of which, within the limits of statute, they have the power to determine the rate.

In Poland, the financial resources deriving from “local taxes” represent a significant part of the municipal income (43,3% according to the 2017 data of the Ministry of Finance), whereas they are limited for powiat (35,8%).

However, the main issue is not represented by the proportion of those taxes on the total revenues of local authorities. The main concern is that the so-called “local taxes” are set by law or by regulation enacted by the Minister of Finance. Local authorities can only introduce tax exemptions and reliefs, with the only exception of the possibility for municipalities to determine the tax rate of the property tax, within the limits set by national legislation. Powiaty do not have any real “local tax”.

Therefore, the rapporteurs consider that Article 9, paragraph 3, is not respected in Poland.

Article 9.4

Financial resources of local authorities

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 9, paragraph 4, refers to the need for the resources available to local authorities to be of a sufficiently diversified and buoyant nature to enable them to keep up as far as practically possible with the actual changes (increases) in the costs for carrying out their tasks.

In Poland, the main revenues for municipalities are the shared Corporate Income Tax and Personal Income Tax, together with grants and subsidies from the State budget, whose purpose is to support some tasks (especially education) and to equalise socio-economic inequalities. However, the limited possibility of establishing local taxes makes it difficult to consider local resources as having a sufficiently diversified and expanding nature to enable them to keep up as far as practically possible with the actual changes (increases) in the costs for carrying out their tasks.

Therefore, the rapporteurs consider that Article 9, paragraph 4 of the Charter is not respected in Poland.

Article 9.5

Financial resources of local authorities

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 9, paragraph 5, refers to the protection of financially weaker local authorities through equalisation procedures. Recommendation 373 (2015) recommended Polish authorities to “adjust the equalisation system so as to be more reactive to changes in the economic climate, for example by reviewing the scale of donations”. As previously indicated, the general subsidy includes an “equalisation component”, which has been revised after the decision of the Constitutional Court of

2014 (see further infra).

During the monitoring visit, the delegation did not hear specific complaints on the equalisation mechanism. The only issue raised by the Association of Polish Cities refers to the fact that the equalisation system does not take into account the differences in the financial burdens falling on urban local authorities; instead, it takes into account, twice, the specific nature of rural municipalities. Considering the complex equalisation formula, the rapporteurs do not believe this issue to determine an infringement of the Charter. The needs of urban local authorities could be better satisfied by a greater capacity of establishing and managing their own local taxes.

Therefore, the rapporteurs consider that the requirements of Article 9, paragraph 5, are respected in Poland.

Article 9.6

Financial resources of local authorities

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



Poland [Article ratified - Report adopted on 2 April 2019]

As for Article 9, paragraph 6, of the Charter, on consultation of local authorities on the way in which redistributed resources are allocated, the delegation was informed that the issues emerged with regard to the consultation process in the last few years in Poland have affected also the consultation on the redistribution of resources.

During the consultation procedure, the government, did not share this assessment and claimed that there are many positive examples of cooperation between local self-government and central authorities. It mentioned in particular the dialogue of the Ministry of Finance with self-government representatives on financial matters held within Joint Committee's various Task Forces.

However, in view of the rapporteurs, the malfunctioning of the Joint Committee is coupled with the lack of compliance for the provision of the Law on Public Finance (Article 50.2 and 3) according to which "2. A draft law resulting in a change in the level of income or expenditure of local government units requires the determination of the impact of these changes, an indication of the sources of their financing and an opinion of the Joint Commission of the Government and the Local Self-government. 3. The Council of Ministers, by submitting to the Sejm a bill referred to in para. 2, attach the opinion of the Joint Government Committee and the Local Self-government". The Association of Polish Cities pointed out that laws have been passed by the parliament without any assessment of the effects of the new legislation, despite the fact that such assessment is mandatory.

Therefore, the rapporteurs consider that Article 9, paragraph 6, is not respected in Poland.

Article 9.7

Financial resources of local authorities

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.



Poland [Article ratified - Report adopted on 2 April 2019]

As for Article 9, paragraph 7 of the Charter, grants for specific projects do exist in Poland. Part of local investment projects are also financed through EU structural funds and other financial instruments, based on the legal instruments. In general, they do not represent a significant part of the financial resources of local autonomies and do not seem to constitute a problem for their autonomy. In this regard, the delegation did not receive any complaint, and therefore the rapporteurs consider that Article 9, paragraph 7 is respected in Poland.

Article 9.8

Financial resources of local authorities

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



Poland [Article ratified - Report adopted on 2 April 2019]

Article 9, paragraph 8, on the access to the national capital market for the purpose of borrowing for capital investment, is not especially problematic in Poland. Local authorities have access to the national capital market, within the limits established by law, which indicates that borrowing is possible only for investments. As the Ministry of Interior in its written replies to the questionnaire pointed out, in extreme cases this may result in the inability of local authorities to repay the debt; a circumstance that can even lead to the abolition of the municipality, as it has happened in the case of Ostrowice (see supra, sub Article 5). Therefore, the rapporteurs consider that Article 9, paragraph 8, is respected in Poland.

Article 10.1

Local authorities' right to associate

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 10, paragraph 1, refers to types of cooperation aimed at carrying out tasks of common interest. Polish legislation provides for up to three main forms of inter-municipal co-operation: (a) the inter-municipal association created by municipalities for the joint performance of common tasks; (b) inter-municipal agreements, which do not involve the establishment of a separate legal entity, and (c) the consortium of local authorities, which also admits powiaty and voivodeships as members. The delegation did not hear any remark or complaint and the rapporteurs consider that this principle is fully respected in Poland.

Article 10.2

Local authorities' right to associate

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.



Poland [Article ratified - Report adopted on 2 April 2019]

The second paragraph of Article 10 of the Charter is also respected in Poland. Article 172.1 of the Constitution provides that «Units of local government shall have the right to associate». Local and regional authorities of Poland have made active use of the right to form domestic associations for the promotion and protection of their common interests. Currently, there are six well-structured and active associations of local and regional authorities in Poland: the Association of Rural Communes of the Republic of Poland (ZGWRP), the Association of Polish Cities (ZMP), the Association of Polish Powiaty (ZPP), the Association of Polish Metropolises (UMP), the Union of Polish Towns (UMP) and the Association of Polish Voivodeships (ZWRP).

These associations (all of them having a national dimension) are inclusive and representative of local authorities (at municipal, district or regional level). They play an active role in the representation, defence and advancement of local interests, and they negotiate on a regular basis with the central government on major developments affecting local interests, essentially within the Joint Committee (see supra, sub Article 4).

As for the possibility to join international associations of local authorities, Article 172.2 of the Constitution establishes that “A unit of local government shall have the right to join international associations of local and regional communities as well as cooperate with local and regional communities of other States”. The Law of 15 September 2000 states that the decision to join an international association must be approved by the Minister competent for foreign affairs (Article 4).

In conclusion, the rapporteurs believe that Article 10 of the Charter is fully respected in Poland.

Article 10.3

Local authorities' right to associate

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 10, paragraph 3, addresses the cooperation of local authorities with their counterparts in other States. The right to engage in cross-border cooperation is also protected by Article 172.2 of the Constitution. Furthermore, the Law on Municipal Self-government (Article 18.2, no. 12), assigned to the council the exclusive competence to adopt resolutions on cooperation with local authorities of other countries. Analogous provisions are included in the Law on Powiaty Self-Government (Article 75a and Article 12.9a).

Therefore, Polish local authorities are entitled to co-operate with their counterparts in other States. This cooperation is well developed also in practice. It is also worth mentioning that Poland has signed and ratified the European Outline Convention on Cross-border Co-operation between Territorial Communities or Authorities (CETS No.106).

In conclusion, the rapporteurs believe that Article 10 of the Charter is fully respected in Poland.

Article 11

Legal protection of local selfgovernment

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.



Poland [Article ratified - Report adopted on 2 April 2019]

Article 11 of the Charter refers to an effective judicial remedy to ensure respect for local self-government.

In Poland, legal protection of local self-government is expressly guaranteed by the Constitution, namely in Article 165.2 which stipulates: «The self-governing nature of units of local government shall be protected by the courts». Moreover, Article 166, paragraph 3 stipulates that «The administrative courts shall settle jurisdictional disputes between units of local government and units of government administration».

In addition, each local government unit that is allegedly affected by a piece of legislation is allowed to file a complaint with the Constitutional Court. Article 191.1. 3) of the Constitution establishes that “the constitutive organs of units of local government” may lodge a complaint with the Constitutional Court, against a normative act that relates to matters relevant to the scope of their activity. Article

188 specifies the jurisdiction of the Court: “1. the conformity of statutes and international agreements with the Constitution; 2. the conformity of a statute with ratified international agreements whose ratification required prior consent granted by statute; 3. the conformity of legal provisions issued by central State organs with the Constitution, ratified international agreements and statutes; 4. the conformity with the Constitution of the purposes or activities of political parties; 5. complaints concerning constitutional infringements of rights and freedoms, as specified in Article 79, para. 1”.

Therefore, the local authorities (considered as individual entities) and the principle of self-government (as a principle) generate a wide range of recourses in Poland. On this basis, in the past the Constitutional Court played an active role in implementing the Charter in several constitutional proceedings dealing with local government issues, as it was underlined by the 2015 Report.

During the monitoring visit, the delegation was informed of several complaints submitted in the past few years by local authorities to the Constitutional Court, and that all of them have been rejected. Many of the local representatives met by the delegation showed their reservations with regard to the possibility to have their local autonomy upheld by the Constitutional Court, to the point that they are not submitting any new applications and complaints. During the meeting at the Constitutional Court, the delegation could not address this issue further, since no judge of the Court participated in the meeting and the delegation could only meet with members of the Court’s administrative staff. The case-law of the administrative courts mentioned by the interlocutors during the monitoring visit seems presently more open to the principles of local self-government.

In light of the preceding considerations, it can be said that the requirements of Article 11 of the Charter are complied with in Poland; however, considering the general situation of the judiciary and of the rule of law in Poland, the issue will require closer monitoring in the future.

Article 12.3

Undertakings

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 12.2

Undertakings

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

Article 12.1

Undertakings

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.

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.

Article 15.3

Signature, ratification and entry into force

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 15.2

Signature, ratification and entry into force

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.

Article 15.1

Signature, ratification and entry into force

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.

Article 16.1

Territorial clause

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.

Article 16.2

Territorial clause

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.

Article 16.3

Territorial clause

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 17.1

Denunciation

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.

Article 17.2

Denunciation

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

MONITORING
OF THE EUROPEAN CHARTER OF
LOCAL SELF-GOVERNMENT



Bosnia & Herzegovina 13.07.2002 Austria 15.10.1995 Belgium 15.10.1995 Denmark 15.10.1995 France 15.10.1995 Serbia 24.06.2005 Croatia 15.10.1995 Lithuania 27.11.1996 Albania 05.05.1998
Montenegro 10.07.2013 Monaco 15.10.1995 Greece 15.10.1995 Italy 15.10.1995 Liechtenstein 15.10.1995 Luxembourg 21.10.2010 Andorra 21.12.2001 Azerbaijan 28.05.1998 Czech Republic 28.05.1998
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Romania 04.10.1996 Slovenia 15.10.1996 Russia 28.02.1996 Moldova 02.05.1996 Ireland 07.10.1997 United Kingdom 03.06.1997 Ukraine 04.11.1996 Switzerland 21.01.2004

the Council of Europe.