

RAPPORT DE MONITORING

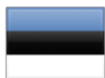
OF THE EUROPEAN CHARTER OF LOCAL AUTONOMY

Country : Estonia

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Article 2 of the Charter requires signatory countries to recognise the principle of local self-government in their domestic legislation or constitution. Overall, the rapporteurs consider that this Charter provision is reflected in the Estonian Constitution. Nevertheless, there may be a constitutional and legislative margin to increase legal protection of local self-government principles, as well as to improve continuity of central state politics towards local self-governments.

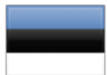
In Estonia, the relevant constitutional provisions (Chapter XIV) do meet this requirement of the Charter; Article 154, paragraph 1, stipulates that “all local issues shall be resolved and managed by local governments, which shall operate independently pursuant to law”. Details are regulated in particular in the Local Government Organisation Act, the Local Government Financial Management Act and the Local Government Council Election Act.

In this context, Article 3 of the Constitution gives an indication as to what extent principles and rules of international law are part of the Estonian legal system. According to section 2 of the ECLSG Ratification Act, the Republic of Estonia undertakes to follow all the articles of the Charter in the territory subject to its jurisdiction. The Charter sets out the minimum requirements that the state must keep in mind when organising local self-government, including when deciding funding for local authorities. Therefore, the Court en banc has held that the Charter plays an important role in interpreting the provisions of the Constitution concerning the organisation of local self-government and “in principle ... generally recognized principles and rules of international law are directly applicable in [the] Estonian legal system. These rules can be relied upon in Estonian courts”. This also would apply to the European Charter of Local Self-Government. In accordance with Article 123 (2) of the Constitution when laws or other legislation of Estonia are in conflict with an international treaty ratified by the Riigikogu, the provisions of the international treaty apply.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Article 3 of the Charter requires that local authorities must have “a substantial share of public affairs under their own responsibility”. Although the Charter does not specify which tasks and functions must fall within the competence of local authorities, the latter should primarily regulate and administer those public affairs that affect the majority of the local community and can be effectively carried out by local authorities.

Article 154 (1) of the Estonian Constitution stipulates that “All local matters are determined and administered by local authorities, who discharge their duties autonomously in accordance with the law.” The details are set out in section 2 of the Local Government Organisation Act: Local government is the right, authority and duty of the democratically formed bodies of power of a local authority provided for in the Constitution, a rural municipality or city, to independently organise and manage local issues pursuant to law and based on the legitimate needs and interests of the residents of the rural municipality or city, and considering the specific development of the rural municipality or city. 2) Local government is: - based on the division of the territory of the state into administrative units; - exercised by democratically formed legislative and executive bodies and, with regard to local issues, by means of opinion polls or public initiative.

Representatives from various institutions and associations, together with local authorities, have underlined the need to clarify what are the mandatory tasks and functions of local government and how to differentiate between local affairs and state responsibilities. The Chancellor of Justice hinted that there is an on-going debate to clarify this issue and informed the rapporteurs that the question how to change domestic legislation to allocate a greater proportion of financial resources to local authorities is still being discussed as part of the on-going reform. The rapporteurs point out that the Chancellor of Justice can act on her own initiative if she has a reason to believe that the legislation of general application is not in conformity with the constitution and laws.

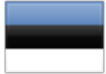
Another important issue has been raised by the National Audit Office when analysing the part of public affairs executed by local authorities. Should the distinction between state and local affairs be unclear, there is a risk that local authorities perform state functions at their own expense, instead of assigning costs directly to the competent state administration.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Concerning conformity with Article 3, paragraph 2, of the Charter, the rapporteurs have heard no criticism with respect to this provision, except for the Tallinn city representatives who criticised state legislation fixing the number of councillors to “no fewer than” 79 members. In their opinion, the number of councillors is too high, particularly in comparison with the number of members of the Estonian Parliament (101). The rapporteurs concur with the starting point of the city, that all local (and state) institutions should be organised in such a way as to simultaneously permit optimum functionality and budget economy. With regard to the details, Article 154 of the Estonian Constitution refers to the national legislation, as well as Article 3 of the Charter. Therefore, the national legislature is free to organise the framework of local authorities’ activities and to set the number of local councillors.

Concerning Article 3, paragraph 2, of the Charter with respect to direct citizen participation, the rapporteurs refer to Chapter III, point 6, of the new government’s “Basic Principles” and support the government’s initiatives to strengthen all instruments of direct or indirect citizen participation at local and, if necessary, at state level.

The rapporteurs believe that, in general, Estonia is in line with the provisions of Article 3 of the Charter. However, they underline the need to strengthen local democracy with a clear distinction between state and local authorities’ powers. The government’s approach to strengthening local democracy through merged greater territorial units needs to be completed by strengthening local authorities’ powers and finances.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Consult replies indicated at articles 4.2, 4.3, 4.4 and 4.6.

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.



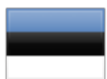
Estonia [Article ratified - Report adopted on 29 March 2017]

For the representatives of the associations and local authorities a key focus was the conformity of Estonian practice with Article 4, paragraph 2, of the Charter. In this respect, the rapporteurs believe that there could be room for improvement in Estonian legislation and practice. Different factors combine to limit “the full discretion of local authorities to exercise their initiative”. As mentioned above, a clear distinction between state and local affairs is missing. Secondly, bearing in mind that the state is currently streamlining the organisation of services of public interest at central level, local authorities expressed their concern that this would put an extra financial burden on local citizens and worsen the local business and living environment. Some examples have been presented to the rapporteurs: with respect to the reorganisation of driving education centres, the number of units throughout the territory was reduced from 15 to 4. Such a measure is cost effective for the state but more expensive and time consuming for citizens. This would reduce the financial capacity of families and the discretion of local authorities to increase local taxes. Thirdly, Estonian local authorities are largely dependent on state budget allocations; their own resource potential is far too small to execute their tasks under Article 4, paragraph 2, of the Charter. The rapporteurs consider that Estonia is not in conformity with this provision.

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.



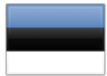
Estonia [Article ratified - Report adopted on 29 March 2017]

Concerning Article 4, paragraph 3, of the Charter, the subsidiarity principle is largely accepted in the country's political practice as well as in the national jurisdiction. In its judgment of 16 January 2007, No. 3-4-1-9-06, the Supreme Court held that “the restriction of the local governments’ guarantee, imposed by section 13 of the Building Act (which provides that local governments shall undertake to organize the building of public roads, public green zones, external lighting and rainwater pipes on the basis of a detailed spatial plan up to the boundary of a land unit specified in a building permit, unless the local government in question and the person requesting the preparation of the detailed spatial plan or the applicant for the building permit agree otherwise), is suitable for the achievement of the referred aim.” As it is most expedient to ensure that this aim is achieved at local government level, the restriction is both necessary and in compliance with the principle of subsidiarity arising from Article 4, paragraph 3, of the Charter. Another judgment also referred to the applicability in Estonia of the principle of subsidiarity (Supreme Court judgment of 3 December 2007, No. 3-3-1-41-06).

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

With regard to Article 4, paragraph 4, of the Charter, the rapporteurs would like to advance the same considerations as in respect of paragraph 2. Accordingly, the implementation of this provision is, in practice, not fully guaranteed at local authority level. The principles of consultation are laid down in the rules of the Government of the Republic of Estonia in Estonian. These rules, particularly section 4 on co-operation and engagement and section 6 on co-ordination (concording), stipulate that the national associations of local government must be consulted when draft legislation is presented in parliament. In practical terms, the associations submit their comments on the draft laws via the e-law information system. The associations consider that, by and large, they have been duly informed and consulted about the new initiatives. At parliamentary level, we would mention the “Rule on Legal Technique of Drafts proceeded in Riigikogu”. During the consultation process, the rapporteurs were informed by the Constitutional Committee of the Parliament that Riigikogu Rules of Procedure and Internal Rules Act had been amended on 13th of May 2016 (§ 36 section 2) so as to oblige the committee to invite those interest groups that were invited to participate in the preparation of the bill, to participate in the discussion of this bill.

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.



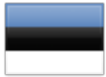
Estonia [Article ratified - Report adopted on 29 March 2017]

Consult replies indicated at articles 4.2, 4.3, 4.4 and 4.6.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

The Administrative Procedure Act (2001) is of particular relevance, with regard to consulting local government as a party to various proceedings. Not holding hearings, when authorised to by law, is an essential procedural error that invalidates the respective state administrative act. With regard to the consultation procedures for changing local boundaries, Article 158 of the Constitution of the Republic of Estonia states that the boundaries of local authorities shall not be altered without taking into consideration local government entities' opinions. Section 46 of the State Budget Act establishes specific procedures with regard to consultation on the budget.

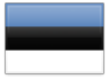
However, there seem to be some practical and organisational problems with the consultation procedure. The associations criticise the short deadlines allowed (normally a 15-working day consultation period is to be respected) and stress the important point that draft bills may change in substance during the parliamentary deliberation process. Continuous consultation of the associations may be necessary but it is not always implemented, although the associations have been involved in the work of the reform committee. In general, consultations concentrate on practical aspects of a draft; local authorities are less included in the governmental discussions and decision-making processes on fundamental political issues. Particular criticism came from the associations with respect to the Administrative Reform Act; according to them, the government has not sufficiently communicated the overall aims of the reform.

The rapporteurs consider that Estonia formally respects Article 4, paragraph 6, of the Charter. However, consultation mechanisms could be improved. There should be more detailed information about mid- and long-term projects and their consequences for local authorities. Consultation practices should be adapted local authorities' need to closely follow deliberation processes. The government should not only organise the consultation process on a formal basis, in compliance with the criteria laid down in the Charter (in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly), but the consultations should also take place on a regular basis. The rapporteurs are of the opinion that the consultation process between local authorities and the government should be globally improved in order to reinforce it.

To summarise these findings, the rapporteurs are of the opinion that non-compliance problems arise with the implementation of paragraphs 2 and 4 of Article 4.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Article 158 of the Constitution of the Republic of Estonia requires that boundaries of local authorities shall not be altered “without considering the opinion of the local governments concerned”. In view of the ongoing reform project to amalgamate, on a large scale, the existing territorial units in Estonia, the aim of seeking the opinion of local authorities should be borne in mind. One of the interlocutors pointed out to the delegation “that local governments should protect the local government unit and provide coincidence of the state decision and public interest. The opinion of the local government unit should be profound and substantial and enable to clarify whether through border changes the wishful aim can be achieved. Such conclusion is confirmed by the fact that the Constitution does not exclude the border changes to be made against the will of the community”.

In this regard it is worth mentioning that the Supreme Court in its judgement of 20 December 2016, stated (point 136): "Obligation to ascertain the opinion of residents does not proceed from § 158 of the Constitution. The Chamber is of an opinion that an obligation proceeds from § 158 of the Constitution for the executive power of the state to hear out the opinion of the local government unit. The Chamber notes that also the European Charter of Local Self-Government does not require the hearing out of the opinion of local residents. Article 5 of the Charter enacts: “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.” Thereby the Charter leaves it up to the accessed state to decide whether to organise a referendum which, pursuant to Estonian legal order, is of a binding nature, or a consultative referendum which, pursuant to Estonian legal order, does not have a binding legal force, or to delegate the expressing of residents opinion into the competence of the local government body”.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Article 154, paragraph 1, of the Estonian Constitution stipulates that “all local issues shall be resolved and managed by local governments, which shall operate independently pursuant to law”. The organisational power of local authorities to decide how to manage local issues is itself a “local issue” and may be not restricted by the government. This right is restricted neither in this constitutional provision nor within the Local Government Organisation Act and other legal acts. In its judgment No. 3-4-1-12-09 the Supreme Court of Estonia gave some explanations concerning the principles ruling the internal organisation of local authorities, in particular: “The right of self-management is not an absolute right, yet the central authority of the state may interfere with the right only with such measures that are proportional and bear in mind a clearly defined lawful

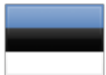
objective.”

The rapporteurs have not heard any objections from representatives of local authorities with respect to a potential infringement of Article 6 of the Charter, with the exception of the above-mentioned criticism from the City of Tallinn concerning the number of council members. However, there has been repeated criticism with respect to the weak financial autonomy of local authorities, a fact which hinders them from building effective local administration structures, particularly in rural areas. According to the associations, quite often in smaller municipalities one employee covers different fields. As there is little work for specialists, since generalists are preferred, maintaining the quality of the staff is a challenge. Remuneration (and the volume of the budget) is comparable across municipalities that have a similar size. This topic will be dealt with under Article 9 of the Charter. In addition, the rapporteurs refer to Chapter VIII, point 2, of the “Basic Principles: “We will carry out an administrative reform to increase the decision power and responsibility of local governments in managing and organising public life.” As details are not yet known, the rapporteurs recommend reviewing these developments under Article 6 of the Charter at a later date.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

With regard to the remuneration of local staff, the associations generally had no objections vis-à-vis the governmental instructions. Concerning the remuneration of teachers, who are local employees, the government has made use of earmarked grants for this purpose.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

The rapporteurs heard no objections concerning the compatibility of Estonian rules and practices with Article 7 of the Charter. Details with respect to municipal councils are set out in Article 156 of the Constitution and Chapter 2 of the Local Government Organisation Act, as well as in the Municipal Council Election Act. Concerning remuneration, the details are set out in section 17,

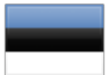
paragraph 3, of the Local Government Organisation Act.

The upcoming reform affecting the accumulation of mandates between local government membership and parliamentary membership is of particular concern. The associations are sceptic as to whether this reform project will improve local self-government. As already mentioned, the Constitutional review proceeding against the law introducing the accumulation of mandates is currently pending before the Supreme Court of Estonia. The rapporteurs would like to refer to projects in other Council of Europe member states (for example, France) where the aim is to separate functions in the clear interest of preventing confusion between state and local affairs.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Consult reply indicated at article 7.1.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Consult reply indicated at article 7.1.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

With regard to the supervision of local authorities, the principle is laid down in Article 160 of the Constitution: “The administration of local governments and the supervision of their activities shall be provided by law.” Details are set out in sections 66 and 66.1 of the Local Government Organisation Act. There are two main forms of supervision of municipalities. Internal supervision is carried out by the audit committee, the council and the Government (executive body of the local government). External supervision is carried out by the county governor, the Chancellor of Justice and the National Audit Office. Administrative supervision over the activities of local governments is also exercised by ministries, boards and inspections (for example, Ministry of Finances, Data Protection Inspectorate, Language Inspectorate, Labour Inspectorate, etc). The main supervision functions have been described by the Minister of Public Administration in functions as follows: the county governor has the right to monitor individual legislative measures of councils and local authorities. At the same time the county governor has no authority to stop or declare void any measures taken by local authorities; he/she can only suggest that the local authority take the necessary measures to comply with the law. If the municipality does nothing to bring the act into line with the law the county governor must appeal to the courts. The Chancellor of Justice reviews the local government regulations for conformity with the Constitution and the laws. The National Audit Office exercises economic control over local authorities insofar as they use immovable and movable property of the state which has been transferred into their possession; it also exercises control over the municipal use of allocations for specific purposes, such as earmarked grants, and subsidies granted from the state budget; and funds allocated for the performance of state functions. The mandate of the National Audit Office also includes the audit of local authorities regarding the possession, use and disposal of municipal assets; the audit of the foundations and non-profit associations founded by a local authority or where a local authority is a member as well as of companies where a local authority exercises dominant influence through a majority holding or otherwise, and the subsidiaries of such companies. The National Audit Office verifies whether public funds have been properly used – i.e. economically, efficiently and effectively – and that their use is lawful. In order to avoid conflict with the principle of autonomy of local government, the National Audit Office may not, however, assess the expediency of the activities or use of funds by local authorities. In other words, the National Audit Office may not conduct performance audits of local authorities. The National Audit Office also has the right to make proposals to the government, ministers and local authorities to draft legislation or amend or modify legislation in force. The purpose of supervision is to ensure the lawfulness and appropriateness of municipal activities. The rapporteurs believe that the requirements of Article 8 are met in Estonia.

In order to interpret the scope of the legal limits of administrative supervision of local authorities, the Supreme Court of Estonia has referred directly to Article 8 of the Charter. “To preserve the essence of the local authorities’ right to self-organisation the restriction thereof must be proportional, i.e. suitable for achievement of the desired aim, necessary and reasonable.” (See the Constitutional Review Chamber on the Supreme Court’s judgment of 16 January 2007 in case No. 3-4-1-9-06 – RT III 2007, 3, 19; paragraph 23). The same requirement concerning administrative control is expressed in Article 8(3) of the Charter. In this judgment the Court held that “the Charter does not preclude economic control over the state assets allocated to local governments in the extent described in § 6 of the NAOA, if the control is exercised - in conformity with Article 8(2) of the Charter - according to such procedures and in such cases as are provided for by the constitution or by statute”. However, with respect to the limitations of this aspect of control it deemed that the control of the use, possession and disposal of municipal property would be in conflict with the Charter. This possibility is not provided for in the National Audit Office Act.

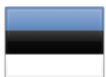
With regard to the supervision of the upcoming administrative reform project, the Minister of Public

Administration in functions explained to the rapporteurs that during the voluntary phase there will be minimal supervision (limited to the legality of the proceedings) of the merging agreement and other decisions made by local councils in preparation for the reform. In addition to the legal supervision, the Minister of Public Administration is financing seven merger consultants to support all the municipalities interested in additional expertise. One of their roles is to support the preparation process and guarantee the inhabitants' involvement in it. In the state-initiated phase there will be a larger – supportive, not supervisory - role for county governors, as in certain situations they will have lead the merger process. As the voluntary phase ends in early 2017, the state will initiate mergers in line with its regulation in mid-February, so that local government council elections can be held in October. During the process inhabitants will be polled and local authorities' opinions will be obtained. The rapporteurs will follow with interest whether the new government will continue the former government's supervision strategy or whether it will completely or partially change the administrative procedures.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Consult reply indicated at article 8.1.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Concerning conformity with Article 9 of the Charter, the rapporteurs consider that there is significant room to improve the overall local finances system, not only the total amount of financial revenues and expenditures allocated to local authorities, but also with respect to the autonomy of own resources and distribution procedures, including equalisation and the special support scheme. The rapporteurs refer to the Congress recommendation of 2010, where similar topics were already raised.

The rapporteurs acknowledge the important challenges that Estonia had to deal with following the international financial and economic crisis of 2008. These developments have certainly influenced the country's budgetary policy to a large extent, as well as financial intergovernmental relations and may confer legal discretion to vary state financial transfers to local authorities. Although representatives from the state and the local levels may normally have a different perception of questions linked to the fair balancing of benefits and burdens, following external shocks to the economy and how to distribute the financial consequences between the levels of government, the rapporteurs consider that there has since been a significant economic and financial improvement at national level, which has certainly had positive effects on local finances but which, in addition, may have allowed room for a more expansive budgetary policy with particular relevance for local authorities' finances.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

With respect to Article 9, paragraph 2, of the Charter, the difference in understanding of the compliance with the judgment of the Supreme Court of 2009 concerning the clear distinction necessary between state and local authorities' affairs should be mentioned. The government is of the opinion that there has been a sufficient evaluation of tasks and their clear distinction. The associations do not share this point of view. The rapporteurs refer to the spirit of the above-mentioned Supreme Court judgment that entails that a clear distinction between the state and local affairs is needed as this may also affect the financial situation of local governments. If there is a lack of clarification of the situation with respect to the allocation of competences, local authorities constantly run the risk of having to finance delegated state competences, although these competences must be financed completely by the state level directly or by earmarked transfers from the state level.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Concerning conformity with Article 9, paragraph 3, of the Charter, the table of local revenues for 2015 provided by the minister clearly shows that the tax revenues of local authorities are largely inadequate. The associations have pointed out that these taxes, namely, advertisement tax, tax for closing streets, motor vehicle tax, tax on keeping domestic animals, and parking fees represent about 1% of the revenues. This is not in line with the Charter.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

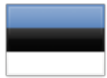
The same finding is relevant for conformity with Article 9, paragraph 4, of the Charter. The Estonian system of financing local authorities is neither diversified nor evolutionary; there is excessive dependence on state grants and transfers. Even if an important share of personal income tax (which represents about 50% of the local revenues) is transferred to local authorities (according to Article 5 of the Personal Income Tax law 11,6% from the total wage of taxpayer goes to local budgets and the rest of tax yield goes to state budgets), the tax yield is not legally shared between the levels. The state has discretion to fix the tax rate, the tax basis and - within the yearly budget - the quota to be transferred from the state budget to local authorities. The proposed reforms of personal income tax will probably also have consequences for the local share.

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.



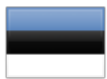
Estonia [Article ratified - Report adopted on 29 March 2017]

Article 9, paragraph 5, of the Charter is only partially respected in Estonia. According to the Constitutional Judgment No. 3-4-1-8-09 of 16 March 2010: “Financial equalisation mechanisms or analogous measures must be applied in the defence of local authorities whose funds are smaller so as to balance the uneven division of the potential sources of revenue and expenditure between local authorities.” The state has adopted, in section 46 of the State Budget Act, instruments to organise vertical transfers to local authorities. Considering that in 2016, 173 municipalities out of 213 received financing from the equalisation fund, the €75 million allocation is not sufficient to cover the needs of local authorities. The rapporteurs suggest increasing the level of this fund – as was proposed by the Minister of Public Administration in functions – and completely reviewing the system upon completion of the territorial reform process. There will be fewer local authority units which will perform better if the reform succeeds. Along with the reform projects set out in the “Basic Principles” aimed at strengthening local fiscal autonomy, there might be room for new vertical and horizontal instruments to improve the Estonian fiscal equalisation system.

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.



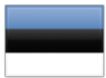
Estonia [Article ratified - Report adopted on 29 March 2017]

The rapporteurs have already referred to section 46 of the State Budget Act, which contains specific procedures for negotiations between local authorities, associations and state representatives with respect to the budget. They recommend strengthening the position of the associations at the end of the negotiation process with a view to giving them more than a formal right to participate. In fact, very often at the end of negotiations, the minutes are signed merely to prove that the negotiations have taken place. In relation to negotiations, section 46 of the State Budget Law goes beyond Article 9, paragraph 6, of the Charter. This includes a real will on both sides to agree, in the negotiation process, upon core elements which affect local finances. The rapporteurs suggest that both the associations and the competent ministry develop a common negotiation scheme, which would cover the most important issues to be dealt with and would also be in line with the relevant EU legislation within the so-called two- and six-pack measures to improve financial stability at all levels of government.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

With respect to Article 9, paragraph 7, the rapporteurs refer to the Supreme Court ruling No. 3-3-1-74-15 of 20 April 2016: "It appears from Article 9 (7) that project-based supports are not excluded but need to be avoided, if possible. Whereas it emerges out of Charter that local government's freedom of activity can be restricted through ear-marked distribution of a large share of supports to carry out concrete projects, there is no such an influence, if such supports have insignificant relative importance in total revenues." In conclusion, the Court states that earmarked funding is in compliance with Article 9, paragraph 7, of the Charter, even if such support measures do only "have insignificant relative importance in total revenues". The rapporteurs believe that, when this criterion is respected, Estonia is in conformity with Article 9, paragraph 7, of the Charter.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Consult replies indicated at articles 9.1, 9.2, 9.3, 9.4, 9.5, 9.6 and 9.7.

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.



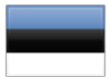
Estonia [Article ratified - Report adopted on 29 March 2017]

The Charter requires signatory countries to entitle local governments “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”. The rapporteurs did not hear any remarks or criticism from representatives of local authorities and their associations with respect to this provision. Concerning the future of the two associations, there are obviously plans to reorganise the structure of representing local authorities in Estonia after the territorial reform has taken place.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

Consult reply indicated at article 10.1.

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.



Estonia [Article ratified - Report adopted on 29 March 2017]

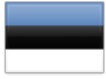
Consult reply indicated at article 10.1.

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.

Estonia [Article ratified - Report adopted on 29 March 2017]



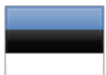
The Supreme Court has underlined the importance of judicial control to guarantee local self-government in Estonia. The Chancellor of Justice told the rapporteurs that local authorities had always had the right to apply to an administrative court to obtain protection of their lawful rights with regard to application of the law or another act of a more general nature. The Constitutional Review Court Procedure Act of 2002 gave an additional effective remedy to local authorities to protect them directly against an act of a general nature, (including the law itself. According to the Act, local government councils may submit a request to the Supreme Court to declare an act which has been promulgated but which has not yet entered into force, or a regulation of the Government of the Republic or a minister which has not yet entered into force, to be in conflict with the Constitution or to repeal an Act which has entered into force, a regulation of the Government of the Republic or a minister, or a provision thereof, if it is in conflict with the constitutional guarantees of local government.

Bearing in mind the important, diversified and permanent jurisdiction of the Supreme Court concerning local self-government topics and the possibility for local authorities to turn to the President of the Republic (cases under Article 107 of the Constitution), the Chancellor of Justice (cases under Article 142 of the Constitution and control of conformity of international agreements with the Constitution), the National Audit Office, or the administrative courts (Article 152 of the Constitution) if they consider that there may be an infringement by state administrations with respect to the core guarantees of local self-government, the rapporteurs consider that Estonia is in conformity with Article 11 of the Charter .

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.



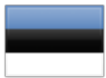
Estonia [Non ratified - Report adopted on 29 March 2017]

115. Estonia has not given notification of any reservations or declaration with respect to the Charter provisions. 9. THE ADDITIONAL PROTOCOL 116. On 16 November 2009, Estonia signed and on 20 April 2011, ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), which entered into force on 1 June 2012. The Supreme Court has in different judgments accepted the Additional Protocol as a valid legal basis for controlling the constitutionality of Estonian laws.⁹⁷

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.



Estonia [Non ratified - Report adopted on 29 March 2017]

115. Estonia has not given notification of any reservations or declaration with respect to the Charter provisions. 9. THE ADDITIONAL PROTOCOL 116. On 16 November 2009, Estonia signed and on 20 April 2011, ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), which entered into force on 1 June 2012. The Supreme Court has in different judgments accepted the Additional Protocol as a valid legal basis for controlling the constitutionality of Estonian laws.⁹⁷

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.

Estonia [Non ratified - Report adopted on 29 March 2017]



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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 the Council of Europe.