

European Charter a fundamental document for the organization of local self-government system

RAMIZ FAZLIU, M.Sc.
European University of Tirana
Tirana, Albania

Abstract:

Local Government is the closest level of government to the citizens and to the responsibilities for the overall democratic and social development.

The concept of local self-government now has gained the legality and legitimacy of an integrated political system in all democratic states regardless of the form and the type of political and territorial organization.

The European Charter of Local Self-Government, a document approved as a Convention form, by the Council of Europe, the primary objective is the aim to unify local self-government systems in general democratic principles by the spirit of the legal culture of united Europe. But at the same time, it allows through its principles for the member states to maintain their specifications and differences, by the legal and constitutional regulation of local self-government system.

Key words: Local government, The European Charter, democratic principles.

1. GENERAL OVERVIEW OF THE CHARTER

The second half of the twentieth century is considered as the renaissance of reforms in the field of local self-government not only to contemporary democratic countries but also countries

that have passed the period of transition as well as the western Balkan countries.

European Charter (in Convention form) ¹ is considered as the most important international document which defines the basic principles of local self-government, approved by the Council of Europe in the form Convention on 15 October 1985. This document was drafted by government experts within the Committee members in local and regional issues, based on the proposal of the permanent Conference of local and regional authorities.

Council of Europe as an international organization since its establishment in May 5, 1949, is defined as an institution that cares for the preservation of fundamental human rights, development and protection of democratic principles of government and local self-government level. For this purpose, since 1957, was established the representative body at European level in the form of Permanent Conference of Local and Regional Authorities of Europe, which since 1994 works as a Congress of Local and Regional Authorities (CLRAE - The Congress of Local and Regional Authorities of Europe), as a consultative body which replaced the previous Conference. With the establishment of Congress as a special body of the Council of Europe, the fundamental issues that Congress will be dealing were local issues or the commitment to adopt a document with transnational character on local self-government.

This document in the form of a charter, would define the basic principles of the organization and functioning of local self-government, which would oblige signatory members that these principles and standards not only to incorporate into the internal legal systems, but also to implement them in practice. The Charter is open for signature as a Convention form to members of the Council of Europe. So far 44 out of 47 member states of the Council of Europe² have signed it. Out of these

¹ www.conventions.coe.int

² www.conventions.coe.int

countries only Andorra, Monaco and San Marino have not signed it.

Kosovo which is not yet a member of the Council of Europe with full rights, it actively participates in several forums of this organization, but the right for local self-government is arranged and guaranteed by law and constitutional provision respectively article 123. Paragraph 3. of the Constitution of the Republic of Kosovo³, with what it respects the European Charter of Local Self Government. Therefore, the Republic of Kosovo implements all the Charter principles to the extent which is required for each signatory state.

European Charter of Local Self Government is made up of short **Preamble** and three parts of normative character. In the Preamble are emphasized basic premise of local self-government and democracy, the main role of local government in construction of modern Europe and also the need of democratic constitution of local self-government power that has a large autonomy.

The first part treats the basic norms and principles on which it is established constitutional and legal basis of local self-government; the concept of local self-government, scope; border protection of local self-government units; organization administration and resources for duty performance; work supervision, financial resources; the right of organizing associations, the legal protection of local self-government.

The second part contains norms that dealing mainly with the obligations that parties receive upon signing. In this part, the Charter sets them as mandatory obligations and remaining obligations for which the parties commit to comply with the elimination of obstacles laid out in advance during the request for signature.

³ The Constitution of the Republic of Kosovo, Prishtina 2008

The third part regulates the matter related to procedures that signatories must respect in case of: signature, ratification, entry into force; territorial clause, withdrawal and information.

MEMBER STATES

■ Albania, Andorra, Armenia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine, United Kingdom.

MONITORING STATES

■ Canada, Vatican, Israel, Japan, Mexico, United States.

2. THE BASIC PRINCIPLES OF THE EUROPEAN CHARTER

The principles of the European Charter proclaims in the first place, should be understood as objective of the Council of Europe itself to achieve the unity of the Member States in order to achieve and maintain common European democratic values. Therefore, through the principles of this Charter Member States are committed to create a standard for the organization of local self-government system, and at the same time are obliged to confirm this standard by legal and constitutional provisions.

2.1. Legal and constitutional principle of local self-government

Legal and constitutional principle of local self-government is defined by Article 2 of the Charter:

“The principle of local self-government shall be recognized by internal legislation and, if possible, by the Constitution.”⁴

By this principle the right of local self-government should be guaranteed by law and the Constitution (where possible), than this right becomes legal and constitutional category, as an integral part of the general legal and constitutional system. However, by the original interpretation of this principle we can see that there are two possible solutions which regulate the local self-government. **The first** solution, is that local self-government to be regulated by law and constitution and, **the second** solution, which is based on the second part of Article 2 which states "**where possible by the Constitution**", which means that this principle expresses an understanding or has flexibility in itself for decisive request to amend constitutions of member states, which very often is a long and difficult process as well as familiarizes those countries that have no written constitution in the active developments in the field of reforms.

2.2. The concept of local self-government

"By local self-government we mean the right and effective capacity of local authorities to regulate and direct, within the law, under their own responsibility and in the benefit of their population a good part of public affairs".⁵

So, the Charter refers here to the original competences or "own" local authorities through which performs duties in the real and formal manner, which reflect directly on the development and life of local communities.

⁴ European Charter of local self-government, article 2

⁵European Charter of local self-government, article 3.

"This right is exercised by councils or assemblies composed by members elected by free, secret, equal, direct and universal voting, and which may possess executive and responsible organs in front of them."⁶

So, we are dealing with local-level bodies. Their organization, structure and forming is based on democratic principles and procedures. Thus, the European Charter but also the practice of European countries shows that local governments have three basic types of their bodies, who are: Assembly or the Council, the Executive Body of the Assembly or Council and Local Administration.

The Assembly or the Council - this is the representative body of local self-government unit. The Assembly is composed of members elected by free, secret, direct, equal conditions, universal voting and may have executive bodies responsible to them.⁷

Executive body of the Assembly (Local Government), - as the body of local self-government unit responses to the Assembly. The Executive Body may be of collegial kind, type of committee, board, council or local government, and individual body (INOKOS), as it is the President, manager etc.

Local administration - as the body not less important for the local self-government unit, which is different not only by shape but also by the organizing manner respectively staff selection-recruitment.

2.3. Scope and competences - the principle of subsidiary and consultation

"The basic competences of local self-government units are set by the Constitution or by law. However, this provision does not prevent local self-government units

⁶ European Charter of local self-government, article 3.2.

⁷ Emir Dobjani , E drejta administrative I, Tiranë 2004, pg.113

to take competences with special purposes, in accordance with the law".⁸

So, the basic competencies of local self-government are determined by the Constitution or law. The competences entrusted to this authority should be to complete and at the same time where it is possible should be respected the principle of subsidiary meaning the exercise of public responsibilities belongs to the authorities closer to citizens. But, the practice of legal settlement local self-governments in all the countries provides that the competences may be discussed or limited by another authority, central or regional, only within the law and only by law. But, more in advance before a competence passes to a central or regional authority, local communities should be asked for their opinion (consultation) if possible, at the right time and in an appropriate manner, during the process of making decisions on competences transfer (taking and delegating) for all the matters belonging to them directly.

3. THE RELATIONSHIP BETWEEN CENTRAL AND LOCAL GOVERNMENT

The organization, functioning and quality of services to local institutions is greatly influenced by the institutional basis and the principles set in the relationship of the central state bodies and local self-government ones.

The relationship between central and local institutions is in a continuous development, which often takes the character of open controversy in relation to clearly defined competences.

The Local self-government although it is a right that allows citizens territorial governance in a smaller unit, it is also proven as an element of state regulation. This is especially reflected in the performance of certain public performance, entrusted by the central authorities, which could come under the delegated and devolved competences of government.

⁸European Charter of local self-government, article 4.1.

European Charter of Local Self-Government defines independence and dependence of local institutions clearly in its Article 11, which states: **"Local Self-Government Units within the local character performances are independent and performances within state character they depend on the central bodies "**.⁹

Central bodies of the government possess legal mechanisms that make the supervision of local self-government bodies.

Under the constitution, the laws and the European Charter of Local Self-Government, is set the right and the manner of controlling the legality of local self-government units performance, financial control, ways of consultation with local self-government units, consulting on laws and other acts locally implemented, consulting for government grants, conditions and procedures for disassembling of the assembly of the unit for local self-government, forms of cooperation between government and municipalities, appeals and legal protection of citizens with administrative procedure.

All forms of support and intervention of the central government in local administration affairs are positive effect on citizens, when they are explicitly defined and permitted by the laws which guarantee full rights of citizens and non-discrimination.

All forms and methods of control of legality and financial control of local self-government bodies should be expressly provided by law.

The ultimate purpose of building relationships between central and local institutions lies in the implementation of constitutionality and legality in the affair of the organs of local self-government unit through institutional mechanisms.

⁹European Charter of local self-government, article 11

4. THE DECENTRALIZATION AND DECONCENTRATION

The meaning of the notion of local self-government and decentralization, depending on the historical context of the development of state and local government reform has created such relationship, so that in theory and practice is difficult to divide and set the border between them. While the decentralization is the administrative notion, self-government is mainly a political notion.

The decentralization is defined in general terms as transfer, distraction or transfer of governance functions, management and administration from central to local level. This transfer includes the competences, authority, functions, resources and responsibilities of the exercise of power.

The transfer of the central power to local power refers to the level of the central government to local self-government units, but this transfer can also include other state institutions as the central administration office raised in the local level, which have intermediate role of exercising government.

The decentralization and development of local government systems are essential components of transition and reform for the states with consolidated democracy. Such practice has followed all the countries that have already gone through a long transition period, and is unavoidable way for the countries undergoing transition.

The decentralization and local government reform is an ongoing process and continuously perfects, but never been completed and can not end in any kind of development or quality of democracy. Therefore, the meaning of self-government and decentralization doesn't have the same interpretation and implementation in practice in all the countries, depending on the country and the political system of state regulation.

Unlike decentralization which implies the transfer of power from central to local level and providing services to citizens, the deconcentration means the transfer of responsibility and authority within a state institution or municipal entity, in order to facilitate services and internal functioning.

Even the background of the introduction and development of local self-government in many countries, shows that the local self-government has not been and is not just a form of restriction of centralization, but also as an independent and self-governing institution from the central state institutions in accordance with the constitution and laws.

The European Charter on Local Self-Government, in its preamble provides space and implies the existence of local authorities endowed with decision-making bodies established in a democratic way by the choice of citizens, and with a broad autonomy of responsibilities and means by which they are exercised and resources needed for their implementation.

5. THE FORMS OF COOPERATION BETWEEN LOCAL AUTHORITIES (INTERMUNICIPAL COOPERATION, CROSS-BORDER, REGIONAL AND INTERNATIONAL)

5.1 Intermunicipal Cooperation

Joint nature of affairs and the need of solving problems nearly the same in order to provide quality service to the citizens, has increased the need for cooperation between municipalities, which means cooperation of two or more local governments on specific issues.

This cooperation in the best way is foreseen by Article 10. Paragraph 1. of **European Charter for local Self-government which states:**

"Local communities (local self-government units r.f.) have the right, exercising their competences, to

cooperate and, within the law, to join with other local communities to carry out tasks of common interest¹⁰

Intermunicipal cooperation helps local governments to increase efficiency, improve the management of local issues and improve the quality of municipal services. The practice of cooperation between local government authorities in Europe has been increased in recent decades, especially after the expansion of the number of EU states.

The cooperation between municipalities, towns and regions in developed countries has proved a successful practice to cope with the difficulties in certain areas of competence of local authorities.

The best examples of such Intermunicipal cooperation, which means cooperating within the country, are shown almost in all countries, but as a model of cooperation is taken such as in Switzerland, Finland, Italy, Slovenia and in other countries. It is common in Switzerland and Italy for two or more municipalities to establish joint companies for their waste recycling, or to create and jointly manage the forestry companies within their territories, jointly manage tourism and holiday centers. In this area of cooperation, the municipalities regulate the issues of taxes and other payments according to the law, in the case of Switzerland in respective municipalities and cantons.

In Finland, in some small municipalities are formed municipal offices, which are being used by more local authorities and carried out common functions. This practice is being attended more and more by municipalities in Kosovo very well, especially in the provision of services issuing documentation for private business registration or registration of vehicles.

¹⁰European Charter of local self-government, article 10.1.

5.2 Regional- Crossborder cooperation

In the spirit of the principles of European Charter for Local Self-Government, the municipalities have the right to conclude agreements with other country's bodies of local self-government. This kind of cooperation has grown up and is developing rapidly in many border municipalities in EU countries.

The need to resolve common issues and quality services for their citizens has encouraged cross-border and regional cooperation of countries on certain issues such as power supply, water supply, waste management, public transport, forest management, education, cultural activities, sport activities, joint road infrastructure, etc.

Such examples of cooperation we find in Scandinavian countries, Benelux, and in most border countries of EU.

Such practice of cooperation is extended to the countries of Central Europe, while a little less, but with growing perspective, this cooperation has begun in the countries of Eastern Europe.

After independence and recognition of the Republic of Kosovo, municipalities are entitled to enter into agreements with municipalities in other countries, within their competences, within the principles of the European Charter of Local Self-Government, and the Constitution and the Law on Local Self-Government.

The main purpose of any form of cooperation is the establishment of contractual relations or connections to find common solutions for similar problems, or to assist each other in fulfilling their responsibilities. Therefore, the cooperation has to do more with the exercise of competences on functional bases, rather than on political bases.¹¹

¹¹ MAPL, "Departamenti i Planifikimit të Burimeve" Prishtinë, 2007

5.3 International cooperation

International cooperation of municipalities in many cases is realized in the form of twinning the cities or wider partnership within a plan little bit coordinated by the Congress of Local Authorities in Strasbourg.

However it is understood that the forms and possibilities of intermunicipality cooperation and between cities of different countries are not exploited enough, with particular emphasis where there was more opportunity for cooperation, such as public utilities, education, health, etc.

The international cooperation of municipalities can achieve a lot in promoting the values that the European Charter of local Self-Government provides, or in order to establish best governance practices, permanent and long-term cooperation in the exchange of common experiences and expertise.

To increase the level of international cooperation and coordination, it is needed the support from the central level of the respective state governments.

To increase the level of international cooperation and coordination needed support from the central level of the respective state governments.

Besides these forms of cooperation of local self-government units, The Charter also recognizes their right to join and have a membership in associations or organizations within the country or in international level. The right to form associations of local units, the European Charter for Local Self-Government provides it in Article 10, which among other things says:

"Local self-government units have the right, during the exercise of their competences, to cooperate and, within the law, to join in the association with other local units to carry out tasks of common interest within the country (state) as well as the right to accede to an international

association, with conditions recognized by law, in order to cooperate with associations of other countries"¹².

These associations formed at national (regional) or international level have their main goal the affirmation and promotion of the fundamental values of the European Charter of Local Self-Government as best governance practices, exchange of experiences, mutual assistance, transparent and democratic governance. Depending on the organization level of local self-government system, these associations are also being designated as such. Association of Municipalities (Kosovo, Macedonia, Slovenia, France, Germany, etc.), Union of cities (Serbia), the Union of Municipalities and Communities (Albania) etc.

6. FINANCIAL RESOURCES

In accordance with national economic policies, and taking into consideration the fiscal sustainability of the units of local self-government, they have the right to have sufficient financial resources which makes them freely exercise their legal competences. So, the resources of local self-government units must be fair comparing the competences provided by the Constitution or law.

The financing and financial resources issue of local self-government units is foreseen in Article 9. of the Charter:

"At least a part of the local government's financial resources must come from local taxes and obligations, where the level can be set up by its local authorities within the limits that law allows"¹³

Since the functioning practice of local self-government units has shown that in many countries can not meet its legal obligations by relying on its own financial resources especially countries with insufficient national development (countries in

¹²European Charter of local self-government, article 10

¹³European Charter of local self-government, article 9.3

transition), the Charter provides financial support for local units which are financially weaker, and requires the establishment of procedures for financial regulation or the appropriate measures aiming correcting the effects of the unequal sharing of potential financial resources and responsibilities belonging to them. For these reasons, the government financially supports the activities of local government through the form known as "government grants". But, the issuance of these grants should not take away the basic freedom of local authorities to exercise the right to select the policies within their jurisdiction. By this, the unit of local self-government should not be conditioned on determining the funding of specific project by government grants, because otherwise they will reduce the autonomy in their area of responsibility. Hence, also by the Charter of Local Self-Government, these practices and procedures are regulated by article 9. point6. which expressly says:

"The Local authorities should be asked for their opinion in due time, for the manner of acquiring relocated resources."¹⁴

This principle must be understood that local authorities should have the right and authority to regulate and manage financial resources independently arising from the revenues, or which are divided in the form of government grants.

7. LEGAL SUPPORT

Since the units of local self-government institutions on the occasion of their foundation are based on constitutional and legal norms, with what they even enjoy their independent legal subjectivity. Enjoying this right they also enjoy at the same time the right of legal support. This right is recognized also by the Charter in Article 11 which states:

¹⁴European Charter of local self-government, article 9.6

"Local government should enjoy the right to claim jurisdiction in order to ensure the free exercise of its competences and respecting the principles of local autonomy recognized by the Constitution or domestic legislation."¹⁵

Based on this principle, respectively the legal support mechanism is a very important instrument which local self-government units are protected from the arbitrary of highest organs of the state in situations when dealing with administrative disagreements or conflict between central and local bodies.

8. PROCEDURES OF SIGNING AND RATIFICATION OF THE EUROPEAN CHARTER BY INTERESTED COUNTRIES

Comparing other conventions of international character, interested countries for admission respectively signing and ratification of the European Charter of Local Self-government is a subject to a special procedure. Thus any party in this case member states of the Council of Europe on the occasion of recognizing the Charter, should submit a request for admission and ratification, in which is determined the level of local or regional government that exists on their territory. The party expresses for admission and the implementation of the provisions by the Charter or that provision reserves the reserved or excluded right for their implementation.

Each Member States which accepts the Charter on the occasion of submission instrument for admission and ratification is obliged to implement the twenty paragraphs of Part I of the Charter, and at least ten of them are selected from among the following paragraphs:

Article 2. Article 3, paragraph 1 and 2, Article 4.paragraph 1,2 and 4, Article 5, Article 7.paragraph 1, Article

¹⁵ Same, article 11

8.paragraph 2, Article 9.paragraph 1,2 and 3, Article 10.paragraph 1 and Article 11.¹⁶

The submission of request – the instrument of ratification, of admission or approval, a party - interested state is made by the Secretary General of the Council of Europe, with the paragraphs selected in according to provisions of the Charter for admission and ratification. Also, The Party - interested state reserves the right at any later time, to notify the Secretary General, that consider themselves to be bound by any other paragraph of the Charter, which is not being accepted yet according the requirements from paragraphs of Article 12.

These subsequent commitments from interested parties will be considered as an integral part of the ratification, admission or approval of the Party - state which makes the official announcement. To enter into force the additional accepted provisions by the accepted state must exceed a period of three months from the first day of the month following after the date of confirmation by the Secretary-General.

The third and the last part of the Charter is considered as its technical part which establishes the rules of signature, ratification and entry into force of the Charter for member states of the Council of Europe (Article 15), with a character open for membership, territory clause (Article 16), denunciation (article 17), and the notification by the Secretary General to the member states of the Council of Europe (Article 18).

After the signature, admission and ratification of the Charter, the contracting States shall take all responsibilities for the implementation of all provisions of the submitted instrument of ratification, and simultaneously these principles of the Charter to incorporate into the internal legal system either through constitutional or legal provisions.

Also, the provisions of the Charter also foresee certain terms when it may be denounced by signatory party. Therefore, the party- signatory state to denounce the Charter, must wait

¹⁶ European Charter of local self-government, article 12

time of at least five years from the entry into force of the Charter with regard to this Party. The denunciation is made in the written form notification addressed to the Secretary General of the Council of Europe. The denunciation of the certain party does not affect the validity of the Charter against Parties, provided that their number is not less than four Member States that still have the Charter into force.

LITERATURE

1. European Charter of local self-government , Strasbourg. 1985
2. Emir Dobjani; E Drejta Administrative, Tirane 2004
3. The Constitution of the Republic of Kosovo, Prishtina 2008
4. Raport i MAPL, “Departamenti i Planifikimit të Burimeve” Prishtinë, 2007