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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

OF THE COUNCIL OF EUROPE

(VENICE COMMISSION)

REPORT

ON

THE STATUS OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT IN THE DOMESTIC LEGAL ORDER

On the basis of comments by

Mr Rafael BUSTOS GISBERT (Member, Spain)
Ms Regina KIENER (Member, Switzerland)
Mr Tomáš LANGÁŠEK (Substitute member, Czech Republic)
Mr Andreas PAULUS (Substitute Member, Germany)

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I. Introduction

1. By letter of 24 April 2024, the President of the Congress of Local and Regional Authorities of the Council of Europe requested a study on the status of the European Charter of Local Self-Government in the domestic legal order of the Council of Europe member states, as well as its application by their constitutional courts.

2. Mr Rafael Bustos Gisbert, Ms Regina Kiener, Mr Andreas Paulus and Mr Tomáš Langášek acted as rapporteurs for this report.

3. This report was drafted on the basis of comments by the rapporteurs, the results of the comparative research conducted by the rapporteurs and the secretariat of the Venice Commission, and the replies to the questionnaire sent to the members of the Venice Commission. It was adopted by the Venice Commission at its 145th Plenary Session (Venise, 12-13 December 2025).

II. Background and the scope of the report

4. The European Charter of Local Self-Government is an international treaty adopted within the framework of the Council of Europe at the initiative of the Conference of Local and Regional Authorities of Europe,[1] with the aim of expounding the principles of local autonomy in Europe and ensuring their guarantee and protection through a legally binding document. It entered into force on 1 September 1988.

5. The Congress of Local and Regional Authorities (hereinafter, the Congress) assesses the application of the European Charter of Local Self-Government (hereinafter, the Charter). Its Committee on the Monitoring of the implementation of the Charter and on the respect of Human Rights and the Rule of Law at local and regional levels (hereinafter, the Monitoring Committee) is responsible for monitoring the implementation of the European Charter of Local Self-Government and its Additional Protocol on the right to participate in the affairs of a local authority by Council of Europe member states that have ratified them.[2]

6. The Statutory Resolution CM/Res(2020)1 relating to the Congress, adopted by the Committee of Ministers on 15 January 2020,[3] re-confirmed its task to ensure the effective implementation of the principles of the European Charter of Local Self-Government, as part of its monitoring activity.

7. In 2020, the Congress adopted a commentary on the explanatory report to the European Charter of Local Self-Government,[4] which was largely based on the normative and monitoring works carried out by not only by the Congress, but the Council of Europe in general, reviewing thirty years of its implementation by member states of the Council of Europe. The commentary took into account "the monitoring reports and recommendations adopted by the Congress with respect to the situation of local and regional democracy in member states, relevant texts from other bodies and instances of the Council of Europe, in particular, recommendations of the Committee of Ministers, opinions of the European Commission for Democracy through Law (Venice Commission) as well as recommendations and resolutions of the Parliamentary

[1] As from 14 January 1994 the Standing Conference was transformed into the Congress of Local and Regional Authorities of Europe (CLRAE).
[2] CETS No. 207.
[3] Statutory Resolution CM/Res(2020)1 relating to the Congress of Local and Regional Authorities of the Council of Europe and the revised Charter appended thereto (Adopted by the Committee of Ministers on 15 January 2020 at the 1364th meeting of the Ministers' Deputies).
[4] CG-FORUM(2020)02-05final, Report, A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government. https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149 .

Assembly, and the case-law issued by domestic courts in member states when interpreting provisions of the Charter."[5]

8. The commentary referred to the Congress's report on the monitoring of the implementation of the Charter adopted in 2017,[6] which identified four recurrent issues, namely: a) the inadequacy of financial resources for local and regional authorities, b) the restricted definition, allocation, and exercise of local competences, c) the lack of consultation with regard to central government, and, particularly relevant to the present study, d) the absence of direct applicability of the Charter in domestic legal systems. As the Congress found, these modalities vary from country to country, not only because of a monist or dualist system, but also due to divergences in the case law of national courts. The Congress views these divergences as influencing the status and position of the Charter within each domestic legal order.

9. By letter of 24 April 2024, the President of the Congress requested a study on the status of the Charter in the domestic legal order of the 46 Council of Europe member states, as well as its application by their constitutional and supreme courts. According to the letter, the Congress has regular meetings with representatives of constitutional or supreme courts to discuss the modalities of incorporation into the domestic legal order of international treaties, and most notably the Charter. Owing to these exchanges, the Congress had noticed that these modalities vary from country to country and considered that these divergencies influenced the status and position of the Charter in each domestic legal order. The Venice Commission opinion would help the Congress to clarify the legal issues arising in this connection and facilitate the Congress' future activities and co-operation with member states in this field.

10. The rapporteurs, supported by the secretariat, prepared a questionnaire which was distributed to 46 members (or substitute members) of the Venice Commission from European countries, which can be found in an appendix to this text. The secretariat of the Venice Commission collected 29 replies to the questionnaire (available by country and by question). Documents of the Congress, notably its Monitoring reports of the application of the Charter in the Council of Europe member states, previous opinions of the Venice Commission on local democracy and research materials where relevant, were also taken into account in the preparation of the report.

11. In the past, the Venice Commission addressed several issues concerning local and regional authorities. Its opinions and reports focused not only on constitutional guarantees for local and regional autonomy (general principles, own powers versus delegated powers, etc.) but also on more specific issues such as decentralisation, adequacy between powers and financial resources, respect for principle of financial autonomy for local self-government, deconcentrated and decentralised powers, election and appointment of self-government powers, and local elections.[7]

12. The present report examines the legal nature of the Charter and its position within the legal order of the Council of Europe member states based on the results of the comparative study and research materials on constitutional and legal provisions, as well as case-law of national courts on local self-government. It examines the status of international treaties (notably the Charter) within national legal systems at the time of their ratification, as well as the status of the Charter

[5] Idem.
[6] Debated and adopted by the Congress on 28 March 2017, 1st sitting (see Document CG32(2017)19, explanatory memorandum), co-rapporteurs: S. Dickson, United Kingdom (R, ILDG) and L. Verbeek, Netherlands (R, SOC).
[7] See among other texts : CDL-AD(2025)016, Georgia - Opinion on the amendments to the Organic Law "Election Code of Georgia", pertaining to local elections ; CDL-AD(2022)038, Ukraine - Urgent joint opinion of the Venice Commission and the OSCE/ODIHR on the draft law on local referendum ; CDL-AD(2021)037, Albania - Amicus Curiae Brief on the competence of the Constitutional Court regarding the validity of the local elections held on 30 June 2019 ; CDL-AD(2017)021, Türkiye - Opinion on the Provisions of the Emergency Decree-Law N° 674 of 1 September 2016 which concern the exercise of Local Democracy.

within the national legal order and in the case law of constitutional and ordinary courts when dealing with complaints concerning local self-government. Given the time and thematic constraints of this report, it has not been possible to carry out a thorough comparative study, and only a few pertinent examples will be cited. The Venice Commission wishes to underline in this context that evidence from different legal systems cannot be definitively provided in isolation from the entire legal framework, nor can it take due account of the specific broader social, political and historical background.

III. Analysis

13. The Charter is one of the Council of Europe treaties in the sense of the 1969 Vienna Convention on the Law of Treaties.[8] It is binding upon the parties to it and must be performed by them in good faith. The Charter has been signed and ratified by all 46 member states of the Council of Europe.[9] So far, the Additional Protocol to the Charter on the right to participate in the affairs of a local authority has been signed by 26 and ratified by 23 countries.[10]

A. The Charter as a Council of Europe treaty

14. In 1968, the Standing Conference of Local and Regional Authorities of Europe[11] adopted Resolution 64 (1968), proposing a Declaration of Principles on Local Autonomy and called upon the Committee of Ministers of the Council of Europe to adopt it. This initiative was supported by the Consultative Assembly, which in its Recommendation 615 (1970) presented to the Committee of Ministers a text closely based on that of the Conference and drafted jointly by the two bodies. The proposed declaration was, however, considered too general at the time and not adopted.

15. In 1981, the Conference on Local and Regional Authorities of Europe adopted Resolution 126 (1981), submitting a draft European Charter of Local Self-Government to the Committee of Ministers of the Council of Europe with the request to adopt it with the status of a European convention. Upon instruction of the Committee of Ministers, the text of the draft Charter was revised by the Steering Committee for Regional and Municipal Matters (CDRM) and submitted to the 6th Conference of European Ministers responsible for Local Government, which met in Rome from 6 to 8 November 1984. After examining this text, the ministers expressed their unanimous agreement on the principles it contained. Regarding the legal form the Charter should take, the majority were in favour of a convention.[12]

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

17. The explanatory report to the Charter indicates that the drafters have given due consideration to the diversity of local authorities in the Council of Europe member states. It establishes that “potentially, the principles of local self-government laid down in the Charter apply to all the levels or categories of local authorities in each member state, and indeed also, *mutatis mutandis*, to territorial authorities at regional level; however, to allow for special cases,

[8] Vienna Convention on the Law of Treaties 1969, United Nations, Treaty Series, vol. 1155, p. 331.
[9] Chart of signatures and ratifications of Treaty 122: Full list - Treaty Office .
[10] CETS No. 207.
[11] See footnote 1.
[12] Explanatory report to the European Charter of Self-Government (ETS No. 122).

the parties are permitted to exclude certain categories of authorities from the scope of the Charter."[13]

18. The application of the Charter in federal and politically decentralised states raises specific issues related to local self-government. In federal countries, federated entities (like the Länder in Austria and Germany or the Cantons in Switzerland) do not fall within the scope of the Charter. In decentralised states, not all regions may have the same position. Only regions without the power to adopt primary legislation fall within the scope of the Charter. As for the regions with primary legislation powers, they may or may not be included in the scope of application of the Charter, depending on a decision taken by the authorities at the time of ratification (for example, in Italy the *regioni* are within the scope of application of the Charter, while in Spain the *Comunidades Autónomas* are not). The differences between individual states are not limited to the traditional distinction between unitary and federal countries. There are also countries composed of autonomous communities (such as Spain and Serbia), while others have regions with a special or unique legal status (such as Finland, France, Denmark or the Netherlands).

19. The status of communities and territories (as well as of other self-governing entities) is often shaped by specific historical circumstances, the interests of their populations, whether favouring a closer or more autonomous relationship with the state authorities. In some cases, it is also shaped by their recognition as peoples under international law and the associated right to self-determination. These circumstances are reflected in the degree of attention paid to local self-government issues in individual countries. While in some countries, it is a matter of relatively minor concern, the status of local authorities plays a central role in their constitutional, political and socio-economic spheres of others. In some cases, the resolution of such issues may even pose a threat to the territorial integrity of the state, which remains one of the cornerstones of contemporary international law. The provisions of the Charter allow to take these realities into due consideration.

20. Bodies of local self-government exist at various levels. The only local authorities covered by the provisions of the Charter which are present in all member states are municipalities. Further, there are supra- and infra-municipal entities. Infra-municipal entities include districts or neighbourhoods, as well as supra-municipal entities such as counties, islands, commonwealths, provinces, areas, departments and regions. Finally, some large cities or metropolitan areas have their own form of local self-government. All these diverse bodies, both politically and functionally, fall within the scope of the Charter.

21. From the outset, the drafters of the Charter had to prepare a document containing rules respecting this diversity of legal systems and traditions of individual member states in the field of local self-government.[14] While in other areas it is often possible to identify common principles with relative ease, the approaches of European countries to local self-government are extremely varied.

22. The adoption of the Charter marked an important commitment to applying the basic rules that guarantee the political, administrative and financial independence of local authorities. While some countries already had a developed system of constitutional guarantees to protect local democracy before ratifying the Charter, others were in the process of developing their national legislation on local and regional authorities at the time of ratification. This difference directly affects the way the Charter is integrated into national legislation and implemented by national courts.

[13] Idem, page 3.
[14] Idem.

23. The Charter does not provide for an institutionalised system of control of its application. It does, however, require parties to provide the Secretary General of the Council of Europe with all relevant information concerning legislative or other measures taken to comply with its provisions.[15] At a certain point, consideration was given to setting up an international system of supervision analogous to that of the European Social Charter.[16] However, it was never established and the task to ensure adequate political control of compliance by the parties with the requirements of the Charter was entrusted to the Congress of Local and Regional Authorities of Europe.[17]

B. The nature of standards set by the Charter

24. The Explanatory Report to the Charter provides that its purpose is « to make good the lack of common European standards for measuring and safeguarding the rights of local authorities, which are closest to the citizen and give him the opportunity of participating effectively in the making of decisions affecting his everyday environment».[18] The aim of the Charter is to set *minimum standards* for the protection and autonomy of local authorities.

25. The Charter has three parts. The first part contains the substantive provisions setting out the principles of local self-government. Article 1 expresses the will of the parties to observe the principles of local self-government laid down in Part I of the Charter (Articles 2-11). Article 2 of the Charter provides that "*the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.*" It is the opening provision of the substantive part of the Charter (Part I). For this reason, it has a foundational and symbolic value and is one of the few provisions that cannot be subject to the reservations set out in Article 12 of the Charter. This provision requires the principle of local self-government to be expressly recognised in the domestic legal order. The practical and operational consequences of such recognition are best understood in light of Article 11, which provides that "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."

26. Further provisions of the Charter concern the protection of the boundaries of local authorities (Article 5), the autonomy as regards their administrative structures (Articles 3, 4) and access to competent staff and defining conditions for the holding of local elective office (Article 7). Two provisions aim at limiting administrative supervision of the activities of local authorities (Article 8) and ensuring that they have adequate financial resources at their disposal on terms which do not impair their basic autonomy (Article 9). The remaining provisions in Part I cover the right of local authorities to co-operate and form associations (Article 10) as well as the protection of local self-government through the right of recourse to a judicial remedy (Article 11).[19]

27. Part II of the Charter contains miscellaneous provisions relating to the scope of the undertakings entered by the parties. Article 12 strikes a realistic balance between the safeguarding of essential principles and the flexibility necessary to take account of the legal and institutional peculiarities of the various countries by giving the signatories a choice between

[15] Article 14 of the Charter.
[16] The European Committee of Social Rights is the monitoring body of the European Social Charter. It is composed of 15 independent, impartial members which are elected by the Council of Europe's Committee of Ministers for a period of six years, renewable once. The European Committee of Social Rights (former Committee of Independent Experts) examines the reports and decides whether the situations in the countries concerned are in conformity with the Charter. If a Party takes no action on a decision of non-conformity of the European Committee on Social Rights, the Committee of Ministers may address a recommendation to that Party, asking it to change the situation in law and in practice (see n.35 below).
[17] Article 1.2 of the Charter of the Congress of Local and Regional Authorities of the Council of Europe (Appendix to Statutory Resolution CM/Res (2020) 1.
[18] Explanatory Report to the Charter, General remarks, par. 1.
[19] Explanatory report to the European Charter of Self-Government, page 3.

the provisions of the Charter they considered as binding, demanding only that each country would have "to consider itself bound by at least twenty paragraphs of Part I of the Charter". [20]

28. States have used Article 12 of the Charter in different ways. From the outset, 16 countries (Albania, Bosnia and Herzegovina, Bulgaria, Finland, Germany,[21] Lithuania, Luxembourg, North Macedonia, Norway, Poland, the Republic of Moldova, Romania, Slovenia, Sweden, Ukraine and the United Kingdom) ratified the entire Part I of the Charter. Meanwhile, 28 states[22] made use of Article 12 and indicated the provisions of the Charter applicable on their territory.[23] Two countries, Denmark and the Netherlands, excluded certain territories from the application of the Charter.[24] Belgium[25] and France[26] have only ratified part of the Charter, making reservations/declarations.

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[20] Article 12 – Undertakings

1. Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
– Article 2,
– Article 3, paragraphs 1 and 2,
– Article 4, paragraphs 1, 2 and 4,
– Article 5,
– Article 7, paragraph 1,
– Article 8, paragraph 2,
– Article 9, paragraphs 1, 2 and 3,
– Article 10, paragraph 1,
– Article 11.
2. Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
3. Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

[21] Germany declared that the scope of the Charter was only applicable to some communes, namely it was confined to Gemeinden (municipalities and communes, our transl.), Verbandsgemeinden (associated communes), and Kreise (counties) in the Land Rhineland-Palatinate and to Gemeinden and Kreise (counties) in the other Länder. In addition, Germany considers itself bound by all paragraphs of Part I of the Charter, with the following exceptions:
1. In Land Rhineland-Palatinate, Article 9, paragraph 3, does not apply to Verbandsgemeinden and Kreise.
2. In the other Länder, Article 9, paragraph 3, does not apply to Kreise.

[22] Provisions of the Charter excluded by countries at the moment of ratification: Andorra (Articles 9.2, 9.5, and 9.8), Armenia (Articles 5, 6.1, 6.2, 7.2, and 12.1), Austria (Articles 4.2, 4.3, 4.5, 7.2, 8.2, and 11), Azerbaijan (Articles 4.3, 7.2, 9.5, 9.6, 12.1,12.2, and 12.3), Croatia (Articles 4.5, 16.2, 16.3, 17.1, 17.2, and 18), Cyprus (Articles 7.2, 9.5, 9.7, 9.8, 12.1, 12.2, and 12.3), Czech Republic (Articles 4.5, 6.2, 7.2, 9.3, 9.5, and 9.6), Denmark (Articles 12.1, 12.2, 12.3 and 13), Estonia (Articles 12.1, 12.2, 12.3, 13, 15.3, and 16.3), Georgia (Articles 4.6, 5, 6.2, 9.6, 10.2, and 10.3), Greece (Articles 5, 7.2, 8.2, 10.2, 12.1, 12.2, and 12.3), Hungary (Articles 12.1, 12.2, and 12.3), Iceland (Articles 12.1, 12.2, and 12.3), Ireland (Articles 12.1, 12.2, 12.3, and 13), Italy (Articles 12.1, 12.2, and 12.3), Latvia (Article 9.8), Lichtenstein (Articles 3.2, 7.2, 9.3, 9.4, 9.8, 10.2, 10.3, 12.1, 12.2, and 12.3), Malta (Article 9.3), Monaco (Article 3.1, 4.3, 7.2, 8.3, 9.1, 9.2, 9.3, 9.4, 9.8, 10.2, and 16.2), Montenegro (Articles 4.3, 4.5, 6.2, 7.2, 8.2, 8.3, 12.1, 12.2, and 12.3), Netherlands (Articles 6.2, 7.2, 8.2, 9.5, 11, 12.1, 12.2, and 12.3), Portugal (Articles 12.1, 12.2, and 12.3), San Marino (Articles 9.3, and 9.8), Serbia (Articles 4.3, 6.1, 6.2, 7.2, and 8.3), Slovak Republic (Articles 12.1, 12.2, and 12.3), Spain (Article 3.2), Switzerland (Articles 4.4, 6.2, 7.2, 8.2, 9.5, 9.7, 11, 12.1, 12.2, and 12.3) and Türkiye (did not ratify Articles 4.6, 6.1, 7.3, 8.3, 9.4, 9.6, 9.7, 10.2, 10.3, and 11).

[23] The Congress of Local and Regional Authorities, Chamber of Local Authorities. Reservations and declarations to the European Charter of Local Self-Government (Appendix I). 21st Session, Doc. CPL(21)5, 28 September 2011. For more detailed information on individual States, see also the replies to the questionnaire.

[24] Denmark declared that the Charter would not apply to Greenland and the Faroe Islands; the Netherlands accepted the Charter for the Kingdom in Europe.

[25] In accordance with Article 13 of the Charter, the Kingdom of Belgium confined the scope of the Charter to the provinces and municipalities and declared that the provisions of the Charter would not apply to the "Centres publics d'Aide sociale" (CPAS) on the territory of the Brussels-Capital Region.

[26] France declared that the provisions of Article 3, paragraph 2, would be interpreted as giving to the States the possibility to make the executive organ answerable to the deliberative organ of a territorial authority; and excluded the public establishments of intercommunal cooperation, which were not territorial authorities, from the scope of application of the Charter.

29. All the Articles of Part II of the Charter refer to national legislation that should clarify or complement them. This can be seen as a logical consequence of respect for the diversity of local self-government systems in member states. Regardless of the legal nature of local self-government bodies (which may differ from one country to another, ranging from general references to self-government as a constitutional principle to separate chapters with constitutional or institutional guarantees of self-government), a detailed regulation is usually required within the national legal order through primary legislation, both general and sectorial. This will specify the content and scope of the rules applicable to local self-government.

30. This "variable geometry"[27] of the Charter allows Council of Europe member states considerable leeway in complying with its provisions. States may be hesitant to limit their oversight of local governance.[28] The text of the Charter itself does not specify how and to what extent the principles it contains should be implemented. While these principles may be broad, they are clarified by domestic legislation, thus avoiding the imposition of specific designs for local authorities that could undermine the unique constitutional and historical features of member states.[29]

31. Some countries had developed systems of constitutional guarantees to protect local democracy before ratifying the Charter, others adopted their national legislation on local and regional authorities taking it into account. The 'à la carte' obligation mechanism allowed some contracting parties to initially commit to certain provisions of the Charter, with the option to assume additional obligations under the remaining articles at a later stage, provided the necessary conditions for their effective implementation within the national legal order were in place. Examples of such countries include Armenia, Croatia and Slovakia.[30]

32. Article 12 of the Charter giving member states the choice of which provisions they are willing to follow is not exceptional for Council of Europe treaties. Other instruments, such as the European Social Charter are also based on a ratification system, enabling States, under certain conditions, to choose the provisions they are willing to accept as binding international legal obligations.[31] As with the Charter, States-parties to the Social Charter are also encouraged to progressively accept all of its provisions.[32] A similar approach is taken by the European Charter for Regional or Minority Languages.[33]

33. Since the Charter includes general principles (the text does not specify how and to what extent these principles are to be adhered to), member states have a considerable margin of appreciation to decide on how they comply with them. The Explanatory Report to the Charter recognises that the "formulation of the principles of local self-government laid down in Part I of the Charter had to try to reconcile the wide diversity of legal systems and local government structures existing in the member states of the Council of Europe" and that "individual governments may still face constitutional or practical impediments to subscribing to particular provisions of the Charter."[34] The fact that national legislation determines how these principles are implemented makes it easier for national courts to enforce them.

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[27] CG-FORUM(2020)02-05final, Report, A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, paras 12 and 221.

[28] For example, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority has been ratified only by 23 countries.

[29] The Congress of Local and Regional Authorities recognises and respects this diversity; however, Member states were invited to extend the number of applicable provisions of the Charter considering the evolution of national systems of local government since its entry into force. See for example, Recommendation 314 (2011) of the Congress adopted on 20 October 2011.

[30] See, for example, the replies to the questionnaire provided to by Armenia and Slovakia.

[31] European Social Charter (CETC n° 35), Part III, Article 20.

[32] Idem, Part IV, Article 22.

[33] European Charter for Regional or Minority Languages (ETC n° 148), Part III, Articles 8 – 14.

[34] Explanatory Report -ETS 122 – Local Self-Government (Charter), page 10.

34.Specific bodies responsible for monitoring treaty obligations have adopted a flexible approach and accepted that states party to a treaty can implement it in different ways.[35] The regular reports on individual countries prepared by the Monitoring Committee acknowledge this diversity in Council of Europe member states.[36]

IV. The Charter and national legal systems

A. General remarks

35. There is great diversity in the way in which member states have traditionally dealt with the issue of local self-government. In some countries, clear and often detailed provisions on local self-government are enshrined in their respective constitutions, for example, in Armenia, Austria, Cyprus, Estonia, Finland, France, Germany, Ireland, Italy, Lithuania, North Macedonia, Montenegro, the Republic of Moldova, Monaco, Portugal, Serbia, Slovakia, Spain, Sweden, Switzerland, Türkiye and Ukraine.

36. The internal organisation of a state is a sensitive issue from the perspective of its constituent power. Therefore, any international regulation on this subject must be respectful of the self-organising powers of a sovereign state. International or regional instruments on local self-government must pay particular attention to the national constitutional organisation of local self-government.[37]

37. The way a treaty is incorporated into the national legal order varies from one country to another, and the modalities of its implementation may depend on the specific legislation and, in certain cases, on the interpretation of a treaty by national jurisdictions. Several factors influence the implementation of the Charter, notably its place in the national legal order, its status compared to national laws, or the territorial organisation of the country and the powers given to different levels of judicial authorities.

B. The direct applicability of the Charter in domestic law

38. Council of Europe member states do not take a unified approach to the implementation of international treaties in domestic law. So-called monist and dualist approaches coexist within these states. Monism is the view that international law and domestic law are part of a single, unified legal system, meaning an international treaty automatically becomes part of domestic law upon ratification. Dualism in turn is the view that international and domestic law are separate and distinct legal systems, requiring international law to be explicitly incorporated into domestic law through legislation before it has domestic effect. While adopting one of these models does not imply stronger commitment to international treaty obligations, it plays an important role in determining the legal status of international treaties within national legal systems, as well as how they can and will be applied by national authorities. In addition, national practice varies greatly even within these two approaches.

39. Not all international legal norms are “directly applicable”, even in monist systems. Some are programmatic and require further national legislation to be implemented. A treaty is considered to be directly applicable (or self-executing) in domestic law, and creates rights and obligations for individuals, when its provisions are applied by national courts as provisions of national legislation without the need of further legislative measures. Whether a treaty is directly applicable in national

[35] Idem.
[36] See Congress reports on the Monitoring of the European Charter of Local Self-Government. https://www.coe.int/en/web/congress/congress-reports .
[37] For example, Article 4.2 of the European Union Treaty includes within the “national identity” of the state those rules “inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government.” Consolidated version of the Treaty on European Union, Official Journal of the European Union, C 326/13.

legal order is determined by domestic law and not by international law. While a treaty may require the contracting party to ensure that some or all of its provisions are directly applicable in domestic law, this is not generally the case. In its 2014 report on international treaties, the Venice Commission pointed out that "even if treaties are part of the law of the land, as is the case for international legal norms in monist systems, or after having been transformed into domestic law, as is the case in dualist systems, they cannot always be directly applied."[38]

40. The term "direct applicability" refers to the legal mechanism that allows a domestic body (especially a court) to apply an international rule directly. Together with the "supremacy" of international law, direct application can render without effect a rule of domestic law which is not in conformity with international law.[39] Article 27 of the Vienna Convention on the Law of Treaties provides that "A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty." The Venice Commission report has indicated that "a treaty provision can form part of the domestic legal order without being directly applicable by the domestic courts."[40] The Commission's position is that States may never justify the non-respect of international law by the fact that a treaty "does not as such form part of its domestic legal order; or that it contradicts a norm of its national legal order."[41]

41. The classical example of a treaty that is directly applicable is the European Convention on Human Rights. Human rights treaties may have a specific status derived from factors (national and international) present only in this kind of international instrument, as explained in the Venice Commission report on the implementation of international human rights treaties in domestic law and the role of courts. The report explains, for example, that the European Convention on Human Rights has specific features relevant for its impact on national legal systems, since it has "the only compulsory international human rights judicial mechanism where individuals may file applications directly to the Court (European Court of Human Rights – ECHR) since the entry into force of Protocol 11 (1998)."[42] In addition, the Convention has several instruments to enhance its impact on national law: Article 32 grants final jurisdiction to the European Court to interpret the ECHR, and according to Article 46, States undertake to abide by the final judgment of the ECHR. In addition, the ECHR has developed several specific powers to maximise the impact of its case-law.

42. In many countries, the Charter has been incorporated into national law. However, some courts have not considered the Charter to be sufficiently precise in content to be directly applicable. The Charter itself refers to the need for implementing legislation.[43]

43. According to the replies to the questionnaire, several countries, including Armenia, North Macedonia, Lithuania, the Republic of Moldova, Montenegro and Serbia, consider the provisions of the Charter to be directly applicable by courts. In Armenia, for example, this approach is enshrined in Article 5, paragraph 3 of the Constitution, which provides that "[i]n case of conflict between the norms of international treaties ratified by the Republic of Armenia and those of laws, the norms of international treaties shall apply". Article 138(3) of the Constitution of the Republic of Lithuania provides that treaties ratified by the Seimas (Parliament) are a constituent part of the

[38] CDL-AD(2014)036, Report on the implementation of international human rights treaties in domestic law and the role of courts, adopted by the Venice Commission at its 100th plenary session (Rome, 10-11 October 2014), page 13.
[39]. For example, on primacy of EU law, see the judgment of the Court of Justice of the European Union of 15 July 1964, Costa v ENEL, Case 6/64, ECLI:EU:C:1964:66; and the judgment of 22 February 2022, C-430/21 - RS, ECLI:EU:C:2022:99, §§ 47-53.
[40] CDL-AD(2014)036, para 30.
[41] Idem, para 17, page 7.
[42] Idem, para 41, page 18.
[43] See, *infra*, in particular para. 29.

national legal system.[44] In the Republic of Moldova, Article 7 of the Law on local public administration establishes that "when implementing the powers, bodies of local public authority use the autonomy fixed and guaranteed by the Constitution of the Republic of Moldova, the European Charter of Local Self-Government and other agreements, to which the Republic of Moldova is a party." [45] Article 9 of the Constitution of Montenegro states that ratified international agreements and generally accepted norms of international law are an integral part of the internal legal order and have supremacy over national legislation and they can be applied directly by national courts when they conflict with domestic laws.

44. If the issue of applicability of an international treaty is not specifically established by the constitution, national jurisdictions determine whether a rule of international law is directly applicable or not by way of interpretation.[46] The Swiss Federal Supreme Court has developed a series of criteria for the direct applicability of rules of international law. According to these criteria, international legal norms are directly applicable "if the content of the international treaty provision invoked is sufficiently specific and clear to serve as a basis for a decision in the individual case. The necessary specificity is lacking above all in mere programme articles. It is also lacking in provisions which regulate a matter only in outline, which leave considerable discretion or scope for decision-making to the State party, or which contain mere guiding principles, i.e. provisions which are addressed not to the administrative and judicial authorities but to the legislature."[47]

45. In some Council of Europe member states, the Charter, as most other treaties, is not considered by national jurisdictions directly applicable within the national legal orders (for example, Austria, Belgium, Czech Republic, Cyprus, France, Monaco, Norway, Slovakia, Sweden). Specific national legislation must give the Charter effect in a national legal system, and individuals and municipalities can invoke it directly in court to claim rights only if national law incorporates it, or courts interpret it as directly applicable. There are several examples of the interpretation given by national jurisdictions to specific provisions of the Charter, that support this position.

46. Cypriot courts can apply directly the provisions of an international treaty only if they are sufficiently clear, precise and unconditional. The European Convention on Human Rights is the primary example of a treaty that is directly applicable in Cyprus, particularly Articles 2, 3, 6, 8, 10, and 13 which cover areas such as fair trial, freedom of expression, and protection from inhuman treatment. By contrast, other Council of Europe treaties, such as the Charter,[48] the Lanzarote Convention, and the Istanbul Convention, contain broader programmatic obligations and are not considered directly applicable. Their provisions require implementation through national

[44] In interpreting this provision of the Constitution, the Constitutional Court of Lithuania has emphasised that treaties ratified by the Seimas acquire the force of law. However, in situations where a provision of a national legal act (except for the Constitution) conflicts with a provision of a treaty, the latter must be applied. Meanwhile, if there is an incompatibility between a ratified treaty and the Constitution, the Republic of Lithuania has either to withdraw from the treaty in accordance with the norms of international law, or to adopt appropriate amendments to the Constitution (see decisions of the Constitutional Court of 14 March 2006 (Case No. 17/02-24/02-06/03-22/04) and 18 March 2014 (Case No. 31/2011-40/2011-42/2011-46/2011-9/2012-25/2012)).

[45] Article 7 of the Law No. 436 of 28 December 2006 on Local Public Administration.

[46] For example, the Swiss Federal Supreme Court has developed a series of criteria for the direct applicability of rules of international law. According to these criteria, international legal norms are directly applicable ('self-executing') "if the content of the international treaty provision invoked is sufficiently specific and clear to serve as a basis for a decision in the individual case. The necessary specificity is lacking above all in mere programme articles. It is also lacking in provisions which regulate a matter only in outline, which leave considerable discretion or scope for decision-making to the State party, or which contain mere guiding principles, i.e. provisions which are addressed not to the administrative and judicial authorities but to the legislature" (See for instance BGE 126 I 240 E. 2c.).

[47] See for instance BGE 126 I 240 E. 2c.

[48] Despite its formal incorporation, Cypriot courts do not consider the Charter to be self-executing. The leading case, Pantelides v. Leantzi (1991) 3 CLR 273, established that the Charter's provisions are too general and indeterminate to create directly enforceable rights without domestic implementing legislation. The Court emphasised that treaty provisions must be clear, precise, and unconditional to be applied judicially, relying on earlier reasoning from Malachtou v. Armefti (1987) 1 CLR 207.

legislation. In such cases, Cypriot courts do not apply the provisions of these treaties directly but may use them as interpretative aids to assess the compatibility of domestic measures with international commitments. Without implementing legislation, these treaties are not considered justiciable.[49]

47. A similar approach to the direct applicability of international treaties can be seen in the Constitution of the Netherlands, which expressly takes this condition of applicability into account by stipulating that only treaty provisions "which may be binding on all persons", may be applied by the courts and then take precedence over conflicting domestic law (Articles 93 and 94).

48. In Switzerland the Federal Council in the explanatory report on the Charter of 19 December 2003 affirmed the direct applicability of at least some of its provisions. The Swiss Federal Supreme Court accepted complaints invoking Articles 3, 4, and 5 of the Charter, however without discussing the self-executing nature of these provisions.

49. In the Czech Republic, the Constitutional Court has occasionally approached the Charter as part of the constitutional order in a manner similar to its treatment of the European Convention on Human Rights, with the distinction that the Convention is considered directly applicable, while the Charter is not. A decision taken by the Constitutional Court in 2003 explains the reasons for this approach: by establishing collective rights, the Charter does not directly address individuals, but rather the community of citizens. The decision provided that "the rights guaranteed by the Charter to the local self-government of the contracting parties are framework rights" and that "the Charter itself, in several provisions, anticipates detailed national legislation, which certainly sets the limits within which local self-government will operate."[50]

50. In Poland, according to the Constitutional Tribunal, "the provisions of the Charter, due to their general nature, can only to a limited extent serve as an independent, direct basis for examining whether the procedure used to enact a legislative act was consistent with its provisions. However, the Charter clearly imposes on the Polish legislator the obligation to establish appropriate statutory regulations that will implement the rights guaranteed therein."[51]

51. For some countries, the Charter's focus on institutional issues, which are usually addressed by national legislation, is the reason why national courts do not consider its provisions as directly applicable. In its 2007 decision,[52] the Supreme Court of Norway considered whether Article 11 of the Charter, which establishes a right to judicial appeal for local authorities, should apply to a decision by a national authority on the allocation of expenses between municipalities regarding the care for people with disabilities. The Supreme Court made extensive references to the Charter, a recommendation by the Congress, and the views of an expert committee under the Congress. Yet the Supreme Court found that the Charter would have to yield to a clear rule in Norwegian legislation, allowing national authorities to solve disputes between municipalities on the responsibility for care. The Court referred to dualism as well as the principle of presumption of a treaty-friendly interpretation but found that this presumption was primarily warranted in relation to individual rights, and less so when deciding on institutional issues.

52. As indicated previously, the Charter contains broad principles and programmatic obligations, such as the right of local authorities to autonomy, adequate financial resources, and legal protection. These general principles are difficult to apply directly because they do not precisely specify which rights and obligations must be respected, leaving a wide margin of appreciation as to how states should fulfil them. Indeed, it may not be clear in a domestic legal system whether rights and obligations derived from the Charter apply to the member state as a whole, to specific

[49] See Cyprus' answers to the questionnaire.
[50] Constitutional Court, case No. Pl. ÚS 34/02 of 5 February 2003
[51] Constitutional Court, judgment of 18 February 2003, K 24/02, OTK-A 2003, No. 2, item 11, para. 156.
[52] Supreme Court, decision HR-2007-324-A.

authorities, or to individuals. Implementation of the Charter can be achieved through an interpretation of domestic law in light of the Charter's relevant provisions. According to the Venice Commission's report on the implementation of international human rights treaties in domestic law and the role of courts, such an approach "may supplement the 'direct application' or even constitute an alternative to it and is therefore sometimes referred to as the 'indirect effect' of international (human rights) law."[53]

53. Based on the examples provided by member states and additional research materials, it can be concluded that, regardless of whether treaties form part of the national legal order, as is the case for international legal norms in monist systems, or after they have been transformed into domestic law, as is the case in dualist systems, they cannot always be directly applied. Whether a treaty is directly applicable in a national legal order is determined by domestic law, not by international law. In some cases, constitutional and supreme courts in member states have decided that the entire text of the Charter or some of its provisions are directly applicable based on national constitutions or legislation.

54. The Venice Commission considers that, irrespective of its direct or indirect application, the Charter has many normative effects of primary importance for the protection of local democracy. The Charter provides clear guidance for national (and subnational in federal and quasi-federal states) legislatures when drafting legislation relating to local self-government. They must rule on the issue, taking into account not only their specific traditions and constitutional rules, but also the 'European consensus' on local self-government, which sets out the minimum level of autonomy to be respected in all cases. In this sense, the Charter has and continues to play an important role in providing guidance for member states with regard to local self-government. The Charter is therefore a treaty that inspires and legitimises legislative policies in member states. In addition, in several Council of Europe member states it is used as a standard by the constitutional courts for review of legislation on local self-government.[54]

C. The place of the Charter in the national legal order

55. The status of the Charter within the system of sources of law, its direct applicability and the absence of any specific reference to the Charter in the constitutions of the Member States suggests that its status is, prima facie, the same as that of any other international treaty within each national legal order. The responses to the questionnaire and the results of the additional research demonstrate that the status of the Charter in member states depends on the manner in which international treaties are incorporated into the respective national legal order.

56. Provisions on the supremacy of international treaties in the domestic legal order exist, for example, in Armenia (Article 5, paragraph 3 of the Constitution)[55] in Greece, where the Charter as an international treaty, takes, under Article 28 (1) of the Greek Constitution, supremacy over national legislation; in Estonia (Article 123 (2) of the Constitution)[56] or North Macedonia, where ratified international treaties have a higher status than domestic legislation (Article 118 of the Constitution).[57]

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[53] Report on the implementation of international human rights treaties in domestic law and the role of courts, CDL-AD(2014)036, para 32.
[54] See, for example, Albania, Armenia, Croatia the Czech Republic, Estonia, Greece, Lithuania, North Macedonia, the Republic of Moldova, Montenegro, Serbia, Slovakia, Slovenia and Switzerland.
[55] Article 5, paragraph 3 of the Constitution provides that "[i]n case of conflict between the norms of international treaties ratified by the Republic of Armenia and those of laws, the norms of international treaties shall apply."
[56] Article 123 (2) of the Constitution provides that "When laws or other legislation of Estonia are in conflict with an international treaty ratified by the Riigikogu, provisions of the international treaty apply."
[57] The Law on Courts, which states that when a court believes that the application of the law in a specific case is in conflict with the provisions of an international treaty ratified in accordance with the Constitution (Article 118), the court will apply the provisions of the international treaty, provided that they can be directly applied.

57. In France, the Charter has the same status as that conferred by the Constitution (Article 55) to any ratified treaty, meaning it has "an authority superior to that of laws." In the French legal system, however, international treaties do not have an authority superior to that of constitutional provisions, which remain at the top of the constitutional system of sources of law. This is also the case in Latvia, where international treaties take precedence over domestic legislation and regulations, with the exception of the Constitution.[58] Under Article 169(3) of the Constitution, all treaties ratified by Cyprus, including those of the Council of Europe, acquire supra-legislative status once published in the Official Gazette. These treaties prevail over ordinary legislation but remain subordinate to the Constitution; however, despite being ratified through Law No. 27/1988 and incorporated into domestic law under Article 169.3 of the Constitution, the Charter is not considered directly applicable or to confer rights. The Constitution of Azerbaijan establishes that international treaties have a lower status than the national constitution and acts adopted in a national referendum (Article 151 of the Constitution of Azerbaijan). In Slovakia, according to Article 5.7 of the Constitution, international treaties ratified by the Slovak Republic and published in the manner provided by law before the entry into force of the 2001 Constitutional Act[59] "shall form part of its legal order if provided by law."

58. In Austria, the Charter does not have constitutional rank and has a status of an ordinary law. This is also the case of Italy and Germany, where the Charter has the rank of ordinary legislation so that the lex posterior-rule applies. However, if Italian courts are unable to interpret the domestic law in conformity with the international treaty, they have to refer the matter to the Constitutional Court, which may declare the domestic law unconstitutional for violation of Article 117, para. 1 of the Italian Constitution ("Legislative powers shall be vested in the State and the Regions in compliance with the Constitution and with the constraints deriving from EU legislation and international obligations"). In Germany, only the ECHR and other human rights treaties cannot be overridden by later legislation, but this does not apply to the Charter that has the status of ordinary legislation.[60] In San Marino, treaties of the Council of Europe are international agreements that generally become binding on the legal system after being transposed by a specific domestic law and are then considered to be ordinary laws.

59. In Finland, Ireland, Norway and Sweden, international treaties (including the Charter) cannot become part of the national legal order by ratification alone. In addition to ratification, a separate domestic enactment is required to give treaty provisions (including the Charter) domestic legal validity and direct applicability in the national legal order. Finland ratified and incorporated the Charter in 1991 and its Additional Protocol in 2012. As both the Charter and its Additional Protocol have been integrated into the domestic legal order by an Act of Parliament, they both enjoy the status of an Act of Parliament. In Norway, only a few selected human rights treaties, including the ECHR, as well as the Agreement on the European Economic Area and several additional agreements with the EU, are incorporated as such into Norwegian law. Therefore, the Charter, like other non-incorporated treaties, will have the status of international obligations, though they are subject to implementation through treaty-friendly interpretation of legislation. In Sweden, at

[58] In Latvia, the Law on International Treaties provides that: «if an international treaty ratified by the Saeima contains different provisions than legal acts of the Republic of Latvia, the provisions of the international treaty shall apply."

[59] Constitutional Act adopted on 1 July 2001.

[60] In this sense Order of the Second Senate of 15 December 2015, – 2 BvL 1/12 –, para. 76, but see paras. 46-51, 74, on the application of the lex posterior-principle to ordinary treaties. In its declaration and memorandum on the ratification of the Charter, the German government declared that German law already conforms to the requirements of the Charter, Federal parliament printing matter 10/6086 (1986), pp. 5, 14. A regional constitutional court in Saxony-Anhalt was of the view that the Charter does not confer subjective rights to municipalities, Landesverfassungsgericht des Landes Sachsen-Anhalt, Urteil vom 21. April 2009 – LVG 12/08 –, juris, para. 62. Other Länder Court applied the Charter as a mere interpretation aid, Verfassungsgericht des Landes Brandenburg (Constitutional Court of the Land Brandenburg), judgment of 16 Sept. 1999 – 28/98 –, juris, para. 118, or pointed out that it does not go beyond the regional constitution, Verfassungsgericht des Landes Brandenburg, judgment of 20. Jan. 2000 – 53/98 –, juris, para. 105. The Bundesverwaltungsgericht (Federal Administrative Court), Order of 25 July 1996 - 8 B 150/96 -, juris, para. 3, cited the Charter without determining its precise status.

the time of the approval of the Charter in 1989, the view of the Government was that the (then) 1977 Swedish Local Government Act was in line with the Charter and that no substantive changes in the Swedish legislation were needed. However, some adjustments were made in the 1991 Local Government Act following the ratification of the Charter.

60. The practice of member states differs as to the force given to international treaties after their ratification. Three most common approaches are as follows: treaties, including the Charter, are integrated directly into the domestic law system and have superior force vis-à-vis national laws and can be referred to by courts. The second approach gives the treaties supremacy over ordinary laws, but within the limits established by national constitutions, which remain at the top of the hierarchy of norms. In the third case, the Charter cannot be used by courts as a standard when assessing other legislation since it is considered an ordinary law within the national constitutional system of sources of law, unless a specific piece of legislation on the implementation of the Charter is adopted. Regardless of how the Charter's provisions are incorporated into the national legal order, national authorities must respect their international obligations and take the necessary measures to adopt and/or update their corresponding legal frameworks in line with the Charter's provisions.

61. The Charter is integrated directly into the national legal order if the constitution provides that international treaties do not require specific implementing legislation. In Portugal, duly ratified treaties are integrated into the national legal system and are directly in force without the need for specific implementing legislation. A similar approach is taken by Constitutions of Bulgaria Lithuania (Article 138(3)), (Article 5 (4)), the Republic of Moldova (Article 8), Montenegro (Article 9), Slovakia (Article 7 par. 5), Slovenia (Article 8) and Ukraine (Article 9 (1)).

62. The Charter itself refers in its articles to national legislation in order to concretise its provisions. References to 'established in law' or 'within the law' are continuous throughout its text. This can be seen as a consequence of respect for the diverse local self-government systems in member states. The standards announced in the Charter are usually directly included in national legislation on local self-government. For example, in Albania, Laws 139/2015 on local self-government and 68/2017 on local financial autonomy expressly reflect the objectives of the Charter and some of its definitions. The same approach is evident in Croatia (Law on Local and Regional Self-Government), Romania (notably, Article 75 of the Administrative Code dealing with local public administration), and Ukraine (laws on local self-government, on co-operation of territorial communities, among others).

63. In some member states, issues of local self-government fall under the responsibility of regional entities. In federal countries such as Germany and Switzerland, federated entities are excluded from the scope of application of the Charter, rather, they are competent to regulate local self-government through their legislation within the limits of the federal constitution (cf. Art. 28 of the German Grundgesetz (Basic Law, hereinafter: GG)). In Germany, the federal states ("Länder") are not considered mere local or autonomous authorities, but as sovereign states, subject only to federal law (Article 31 GG) and autonomous European law which enjoys precedence (supremacy) within the limits of the GG (Art. 23) and is directly applicable in the domestic legal order where it so requires. Local self-government is thus regulated by Art. 28 GG[61] and by the laws of the 16 Länder, respectively. Germany has ratified the Charter in accordance with Article 59 (2) sentence 1 GG with the consent of the Federal Council, considering the Charter to relate to subjects of legislation and not merely administration. This gives the Charter the status of federal law binding on the Länder but does not necessarily imply

[61] Art. 28 para. 2 reads in part: (Engl. Transl.): "Municipalities must be guaranteed the right to regulate all local affairs on their own responsibility within the limits prescribed by the laws. Within the limits of their functions designated by a law, associations of municipalities shall also have the right of self-government in accordance with the laws. The guarantee of self-government shall extend to the bases of financial autonomy."

direct applicability.[62] Article 50 of the Swiss Federal Constitution states that "Municipal autonomy is guaranteed according to cantonal law. Since autonomy is defined by cantonal law, the extent of judicial protection varies by canton. This particularity reflects Switzerland's principle of subsidiarity and strong cantonal sovereignty. At the cantonal level, each canton defines and protects municipal autonomy within its own cantonal constitution and laws.

64. A similar situation exists in countries, which include regions with extensive powers. Spain is organised into municipalities, provinces, and autonomous communities (Article 137 of the Constitution). The Autonomous Communities are regional entities that enjoy a high degree of self-government ('political autonomy'), including the power to adopt primary legislation. Their powers are comparable to federal entities in federal states, but they lack regional constituent power. The Autonomous Communities are not considered local entities within the scope of the European Charter. Although Spain is not a federal state, the competencies in the field of self-government are divided between central powers, who are responsible for establishing the basic rules on local self-government, and regional authorities, who are responsible for developing these basic rules for their own territories based on the provisions of the Local Government Framework Act.[63]

65. When States signed and ratified the Charter, they committed themselves to respecting the standards set out in its articles. National and regional legislation on local self-government reflects these standards and provides detailed regulation of different areas of the powers and organisation of local authorities, their relations with the central government and their degree of autonomy. Direct references to the Charter in national legislation are rare. On the basis of the information provided in the replies to the questionnaire and other research materials, it can be concluded that the guarantees for local self-government set out in the Charter are reflected in national legislation on local self-government in the majority of Council of Europe member states.

D. The Charter and the case law of national constitutional and ordinary jurisdictions in Council of Europe member states

66. The incorporation of international treaties, including the Charter, into the domestic legal orders by constitutional and supreme courts of the Council of Europe member states depends on a number of factors. These include constitutional provisions on the established hierarchy of norms in the national legal order, the status given to an international treaty at the time of its ratification, the nature of obligations established by the treaty and the extent of the powers of constitutional courts and similar jurisdictions to review the conformity of national legal norms with the ratified international treaty. These elements, either individually or in combination, can explain why some Council of Europe member states' Constitutional Courts have used the Charter as a standard for the constitutional review of legislation on local self-government, while others have not.

67. In many Council of Europe member states where international treaties have superior force over national legislation, constitutional and Supreme Courts refer to the Charter as a standard for constitutional review when considering complaints concerning local self-government. This is the case in Albania, Armenia, the Czech Republic, Estonia, Greece, Lithuania, North Macedonia, the Republic of Moldova, Montenegro, Poland, Serbia, Slovakia, Slovenia and Switzerland. Some countries, such as Lithuania, North Macedonia, Serbia and Slovakia, also provide for a conventionality review of the legislation before their constitutional courts.

[62] The Federal Constitutional Court has yet to pronounce itself on the matter; a couple of constitutional courts of the Länder have applied the Charter without clarifying its direct effect.
[63] Reguladora de las Bases del Régimen Local (Ley 7/1985, de 2 de abril), «BOE» núm. 80, de 03/04/1985.

68. The Albanian Constitutional Court has ruled on several occasions on cases concerning local self-government and has referred directly to the Charter in several decisions.[64]

69. The Constitutional Court of Armenia has referred to the Charter in its decisions on the constitutionality of relevant pieces of domestic legislation concerning local self-governance, referenda, and electoral matters. The first decision referring to the Charter was adopted prior to its ratification by Armenia and concerned the conformity of legislation on local self-government and on elections with the Constitution of Armenia.[65] The second decision concerned the establishment of a constitutional and legislative procedure for the establishment of local self-government bodies.[66]

70. The Constitutional Court of Croatia in its 1999 decision repealed two articles of the Act on Local Self-Government arguing that the legislator had an obligation to provide legal remedies to challenge decisions to dismiss representative bodies of self-government in application of Article 11 of the Charter.[67]

71. In the Czech Republic, the Constitutional Court appeared in some cases to use the Charter as a standard for constitutional review of legislation. The fact that the Charter forms part of the constitutional order means that in principle ordinary courts are authorised to refrain from applying subordinate legislation that they find inconsistent with the provisions of the Charter.[68]

72. Estonia's Supreme Court referred to the Charter in its 5 July 2024 decision which concerned the funding of certain social services (i.e. whether they should be funded by the government or the local municipality).[69] In this case, the Estonian Supreme Court ruled against the respective local municipalities but considered the Charter as a relevant standard.

73. In Latvia, the principle of self-government, derived by the Constitutional Court from Articles 1 and 101 of the Constitution, has been consistently interpreted by the Constitutional Court in harmony with the Charter[70] and serves as a standard for the constitutional review of legislation. The right to review cases concerning the conformity of Latvian national legal provisions with those international agreements to which Latvia is party to, including the Charter, is explicitly given to the Constitutional Court by Article 16(6) of the Constitutional Court Law.[71]

74. The Constitutional Court of Lithuania has referred to the European standards concerning the functioning of representative political and local self-government institutions, including the

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[64] In Decision 37 of 12 June 2015, the Court stated that the Charter had established clear concepts applicable to both local self-government and the subsidiarity principle, and that local government meant the right of the inhabitants of a geographical community to manage their affairs independently, either directly or via organs of their choice. The Court added that decentralisation of power was a key principle on which local government and its operations were based. In Decision N° 19 of 15 April 2015, the court referred expressly to Article 5 of the Charter. In Decisions N° 4 of 2 February 2015 and N°3 of 2 February 2009 it considered the subsidiarity principle from the standpoint of Article 4 of the Charter.

[65] Decision DCC-179 on the case concerning the conformity of Article 3.2 of the Law on Local Self-Government, Articles 2.1, 122.1 and 122.2 of the Electoral Code of the Republic of Armenia and Article 18.8 of the Republic of Armenia of the Law on Refugees with the Constitution of the Republic of Armenia. https://concourt.am/decision/decisions/sdv-179.htm

[66] In this decision, the Court referred to the general content of Article 3 of the Charter, as well as to Article 1 of its Additional Protocol. Decision DCC-1356. https://concourt.am/decision/decisions/sdv-1356.pdf

[67] Constitutional Court of Croatia, Decision No. U-I-317/1996 of 3 February 1999.

[68] See, for example, judgements in Cases No. Pl. ÚS 5/03 of 9 July 2003 and No. Pl. ÚS 24/19 of 24 November 2020).

[69] Judgment 5-23-38, paras 27, 52 and 86. https://www.riigikohus.ee/et/lahendid?asjaNr=5-23-38/48

[70] See for example, the judgment of the Constitutional Court of 9 November 2023 in case no. 2022-17-01, para. 18.2.

[71] The Constitutional Court of Latvia applies the Charter on a regular basis which was reflected in the 2018 Congress' Monitoring Report on local and regional democracy in Latvia. 2018 Monitoring Report .

provisions of the Charter, in four of its decisions.[72] In Lithuania other courts also consider the Charter to be an international standard in the conventional review of legislation. Both the Supreme Administrative Court of Lithuania and regional administrative courts have repeatedly relied on the Charter and its principles when assessing the legality of both individual and normative acts. The Charter has also been referenced by the Supreme Court of Lithuania in at least one of its decisions.[73]

75. In the Republic of Moldova, when the constitutional provisions concerning local autonomy apply, the Constitutional Court bases its examination of cases on the standards derived from the Charter, supporting its reasoning with reference to the provisions of the Charter.[74] Constitutional review considers the compatibility of legal provisions with the constitutional text, and international treaties serve as an argument for establishing inconsistencies between legal provisions and the Constitution. In the practice of ordinary courts, the use of the Charter as a standard for conventionality control is less frequent. However, in cases concerning the rights of local authorities or competence-related disputes, courts may refer to the Charter as a subsidiary interpretative instrument.

76. The Constitutional Court of North Macedonia considers the Charter as a standard for constitutional review of legislation. Article 18 (4) of the Law on Courts[75] provides that when a court considers that the application of the law in a specific case is in conflict with the provisions of a ratified international treaty, it will apply the provisions of the treaty. In 2018, the Constitutional court referred to the provisions of the Charter when it considered the case on the powers of local authorities.[76]

77. The Constitutional Court of Poland uses the Charter as a standard for constitutional review of legislation, referring to the Charter in its judgments and setting the direction for the interpretation of the provisions of the Charter.[77]

78. The Constitutional Court of Serbia, in line with Article 167 of the Constitution, decides on the compliance of laws and other general legal acts with the Constitution, generally accepted rules of the international law and ratified international treaties. Under Article 194, paragraph 5 of the Constitution, laws and other general legal acts enacted in Serbia may not be inconsistent with the ratified international treaties and generally accepted rules of the International Law. Therefore, in any relevant constitutional review of legislation, the Constitutional Court considers the Charter as a standard. Moreover, regarding local self-government, Article 193, paragraph 2 of the

[72] Decisions “On the elections and powers of municipal mayors” (19 April 2021); “On the transfer of a share of the personal income tax to municipal budgets” (11 June 2015); “On the establishment and abolishment of municipalities, the determination and changing of their territorial boundaries and centres” (28 June 2001) and “On the subjects of administrative supervision of municipal activities” (18 February 1998).

[73] The Supreme Court of Lithuania also made reference to the Charter in its ruling of 4 July 2012 in civil case No. 3K-3-356/2012, which concerned the legal basis and payment conditions for remuneration to municipal council members for fulfilling their official duties. According to the court decisions database (infolex.lt), the Charter has been referred to in more than 70 decisions of Lithuanian courts.

[74] For example, the Constitutional Court referred to the Charter in cases on redistributing resources locally according to the tasks of each administrative-territorial unit (*Constitutional Court Decision no. 27 of 14 September 2021, § 25*) or on rights of local communities to manage their lawful interests without interference from central authorities (*Constitutional Court Decision no. 17 of 5 August 2003*).

[75] CDL-REF (2019) 016, North Macedonia, Law on Courts, official translation.

[76] For example, in its decision of 20 June 2018 N°105/2017é1 the Constitutional court established that: “Regarding the competencies of local authorities vis-à-vis central authorities, the provision of Article 4 of the European Charter of Local Self-Government, according to which local authorities, within the framework of the law, have complete freedom to exercise their initiative concerning matters that are not excluded from their competence and are not assigned to the competence of any other authority is relevant.”

[77] Examples of rulings in which the Charter is a standard of control: judgment of the Constitutional Tribunal of 18.07.2006, U 5/04, OTK-A 2006, No. 7, item 80, judgment of the Constitutional Tribunal of 18.09.2006, K 27/05, OTK-A 2006, No. 8, item 105, judgment of the Constitutional Tribunal of 3.11.2006, K 31/06, OTK-A 2006, No. 10, item 147. judgment of the Constitutional Tribunal of 12.03.2007, K 54/05, OTK-A 2007, No. 3, item 25. judgment of the Constitutional Tribunal of 8.04.2009, K 37/06, OTK-A 2009, No. 4, item 47.

Constitution explicitly states that a body designated by the Statute of the municipality/city may initiate proceedings for assessing the constitutionality or legality of a law or other legal act of Serbia or autonomous province if it violates the right to local self-government. Similar protection is given to provincial autonomy through Article 187, paragraph 2 of the Constitution. Conventional review of legislation is one of the constitutional competences of the Constitutional Court. The Charter is considered an international standard concerning the right to local self-government.

79. The Constitutional Court of Slovakia has the power to invalidate laws and other generally binding regulations for both their unconstitutionality and unconventionality. The Charter has explicitly been recognised as a standard of review in case no. PL. ÚS 4/2016[78] because it is one of the "international treaties to which the National Council of the Slovak Republic has expressed its assent, and which were ratified and promulgated in the manner laid down by a law" (Art. 125 par. 1(a)). In two cases, the provisions of the Charter have been used as a supporting argument, i.e. implicitly acknowledging their indirect effect.[79]

80. In Slovenia the Constitutional Court has the competence to declare that a law is not in conformity with the Charter. As it has been noted in the 2018 report of the Monitoring Committee of the Congress, the Slovenian Constitutional Court is very active in guaranteeing the applicability and effectiveness of the Charter as it can be seen from many court decisions that interpret it extensively. The cases decided by the court covered a wide range of issues that are granted protection by the Charter like the powers of municipalities, their financing or services provided by bodies of local self-government.[80]

81. In Switzerland, courts at different levels refer to the Charter on a regular basis. The Swiss Federal Supreme Court considers autonomy to be a "constitutional right" of the municipalities, which they can invoke in all court or administrative procedures. Swiss courts, especially cantonal administrative courts and the Federal Supreme Court, ensure that municipal autonomy is respected when challenged by cantonal or federal actions. There are numerous court decisions both at the cantonal and the federal level on the scope of municipal autonomy. There are several decisions by the Swiss Federal Supreme Court in which the Charter is quoted, most often because it has been invoked by the complainants. However, the provisions of the Charter are rarely discussed in substance; often, the Court simply states that the Charter provision invoked does not confer more rights to the parties than national legislation.[81] Case law both on federal and Cantonal levels shows that the Swiss law meets or exceeds the Charter standards. At the same time, the Charter can be invoked before the Federal Supreme Court and may serve as a reference point for legal interpretation, thus providing interpretative value.

82. The case law of the Constitutional Court of Ukraine includes decisions on quite an extensive range of issues relevant to local self-government, including administrative-territorial organisation[82] or revocation of acts of local self-government bodies.[83] In Ukraine, international treaties ratified by the Parliament have direct effect and are applied by courts when

[78] Decision of the Constitutional Court of Slovakia, PL. ÚS 4/2016, para 134.
[79] See, for example, decisions of Liptovský Mikuláš District Court, 4C/87/2009; Košice Regional Court, 7S/21/2014.
[80] See, among others decisions No. U-I-150/15, dated 10 November 2016, on municipal solidarity balancing funds ; No. U-I-164/13, dated 10 June 2015, on tasks of municipalities the costs of which are taken into account when establishing the appropriate expenditure of a municipality ; No. U-I-37/10, dated 18 April 2013, on special protection areas (Natura 2000 areas) ; No. U-I-88/10, dated 22 November 2012, on public services provided by local self-government ; No. U-I-239/10, dated 23 June 2011, on dual office holding for municipal mayors employed on non-professional base ; No. U-I-230/10, dated 23 June 2011, on position of the mayor in joint bodies established for public utility service delivery; No. U-I-312/08 of 20 May 2010, on original tasks of municipalities.
[81] See, among others, 1C_181/2007 judgement of 9 August 2007; 2C_885/2011, judgement of 16 July 2012, para 3.2; 1C_263/2018 judgement of 4 December 2018; 1C_517/2017 judgement of 18 December 2017.
[82] Decisions No. 11-rp/2001 of 13 July 2001, No. 1-rp/2003 of 16 January 2003.
[83] Decision No. 7-rp/2009 of 16 April 2009.

considering cases. In the event of a conflict between a law and an international treaty, the international treaty shall prevail.

83. Some Constitutional Courts do not refer to the provisions of the Charter as a standard when reviewing laws, as they consider that the level of protection given to self-government by national legislation exceeds the obligations enshrined in its articles.

84. For example, German courts have so far applied Article 28 (2) of the GG or regional Länder constitutions rather than the Charter to uphold local self-government.[84] The Federal Constitutional Court exercises its jurisdiction to uphold the constitutional right to local self-government enshrined in Article 28 (2) that is considered to go beyond the requirements of the Charter. According to Art. 28 (3) of the GG, the federal government has a duty of oversight, but this provision is superseded by the possibility of communal complaints to the Federal Constitutional Court (Art. 94 (1) Nr. 4a. of the GG).

85. In Italy, the Constitutional Court has only referred to the Charter twice. In its judgment 325/2010, the Constitutional Court noted that the Charter's articles that had been invoked by the parties as standard for constitutional review "do not have specific prescriptive content but are predominantly definitional (Article 3 (1)), programmatic (Article 4 (2)) and, in any case, generic (Article 4 (4))". Furthermore, the Constitutional court stressed that Article 4, para. 1 of the Charter "states, with a provision of a general nature, that 'the basic competences of local authorities are established by the Constitution or by law', thereby deferring the definition of the general framework of competences to national legislation". This statement was upheld and further developed in the judgment of the Court n° 50/2015, where the Constitutional Court termed the Charter as "unsuitable to determine the unconstitutionality of domestic legislation in contrast with it."

86. In countries where international treaties, including the Charter, have the status of an ordinary law and are not being considered as part of the constitution or the "constitutional bloc", the provisions of the treaties cannot be used to determine the constitutionality of legislation. This applies to Austria, Cyprus, Liechtenstein, Norway, Sweden and Türkiye.

87. In Austria, the Constitutional Court has the competence to assess legislation in line with the standard of the constitution. As the Charter does not belong to the constitutional part of the Austrian legal order, it cannot be referred to as a standard. In the Austrian legal order, the Charter (as most international treaties) has the rank of an ordinary law. Accordingly, the Charter cannot form the standard for the legality of another law when assessing the constitutionality of a law. The Constitutional Court has affirmed this position on several occasions, inter alia in connection with complaints against mergers of municipalities.[85] However, since some provisions of the Charter are congruent with provisions of the Austrian Federal Constitution Act, they can be referred to for the reviewing of corresponding legislation.

88. In countries like France, Monaco and Spain, constitutional jurisdictions do not review the conformity of national legislation with the provisions of international treaties. Instead, this task is given to ordinary courts.

89. The Constitutional Council of France does not review the conformity of laws with international treaties. The Council of State, the supreme administrative court in France, in a 2015 ruling on a dispute concerning a law that modified the territorial boundaries of French regions, refused to consider the provisions of Article 5 of the Charter as imposing a procedural rule on the French Parliament (these provisions provide for consultation with the affected communities before any modification of their territorial boundaries). The French judges considered that the

[84] See footnote n° 58 above for isolated cases before constitutional courts of the Länder.
[85] See decisions e.g. VfSlg 13.235 of October 16, 1992, and G220/2014 of February 23, 2015.

Constitution alone is competent to impose rules of legislative procedure on the national Parliament.

90. The Supreme Court of Monaco decided that it was only competent to rule on constitutional appeals involving an infringement of the rights and freedoms enshrined in Title III of the Constitution (fundamental rights and freedoms). It ruled that it is not empowered to declare a law unconstitutional on the grounds that it is contrary to an international convention, whether by way of action or exception.[86] Nevertheless, case law distinguishes between international standards with direct effect (which can be invoked by litigants), and those that only create rights or obligations with respect to the State (which cannot be invoked). Indeed, the Supreme Court considers that it does not have jurisdiction to annul an administrative act on the basis of an international standard that has no direct effect in Monaco's legal system.[87] Until now, the Supreme Court has not been called to rule on complaints concerning violations of the provisions of the Charter.

91. The Constitutional Court of Spain has consistently declined to rule on the compatibility of treaties with national laws, as it considers such conflicts to be a matter of selecting the applicable rule, rather than a constitutional issue. Therefore, it is a matter for the ordinary courts to decide.

92. The Constitutional and Supreme Courts play an important role in protecting local self-government in Europe. There is a considerable variety in the approaches regarding the judicial control of the implementation of international treaties, including the Charter, within national legal systems. In the majority of the member states, this function belongs to constitutional and supreme courts; in other countries ordinary jurisdictions are entrusted with this task. In countries where international treaties are directly applicable, constitutional courts and similar jurisdictions refer to the Charter more often as a standard when assessing national legislation on local self-government. Such constitutional review is exercised with regard to the compatibility of legal provisions with the constitutional text, with international treaties serving as an argument for establishing the inconsistency between a legal provision and the relevant national constitution. These powers are exercised by the courts on the basis of provisions of the constitution and legislation on constitutional courts. In some national legal systems where the Charter could potentially serve as a standard, national courts use national legislation on local self-government, as they deem the national legal framework to be more comprehensive than the provisions of the Charter. In some member states where international treaties have the status of ordinary laws, constitutional courts and other jurisdictions do not use the Charter to check the constitutionality of legislation.

93. The Charter itself has no constitutional status in any of the countries referred to in this report. However, it may be used by constitutional courts and other jurisdictions to interpret more general provisions on the protection(s) of local autonomy in domestic constitutions more concretely, or to fill eventual gaps in constitutional guarantees of local self-government as a soft law indicator. As it can be seen in the national case-law, most states do not equate conventional review with constitutional review. However, many national court decisions indicate that the Charter is used by national jurisdictions, and in several states parties it helps to fill gaps in domestic law and to interpret constitutional or legislative provisions as to their conformity with international standards.

94. Based on the replies to the questionnaire, additional research materials and the information available in the reports of the Monitoring Committee of the Congress, the Venice Commission believes that using the Charter as a standard for reviewing national legislation

[86] See decisions in cases Supreme Court, 4 October 2010, Ordre des avocats Défenseurs et Avocats près la Cour d'appel c/ Ministre d'État; T. S, 4 March 2022, Union Des Syndicats de Monaco c/ État de Monaco.

[87] See, for example, Supreme Court, 1 December 2008, Syndicat des Copropriétaires de l'immeuble "Le Sardanapale" c/Etat de Monaco.; Supreme Court, 4 October 2010, Syndicat des Copropriétaires de l'immeuble "Le Sardanapale" c/ Ministre d'État)

on local self-government depends on several factors. These include the place of international treaties in the domestic legal order, the interpretation given by national courts to its provisions, the nature of the jurisdictions dealing with complaints on local self-government and the degree of development of national legislation in this field. Regardless of whether the Charter is used as a standard for reviewing national legislation on local self-government or not, it should be noted that numerous courts take its provisions into consideration when deciding on cases involving different local authorities.

V. Conclusions

95. The Charter is an international treaty in the sense of the 1969 Vienna Convention on the Law of Treaties. It is legally binding upon its parties, who must implement it in good faith. The Charter has been signed and ratified by all 46 member states of the Council of Europe. In most countries, the Charter has the same status in the national legal order as other Council of Europe treaties. Only the human rights treaties, in particular the ECHR, may enjoy a higher status.

96. Approaches to local self-government vary greatly between European countries. The aim of the Charter is to set minimum standards for the protection and autonomy of local authorities. Through repeated references to domestic legislation, the Charter grants member states considerable discretion in implementing the principles it contains. It also enables them to select the provisions of the Charter by which they agree to be bound, in accordance with Article 12. This “variable geometry” of the Charter gives Council of Europe member states a considerable degree of freedom in complying with its provisions. States may be reluctant to limit national oversight of local governance. The text of the Charter itself does not specify how or to what extent its principles are to be implemented. While these principles may be broad, they are clarified by domestic legislation.

97. Based on the examples provided by Member States and additional research materials, it can be concluded that, regardless of whether treaties form part of the national legal order — as is the case for international legal norms in monist systems — or have been transformed into domestic law — as is the case in dualist systems — they cannot always be applied directly. Whether the Charter is directly applicable in the national legal order is determined by domestic law, not international law. In some cases, constitutional and supreme courts in member states have decided that the entire text of the Charter or some of its provisions are directly applicable based on national constitutions or legislation on international treaties. The Venice Commission considers that regardless of its place in the constitutional system of sources of law, the Charter has many normative effects of primary importance for the protection of local democracy. The Charter provides clear guidance for national (and subnational in federal and quasi-federal states) legislatures when drafting legislation relating to local self-government. Member states must consider the ‘European consensus’ on local self-government, which establishes the minimum level of autonomy that must be respected in all cases. In this sense, the Charter is a treaty that inspires and legitimises legislative policies in member states.

98. The practice of member states varies as to the force given to international treaties after their ratification. The three most common approaches are as follows: treaties, including the Charter, take precedence over national laws and can be referred to directly by courts. The second approach gives the treaties precedence over the ordinary laws, but within the limits established by national constitutions, which remain at the top of the hierarchy of norms. In the third case, the Charter cannot be used as a standard by courts when assessing other legislation, as it has a similar status to regular laws within the constitutional system of sources of law but may serve as interpretation aid of domestic legislation. Regardless of how the Charter’s provisions are incorporated into the national legal order, national authorities must respect their international obligations and take the necessary measures to adopt and/or up-date their corresponding legal frameworks in line with the Charter’s provisions.

99. The Charter itself has no constitutional status in any of the countries referred to in this report. However, it has been used by constitutional and other jurisdictions to interpret general provisions on the protection of local self-government in national constitutions or to fill eventual gaps in constitutional guarantees of local self-government as soft-law indicator. There are many national court decisions indicating that the Charter helps national jurisdictions to interpret constitutional or legislative provisions in conformity with international standards. National courts, particularly constitutional courts, can also use the Charter to define the minimum boundaries of local self-government that legislatures cannot exceed, especially in countries without a long-standing tradition of local self-government.

100. The above analysis shows that, in respect of the place of the Charter in a given country, several interrelated factors are to be taken into consideration:

1) Council of Europe member states have different forms of government (federal, unitary, decentralised, centralised), and the division of powers between central, regional and local governments varies significantly, influencing how different standards are applied within the national legal order.
2) At the time of ratification of the Charter, some countries had well-developed constitutional provisions on local authorities, with some constitutional systems providing more guarantees than those set out in the Charter. For other countries, however, the Charter played an important role in establishing or even creating local self-government.
3) In countries where local self-government is strongly protected by the constitution and by law, there may be no need to invoke the Charter regularly, as an extensive body of case law and jurisprudence on the national guarantees of local self-government already exist.
4) The Charter contains broad and vague provisions, using general language (like “adequate resources,” “substantial proportion”), allowing flexibility but hindering consistent interpretation of its provisions.
5) In situations involving complaints concerning local self-government issues, those affected will usually turn to national constitutional provisions and national legislation on local self-government rather than to the Charter.

101. Some national courts apply the Charter directly. In any case, it has significant normative effects. Firstly, there are indirect effects, such as requiring an interpretation of national law on local self-government that is consistent with the Charter’s provisions. Secondly, there is a directive effect, involving the stimulation of changes to national law to fulfil the obligations stemming from the Charter, as well as the selection of the most suitable alternative for each state on the basis of the provisions of the Charter. Finally, the 'constitutional' interpretative effect sees gaps in the interpretation of constitutional provisions related to local self-government filled by constitutional and other courts through direct and indirect references to the text of the Charter.

102. The Venice Commission remains at the disposal of the Congress of Local and Regional Authorities for further co-operation on this matter.

Annex I

QUESTIONNAIRE

CONCERNING THE STATUS OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT IN THE NATIONAL LEGAL ORDER

1. *To which extent is the status of local self-government protected in the national legal order by the:*
   a. *Constitution;*
   b. *national legislation;*
   c. *regional legislation (where applicable).*

2. *What is the legal status of the European Charter of Local Self-Government in the national legal order? Do constitutional and ordinary courts consider the Charter or its provision(s) to be self-executing?*

3. *What is the legal status of the other ratified treaties of the Council of Europe?*

4. *What interpretation is given to the obligations of the State in the light of Article 12 of the Charter?*

5. *Which categories of local or regional authorities are covered by the scope of the Charter and which are excluded (if any) from its scope (in accordance with Article 13 of the Charter)? Has the application of the Charter been extended to authorities which were excluded from its scope at the moment of ratification?*

6. *Do national constitutional jurisdictions consider the Charter as a standard for constitutional review of legislation?*

7. *Do constitutional and ordinary courts consider the Charter as an international standard for conventional review of legislation?*

Optional:

8. *Could you indicate relevant academic publications dealing with the issue of the status of the Charter in your legal system?*