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Democracy at the national, regional and local levels

Contribution of the Council of Europe¹

Introductory remarks

Local and regional democracy is an essential component of democracy. True to its mission of promoting democracy, human rights and the rule of law, the Council of Europe works for the reinforcement and consolidation of local and regional democracy in member states through the provision of standards and know-how for the functioning of the state, its institutions and its intermediate structures and by encouraging the sharing of experience and best practice in “front line” issues of change.

Prerequisites of local democracy are a clear division of responsibilities between central government and local authorities, the assigning of financial resources of their own to local authorities, commensurate with the tasks for which they are responsible, and freedom for them to decide how to use these. These principles are contained in the European Charter of Local Self-Government, a Council of Europe treaty binding on the vast majority of its member states. The Charter is one of several treaties making up the core standards of the Council of Europe in the field of local and regional democracy (see A. below).

The European Ministers responsible for local and regional government meet regularly to exchange views and agree on common guidelines for policy developments. At their most recent session (Budapest, 24-25 February 2005), the ministers adopted the Budapest Declaration on delivering good local and regional governance and the Agenda setting out work to be undertaken at international level and domestic level until 2010. The Budapest Agenda will be reviewed and updated, as the case may be, at the forthcoming ministerial conference to be held in Valencia, Spain on 16-17 October 2007.

The work of the main intergovernmental body in charge of local democracy issues (the European Committee on Local and Regional Democracy, or CDLR) usually leads to the publication of reports and guidelines and to the adoption by the Committee of Ministers of the Council of Europe of recommendations and conventions (see B. below).

¹ Established by the Directorate of Democratic Institutions, Directorate General of Democracy and Political Affairs.

Intergovernmental co-operation, open to all Council of Europe member states, is complemented by specific activities aimed at providing legislative advice, supporting reform and enhancing management capabilities and democratic participation. These activities are specifically focussed on the democratic stability of central and eastern European countries and many of them contribute to the pursuit of the goals of the Stability Pact for South Eastern Europe (see C. below). A new and innovative strand of work consists in developing modern tools based on the best European practice and implementing practical programmes aimed at strengthening the capacity of local authorities to deliver good local governance (see D. below). A Strategy on Innovation and Good Governance at local level is being developed and its implementation promoted in member states. The Strategy's aim is to improve the quality of governance at local level through enhanced transparency, accountability and participation (see E. below).

A. Legal Instruments

The European Charter of Local Self-Government

The European Charter of Local Self-Government (ECLSG), which entered into force in 1988, is the only international convention on this subject. It is one of the most important legal instruments of the Council of Europe and has been ratified to date by 43 member states, including Serbia, and signed by 1 other.

The Charter commits the Parties to applying basic rules guaranteeing the political, administrative and financial independence of local authorities. It stipulates that the principle of local self-government shall be recognised in domestic legislation and, where practicable, in the constitution. Local authorities are to be elected by universal suffrage.

Local authorities, acting within the limits of the law, are to be able to regulate and manage public affairs under their own responsibility in the interests of the local population. Consequently, the Charter considers that public responsibilities should be exercised preferably by the authorities closest to the citizens, the higher level being considered only when the co-ordination or discharge of duties is impossible or less efficient at the level immediately below. To this end, it sets out the principles concerning the protection of local authority boundaries, the existence of adequate administrative structures and resources for the tasks of local authorities, the conditions under which responsibilities at local level are exercised, administrative supervision of local authorities' activities, the financial resources of local authorities and legal protection of local self-government.

The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities

Ratified to date by 34 states and signed by 3 more, this Convention entered into force in 1981 and is intended to encourage and facilitate the conclusion of cross-border agreements between local and regional authorities within the scope of their respective powers. Such agreements may cover regional development, environmental protection, the improvement of public services, etc., and may include the setting up of transfrontier associations or consortia of local authorities.

To allow for variations in the legal and constitutional systems of the Council of Europe's member states, the Convention sets out a range of model agreements to enable both local and regional authorities as well as states to place transfrontier co-operation in the context best suited to their needs.

Under the Convention, the Parties undertake to seek ways of eliminating obstacles to transfrontier co-operation and to grant authorities engaging in international co-operation the facilities they would enjoy in a purely national context.

The Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, which entered into force in 1998, aims to strengthen the Outline Convention by expressly recognising, under certain conditions, the right of territorial communities to conclude transfrontier co-operation agreements, the validity in domestic law of the acts and decisions made in the framework of a transfrontier co-operation agreement, and the legal corporate capacity ("legal personality") of any co-operation body set up under such an agreement.

Protocol No.2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, which entered into force in 2001, extends the provisions of the Outline convention to inter-territorial co-operation between non-contiguous territorial communities and authorities.

The Convention on the Participation of Foreigners in Public Life at Local Level

Ratified to date by 8 states and signed by a further 4, the Convention entered into force in 1997 and aims to improve the integration of foreign residents into the life of the community. It applies to all persons who are not nationals of the Contracting Party and who are lawfully resident on its territory.

The Convention provides that the Parties undertake to guarantee to foreign residents, on the same terms as to its own nationals, the "classical" rights of freedom of expression, assembly and association, including the right to form trade unions. Moreover, the Parties will make efforts to involve foreign residents in processes of consultation on local matters.

The Convention opens the possibility of creating consultative bodies at local level elected by the foreign residents in the local authority area or appointed by individual associations of foreign residents.

The Convention provides also that the Parties may undertake to grant to every foreign resident the right to vote in local elections, after five years of lawful and habitual residence in the host country, and to stand for election.

The Parties are to inform foreign residents about their rights and obligations in relation to local public life. Parties to the Convention must keep the Secretary General of the Council of Europe informed about developments in the participation of foreign nationals in local public life.

The recommendations of the Committee of Ministers

Committee of Ministers' recommendations are not legally binding on member states but they have a very strong political legitimacy. They are adopted by unanimous decision of the Committee of Ministers and are addressed to all member states of the Council of Europe. The recommendations covering local and regional democracy are listed in the Appendix.

B. Intergovernmental co-operation – The European Committee on Local and Regional Democracy (CDLR)

The CDLR is the Council of Europe's intergovernmental body in the field of local and regional democracy. It examines issues of interest for local and regional democracy, it draws up principles, standards and guidelines enabling democratic states to be given a legal framework at local and regional level and it follows up the implementation of the various relevant conventions.

The CDLR also prepares the conferences of European ministers responsible for local and regional government and follows up its conclusions and recommendations. In particular, it has been entrusted by the Committee of Ministers with the implementation of the Agenda for delivering good local and regional governance adopted in Budapest by the ministerial conference.

The CDLR undertakes the following types of activities:

- identification and collation of best practice, development of know-how: it gathers information on the practice of member states in different fields of interest for local and regional democracy and prepares thematic reports on these topics, including conclusions and best practice guidelines;
- standard-setting: on the basis of the best practices identified, the CDLR prepares draft legal instruments (recommendations and occasionally conventions) for adoption by the Committee of Ministers;
- monitoring the implementation of European standards: it prepares national reports on the structure and operation of local and regional democracy in member states and gathers information on the implementation of the conventions in this field;
- promotion of standards and best practice: the CDLR makes efforts to promote the Council of Europe "acquis" in the field of local and regional democracy, through publications, seminars and the ICT (internet, CD-ROMs...).

The CDLR reports, as well as the conventions and the Committee of Ministers' recommendations on local and regional democracy can be found on the LOREG (LOcal and REGional Democracy) database (www.loreg.org) and on the Local Democracy website www.coe.int/local. Its activities are organised around four domains : *Democratic participation and public ethics at local level, Legal framework and institutional structure, Local finance and public services, Transfrontier co-operation*.

C. The promotion of democratic stability in central and eastern Europe

The programmes for democratic stability in the field of local democracy draw their inspiration from the European Charter of Local Self-Government. They are drawn up every year by the Directorate of Democratic Institutions – Department of Local and Regional Democracy and Good Governance on the basis of the needs expressed by the beneficiary countries through either the governmental authorities or the national associations of local authorities.

Main features of the programmes for democratic stability

The purpose of these programmes may be summed up in three strategic aims, which are related to the implementation of the *subsidiarity* principle within the legal orders of the Council of Europe member states:

- ⇒ To foster the decentralisation process
- ⇒ To support the development of effective local and regional self-government
- ⇒ To ensure that democracy takes root at local and regional level.

With these strategic aims in mind, the Department focuses on two main goals:

- ⇒ To establish a sound institutional framework for local government
- ⇒ To build effective and democratic local government

Within the framework of the first goal, the programmes for democratic stability are designed to encourage effective decentralisation strategies and set up a sound legal basis for local self-government, and to shape a sound relationship between state administration and local government.

The second goal aims to develop effective leadership and strategic management in the provision of public services, and develop democratic leadership and citizen participation in local decision-making.

This approach was endorsed by the first Regional Ministerial Conference of South-Eastern European countries, held in Zagreb in October 2004. As a follow-up to this Conference, the Ministers of the region committed themselves to developing “National Work Programmes for Better Local Government”, pointing to problems to be dealt with, setting clear targets to achieve, identifying appropriate action to undertake and establishing a medium-term timeframe for implementation. At the second Regional Ministerial Conference that took place in Skopje on 8-9 November 2006, stock was taken of the implementation of the Zagreb Agenda and new impetus was placed on the implementation of more narrowly focused, action oriented plans. With the contribution of OSI/Local Government Initiative, the Council of Europe is now engaged in providing the countries concerned with specific assistance for the implementation of the national action plans and regional frameworks for sharing experience and know-how.

In 2005, a Co-operation Agreement on local government assistance in South East Europe was concluded between the Council of Europe and the OSCE. This agreement is aimed at establishing a wide co-operation framework for joint action of the two Organisations in support of local government reforms and capacity building for local authorities in South-Eastern Europe and is meant to offer a sound political basis for any further operational agreement with individual missions and a collaborative approach in the design and implementation of country-targeted projects.

Coordination meetings took place in March 2006 in Strasbourg and in November 2006 in Skopje. The Council of Europe Secretariat, ODIHR and the OSCE field missions in Albania, Bosnia and Herzegovina, Croatia, Serbia and Montenegro, Kosovo and “the former Yugoslav Republic of Macedonia” identified areas for co-operation between the two organisations and discussed how to harmonize and make the assistance provided to each country mutually reinforcing.

Main on-going projects in the 2007 assistance programmes

Strengthening local democracy in South-Eastern Europe

This programme, which constitutes a key element of the Council of Europe’s contribution to the Stability Pact for South Eastern Europe, includes:

- assistance with the design and implementation of major institutional reforms (consideration of the issue of regionalisation in Albania and in Bulgaria; implementation of the recently adopted framework law on local government in the Federation of Bosnia and Herzegovina; drafting of legislation on capital cities in Moldova and Serbia);

- promotion of decentralisation of competences and fiscal decentralisation (review of the financial arrangements for local government in Bulgaria, Moldova, Montenegro and Serbia);
- assistance in the drafting of specific legislation on key local government issues (reshaping of the relationship between mayors and councils in Croatia following the introduction of direct mayoral elections; drafting of a new law on territorial division, changes in the local electoral arrangements and related changes in the basic law on local government, local government property in Serbia; management of municipal property and administrative supervision in Montenegro).

It is worth noting that assistance to local government reforms in Montenegro and Serbia is being provided within the framework of two sizeable joint programmes between the Council of Europe and the European Agency for Reconstruction, launched in August 2006. These programmes cover the period 2006-2008 (24 months for Serbia and 18 months for Montenegro) and aim at strengthening local democracy in the two countries, building upon the National Work Programmes prepared by the two countries within the framework of the Zagreb Process.

Strengthening local democracy in South Caucasus

The Department has offered legislative assistance to Armenia (issues under consideration are the status of the Capital-city of Yerevan, the status of local government staff and inter-municipal co-operation) and Georgia (assistance with the drafting of the laws on the budgets of local self-government units and on regional development; amendments to the Organic Law on Local Self-Government).

Strengthening federal structures and local democracy in the Russian Federation

In the framework of the Co-operation Programme for the Chechen Republic, the Council of Europe is providing assistance with the drafting of basic legislation on local self-government. Targeted activities are aimed at raising awareness of key local democracy principles and at facilitating the harmonisation of Chechen legislation with the legal framework set at federal level.

D. Capacity-building for local governments throughout Europe

Established within the Department of Local and Regional Democracy and Good Governance, the Centre of Expertise for Local Government Reform aims to support local authorities in the delivery of effective democratic local government.

In co-operation with bodies within the Council of Europe and with external partners, the Centre of Expertise identifies, adapts and develops capacity-building tools from the best of European experience. After preparing these tools, the Centre works with local authority associations, Ministries and other stakeholders and assists them in introducing practical capacity-building programmes designed on the basis of these tools. The Centre engages in these types of activities upon request and subject to available resources.

National Training Strategies

In many countries, local government training is under-developed. A National Training Strategy allows organisations with a stake in local government to establish a more professional training environment.

The Centre has therefore prepared a detailed methodology for the development of such a Strategy based on a comprehensive Training Needs Analysis, an analysis of the legislative framework affecting the training of local officials and a SWOT analysis.

Country-specific programmes based on this tool have been or are being implemented in Albania, Armenia, Croatia, Georgia, Moldova, Serbia and “the former Yugoslav Republic of Macedonia”.

Leadership Development

Strong leadership, i.e. the capacity of local authorities to develop a clear vision for the municipality and to make it come true through strategic management and involvement of the local community, is an essential feature of an effective local authority.

The Centre has therefore developed a model “Benchmark of an Effective Democratic Local Authority” (The Leadership Benchmark) that sets out the expected levels of performance by a local authority in 9 leadership competences. It can be used through local workshops, through self-assessment or through a very powerful Peer Review methodology.

Country-specific programmes based on this tool have been or are being implemented in Albania, Armenia, Bulgaria, Croatia, and Russia and will soon start in Serbia and “the former Yugoslav Republic of Macedonia”.

Best Practice

There are local authorities in every country that achieve the highest standards in some aspects of their work. This best practice can be identified and shared with other local authorities. Learning from each other, rather than from an external expert, is indeed a best practice methodology.

The Best Practice programme applies a systematic approach, where best practice achievement in selected themes is identified and celebrated, but carries with it an obligation to pass on the best practice to other local authorities through a systematic training programme.

Country-specific programmes based on this tool have been or are being implemented in Albania, Armenia, Bosnia and Herzegovina, Croatia, Moldova and Russia and will soon start in Serbia. This programme implementation is being enhanced by collaboration with the OSCE and its in-country resources. In addition, a joint publication of the Centre of Expertise and the OSCE on “Transforming Best Practice into a training vehicle” is envisaged.

These tools appear in Toolkit I. Two other Toolkits are being prepared.

Toolkit II is exclusively dedicated to the strengthening of the capacity of national associations of local governments to delivering good quality services to their members. This tool provides a Benchmark of the capacity of an Association to provide services to its members. An external assessment against the Benchmark will help an Association understand what kind of services its member local authorities would like and would be willing to pay for. This will provide the basis for organisational development so that the Association better responds to the needs of local authorities.

A country-specific programme on this topic has already been implemented in Bosnia and Herzegovina.

Toolkit III will include four other programmes, which have already been implemented or will

be implemented shortly in several countries:

Performance Management

Performance management is a key discipline local authorities can use to drive up performance in internal and external services. Local authorities and their Associations should identify those critical factors that determine good performance in a service (key performance indicators).

The Centre offers a bottom-up approach to pilot a performance management system, including a list of model indicators, in priority policy areas.

This programme has already been implemented in Bulgaria and will soon be implemented in Serbia as well.

Citizen Participation

How good is a local authority in engaging local people and organisations in local government? The Citizen Participation programme will enable a local authority to do a 'stock take' of its performance in this field and draw up an Action Plan to drive improvements.

Building on experimentation carried out in member states, the European Committee on Local and Regional Democracy (CDLR) has developed a model for assessing and promoting citizen participation at local level, called CLEAR. This has been tested in a number of European countries – the first round of testing having been assessed at a European conference in June 2006 in Tampere (Finland) – and in its final form it should be recommended for use by local authorities, through a Committee of Ministers' recommendation to be adopted in the near future.

Public ethics

Democracy depends fundamentally on public trust. Without broad confidence of the public in the integrity of those they elect to represent them, and of those employed to deliver services to them, democratic institutions will falter. Power cannot be devolved effectively to local governments if those receiving it are self-serving.

The Centre of Expertise has recently developed a Public Ethics Benchmark and Improvement Tool which uses a Score Card inspired from the best European experience to invite municipalities to improve their practice through a process involving the adaptation of the Score Card to national circumstances, a self-assessment leading to the creation of a National Benchmark and a series of peer reviews generating the needed change.

The implementation of country-specific programmes based on this tool was tested in Spain and has started in Moldova, Ukraine and Romania.

Financial management

Sound financial management is a precondition for an effective local government. Based in particular on the Committee of Ministers' Recommendation Rec(2004)1 on financial and budgetary management at local and regional levels, the Centre of Expertise is currently developing, in co-operation with the Local Government and Public Service Reform Initiative (LGI) a Benchmark on Effective Financial Management at local government level.

E. The Strategy for Innovation and Good Governance at Local Level

In 2005, the Heads of State and Government of the member states of the Council of Europe meeting in Warsaw for their Third Summit, declared that “effective democracy and good governance at all levels are essential for preventing conflicts, promoting stability, facilitating economic and social progress, and hence for creating sustainable communities where people want to live and work, now and in the future. This can only be achieved through the active involvement of citizens and civil society. Member states must therefore maintain and develop effective, transparent and accountable democratic institutions, responsive to the needs and aspirations of all.”

In order to meet this objective, a Strategy for Innovation for Good Governance at Local Level has been proposed within the Council of Europe. In essence, the Strategy identifies the goal to be pursued (making citizens benefit from good governance at local level), the targets to be met (implementing twelve principles that encapsulate the gist of “good democratic governance”) and the tools for implementation (the establishment of a European platform of stakeholders, the conclusion of national action plans between government and associations of local authorities, the provision of concrete assistance towards the capacity of local authorities through the Centre of Expertise for Local Government Reform, etc.).

The implementation of the Strategy will depend fundamentally on the initiative of local authorities, prompted and encouraged as the case may be, by governments. National action plans may be concluded in order to formalize their respective roles and initiatives. Within the Council of Europe, a stakeholders’ platform will be established in order to oversee the implementation of the Strategy and further develop it in the light of experience.

Municipalities meeting the objectives of good governance may be awarded the European Label of Innovation and Good Governance and a European Prize of Excellence could be created to distinguish outstanding achievements of local authorities across Europe.

The ambition of the Strategy on Innovation and Good Governance is to stimulate central and local governments’ joint action to improve the quality of governance at all levels, starting at the level closest to citizens where strongly and effectively rooted democracy is essential. At the Ministerial Conference, in Valencia, a number of countries are expected to announce their readiness to start implementing the Strategy so that lessons can be learned with a view to making the Strategy flexible and open to changes, incorporating and reflecting developments in the European policy and its social and cultural fabric.

Further information

Further information on the activities of the Council of Europe in the field of local and regional democracy can be obtained through the website www.coe.int/local. A database of pertinent domestic legislation (state and regional laws), international agreements and best practice at national and local levels can be accessed at www.loreg.org.

Appendix

Relevant norms and standards

Conventions

- The European Charter of Local Self-Government
- The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities
- The Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities
- The Convention on the Participation of Foreigners in Public Life at Local Level

Recommendations

- Rec(79)4 concerning principles of a strategy for tourism development in mountain regions;
- Rec(81)18 concerning participation at municipal level;
- Rec(87)10 to member states having sovereignty over large maritime islands on the development of islands or archipelagos as extreme examples of peripheral regions;
- Rec(87)12 on the role of local and regional authorities in employment policy;
- Rec(88)9 concerning the role of local and regional authorities in promoting the creation or operation of small and medium-sized firms;
- Rec(90)12 on services and infrastructures in rural areas;
- Rec(92)5 on borrowing by local and regional authorities;
- Rec(95)19 on the implementation of the principle of subsidiarity;
- Rec(96)2 on referendums and popular initiatives;
- Rec(96)3 on local authorities' budgetary deficits and excessive indebtedness;
- Rec(96)12 on the distribution of powers and responsibilities between central authorities and local and regional authorities with regard to the environment;
- Rec(97)7 on local public services and the rights of their users;
- Rec(98)12 on supervision of local authorities' action;
- Rec(99)8 on the financial liability of local elected representatives for acts or omissions in the course of their duties;
- Rec(2000)1 on fostering transfrontier co-operation between territorial communities or authorities in the cultural field;
- Rec(2001)19 on the participation of citizens in local public life;
- Rec(2002)3 on transfrontier co-operation in civil protection and mutual assistance in the event of natural and technological disasters occurring in frontier areas;
- Rec(2003)2 on neighbourhood services in disadvantaged urban areas.
- Rec(2004)1 on financial and budgetary management at local and regional levels;
- Rec(2004)12 on the processes of reform of boundaries and/or structure of local and regional authorities;
- Rec(2005)1 on financial resources of local and regional authorities;
- Rec(2005)2 on good practices in and reducing obstacles to transfrontier and interterritorial co-operation between territorial communities or authorities;
- Rec(2005)3 on teaching neighbouring languages in border regions.