

INTERNATIONAL LAW AND PUBLIC ADMINISTRATION: THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

This year, in October 2015, the European Charter of Local Self-Government celebrates its 30th birthday. This paper outlines the Congress of the Local and Regional Authorities of the Council of Europe and its historical institutional evolution. The focus is directed at its most important instrument to safeguard local and regional democracy in Europe: The European Charter of Local Self-Government. The paper illustrates core provisions of the Charter, questions of its implementation as well as the monitoring activities of the Congress, which aim at supporting the effectiveness and implementation of the Charter. This is exemplarily shown by drawing on the most recent report on local and regional democracy in Hungary since 2013. The paper concludes with an outlook on current needs and future challenges of local and regional democracy in Europe and especially envisions the ‘individualization’ of local democracy.

KEYWORDS:

**European Charter of Local Self-Government;
Congress of Local and Regional Authorities; International Public Administration;
Local and Regional Democracy; Council of Europe; Monitoring**

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1. INTRODUCTION

This year, in October 2015, the European Charter of Local Self-Government¹ (‘Charter’, or ‘ECLSG’) celebrates its 30th birthday.² Without exaggeration the Charter can be referred to as one of the most important instruments of the Council of Europe in general and the Congress of Local and Regional Authorities (‘Congress’) in particular. By strengthening local self-government the Charter contributes to the development and continuously fosters de-

1 See European treaty series No. 122, online accessible at www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=122&CM=8&DF=14/03/2013&CL=ENG (accessed in March 2015).

2 The Charter was opened for signature on 15th October 1985.

mocracy in general as well as local and regional democracy in particular in Europe.³ However, being confronted with current challenges, for instance the economic and financial crisis and its consequences, it is still important to remember the origins of the democratic movement in Europe and its value for a peaceful and well-functioning public administration. Thus, we should not forget that a stable democracy needs steady hard work to be maintained and enhanced. Major support for local and regional democracy comes also from international law, especially in the institutional frame of the Congress. A major aim of the Congress is to support member states in the protection, improvement and development of self-government and, thus, also democracy at local and regional level. The institutional history of the Congress shows – according to one of its former president *Halvdan Skard*⁴ –, ‘that the Congress has always been able, by dint of energy and endeavour but also persuasion and sometimes stubborn persistence, to further the cause of local and regional authorities in European integration.’⁵ By shedding some light on historical innovations of the Congress this paper will elaborate on the core support from international law for local and regional public administration in Europe. The Charter is a cornerstone of local and regional democracy in Europe and therefore shall serve as a constant reference point.

2. HISTORICAL INNOVATIONS: THE INSTITUTIONALISATION OF THE CONGRESS

Today we consider things which were not feasible for earlier generations, as self-evident. We tempt to underestimate huge progresses we might have made and accomplished in a relatively short period of time. What is now known as the Congress of Local and Regional Authorities of the Council of Europe was launched as a ‘simple’, conference of 124 local elected representatives of 13 European countries in Strasbourg in 1957.⁶ A further remarkable step was the draft Conference-Charter, adopted by the Consultative Assembly – today known as the Parliamentary Assembly of the Council of Europe – in 1960 in the

3 Compare for instance Chris HIMSWORTH, *Treaty-Making for standards of local government: The European Charter of local self-government and its possible application beyond Europe*, University of Edinburgh School of Law Working Paper No. 2011/24, at p. 2 speculates about the Charter as probably being the ‘highest profile product’ of the Council of Europe in terms of promoting democracy.

4 President of the Congress from 2006 to 2008.

5 See the Foreword of Halvdan SKARD, former President of the Congress of Local and Regional Authorities of the Council of Europe, in: Council of Europe Publishing (ed.), *50 years of local and regional democracy in Europe*, 2007.

6 For details see Council of Europe (ed.), *50 years of local and regional democracy in Europe (1957–2007): The Congress of Local and Regional Authorities of the Council of Europe*, Council of Europe Publishing 2007, at p. 13ff. As Jacques Chaban-Delmas, first president of the conference, put it in his opening address, was: ‘the first time in the history of the democracies that the representatives of local authorities have been invited by members of parliament, with the consent of governments, to express their opinion on how they might take part in institutions which are still being organised’. Cited after: Council of Europe, *Committee of Ministers, 50 years and 104 sessions for building a greater Europe without dividing lines*, accessible at <https://wcd.coe.int/ViewDoc.jsp?id=124329> (2015. 03.).

Recommendation 262.⁷ This Conference-Charter, which was finally adopted by the Committee of Ministers on 13th September 1961, gave the Conference a clear frame defining its membership, terms of reference and powers and it provided for its tasks. This strengthened the influence and powers of the European Conference of Local Authorities as ‘a Council of Europe advisory and technical commission under Article 17 of the Statute of the Organisation’.⁸ In 1975 the Conference was renamed the ‘Conference of Local and Regional Authorities of Europe,’ (‘CLRAE’) by an amendment to its Charter in order to include also the growing importance of the Regions in its work.⁹ Finally, almost some 20 years ago, another major innovation took place and the now so-called ‘Congress of Local and Regional Authorities’ became a full-fledged body of the Council of Europe in 1994, comprising a ‘Chamber of Regions’ and a ‘Chamber of Local Authorities’.¹⁰ The Charter of the Congress of Local and Regional Authorities of Europe (‘Congress-Charter’) was adopted in 1994¹¹ and amended in 2000,¹² 2007¹³ and 2011.¹⁴ In its present form, the Congress gives 318 elected representatives from local and regional authorities in the Council’s 47 member states for a political sounding board, representing more than 200,000 grassroots communities in Europe.¹⁵

Its main activities are beside consultative functions (Art. 2 § 1 lit. a Statutory Resolution to the Congress-Charter), the preparation of ‘country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe’.¹⁶ They ‘shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented’ (Art. 2 § 3 Statutory Resolution to the Congress-Charter). A further aim of the Congress is the preparation of ‘reports and recommendations following the observation of local and/or regional elections’ (Art. 2 § 1 lit. 4 Statutory Resolution to the Congress-Charter). The monitoring ac-

7 Cf. Council of Europe, *supra* n. 6, 18.

8 *ibid.*

9 Cf. *supra* n. 6, 22.

10 Cf. *supra* n. 6, 46.

11 See the Appendix to Statutory Resolution (94) 3 relating to the setting-up of the Congress of Local and Regional Authorities of Europe, adopted by the Committee of Ministers on 14 January 1994 at the 506th meeting of the Ministers’ Deputies.

12 See the Statutory Resolution (2000) 1 relating to the Congress of Local and Regional Authorities of Europe, adopted by the Committee of Ministers on 15 March 2000 at the 702nd meeting of the Ministers’ Deputies.

13 See the Statutory Resolution CM/Res (2007) 6 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 2 May 2007, at the 994th meeting of the Ministers’ Deputies.

14 See the Statutory Resolution CM/Res (2011) 2 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 19 January 2011 at the 1103rd meeting of the Ministers’ Deputies.

15 For a more detailed analysis of the current tasks and the institutional background of the Congress see Andreas KIEFER: *Der Kongress der Gemeinden und Regionen: Grundlegende Reform und neue Dynamik für Monitoring* = eds. Europäisches Zentrum für Föderalismusforschung Tübingen, *Jahrbuch des Föderalismus 2012 – Föderalismus, Subsidiarität und Regionen in Europa*, Nomos, 2012, 1–20.

16 Cf. Resolution 31 (1996) on guiding principles for the action of the Congress when preparing reports on local and regional democracy in member states and applicant states.

tivities regarding the implementation and compliance with the European Charter of Local Self-Government as well as the observation of local and regional elections are nowadays well established and good functioning tools in the field of the establishment and protection of a common standard of local and regional democracy in Europe. The Congress is mandated to do so by virtue of its Charter, adopted by the Committee of Ministers of the Council of Europe in 1994 and revised most recently in 2011.¹⁷ Yet, the observation of local and regional elections by locally and regionally elected representatives was another important innovative supplement in November 1990, when the Congress' first observation mission took place in the Czech and Slovak Republic.¹⁸ As of today the Congress has conducted almost 100 election observation missions and has been taken part in observer missions in all 47 member states and even beyond.¹⁹ Since 2000 the Congress has been mandated to accomplish election observations by Art. 2 § 1 lit. 4 of the Statutory Resolution to the Congress-Charter. Such missions comprise also pre-electoral missions to assess the political situation, the campaign environment as well as the legal framework prior to the Election Day. As from 2006 onwards Recommendations and Resolutions were adopted in Congress Sessions following the observation missions.²⁰ Equally important was the first monitoring mission regarding the compliance with the Charter carried out in Romania already as of 1992.²¹

3. THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

3.1. *The Charter*

As of October 1953 a political declaration was framed in the 'European Charter of Municipal Liberties'. This political sign was approved by the first Assembly of European Municipalities, the Council of European Municipalities and Regions ('CEMR') founded in Geneva in 1951.²² Inspired by this the CLRAE aimed – however unsuccessfully – at guaranteeing local autonomy by the 'Declaration of Principles' in 1968.²³ In 1981 this led to the idea of creating a binding international treaty ensuring local democracy and local self-governance. The

17 See *supra* n. 12–15. Monitoring missions are prescribed by Art. 2 § 3 of the Statutory Resolution to the Congress-Charter since its amendment in 2000.

18 See The Congress/CPL/Bur (25) 21, Report of the Council of Europe Mission to observe the municipal elections in the Czech and Slovak Federative Republic (23–24 November 1990). For more details see Council of Europe Publishing (ed.), 50 years of local and regional democracy in Europe, 2007, 47.

19 See information on the website of the Congress www.coe.int/t/congress/Activities/Observation/default_en.asp?mytabsmenu=3 (March 2015)

20 See for instance Recommendation 186 (2006) 1 on the follow-up to the referendum on the state-status of Montenegro (Serbia and Montenegro) (21 May 2006).

21 Again, for more details concerning the development of the monitoring missions, see COUNCIL OF EUROPE, *supra* n. 6, 48.

22 See thereto Jean PETAUX: *Democracy and human rights for Europe – The Council of Europe's Contribution*, Council of Europe Publishing, 2009, 113.; See also Council of Europe, *supra* n. 6, 34.

23 *Supra* n. 6, 34.

European Charter of Local Self-Government was adopted by the Council of Europe in 1985 and entered into force on 1st September 1988.²⁴ The Charter is a cornerstone treaty for local democracy. It lays down the legal basis for the application of the principle of subsidiarity, which leads to decentralisation and, thus, the development of local self-government on the European continent. The Charter, which represents the foundation for a multi-level governance system, is still a unique and was at its time of origin also an innovative convention. It safeguards the principle of local self-government and, thus, establishes and protects the rights of local authorities; both necessary elements of local democracy. In other words, the European Charter of Local Self-Government is a key Council of Europe convention and thus was referred to as a ‘*Magna Carta* for local communities’ by the current Secretary General of the Congress *Andreas Kiefer*.²⁵ Since 1949, the Council of Europe has concluded more than 200 conventions. Less than 20 have been ratified by the 47 member states. Since 29th October 2013 the Charter has been ratified and signed by all 47 member states of the Council of Europe and is within this special group.²⁶

Since its entry into force in 1988 the Charter has remained the only binding European legal instrument laying down the principles of democratic local self-government and enshrining a common standard for Europe. The Charter, thus, has become the main reference point and a benchmark convention for local and regional democracy over the years. This is reflected in its Preamble, which enshrines local self-government as an important part of a ‘Europe based on the principles of democracy and the decentralisation of power’ in general and ‘the right of citizens to participate in the conduct of public affairs’ in particular. Thus, local ‘councils or assemblies’ shall be ‘freely elected’ (Article 3 § 2 ECLSG). Article 3 establishes, for the first time in history that local authorities have the right to manage a ‘substantial share of public affairs under their own responsibility’. The ‘basic powers and responsibilities of local authorities’, so enshrines Article 4 § 1 ECLSG, ‘shall be prescribed by the constitution or by statute’. Article 4 § 3 ECLSG expressly lays down that ‘public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen’ and could, thus, be referred to as a principle of subsidiarity.²⁷ To safeguard these responsibilities and their effective functioning the Charter protects, for instance, the boundaries of local authorities (Article 5 ECLSG), their administrative structures (Article 6 ECLSG) and, probably most importantly, their financial resources (Article 9 ECLSG). In addition central supervision is limited (Article 8 ECLSG) and a principle of prior consultation of local authorities by central organs is established if local au-

24 See European treaty series No. 122, online accessible at www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=122&CM=8&DF=14/03/2013&CL=ENG (March 2015).

25 See the notes of his speech *Andreas KIEFER: Monitoring activities of the Congress of Local and Regional Authorities at the conference Local communities in the European multi-level governance system*, online available at <https://wcd.coe.int/ViewDoc.jsp?id=1995645&Site=Congress> (March 2015).

26 Most recently, Monaco ratified the Charter on 1 October 2012 (entry into force on 1st May 2013) and San Marino, as the last Council of Europe member state, ratified the Charter on 29th of October 2013 (entry into force on 1st of February 2014).

27 Compare to KIEFER, *supra* n. 26.

thorities are concerned in their matters (Articles 4 § 6, 5, and 9 § 6 ECLSG). Furthermore, local authorities shall have the ‘right of recourse to a judicial remedy’ (Article 11 ECLSG).

3.2. IMPLEMENTATION OF THE CHARTER IN NATIONAL LAWS

Article 2 of the Charter stipulates that ‘[t]he principle of local self-government shall be recognised in domestic legislation, and where practicable [even] in the constitution.’ The implementation of the Charter is basically guaranteed by the simple fact that the Charter is a legally binding treaty regime. All the member states, thus, declared to be bound by ratifying the Charter. This is further ensured by the monitoring activities of the Congress. The Congress insists that appropriate measures are taken in each country to make sure that the Charter takes a proper place in the legal system of the member states.²⁸ Article 12 § 1 ECLSG establishes a so called ‘pick and choose’ system, which enables the signing states to apply only some of the provisions of the Charter. However, a common basis is ensured by the need to choose at least 10 out of 14 core provisions. Furthermore, Article 12 § 1 ECLSG requires the member states to ratify 20 out of altogether 30 provisions. This so called ‘pick-and-choose’ system, which allows the member states to pick certain provisions à la carte, is one of the reasons for the huge success of the Charter. It has made possible that 47 Council of Europe member states have ratified the Charter and created thereby a common Europe wide standard of local and regional democracy and self-government. However, by the 14 core principles, whereby the Charter requires the ratification of a minimum of 10, the Charter seeks to ensure a common base, which all the member states have to accept. In addition, monitoring the implementation of the Charter motivates and supports member states to continuously check whether in the light of new developments and reforms non-ratified provisions could be ratified. Thus, the Charter provides for a common basis for all 47 member states, which can gradually provide for further strengthening of the protection of local and regional democracy.

3.3. Monitoring the implementation of the Charter and the Report and Recommendation on Local and Regional Democracy in Hungary 2013

One of the core missions of the Council of Europe’s Congress of Local and Regional Authorities is to monitor the implementation of and the compliance with the Charter in all the 47 European countries that have ratified the Charter. It is a systematic procedure, which applies to all 47 member states. By the so-called regular country-by-country monitoring the Congress ensures that the ratified provisions of the Charter are observed. The Congress is mandated to do so by the virtue of its Charter, which was adopted by the Committee of Ministers of the Council of Europe in 1994 and revised most recently in

²⁸ Cf. Recommendation 39(1998) on the incorporation of the European charter of local self-government into the legal systems of ratifying countries and on the legal protection of local self-government. Discussed and adopted by the Standing Committee of the Congress on 6 March 1998.

2011.²⁹ Thus, the Congress has a direct mandate from the national governments to ensure that the Charter is implemented in their territories. On this basis the Congress carried out about 140 reports from 1994 until March 2015.³⁰ The rules of procedure for monitoring missions were last revised in 2012 in order to ensure fair, independent, transparent and regular monitoring visits.³¹ Generally, a monitoring visit is mostly conducted by two rapporteurs, one independent expert, and one or two members of the Congress Secretariat. Detailed questionnaires are sent out to national, regional and local authorities, academics and other possibly informative interrogation partners in advance. The interviews with the interrogation partners are based upon the questionnaires and are an important basis for the report and recommendations.

The monitoring of the Charter's implementation and observation has produced many country-specific proposals, which have often been translated into new legislation and have sometimes led to the reform of the legislative framework in the field of local democracy.³² And for some countries the Charter and its principles have served as a guideline to design their system of local self-governance.³³ At the same time, the monitoring experience shows that local self-government in many member states is still fragile, characterised by a rather weak legislative framework and rather arbitrary administrative practices. Most pressing issues regarding all the monitoring and reporting activities as well as the recommendations show '*a disproportionality between local competences and available resources; a lack of consultations with local authorities, [...] and providing for consultations on the allocation of financial resources [...] matters of administrative supervision of local authorities by higher levels; [and] finally, a lack of the effective right to legal recourse, which in practice is often hindered by the existing filters (such as the requirement to lodge a legal complaint through a government agency)*'.³⁴

As one of the most recent innovations, monitoring visits are now followed by an effective follow-up process coined as post-monitoring process, which aims to assist the author-

29 See *supra* n. 12–15. Monitoring missions are prescribed by Art. 2 § 3 of the Statutory Resolution to the Congress-Charter since its amendment in 2000.

30 Information from the Congress Secretariat.

31 See Resolution 337 (2012) New Rules of Procedure of the Congress and its chambers – adopted by the Congress on 20 March 2012, 1st sitting. C.f. Resolution 307 (2010) Revised, Procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122). Adopted according to the tacit adoption procedure (Rule 25 of the Rules of Procedure) by the Congress on 19 October 2011.

32 For a detailed account see Andreas KIEFER: *Die Monitoring-Aktivitäten des Kongresses der Gemeinden und Regionen des Europarates* = eds. Elisabeth Alber, Carolin Zwilling: *Gemeinden im Europäischen Mehrebenensystem: Herausforderungen im 21. Jahrhundert*, Nomos, 2014, 217–236.

33 See Kathleen M. DOWLEY: *Local Government Transparency in East Central Europe* = Andrew Coulson, Adrian Campbell: *Local Government in Central and Eastern Europe: The Rebirth of Local Democracy*, Routledge, 2008, 23–26. C.f. Szenté Zoltán: *Local Government in Hungary*, 289; Diana Šaparnienė, Aistė Lazauskienė: *Local Government in Lithuania*, 392.; Simina Tanasescu: *Local Government in Romania*, 536; Inga Vilka: *Local Government in Latvia*, 367. = ed. Ángel Manuel Moreno: *Local Government in the Member States of the European Union: A comparative legal perspective*, INAP, 2012.

34 See KIEFER, *supra* n. 26.

ities of the country in complying with the recommendations and findings of the monitoring reports.³⁵ The main objective of these missions is not to pinpoint problems and shortcomings but rather to assist the countries concerned in improving multi-level governance as well as the legal and political environment. The Congress aims to raise the ‘impact and effectiveness’ of its missions by pursuing ‘political dialogue with national authorities and other relevant stakeholders involved in monitoring and election observation activities, in order to improve the implementation of the [...] adopted texts.’³⁶ As a result, the Congress has expanded its activities and set the frequency of monitoring at least once every five years for each country, with an average of 12 to 13 country missions per year since 2010. Even though limited resources might endanger this ambitious goal, the Congress strives to maintain this high pace.³⁷

Hungary signed the Charter on 21st March 1994. The Charter entered into force on 1st of July 1994 and was adopted in the Hungarian legal order by the promulgation of Act XV of 1997. The first monitoring visit to Hungary dates back to 2002, which resulted in Recommendation 116 (2002). Hungary was last monitored in May 2012 and a detailed report including recommendations was adopted in the 25th session of the Council of Europe’s Congress held between the 29th and 31st October 2013, presenting the strengths and weaknesses of local and regional democracy.³⁸ While the ratification of the Additional Protocol on the Charter on the Right to Participate in the Affairs of a Local Authority is mentioned positively, the report criticises ‘the recent reforms, which led to a deterioration of the legislative framework on local and regional issues in Hungary’.³⁹ The main points of criticism and thus also the target of the recommendation 341 (2013)⁴⁰ for improvement were the ‘trend towards recentralisation of competences and the weak level of protection afforded, at constitutional level, to the principle of local self-government.’⁴¹ Another important recommendation was to ensure financial autonomy of local and regional authorities as well as clearly define their competences. Furthermore, one of the rapporteurs, Mr. Artur Torres Pereira, stressed that

35 See Resolution 353 (2013), Congress post-monitoring and post-observation of elections: developing political dialogue. Debated and adopted by the Congress on 20 March 2013, 2nd sitting.

36 See Resolution 353 (2013), Congress post-monitoring and post-observation of elections: developing political dialogue. Debated and adopted by the Congress on 20 March 2013, 2nd sitting.

37 For a more detailed account of the Congress’ monitoring activities on the European Charter of Local Self-Government see KIEFER, *supra* n. 33.

38 See Recommendation 341 (2013) and the report on Local and Regional democracy in Hungary, online available at <https://wcd.coe.int/ViewDoc.jsp?id=2113213&Site=COE>. C.f. regarding local governance in Hungary, ZENTE, *supra* n. 34.

39 See the Report, *supra* n. 39.

40 Debated and adopted by the Congress on 29th October 2013, 1st Sitting (see Document CG(25)7FINAL explanatory memorandum), rapporteurs: Artur Torres Pereira, Portugal (L, EPP/CCE) and Devrim Çukur, Turkey (R, SOC). Online available at https://wcd.coe.int/ViewDoc.jsp?Ref=CG%2825%297PROV&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=C3C3C3&BackColorIntranet=CACC9A&BackColorLogged=EFEA9C#P46_2693 (March 2015).

41 *Ibid.* For a general overview on monitoring missions see the Congress document on Recurring issues based on assessments resulting from Congress monitoring and election observation missions (reference period 2010–2013) from 15 September 2014, available at <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2596045&SecMode=1&DocId=2180964&Usage=2> (March 2015).

'Local authorities are not consulted properly or in due time on matters of interest for them.' Another issue for him was that local authorities 'do not dispose of an effective legal remedy to protect their interests'⁴²

4. CURRENT NEEDS AND FUTURE PERSPECTIVES: THE 'INDIVIDUALIZATION' OF LOCAL AND REGIONAL DEMOCRACY

The current crisis of the representative system demands to consider new directions questioning the presumption that representation is the only expression of democracy. People are turning their backs on institutionalised politics. Democracy needs to be developed beyond representation, through the introduction of more sustained forms of interaction between people and authorities in order to include direct democratic elements in the decision-making process. As the level closest to citizens, the local and regional tier of governance also represents a great potential for innovation as far as citizen participation is concerned, it often acts as a testing ground for new forms of participation before they become accepted at national and European level as good practices. Within the Council of Europe, the Congress acts to promote and enhance such citizen participation at the grassroots, where its results are the most effective.⁴³

The current situation in Europe shows that the traditional system of representative democracy is already being increasingly extended by elements of direct democracy. The new participatory model is combining representative and direct democracy and should be designed as a process in which all persons, not just nationals, are involved at all times, not just during elections, in the conduct of public affairs at local, regional and national level. Participatory democracy should involve broad access for citizens to information on public action and to consultations with public authorities, as well as self-organisation of civil society within citizen groups and associations, interaction between direct democracy and indirect (representative) democracy (for example, debates in local councils and regional parliaments on citizens' initiatives), innovation and greater use of new communication technologies (in the framework of edemocracy and e-participation), and many other elements.

Thus, the first component of further strengthening the democratic model is a better framework for citizen participation. The European Citizens' Initiative is an important step in this direction, which will also give a boost to e-democracy and the use of e-tools. New information and communication technologies offer vast opportunities in this field, in the framework of the so-called edemocracy – for example, in carrying out direct consultations with citizens and receiving their feedback on public action, in introducing e-voting and e-governance in a broader sense, and in setting up a general framework for e-participation and provision of eservices.

42 See <https://wcd.coe.int/ViewDoc.jsp?id=2122295&Site=CM> (March 2015).

43 Compare, for instance, Andreas KIEFER: *Innovation and the European Charter of Local Self-Government*, speech delivered in July 2013 in Münster; online available at <https://wcd.coe.int/ViewDoc.jsp?id=2086499&Site=COE> (March 2015)

Measures to extend the rights of participation are also crucial in order to better involve all residents: the participatory rights of the citizens of the Council of Europe member states should no longer be linked to citizenship, but to the length of residence, and they should be extended through various forms of participatory democracy.⁴⁴ In this regard, the Council of Europe has made a wide range of proposals to increase and encourage the participation of immigrants in political life, through the granting of political rights to non-citizens. For example, the 1992 Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level⁴⁵ in particular provides for the right to vote and to stand in local elections for everyone who has lived in a given community for five or more years. Today, in practice more than 20 European countries effectively grant foreigners the right to a local vote, and several countries the right to stand in local elections. Yet, this Convention has only been ratified by 8 member states so far, which is a challenge to be addressed, especially with regards to current tragic events.

Another successful initiative of the Congress testing various participation schemes at the grassroots level is the European Local Democracy Week, which has become a truly pan-European annual event since its first launch in 2007.⁴⁶ The Local Democracy Week serves to bring together local citizens and their public authorities to learn about local democratic processes, listen to each other's concerns and decide on priorities for the community. Yet another example is the key policy document for the participation of the youth: the Revised European Charter on the Participation of Young People in Local and Regional Life,⁴⁷ which suggests lines of action to engage young people in democratic processes at the grassroots. In this regard, the Council of Europe system in the field of the youth, whereby recommendations to national governments are elaborated with the participation of representatives of youth organisations, is unique and could serve as an example for any future participatory framework.

The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities was ratified as of March 2015 by 38 Council of Europe member states and provides for a legal framework for cross-border regions.⁴⁸

44 See thereto Andreas Gross: *The crisis of democracy and the role of the State in today's Europe*, Committee on Political Affairs and Democracy of the Parliamentary Assembly of the Council of Europe, Report No. 12955 from 11 June 2012, para 25: 'the participatory rights of the citizens of Europe should no longer be linked to citizenship, but to length of residence, and they should be extended through forms of participatory democracy'.

45 Convention on the Participation of Foreigners in Public Life at Local Level, ETS. 144, adopted on 5 February 1992, entered into force 1 May 1997. As of May 2013 8 Council of Europe member States have ratified this Convention.

46 For further information see <http://www.congress-eldw.eu/> [accessed in March 2015].

47 See the Appendix to the Recommendation 128 (2003), revised European Charter on the Participation of Young People in Local and Regional Life, adopted by the Congress of Local and Regional Authorities of Europe on 21 May 2003.

48 See Council of Europe treaty series No. 106, online accessible at <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=106&CM=&DF=&CL=ENG> (March 2015).

On 16th November 2009 an Additional Protocol on the right to participate in local authorities' affairs was designed to supplement the text of the Charter.⁴⁹ It entered into force on 1st June 2012 and has been ratified by 10 Council of Europe member states so far. The citizens' right to participate in the conduct of public affairs is a democratic principle already enshrined in the Preamble to the European Charter of Local Self-Government. The Additional Protocol specifies this right as the right to seek to determine or to influence the exercise of local authority's power and responsibilities. Its purpose is to bring within the scope of the Charter the right of 'everyone within the [...] jurisdiction' of the ratifying state 'the right to participate in the affairs of a local authority.' (Art. 1 § 1 Additional Protocol).

The adoption of the Additional Protocol is the first step to broaden the application of the Charter by improving direct democracy at local and regional level. This step was complemented by the Congress' recommendation on increasing citizen participation at local and regional level in Europe in October 2011.⁵⁰ In October 2012, the Council of Europe Committee of Ministers, responding to this recommendation, encouraged national governments to implement the proposals for greater public access to government information and for greater use of direct democracy as well as new information technologies to increase citizen participation.⁵¹ The Committee of Ministers also encouraged member states to sign and ratify the Additional Protocol to the Charter and reiterated its support for the Congress' work on monitoring the Charter's implementation.

Another direction for broadening the Charter's implementation is to lay stress on human rights.⁵² The work of local governments in a decentralised system has a wide range of human rights implications through public service provisions, allocation of public resources, etc. Therefore the Congress emphasises the crucial role of local and regional authorities in ensuring conditions for the full exercise of human rights in their communities.⁵³

The Reference Framework on Regional Democracy, adopted by the European ministers responsible for local and regional government in 2009,⁵⁴ stipulates also a relevant body of principles. Even though this Reference Framework is not legally binding, it serves

49 See Council of Europe treaty series No. 207, online accessible at www.conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=207&CM=8&DF=18/03/2013&CL=ENG (March 2015).

50 See Rec. 307 (2011) on Citizen participation at local and regional level in Europe, adopted at the 21st session of the Congress of Local and Regional Authorities of the Council of Europe, taking place on 18–20 October 2011 in Strasbourg.

51 See CM/Cong (2012) Rec. 307, reply to 'Citizen participation at local and regional level in Europe' Congress of Local and Regional Authorities of the Council of Europe Recommendation 307 (2011), adopted by the Committee of Ministers on 24 October 2012 at the 1153rd meeting of the Ministers' Deputies.

52 Compare Recommendation 280(2010) revised, Role of local and regional authorities in the implementation of human rights. Adopted according to the tacit adoption procedure (Rule 25 of the Rules of Procedure) by the Congress on 19 October 2011.

53 For detailed account, see Andreas KIEFER: *Human Rights: Local and regional authorities in action* = eds. Wolfgang Benedek et al.: *European Yearbook on Human Rights*, NWV, 2011, 483–495.

54 See Council of Europe Reference Framework for Regional Democracy, adopted at the 16th Session of the Council of Europe Conference of Ministers responsible for Local and Regional Government on 16–17 November 2009.

as a source of inspiration for member states, through guidelines that can be used by national authorities when establishing or reforming regional authorities. Furthermore, the Congress may rely upon it in his monitoring reports regarding regional democracy in its member states.⁵⁵ In the same vein the Committee of Ministers of the Council of Europe encourages the governments of the member states to take account of the Reference Framework for Regional Democracy in connection with policies and reforms, as proposed in paragraph 8b of the recommendation. It recalls that the framework has been prepared jointly by the Congress and the former European Committee on Local and Regional Democracy ('CDLR')⁵⁶ as '*a useful and practical reference for those considering institutional reforms and governance at the regional level, as well as for the Parliamentary Assembly and the Congress in their work.*'⁵⁷

All these examples show that the common European principles of local self-government are not resistant to development. On the contrary, the principles enshrined in the Charter, which are also developed further by other documents, can be considered as a continuously developing living material – similarly to the European Convention on Human Rights, which has been referred to as a "living instrument".⁵⁸ Thus, the Congress is not only restricted to control the compliance of what has been requested years before, but rather to improve the application of these principles and standards. One aim of the Congress therefore is also to reach a full commitment to the Charter, aiming to support and convince all member states to undertake virtually all of the provisions of the Charter.⁵⁹ As important as historical innovations were in the past is the sensibility for new innovations and the progressive development of the status quo. Thus, a fully ratified Charter in all 47 Council of Europe member states remains a challenge to be addressed in order to guarantee and beyond that to improve the common standard of local self-government and democracy in Europe.

55 Cf. KIEFER, *supra* n. 16.

56 Note that the CDLR, which was in existence between 1967 and 2013, aimed at enabling discussions and preparing sessions for the Conference of European Ministers responsible for local and regional government. For more information, see www.coe.int/t/dgap/localdemocracy/CDLR/default_en.asp (accessed in March 2015). The CDLR was now replaced by the European Committee on Democracy and Governance ('CDDG'). For further information, see www.coe.int/t/dgap/localdemocracy/CDDG/default_en.asp (March 2015).

57 See the reply by the Ministers' Deputies of 12 October 2011, CM/Cong(2011)Rec299 final.

58 Compare EUROPEAN COURT OF HUMAN RIGHTS, *Tyrer v. the United Kingdom*, no. 5856/72, 25 April 1978, at para 31: "the Convention is a living instrument which [...] must be interpreted in the light of present-day conditions".

59 See therefore See CPL(21)5, Reservations and declarations to the European Charter of Local Self-Government, 21st Session on 28 September 2011. For more details see KIEFER, *supra* n. 33.