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## Monitoring of the application of the European Charter of Local Self-Government in the Czech Republic

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

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### Summary

This is the third report assessing the implementation of the Charter in the Czech Republic since the country ratified the Charter in 1999.

The rapporteurs conclude that the system of local self-government in the country is functioning well and point to progress made in this respect since the previous monitoring in 2012.

However, as the report highlights, the government needs to pay particular attention to some specific areas to achieve full compliance with the Charter. For example, local and regional authorities lack commensurate resources to perform their tasks. Coupled with municipal fragmentation this leads to inefficiencies in service delivery. Subnational governments, and in particular regions, are highly dependent on predominantly earmarked grants and transfers from the state, and their own sources of income are not sufficiently diverse and buoyant. Furthermore, despite general compliance with Article 4.6 of Charter, consultation rights of local and regional authorities on all matters that concern them could be enhanced.

Therefore, the report provides a series of recommendations to the national authorities to further increase the degree of compliance with the Charter. These include guaranteeing that funding matches the tasks to be fulfilled, reducing earmarking of grants, diversifying sources of income and strengthening participation and consultation rights of local and regional authorities' associations, in particular, on parliamentary initiatives and emergency legislation. The rapporteurs also suggest further promoting and supporting intermunicipal co-operation to counter the effects of fragmentation.

Finally, the Czech Republic is invited to ratify Articles 4.5, 6.2 and 7.2 of the Charter that it did not ratify in 1999 but with which it complies in practice and sign and ratify the Additional Protocol to the Charter.

<sup>1</sup> L: Chamber of Local Authorities / R: Chamber of Regions.  
EPP/CCE: European People's Party Group in the Congress.  
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.  
ILDG: Independent Liberal and Democratic Group.  
ECR: European Conservatives and Reformists Group.  
NR: Members not belonging to a political group of the Congress.

## RECOMMENDATION 486(2022)<sup>2</sup>

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis 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, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government”;

c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the Congress priorities set up for 2021-2026, in particular priority 6b that concerns the quality of representative democracy and citizen participation;

e. the Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goals 11 on sustainable cities and communities and 16 on peace, justice and strong institutions;

f. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

g. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

h. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities, adopted on 4 April 2019;

i. The previous Congress recommendation 319 (2012) on the monitoring of the European Charter of Local Self-Government in the Czech Republic [Recommendation 319(2012)].

j. the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in the Czech Republic [CG(2022)43-17].

k. the contemporary commentary on the explanatory report to the European Charter of Local Self-Government [CG-FORUM(2020)02-05] adopted by the Congress Statutory Forum on 7 December 2020.

2. The Congress points out that:

a. The Czech Republic joined the Council of Europe on 30 June 1993, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 28 May 1998 and ratified it on 7 May 1999. The Charter entered into force in respect of the Czech Republic on 1 September 1999. The Czech Republic does not consider itself bound by Article 4, paragraph 5; Article 6, paragraph 2; Article 7, paragraph 2; Article 9, paragraphs 3, 5 and 6 of the Charter.

b. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as the Monitoring Committee) decided to examine the situation of local and regional democracy in the Czech Republic in the light of the Charter. It instructed Mr Viorel FURDUI (Republic of Moldova, ILDG) and Mr Jani KOKKO, Finland (R, SOC/G/PD), with the task of preparing and submitting to the Congress a report on the implementation of the Charter in the Czech Republic

c. The monitoring visit took place from 2-4 March 2022. The Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the monitoring visit is appended to the explanatory memorandum.

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<sup>2</sup> Debated and adopted by the Congress on 26 October 2022, 2nd Sitting (see Document [CG\(2022\)43-17](#), explanatory memorandum), co-rapporteurs: Viorel FURDUI, Republic of Moldova (L, ILDG) and Jani KOKKO, Finland (R, SOC/G/PD).

*d.* The co-rapporteurs wish to thank the Permanent Representation of the Czech Republic to the Council of Europe and all those with whom they had exchanges during the monitoring visit.

3. The Congress notes with satisfaction that in the Czech Republic:

*a.* The system of local democracy is functioning well, and the principles of the Charter are reflected in the political and administrative processes.

*b.* The Czech legal order protects the rights of self-governing authorities and facilitates citizens' participation in local affairs.

*c.* Many positive developments have taken place since the previous monitoring visit. These include simplification of the system of territorial division of the Czech Republic (2020); strategic development of the public administration system; an increase in the share of taxes for municipalities and regions; effective use of technology and clarification of the system for remunerating local elected officials.

4. The Congress notes that the following points call for particular attention:

*a.* High dependence on central financing, particularly by the regions and frequently, a mismatch between the funding provided and the actual cost of implementing delegated tasks.

*b.* The fragmented nature of the local government structures characterised by many small municipalities with limited administrative capacity and financial resources.

*c.* Diversification and buoyancy of subnational finances is affected by municipalities' limited options for new sources of funding and the bounded potential for establishing and increasing local taxes.

*d.* Although the system of consultation with local and regional authorities and their associations is functional, it would benefit from enhancing their involvement in decision-making processes for all matters that concern them directly.

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the authorities of the Czech Republic to:

*a.* ensure that any transfer of competences to subnational authorities is guaranteed by adequate financial resources and reduce earmarking of grants and transfers to increase subnational financial autonomy;

*b.* further develop and support inter-municipal cooperation to address the effects of fragmentation on municipalities' administrative and financial circumstances. Meanwhile, implement plans to increase access to training opportunities for local government officials and provide developmental, administrative and technical support for smaller municipalities;

*c.* based on consultation with local and regional authorities and their associations, explore opportunities to diversify subnational income sources, by, for example, enabling greater fiscal autonomy at the subnational level, in order to strengthen subnational capacity to adapt to new circumstances and various needs;

*d.* strengthen the participatory and consultation rights of associations of local and regional authorities, in particular on parliamentary proposals and on emergency legislation which impacts on local self-government;

*e.* progress plans to ratify provisions of the Charter (Articles 4.5, 6.2, 7.2). by which the Czech Republic is not currently bound but complies with in practice;

*f.* sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207).

6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in the Czech Republic and the accompanying explanatory memorandum in their activities relating to this member State.

## EXPLANATORY MEMORANDUM

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## **1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE**

1. Pursuant to Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities (hereinafter referred to as “the Congress”) appended to Statutory Resolution CM/Res (2020)1, the Congress regularly prepares reports on the state of local and regional democracy in Council of Europe member States. The monitoring missions of the Congress pursue the overall aim of guaranteeing that the commitments entered into by member states when ratifying the European Charter of Local Self-Government (hereinafter “the Charter”, ETS No. 122) are fully honoured.

2. The Czech Republic joined the Council of Europe on 30 June 1993 and is one of the parties to the European Charter of Local Self-Government, which it ratified with reservations, on 7 May 1999, and entered into force on 1 September 1999. The Czech Republic has neither signed nor ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of local authorities (CETS No. 207).

3. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in the Czech Republic vis á vis the Charter. A delegation from the Congress of Local and Regional Authorities of the Council of Europe, composed of rapporteurs Viorel Furdui (Republic of Moldova, ILDG) and Jani Kokko (Finland, SOC/G/PD), was appointed to carry out a monitoring visit in Prague, Brno, Jihlava and Velký Beranov from 2 to 4 March 2022. To assess application of the Charter, the rapporteurs held exchanges of views on the latest developments in the field of local and regional self-government in the Czech Republic with a deputy Minister of the Interior and a deputy Minister of Finance, representatives of the Ministry for Regional Development, Parliament, the Constitutional Court and the Public Defender of Rights. Meetings were also held with the mayor of Prague and representatives of the municipalities of Jihlava and Velký Beranov, as well as with the Governor of the Central Bohemian Regional Council. The Congress delegation met with members of the Czech national delegation to the Congress and with the representatives of the Association of Regions of the Czech Republic and the Union of Towns and Municipalities of the Czech Republic.

## **2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK**

### **2.1 Local government system (constitutional and legislative framework, reforms)**

4. The Czech Republic has a surface area of 78,867 sq km and a population of 10.7 million, of whom almost three quarters live in urban areas. Since the end of the Cold War and particularly since the establishment of the Czech Republic in 1993 after the dissolution of Czechoslovakia, significant political, economic and administrative changes have occurred. A member of NATO since 1999 and the EU since 2004, the Czech Republic has been supported by the IMF and World Bank since 1993. It is also a member of the United Nations and the OECD.

5. The Czech Republic is a parliamentary democracy with constitutional separation of legislative, executive, and judicial powers. The Parliament is bicameral and comprises an upper house, the Senate, and a lower house, the Chamber of Deputies. The Chamber of Deputies has 200 members elected for a four-year term and the Senate has 81 members elected for a six-year term. The formal head of the state is the president who (since 2013) is directly elected by citizens for a five-year term. Government is led by the Prime Minister. Following elections in October 2021 the centre right SPOLU coalition of three conservative parties (the Civic Democratic Party, the Christian Democrats and the TOP 09 party) together with the coalition of mayors and the Pirate party now holds the majority in the Parliament. The coalition won a mandatory vote of confidence in the lower house of parliament in January 2022.

6. Since the collapse of the communist regime, democratising and decentralizing reforms were implemented at all levels in the Czech Republic. The embedded cultural/historical traditions and values combined with strong aspirations towards democracy to enable a rapid return to democratic values and the institutionalisation of strong local democracy. Important legislation regarding sub-national government includes the Law on Municipalities (Municipal Order) No. 128/2000 Coll.); the Act on Determination of Municipalities with Authorised Municipal Office No. 314/2002; the constitutional Act on the Higher Self-Governing Territorial Units No. 347/1997, Act on the Capital City of Prague No. 131/2000 Coll. and the Act on Regions No. 129/2000. Other legislation regulates the management of sub-national government or specifies its responsibilities. Such legislation includes Act 250/2000 on Budgetary Rules for Territorial Entities; the Law on Tax Assignment (Act 243/2000 Coll.); the Law on Accounting (Act 563/1991 Coll.); the Law on Local Government Audit (Act 240/2004 Coll.); the Law on Education (Act 561/2004 Coll.) and the Law on Roads (Act 13/1997 Coll.).

7. The Republic is a unitary State with a two-tier subnational government system which comprises regions and municipalities. There are 13 regions in addition to Prague which has special status as both a municipality and region. The municipal level includes municipalities, towns (*mesto*) and 26 statutory cities (*statutarni mesto*). Each statutory city is entitled to decide whether it would like to be divided into municipal districts or not. For example, Hradec Králové is a statutory city, but it is not divided into municipal districts whereas Pardubice does have municipal districts. There is enduring local support for the right of municipalities to elect self-governing bodies regardless of the size of the territory or the population. One of the particularities of the Czech system is the high number of municipalities. The number of municipalities has doubled since 1990 due to a law that enabled municipalities to split. There are currently 6,254 municipalities.<sup>3</sup> This results in fragmentation and varying capacity. The 2000 Act on Municipalities includes an option for voluntary municipal mergers. However, there is little impetus or enthusiasm for amalgamation and many municipalities remain resistant to merging, although inter-municipal co-operation is common.

8. Municipalities vary significantly in size and population and carry out a range of own competences and delegated competences. Almost 90% of municipalities have fewer than 2 000 inhabitants and close to one quarter of municipalities have a population below 200.<sup>4</sup> In 2000, a requirement of at least 1 000 inhabitants for the creation of a new municipality was introduced. Until 2016, some citizens of the Czech Republic lived permanently in the territory of four military districts without the possibility of self-government. The inhabited areas were set aside as of 2016, creating 6 new municipalities. While all municipalities have equal status, delegated competences are not the same for all municipalities and are allocated according to the size and capacity of municipalities. Formal districts exist for statistical purposes and for the territorial dimension of some aspects of state administration. In 2020, an Act on Territorial Division of the State was passed by the parliament to complete the transition from districts to municipalities in order to streamline the system and increase efficiency.

9. Municipalities are divided into three categories according to the scope of their delegated responsibilities:

- 205 municipalities with '*extended powers*',
- 1,036 municipalities with some *delegated powers* (e.g., registry office, building authority), including 183 municipalities with an *authorised municipal authority*
- and the remaining units which are "*basic*" municipalities.

10. Municipal competences include education (pre-elementary, primary, and lower secondary education), agriculture and forest management, housing, primary health care, social care services, local roads and public transport, water and waste management. Some municipal competences are currently being re-allocated from small municipalities to larger ones and to the central government within the framework of the Social Reform process.

11. Regional responsibilities include upper secondary education, regional roads, public transport, health care/general hospitals, economic development and planning, social assistance for disadvantaged groups, the environment and regional development.

12. The basis for local self-government is outlined in the Constitution of the Czech Republic 1993. Article 8 guarantees the right of autonomous territorial units to self-government. Article 99 defines municipalities as the basic territorial self-governing units and regions as higher-level territorial self-governing units. Article 100 specifies that territorial self-governing units are territorial communities of citizens with the right to self-government. Article 101 defines territorial self-governing units as public law corporations which may own property and manage their affairs and budget. It also affirms that the state may intervene in the affairs of territorial self-governing units only if such action is required for the protection of the law and only in a manner provided for by statute. Article 87 gives the Constitutional Court jurisdiction over constitutional complaints by the representative body of a self-governing unit against an unlawful encroachment by the state.

## 2.2 Status of the capital city

13. Prague's status is regulated by a special act (the Act on the Capital City of Prague No. 131/2000, as amended) designating Prague as both a municipality and a region. Since 2002 it has been divided into 57 city boroughs and 22 administrative districts which have similar scope to municipalities with extended power.<sup>5</sup> Under the law, the city is divided into municipal districts, each with its own elected local council. The relationship between the capital and its districts is defined by Act 131 and various bylaws issued by the City of Prague. The most significant difference between Prague city districts and statutory city districts is the fact that the

<sup>3</sup> OECD(2021)ECO/WKP(2021)3

<sup>4</sup> Ibid, 7

<sup>5</sup> EU/Ministry of the Interior (2018) *Public Administration in the Czech Republic*, p 21.

administrative courts stated that Prague city districts have the right to local government (under certain circumstances), whereas the statutory city districts do not have this right. For example, Prague city districts are entitled to bring an action against Prague Land Use Plane (Zoning Plan) whereas the statutory city districts are not entitled to bring such action.

14. In accordance with the Act on the Capital City of Prague, the Prague Assembly consists of between 55 and 70 members (currently 65 members). Members are elected for a four-year term. The Prague City Council is the executive body. It has 11 members, elected by the City Assembly. It is composed of the Mayor, 4 Deputy Mayors and 6 Councillors. The City Council is accountable to the Assembly for its actions.

15. The Mayor of Prague is elected by the Assembly and is accountable to the Assembly for the performance of his or her duties. Some mayoral actions require prior approval of the Assembly or the Council. The Mayor represents the City of Prague externally. The mayor of Prague was selected by the platform “Mayors of Europe” as one of the five best mayors in Europe in 2021.<sup>6</sup>

### 2.3 Legal status of the European Charter of Local Self-Government

16. The Czech Republic joined the Council of Europe on 30 June 1993. It ratified the European Charter for Local Self-Government (ETS 122, hereafter “the Charter”), with reservations, on 7 May 1999, with entry into force on 1st September 1999. According to a declaration submitted at the time of ratification (see Article 12 of the Charter), the Czech Republic does not consider itself bound by Article 4, paragraph 5; Article 6, paragraph 2; Article 7, paragraph 2; Article 9, paragraph 3, paragraph 5 and paragraph 6.

17. The Czech Republic has neither signed nor ratified the Additional Protocol on the right to participate in the affairs of a local authority (CETS 207). During the consultation procedure, the rapporteurs got informed by central government interlocutors that any potential extension of rights for foreigners is associated with high political sensitivity, as the ratification process of the European Convention on the Participation of Foreigners in Public Life at Local Level (ETS 144) has shown. Reluctance to ratify the Additional Protocol is linked to concerns about the provision of Article 1, paragraph 4-2, which would allegedly foresee, under certain conditions, the extension of the right to vote at local level to persons other than citizens. Interlocutors perceive this as both a legislative and political obstacle. The precise wording of paragraph 4.1 of Article 1 is as follows: ‘Each Party shall recognize by law the right of nationals of the Party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside’. The Explanatory Report to the Additional Protocol (CETS 207) clarifies this provision, stating that ‘the Additional Protocol does not oppose the granting of electoral rights by the Party to other persons, such as nationals not resident in the local authority or non-nationals. If the Party chooses to grant such a right, this provision requires it to do so by law. This paragraph does thus not provide for an individual electoral right of non-nationals of the Party’<sup>7</sup>. Furthermore, paragraph 4.2, that refers to foreign residents, leaves it to each State to legislate on foreign residents’ right of participation. Accordingly, the Rapporteurs encourage the Czech Republic to sign and ratify the Additional Protocol.

### 2.4 Previous Congress reports and recommendations

18. Previous monitoring visits were made in 1999 and 2011. The 1999 visit Report CG (7) 4 included recommendations concerning: increasing the municipalities’ and regions’ own powers; the setting up of administrative courts to review the lawfulness of municipalities’ and regions’ activities; reform of local finance and increased training of territorial authority staff. There was also a strong recommendation to reduce the scope of the declaration which had been lodged when ratifying the European Charter of Local Self-Government.

19. The 2011 visit led to adoption of Recommendation 319 (2012) which commended the progress which had been made with regard to the legal framework for local self-government; consultation processes; the creation of a regional tier of government (as recommended following the 1999 visit) and the *de facto* implementation of Articles 4 (paragraph 5) and 9 (paragraphs 3, 5 and 6) of the Charter despite these articles not being ratified. The Congress drew attention to:

- the centralised system of financing
- the fragmented nature of the municipal level
- the need to legally underpin consultation mechanisms
- the need to simplify and co-ordinate central administrative controls
- the need to align financing with the obligations of delegated tasks

<sup>6</sup> See <https://mayorsofeurope.eu/news/2021-report-mayor-prague-hrib/?fbclid=IwAR0LIPWZ69OppLFttwmN9n6gJbP5uVvAwHoNVY0ZzU6bXt54-TvbBc021Po>

<sup>7</sup> CETS 207 - Explanatory Report to the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (coe.int)

20. The report also urged ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority as well as the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159).

### **3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)**

#### **3.1 Article 2 – Constitutional and legal foundation for local self-government**

##### **Article 2**

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

21. The Constitution of 16 December 1992 provides the framework for local government in the Czech Republic. Article 8 guarantees the right of autonomous territorial units to self-government. Chapter 7 Territorial Self-Government (Articles 99-105) contains detailed provisions on territorial self-government. Article 99 differentiates between local and regional levels of self-government specifying that the Czech Republic is subdivided into municipalities, which are the basic territorial self-governing units, and into regions, which are the higher territorial self-governing units. Article 101 (paragraph 3) establishes the legal status of territorial self-governing units as public corporations with their own property and budget while Article 4 of Article 101 (paragraphs 1 and 2) and Article 102 confirm the democratic character of local self-government at the constitutional level through the institutionalisation of elected representative bodies. The Constitution also states (Article 105) that territorial self-governing units will share in the exercise of state power on the basis of statutory authorisation.

22. Several legal texts exist regarding local and regional government, e.g., the Law on Municipalities (Act No. 128/2000) and the Law on Regions (Act No. 129/2000) which recognised the regions as autonomous entities and transferred a series of responsibilities to the new entities; Act No. 131/2000 which governs the capital city of Prague and Act No. 314/2002 which defines the different types of municipalities.

23. Thus, the principle of local self-government is expressly recognised in both the Constitution and in domestic legislation and is respected in practice. Therefore, the Rapporteurs conclude that Article 2 of the Charter is complied with in the Czech Republic.

#### **3.2 Article 3 – Concept of local self-government**

##### **Article 3**

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

##### **3.2.1 Article 3.1**

24. Article 104 of the Constitution clearly states that the representative bodies of municipalities shall have jurisdiction in matters of self-government, to the extent that such matters are not entrusted by statute to the representative bodies of higher self-governing regions. Article 105 states that the exercise of state administration may be delegated to self-governing bodies only if such is provided for by statute. Article 101(4) affirms that the state may only interfere with the activities of the territorial self-administering units if it is required to do so by the law, and only within the limits set by the law. These declarations ensure that local government has the right to manage their part of public affairs within the limits of the law. There is more ambiguity about whether the share of public affairs devoted to the regulation and management of local and regional authorities can be described as substantial. Some interlocutors were happy with the range of responsibilities assigned to sub-national levels while others would like further independent competences.

25. Municipalities have a wide range of competences including education, social welfare, urban development, utilities, etc. Some competences are delegated, and some are carried out independently. The Municipal and Region Acts, as amended, make a distinction between autonomous and delegated responsibilities. While municipalities have equal status, they are divided into three categories according to the scope of their delegated responsibilities: 205 municipalities with extended powers (MEPs), 1 036 municipalities with some delegated



powers (e.g., registry office, building authority), including 183 municipalities with an authorised municipal authority and the remainder which are basic municipalities.

26. The small size and low population of some municipalities restrict their functional capacity so inter-municipal collaboration is becoming more common. Some decentralisations had occurred between 2000 and 2015 but some municipal competences are currently being re-allocated from small municipalities to larger ones as part of the move towards 'Client-oriented public administration 2030' (Government Resolution no. 562/2020).

27. Regional responsibilities include upper secondary education, regional roads and public transport, economic development and planning and health. The regions manage their own property and own revenues as defined by law. In legal relationships, a region acts in its own name and bears responsibility for the resulting relationships.<sup>8</sup>

28. Thus, local self-government has the constitutional and legal right to both regulate and manage certain public affairs and has a broad range of responsibilities allocated in line with the capacity of the various types of local government unit. The practice of using municipal statutes reinforces the regulatory role of local government.

29. It is the opinion of the rapporteurs that Article 3.1 is complied with in the Czech Republic.

### 3.2.2 Article 3.2

30. Local authorities in the Czech Republic are composed of members freely elected by secret ballot on the basis of direct, equal and universal suffrage.

31. Art. 102 of the Constitution outlines the basic rules of elections and electoral terms: '*(1) Members of councils shall be elected by secret ballot on the basis of a universal, equal, and direct right to vote. (2) Councils shall have a four-year electoral term. The circumstances under which new elections for councils shall be called prior to the expiration of an electoral term shall be designated by the act.*'

32. Representation and participation at local level are confirmed in the Czech legal system. Residents of a municipality or a region can elect and be elected as members of municipal and regional councils, propose local referendums and attend council sessions to express their opinion.

33. The constitutional basis for referenda is provided by Article 2, paragraph 2 of the Constitution, and detailed rules for municipal and regional referenda are laid down in Act No. 22/2004 concerning municipal referenda and Act No. 118/2012 concerning regional referenda.

34. The rapporteurs consider that Article 3.2 of the Charter is fully complied with in the Czech Republic.

## 3.3 Article 4 – Scope of local self-government

### Article 4

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

### 3.3.1 Article 4.1

35. The basic powers and responsibilities of local authorities are clearly defined in the Czech Constitution. The detailed powers and competences of the municipalities and regions in the Czech Republic can and are set by statute enabling the attribution to local authorities of further power and responsibilities. Radvan *et al* state that issues of self-administration may "only" be regulated by the constitutional act, regular statutes and other laws

<sup>8</sup> EU/Ministry of the Interior (2018) *Public Administration in the Czech Republic*, p 19.

issued based on a special empowerment set forth in a statute'.<sup>9</sup> The various changes that have taken place (some decentralisation up to 2015; the recent recentralisation as well as allocation of new tasks) illustrate the changing range of powers and responsibilities assigned to local and regional government.

36. The Constitution recognises two categories of local self-administration, i.e., municipalities and regions. The Municipal and Region Acts, as amended, make a clear distinction between autonomous and delegated competences. Furthermore, despite the fact that municipalities have equal status as regards autonomous competences, they are, however, divided into three categories according to the scope of their delegated responsibilities.

37. A judgement<sup>10</sup> of the Constitutional Court declared that the constitutional guarantee of the right to self-government is clear while the definition of independent competence in the Constitution is laconic, i.e., left to "ordinary laws". The judgement also stated that the Constitutional Court considers local self-government to be an irreplaceable component in the development of democracy.

38. There is thus, a mix of constitutional, statutory and attributed powers underpinning sub-national governance in the Czech Republic. The Rapporteurs conclude that Article 4.1 is complied with in the Czech Republic.

### 3.3.2 Article 4.2

39. Local authorities in the Czech Republic do have discretion. However, interlocutors perceive this discretion as somewhat constrained by the increasing amount of detailed state or regional regulation/supervision of their activities. Municipalities must observe government decisions and directives of the central administrative offices published in the Government Bulletins for the bodies of the regions and municipalities. When executing delegated powers, they must also act in compliance with other measures issued by the bodies of public administration but adapted during reviews of the delegated authority.

40. Representative bodies have, within the limits of their jurisdiction, the power to issue generally binding ordinances, a power which implies initiative. One of the independent powers of regions is legislative initiative.

41. Although some interlocutors feel the large share of earmarked transfers could be seen as a centralisation mechanism because it leaves little room for local government discretion, it is generally held that local and regional authorities have discretion and may exercise initiative.

42. The rapporteurs are of the opinion that Article 4.2 is complied with in the Czech Republic.

### 3.3.3 Article 4.3

43. Local government responsibilities in the Czech Republic are generally exercised by the authorities closest to the citizens. The independent powers of the municipalities cover the activities that are perceived to be in the interest of the municipality and its residents, enabling adaptation of operations to local conditions. Article 104(2) of the Czech Constitution states that the Municipal council shall have jurisdiction in matters of self-government, to the extent such matters are not entrusted by the act to the council of higher self-governing unit.

44. Interlocutors referred to the constitutional designation of the Czech Republic as a unitary state. Therefore, it is not possible to apply different legal norms regulating the same sphere for individual territorial units. However, in practice, local conditions are taken into account on the basis of the 'administrative discretion' of the decision-making body.

45. The 2000 Act on Municipalities promotes inter-municipal cooperation in the form of contracts for performing certain functions, establishment of voluntary municipal association and the creation of "mutual-interest associations of legal persons". Such collaboration is common but ad hoc. Different types of cooperation exist and there is some overlap in the functions carried out by each association as no overarching legislative rules and recommendations are in place.<sup>11</sup> Interlocutors from smaller units were concerned that the complexity of administration and tasks and the lack of clarity in the description of the respective governmental tasks could weaken subsidiarity.

46. As in other countries, the extent of subsidiarity is entwined with the financial powers of local government and

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9 Radvan, M., Mrkývka, P. and Schweigl, J., (2021) Local Self-Government in Czech Republic. *Boštjan Brezovnik, Istvan Hoffman, Jaroslav Kostrubiec. Local Self-Government in Europe*, 1, pp.89-120.

10 Pl. ÚS 34/02 of 5 February 2003

11 [OECD \(2021\) ECO/WKP\(2021\)3](#), p. 17

the opportunities and capacity they have to finance and deliver particular activities as well as the range of 'own competences' for which they are responsible.

47. There is occasional disquiet about the levels to which certain tasks are allocated. A new Building Act caused lots of controversy and illustrates this unease. The Act changes the locus of authority, creating new state authorities to apply the New Building Act whereas currently the municipalities have delegated competence to serve as building authorities in the Czech Republic. Furthermore, statutory cities want their own municipal building regulations similar to those enjoyed by Prague prior to the new Act. Municipalities believe that, for example, moving decisions about tree-felling to MEPs (municipalities with extended powers) is inappropriate. The new government is considering further amending the Act. Similarly, municipalities feel that the misdemeanour agenda which is within the delegated competence of the municipalities of type I should be transferred to a higher level, e.g., MEPs because this task should be performed by a competent person (lawyer).

48. The rapporteurs conclude that tasks are allocated in a manner which seeks transparency and that tasks are, to date, generally assigned to the appropriate level. Notwithstanding the multiplicity of municipalities which dilutes effectiveness and efficiency, Article 4.3 is considered to be complied with.

#### 3.3.4 Article 4.4

49. Article 104(2) of the Czech Constitution states that the Municipal council shall have jurisdiction in matters of self-government, to the extent such matters are not entrusted by the act to the council of higher self-governing unit. This underlines the non-hierarchical relationship between the municipalities and the regions. Furthermore, only the judiciary may decide with binding effect upon contested questions regarding the limits to the powers of local and regional authorities under the law.

50. As stated earlier, there are differing categories of municipality with differing powers. The MEPs carry out a selected list of delegated competencies for other municipalities but within a collaborative, not hierarchical relationship.

51. The rapporteurs conclude that Article 4.4 is complied with in the Czech Republic.

#### 3.3.5 Article 4.5

52. Article 4.5 of the Charter has not been ratified by the Czech Republic. However, in practice, there is *de facto* application. Municipalities and regions can regulate the exercise of state administration within their competence by means of a decree. Local circumstances and what interlocutors referred to as 'certain specificities' may be taken into account which indicates 'administrative discretion' for the decision-making bodies. Furthermore, the fact that in the Czech system there is a need for a judicial decision in cases where a local or regional authority disagrees with central government on the extent and/or substance of its responsibilities under the law makes Czech law compliant with the obligation under the Charter.

53. During discussions, interlocutors indicated that the Czech Republic could, in principle, proceed seamlessly to ratification of the provisions of Article 4.5 with regard to formally articulating the power of municipalities to adapting the exercise of delegated powers to local conditions. The rapporteurs encourage the Czech Republic to ratify this Article since in their view, though not ratified, this provision is respected in the country.

#### 3.3.6 Article 4.6

54. The Municipalities Act, the Regions Act and the Act on the Capital City of Prague each enshrine a general obligation of the State to consult with local self-governments on matters concerning them.

55. The Legislative Rules of the Government define the regions and associations of municipalities as 'mandatory consultative bodies'. However, the only mandatory consultation included, refers to the preparation of legislation which refers to the independent or delegated competences of municipalities. Thus, when a government bill is being prepared which concerns the competences of the municipalities, the bill must be discussed with the regions, Prague, and associations representing the municipalities. It was also mentioned by interlocutors that sometimes local and regional authorities' comments are not considered, despite engagement in consultative processes.

56. Interlocutors referred to both formal and informal consultation processes with representatives of interest associations of municipal and regional self-governments or meetings with certain groups of representatives of local and regional authorities e.g., mayors, regional governors, secretaries of authorities. Representatives of the local authorities and their associations are full members of the Government Council for Public Administration which enables them to influence the processes and measures adopted. A Board of Deputy Ministers for

Regulatory Reform and Effective Public Administration was established in 2007. Among its statutory members are the Union of Municipalities and the Association of Regions.

57. The obligatory impact assessment of new regulation requires examination of the impacts on local and regional authorities which usually involves consultation with them.

58. Involvement in EU and transnational programmes has enhanced consultation by involving regions, municipalities and communities in planning and implementation of the programmes.

59. The Covid 19 crisis uncovered some lacunae in the consultative processes. The approval of legislation in an "emergency regime" did not require mandatory consultation with the Union of Towns and Municipalities nor was it necessary to have thorough impact studies. This meant that municipalities were not always informed or aware of the financial implications of the adopted legislation. The lack of consultation about parliamentary proposals and emergency legislation which particularly impacts on local self-government was a concern for some interlocutors. It must be remembered, however, that as the Explanatory Report of the Contemporary Commentary on the Charter asserts 'exceptional circumstances may override the consultation requirement particularly in cases of urgency'.<sup>12</sup>

60. Many interlocutors drew attention to the legal obligations and institutionalised procedures for consultation and the active role of the representative bodies for municipalities and regions in consultation processes. Some interlocutors, however, perceived as ad hoc, the nature of some consultation e.g., on specific matters such as preparation of essential legislative documents or on non-legislative measures.

61. It is the opinion of the rapporteurs that statutory requirements for consultation are observed in the Czech Republic and there is general compliance with Article 4.6, but improvements should be made by expanding the formal mechanisms of consultation with local and regional authorities and their representative bodies, in particular, with regard to parliamentary proposals and emergency legislation which impacts on local self-government.

### 3.4 Article 5 – Protection of local authority boundaries

#### Article 5

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

62. Under Czech law, decisions to amalgamate two or more municipalities are based upon an agreement between the relevant municipalities (Act No. 128/2000). Assemblies of the affected municipalities enter into an agreement to merge or connect, if there is not an application for holding a local referendum on this issue within 30 days from publication of this decision, then it becomes valid, otherwise it is subject to approval by local referendum. During the meetings, the rapporteurs heard no complaints concerning the disrespect of Article 5 in practice.

63. Therefore, the obligation to consult about boundary adjustments seems respected and the Rapporteurs consider that the situation in the Czech Republic is compliant with the requirements of Article 5 of the Charter.

### 3.5 Article 6 – Appropriate administrative structures and resources

#### Article 6

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

#### 3.5.1 Article 6.1

64. Although the relationship between central and local government in the Czech Republic is clearly specified and regulated, local government units do have authority to adapt their internal administrative structures to local needs, within the applicable laws (mainly Act No. 129/2000 Coll., on Regions (Regional Establishment) and Act

<sup>12</sup> The contemporary commentary on the explanatory report to the European Charter of Local Self-Government adopted by the Congress Statutory Forum on 7 December 2020, at <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-1680a06149> CG-FORUM(2020)02-05final, p. 17.

No. 128/2000 Coll., on Municipalities (Municipal Establishment). Each municipality has its own set of bodies: municipal council, municipal board, mayor and municipal office. Each municipal council has between 5 and 55 members, according to the number of inhabitants in the municipality. The executive body is the municipal board consisting of a mayor and between 5 and 11 members elected from among the council members.

65. While local government has a duty to establish financial and controlling committees, municipal boards may choose which other committees to establish and the objectives of the committees, the number of their members etc., reflecting the circumstances of the municipal board. Similarly, the 26 'statutory cities' (Art. 4 of the Municipalities Act) may decide to create town districts or quarters with their own committee structures.

66. It was clear from the interlocutors that there is general satisfaction and a belief that the current variety of structures facilitates effective management and decision-making, good administration and appropriate policies aimed at meeting collective needs and expectations.

67. The rapporteurs note that municipalities and regions are able to set their own internal administrative structures and may adapt them to the local needs so that effective management is ensured. Consequently, the Rapporteurs are satisfied that Article 6.1 is complied with in the Czech Republic.

### 3.5.2 Article 6.2

68. When ratifying the Charter, the Czech Republic excluded the legal effect of Article 6.2. Nevertheless, it can be asserted that the norms currently in place in the Czech Republic comply with the Charter principles. Sub-national government has discretion regarding recruitment and allocation of roles within their administrative and technical services. The Act on Officers of Territorial Self-Administration Units (Act no. 312/2002 Sb., as amended) regulates the status and obligations of officials working within local government. In the past, it was felt that any centrally imposed training programmes, career pathways etc. could be considered as interference in the autonomy of local and regional authorities.<sup>13</sup> However, Act 312/2002 provides for a progressive system including compulsory initial education, continuous education, education of senior officials and special professional qualifications for individual administrative activities.

69. During the consultation procedure, the Ministry of the Interior highlighted revision of the Civil Servants Act to enable digitalisation of public administration and expand education and knowledge for local government officials, taking into account the particular issues of small municipalities. This is envisaged to free them from burdens caused by the verification of knowledge from activities which do not correspond to the scope of performance of their administrative activities.

70. The Contemporary Commentary on the Charter<sup>14</sup> urges that local authority employees should be entitled to training opportunities, remuneration and career opportunities similar to employees at other levels of government so that local authorities can establish a sound and efficient staff policy. This appears to be the situation in the Czech Republic so the requirements of Article 6.2 could easily be institutionalised. This would be in keeping with the aspirations of the *Client Orientated Public Administration 2030* strategy. During discussions, the Ministry of the Interior indicated that this is one of the Charter provisions which is under consideration for ratification.

## 3.6 Article 7 – Conditions under which responsibilities at local level are exercised

### Article 7

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

### 3.6.1 Article 7.1

71. The conditions of office of local elected representatives are primarily laid down in the Municipalities Act, Regions Act and the Act on the Capital City of Prague. There is also general protection of the rights mentioned in Article 7 of the Charter, in the Charter on the Fundamental Rights and Freedoms, which is a part of the Czech constitutional order. Arts. 69 and 70 of the Municipalities Act state that any member of the local government

<sup>13</sup> Congress report on local and regional democracy in the Czech Republic [CG 22/6 \(2012\)](#).

<sup>14</sup> The contemporary commentary on the explanatory report to the European Charter of Local Self-Government adopted by the Congress Statutory Forum on 7 December 2020, at <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

holds his or her office personally and cannot be deprived of any employment rights because of being elected and holding political office.

72. During the visit, interlocutors affirmed that the current conditions of office of local and regional elected representatives facilitate them to perform their duties. However, some issues arise regarding access to information in the case of disagreements.

73. Interlocutors pointed out that due to resource issues, there can be delays in responding by municipalities so currently, it is more advantageous for local representatives to request information via the Act on Free Access to Information, than rely on direct contact with the municipality.

74. The rapporteurs consider that Article 7.1 is complied with in the Czech Republic.

### 3.6.2 Article 7.2

75. The Czech Republic has not ratified Article 7.2 regarding financial compensation to elected representatives. Such questions are left to the discretion of the local and regional councils.

76. However, the Municipalities Act designates two categories of local government members: (i) members of local government who are released from their employment so that they can fulfil the duties connected with the office and (ii) those who were not released. The former obtain remuneration from the municipality, whereas the latter are granted leave by their employer with a salary compensation for performance of their office and are only compensated by their employer for the time they spend working for the municipality. The salary compensation is later repaid by the municipality. On the basis of a decision of the municipal council, the unreleased representatives may also receive remuneration (the unreleased mayor is always remunerated).

77. The opinion of the rapporteurs is that in practice, there is *de facto* application of Article 7.2 since the municipal assembly can decide the question of compensation and other relevant questions. The Rapporteurs were informed that discussions are underway about ratification of Article 7.2.

### 3.6.3 Article 7.3

78. There are few barriers to holding elective office in the Czech Republic. Those that exist refer to those with restricted legal capacity and those serving a prison sentence. These restrictions are specified in Act No. 491/2001 Coll., on Municipal Elections. A further condition, which does not preclude election as a member of the municipal council, but rather the subsequent exercise of the mandate, is the condition set out in Section 5(2), (3) and (4) of the Elections Act, which addresses the issue of incompatibility of offices.

79. The principles underpinning in Article 7.3 of the Charter are evident in the Czech Charter on Fundamental Human Rights and Freedoms. Article 21 declares that all citizens shall have equal access to offices, i.e., shall have a right to run for an office, for instance, in local government. Compliance with these rights and freedoms is reviewed by the Constitutional Court.

80. Thus, any functions and activities which are deemed incompatible with the holding of local elective office are determined by statute or fundamental legal principles. Consequently, the Rapporteurs conclude that Article 7.3 is complied with in the Czech Republic.

## 3.7 Article 8 – Administrative supervision of local authorities' activities

### Article 8

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

### 3.7.1 Article 8.1

81. There is a complex method of supervision of local authorities within the Czech governance system based, particularly, on provisions in the Competence Act; the Municipalities Act (Articles 123, 124 and

129a are provisions concerning own competences, whereas Articles 125 and 129b concern the exercise of delegated competences and the supervision thereof); the Regions Act (Arts. 81, 82 and 87 deal with own competences whereas the supervision of exercise of state-administration is regulated by Articles 83, 84 and 88) and the Act on the Capital City of Prague. There are different approaches to supervision of the exercise of delegated and independent powers. Delegated competences are supervised in a hierarchical manner. The respective ministries supervise the regions, and the regions supervise the municipalities. The Ministry of the Interior has general supervisory authority over the independent competences of municipalities and regions. Where there is a specialised supervisory authority, it will carry out the inspection instead of the Ministry (parallel to it). A similar approach is used for the review of auditing, public procurement, etc.

82. Control of the management of territorial self-government units is regulated by Act No. 420/2004 Coll., on the review of the management of territorial self-government units and voluntary associations of municipalities, and Act No. 320/2001 Coll., on financial control in public administration. Such reviews focus on budgetary management, financial operations, property management, procurement procedures etc. The reviews in municipalities are carried out by regional authorities or independent auditors. The Ministry of Finance is entrusted by law with supervision of the reviews carried out by the regional authority or the auditor. In addition to this, Ministry of finance carries out reviews of regions. The Supreme Audit Office (SAO), an independent body, reviews the expenditure on delegated competences but not expenditure on 'resources collected by municipalities or regions under their independent jurisdiction' (Act 166/1993, Part 2, Section 3).

83. Interlocutors referred to the role of Ministry of the Interior in identifying, assessing and informing statutory supervisory acts within the multi-level system of governance. It was also pointed out that breaches of civil, commercial or labour law or financial control in public administration or the management of local authorities are dealt with by other bodies such as auditors, regional authorities or the Ministry of Finance.

84. The type of supervision that takes place is aimed at ensuring compliance with the principles of the rule of law and with fulfilment of the defined roles of public authorities, the protection of citizens' rights and the effective management of public resources. Some interlocutors mentioned the increasing bureaucratic burden resulting from the supervisory processes which sometimes puts a strain on local authorities' limited administrative resources. Other interlocutors drew attention to a non-systematic transfer of supervisory powers to central state administration bodies with specific sub-agendas. For example, since 2012, the Office for the Protection of Competition has had the power to supervise the performance of local governments in the field of protection of competition. In practice, this has led to the sanctioning of local governments for issuing generally binding decrees, the assessment of which has previously been exclusively entrusted to the Ministry of the Interior.

85. Supervision of Czech local authorities is exercised according to processes and procedures specified by the constitution or by statute. Therefore, the rapporteurs conclude that Article 8.1 is complied with in the Czech Republic.

### 3.7.2 Article 8.2

86. Control activities are carried out by the Ministry of the Interior with a focus on checking compliance with legislation by local and regional authorities when implementing their own spheres of competence. Such inspections may be carried out physically or remotely. If a municipal ordinance or other decision taken by the bodies of the municipality does not comply with the legal order, they may be revoked by the Constitutional Court. The Ministry notifies the municipality or region of the defects and suspends the validity of ordinances giving them time to fix them, or without due delay, if the decisions interfere with the fundamental rights.

87. If agencies of central government believe that territorial authorities have acted contrary to the law, and corrective action has not been taken, any further action is systematically left to the judicial branch of government.

88. The rapporteurs conclude that supervisory activity is generally focussed on ensuring compliance with the law and with constitutional principles. Therefore, Article 8.2 is complied with in the Czech Republic.

### 3.7.3 Article 8.3

89. The decrees which deal with reviews of the actions and management of territorial self-government units ensure that supervisory activities are proportionate. Article 101 (4) of the Czech Constitution decrees that 'the state may intervene in the affairs of territorial self-governing units only if such is required for the protection of law and only in the manner provided for by statute'. Proportionality of supervisory activity is reinforced through the legal system. As Radvan *et al* assert 'in the Czech Republic, the normative acts form a system in which the strongest are the constitutional acts, followed by the "regular" acts. The least power is assigned to a minister's

ordinances or government decrees'.<sup>15</sup>

90. Despite the complexity of the supervisory system, local governments units retain discretion, and the judiciary is the final arbiter of transgression. Thus, intervention by controlling authorities is kept in proportion to the importance of the interests which it is intended to protect. The rapporteurs consider that Article 8.3 is complied with in the Czech Republic.

### 3.8 Article 9 – Financial resources

#### Article 9

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

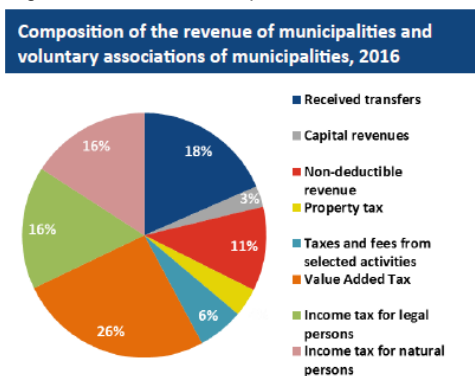
#### 3.8.1 Article 9.1

91. The Czech Republic has not ratified Article 9, paragraph 3; Article 9, paragraph 5 and Article 9, paragraph 6 of the Charter.

92. The Contemporary Commentary on the Charter states that the legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out. Article 9 aims at ensuring that local authorities have adequate financial resources to carry out their tasks.

93. The high number and varying capacity of municipalities complicates the financial dimension of local government in the Czech Republic. With the average municipality size being the lowest among OECD countries in terms of both population and area and with almost 90% of municipalities having fewer than 2 000 inhabitants, the Czech system is fragmented. This fragmentation results in what the OECD describes as 'below average public spending efficiency in the Czech Republic'.<sup>16</sup>

Figure 1 illustrates municipal revenue in 2016



Source: mcvr, 2018.

15 Radvan, M., Mrkývka, P. and Schweigl, J., (2021) Local Self-Government in Czech Republic. *Boštjan Brezovnik, Istvan Hoffman, Jaroslav Kostrubiec. Local Self-Government in Europe, 1*

16 [OECD\(2021\)ECO/WKP\(2021\)3](#), p. 11



94. Sub-national spending accounts for about one-quarter of general government expenditure, close to the average for OECD unitary countries. The expenditure of sub-sector S.1313 (local government sub-sector) in 2020 amounted to CZK 744.209 billion, approximately 13% of GDP. An amendment to Act. No. 243/2000 Coll., on Budgetary Allocation of Taxes in 2021 increased the share of taxes for municipalities and regions, from 23,58 % to 25,84 % for municipalities and from 8,92% to 9,78 % for regions.<sup>17</sup>

95. Czech local self-government units have a right to their own financial resources, as implied in Art. 101(3) of the Constitution: '*Local self-governing units are public law corporations which may own property and manage their affairs on the basis of their own budget*'. Legislation such as Act no. 250/2000 Sb., Budgetary Rules on Local Budgets, the Municipalities Act and the Regions Act reinforce that right. The main source of own resources (as distinct from shared resources) are property tax and charges imposed by the municipality.

96. Local authorities may dispose of their resources freely. There is a significant difference in the investment patterns of large and small municipalities. The OECD found that investment per capita in small municipalities (with less than 500 inhabitants) is less than half of investment per capita in mid-size (5 000 – 10 000 inhabitants) or large municipalities (over 100 000 inhabitants).<sup>18</sup>

97. Thus, local authorities are entitled, within the legal framework (particularly Act No. 243/2000), to financial resources of their own, which they may dispose of freely within the framework of their powers. The adequacy of the funding is questioned by some actors. Nevertheless, the Rapporteurs believe that Article 9.1 is complied with in the Czech Republic.

### 3.8.2 Article 9.2

98. One of the noticeable features of local government finance in the Czech Republic is the high proportion of earmarked grants, linked to delegated competences. The calculation of the contribution towards delegated competences at local level is based on the five types of administrative roles of municipalities: basic competence, registry offices, building authorities, municipalities with an authorized municipal authority, municipalities with extended powers. The total contribution assigned to a specific municipality consists of partial contributions for each relevant role. The coefficients for redistribution to the regions were set in 2005, reflecting the then costs of delivering delegated services and functions. Since then, circumstances have changed, with particular divergence in population trends. Interlocutors commented on the failure to take the population changes into account when taxes are redistributed.

99. Tax revenue directly levied at the local level (as opposed to revenue from shared taxes) represents only 1% of total tax revenue in the Czech Republic. Property tax is the only tax that belongs directly to municipalities. Municipalities thus directly raise only 8.3% of their own tax revenue.<sup>19</sup>

100. For the regions, the most significant revenues are earmarked transfers received from the state budget and from state funds, which account for almost 2/3 of regional incomes. As the Ministry of the Interior states 'regions are not financially self-sufficient and are therefore dependent on other resources. In the case of the regions, this is primarily revenue from transfers from the state'<sup>20</sup>. Regions do not have power to raise taxes. Shared taxes allocated by centre account for almost 36% of all revenue for regions, with the largest share coming from Value Added Tax<sup>21</sup>. Regions play the role of financial intermediary for payments such as wages of teachers. The direct costs of education represent funds from the state budget (from the chapter of the Ministry of Education, Youth and Sports), which the regions and Prague allocate directly to the relevant schools and school facilities. The Ministry of Finance describes education funding as 'a flow non-investment transfer and the region and Prague cannot use these funds in any other way. For this reason, the received transfers of regions and Prague are reduced so as not to distort their economic results. The share of transfers (reduced by the direct costs of education) in income of regions is only 13,4 % instead of 60,7 %. The share of transfers (reduced by the direct costs of educations) in income of municipalities is only 10,51 % instead of 14,7 %. The share of transfers decreases significantly after deducting direct education costs'. Clearly, if direct education costs are deducted the number of transfers appears smaller but the education costs, however classified, form a significant part of the income of subnational government over which they do not have autonomy.

17 Communication, Ministry of Finance, 2022

18 [OECD\(2021\)ECO/WKP\(2021\)3](#), p. 13

19 *Ibid.*, p. 28

20 EU/Ministry of the Interior (2018) *Public Administration in the Czech Republic*, p 38

21 *mvc*, (2018).

Table 1 illustrates the revenue and expenditure of the state, regions and municipalities in 2019.

As a % of total, 2019

	State	Regions	Municipalities <sup>1</sup>
<b>Revenues (% of total revenue)</b>			
<b>Tax revenues</b>	<b>86.4</b>	<b>31.4</b>	<b>67.3</b>
Of which:			
PIT (person income tax)	10.8	8.8	16.8
CIT (corporate income tax)	8.1	7.0	14.6
VAT (value added tax)	19.1	15.6	28.1
Social security contributions	36.2	0.0	0.0
Other tax revenues	12.1	0.1	7.7
<b>Non-tax revenues</b>	<b>1.4</b>	<b>2.8</b>	<b>9.8</b>
<b>Capital revenues</b>	<b>1.2</b>	<b>0.2</b>	<b>1.9</b>
<b>Transfers (consolidated)</b>	<b>11.0</b>	<b>65.6</b>	<b>21.1</b>
Current transfers	6.6	60.7	14.7
Capital transfers	4.4	4.9	6.4
<b>Total revenues</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>
<b>Expenditures (% of total expenditures)</b>			
<b>Current expenditures (consolidated)</b>	<b>91.0</b>	<b>86.1</b>	<b>72.1</b>
<b>Capital expenditures</b>	<b>9.0</b>	<b>13.9</b>	<b>27.9</b>
<b>Total expenditures (consolidated)</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

1. Including capital city Prague and Voluntary associations of municipalities.

Source: Ministry of Finance, "Monitor Státní pokladna – Analytical part of portal Monitor".

101. The principle articulated in Article 9.2 that local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law is not unanimously accepted. Interlocutors from central level claimed that transfers for the delegated competences were adequate. Others argued that amount of compensation for the exercise of delegated competencies is still insufficient with municipalities and regions paying for or supplementing services in the field of health care, education, social services, etc. from their own budget.

102. A difference in expectations was noted. The Ministry of Finance stated that 'as the Czech Republic has a combined model of public administration, it is assumed that municipalities will also contribute to the financing of delegated competences from their own revenues'<sup>22</sup>. Other interlocutors asserted that municipal and city budgets must sometimes be used to finance nationally imposed obligations. World Observatory on Subnational Government Finance and Investment supports such criticisms stating that, for example, 'Education grants, a major component of central government earmarked transfers, are allocated on a per student basis, which does not efficiently reflect the actual cost of the service'.<sup>23</sup>

103. The rapporteurs consider that Article 9.2 is partially complied with in the Czech Republic.

### 3.8.3 Article 9.3

104. The Czech Republic did not ratify Article 9.3 of the Charter. Yet, there are municipal taxes in the Czech Republic. Property tax is the exclusive revenue of municipal budgets. Municipalities can significantly influence the amount of property tax revenue by varying the coefficients. Municipalities may also levy local fees (on dogs, for spa or recreational stays, for the use of public spaces, on admission fees and on accommodation capacity, for vehicle permits, for disposal of municipal waste, for the assessment of a building plot for the possibility of connecting it to a water supply or sewerage system). Such fees are introduced by way of a generally binding municipal ordinance. The municipality can influence the rate payable but must comply with the legally set ceiling.

105. As the Contemporary Commentary on the Charter asserts, the power to levy local taxes is direct evidence of local financial autonomy. In the Czech Republic municipalities have the power, although rather limited, to levy local taxes but regions do not have autonomy in taxation, a key principle of the Charter. This would impede ratification of Article 9.3, a possibility which interlocutors indicated was currently being discussed.

106. Furthermore, in the opinion of the rapporteurs, local authorities could be encouraged to develop their tax base. The tax sharing formula could be adjusted to increase the weighting of factors linked to economic activity

<sup>22</sup> Communication , Ministry of Finance, 2022.

<sup>23</sup> SNGWOFI Country profile available at: <https://www.sng-wofi.org/country-profiles/Fiche%20CZECH%20REPUBLIC.pdf>

(number of employees) and income from such activity.

#### 3.8.4 Article 9.4

107. Some diversity of potential incomes is possible for municipalities and regions in the Czech Republic with income streams available through own resources and grants. They also finance expenditure through loans and the issuing of bonds.

108. The buoyancy of local government income is affected both by national trends and levels of economic activity at sub-national level. Covid 19 impacted on local/regional incomes in the Czech Republic. In 2020 a one-off contribution of CZK 13.4 billion (CZK 1 250 per person) was granted from the state budget to municipalities to compensate for the economic consequences of the coronavirus outbreak. In 2021, regions and municipalities received a contribution to mitigate the effects of the Compensation Bonus Act, with regions receiving CZK 1.1 bn and municipalities receiving CZK 3.2 bn.<sup>24</sup>

109. Sub-national authorities feel strongly dependent on income from central level. Interlocutors stressed that their financial resources are still not sufficient for the necessary investment in infrastructure and local development, leaving them largely dependent on subsidies from national or EU programmes.

110. Contrasting opinions were also expressed. Many municipalities show an excess of income over expenditure which central commentators feel should be invested. Those interlocutors raised questions about non-efficient utilisation of available public finance. There were also criticisms of the reluctance of many municipalities to use possibilities on the revenue side of their budgets - e.g., in setting local fees, in setting prices for services provided (rent, water, sewerage, heat, public transport), setting property tax coefficients, etc. This was perceived as a failure to use their fiscal autonomy.

111. The limited options for new sources of funding and the bounded potential for establishing and increasing local taxes make it difficult to consider local resources as having sufficient buoyancy to enable sub-national authorities to keep up with the actual changes in the costs for carrying out local government responsibilities and make the necessary investments in infrastructure, services etc. Delegation of tasks in a manner that does not indicate the source of full funding to meet the cost of the new responsibility is not compatible with the principle of buoyancy.

112. The system of revenue needs further diversification and flexibility. Interlocutors pointed out that many urban municipalities are feeling financial strain from providing services and infrastructure for large numbers of citizens from surrounding areas. They feel they should be given additional possibilities of taxation and fees.

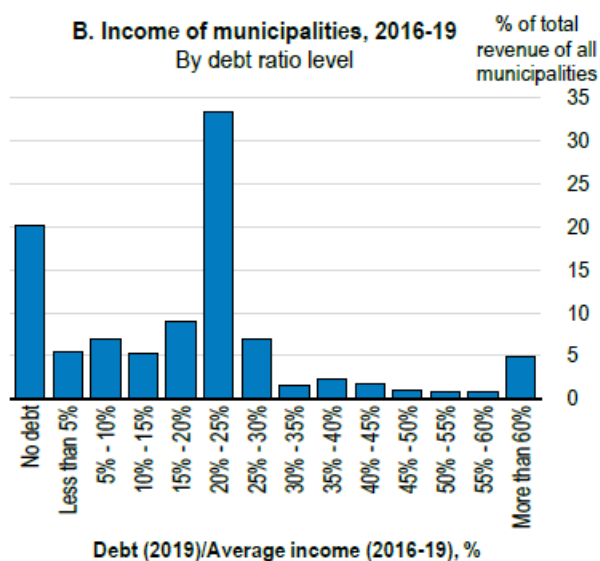
113. Because of the limited opportunities for diversification and the insufficient buoyancy, the Rapporteurs consider that Article 9.4 is only partially complied with in the Czech Republic

#### 3.8.5 Article 9.5

114. Article 9.5 is another provision by which the Czech Republic is not bound. Fulfilment of this provision would require substantial change in the system of financing of municipalities. Despite clear asymmetries between the size, income and capabilities of municipalities, there is no equalisation mechanism in the Czech Republic. Inter-municipality disparities persist, particularly between large and small units and neither the grant allocation processes nor own resources are sufficient to overcome such disparities. Figure 2 illustrates the varying debt ratio/income levels. Regional disparities are perceived to be mitigated by the state (and EU) subsidy policy. Furthermore, there is no agreement within Union of Towns and Municipalities on adopting a tax equalisation scheme in the Czech Republic. Article 9.5 is particularly concerned about the protection of financially weaker local authorities. Without sufficient financial resources, municipalities do not have the ability to carry out local government functions as required by Article 3 of the Charter.

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<sup>24</sup> Communication , Ministry of Finance, 2022.

Figure 2 Income of municipalities by debt ratio level<sup>25</sup>

Source: OECD 2021

115. Furthermore, the current tax-sharing system does not appear to correct the inequalities, therefore it is recommended that some form of equalisation system be considered. A two-stream equalisation system has been suggested by the OECD<sup>26</sup> with one stream from own tax base and another for fiscal equalisation. Such an approach would make redistribution flows more transparent and would also serve to incentivise subnational governments to develop their tax base.

116. Interlocutors informed the delegation that the absence of legislation or the varying legislative position of the relevant institutes does not yet allow the Czech Republic to accede to Article 9.5 as regards horizontal financial compensation, since it is not explicitly included in the Czech legal order. Nevertheless, they indicated that Article 9.5 is included in current discussions regarding further ratification of Charter articles.

### 3.8.6 Article 9.6

117. Neither has Article 9.6 been ratified by the Czech Republic. The fact that no equalisation system has been put in place is seen as decreasing the relevance of this provision. Implicit redistribution does take place through the tax sharing formula, which is weighted towards small municipalities. There are ongoing discussions about subsidy policy at national and EU levels. The Ministry of Finance has also created a working party where the tax sharing system is discussed.

118. The Congress report on the recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions (reference period 2017-2020) states that 'Article 9 also directly foresees consultation obligation of higher-level government on the way in which redistributed resources are to be allocated to local authorities'<sup>27</sup>. There is not such a system in place. Interlocutors referred to poor correlation between the current system of local finance/distribution of resources and between economic potential and needs of different categories of municipalities. There were particular concerns expressed about the limited rights and opportunities of larger and economically developed municipalities as well as inequity between different sized municipalities. Even without an equalisation system, a robust consultation system would help ensure optimal allocation and maximum impact of the redistributed resources. Consultations with representative organisations about the criteria to be used for the distribution of shared taxes could be institutionalised.

119. The rapporteurs heard about the intention to consider ratification of this article and would encourage this move that should be preceded by putting in place a robust consultation system on allocation of distributed resources.

<sup>25</sup> OECD(2021), [OECD\(2021\)ECO/WKP\(2021\)3](#) p. 24

<sup>26</sup> OECD(2021), [OECD\(2021\)ECO/WKP\(2021\)3](#)

<sup>27</sup> P.9 of the Report accessible at <https://rm.coe.int/recurring-issues-2017-2020-rapporteurs-stewart-dickson-united-kingdom-/1680a28a72>

### 3.8.7 Article 9.7

120. The Czech system involves a combination of constraint and autonomy. The majority of transfers, e.g., education funding, are allocated for specific purposes linked to delegated competences, limiting local authority freedom to exercise policy discretion. The high ratio of conditional (earmarked) to unconditional (general) grants is indicative of limited autonomy and not in keeping with the principles of the Charter. Interlocutors repeatedly drew attention to the high level of earmarked grants and the resultant constraints on expenditure preferences. Subsidies are required for the financing of larger infrastructure projects, particularly in small municipalities.

121. However, the financial resources coming from shared (state) taxes can be disposed of as municipalities choose, giving them a degree of financial autonomy. This allows them to allocate those resources to the tasks that have been prioritised by the particular unit of local self-government. Over the years some municipalities have managed to build up savings. The Ministry of Finance asserts that municipalities and regions have long term surplus accounting of 228.3 bn. CZK between 2013-21.

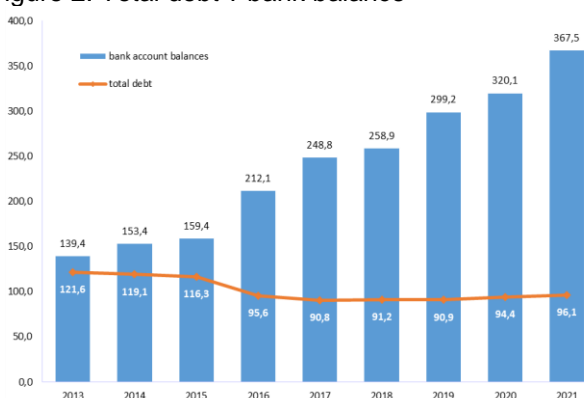
122. Although municipalities have some financial autonomy regarding shared taxes, local and particularly regional, government in the Czech Republic is constrained by the dominance of earmarked transfers. This approach does not conform fully with the principles of local self-government as outlined in the Charter. Therefore, the Rapporteurs consider that Article 9.7 is partially complied with.

### 3.8.8 Article 9.8

123. Access to capital market is guaranteed in the Czech Republic. Loans and bond issue are also possible sources to finance local self-government expenditure. Both municipalities and regions have the possibility of taking out loans from commercial banks in the Czech Republic. The share of loans in the total debt of municipalities at the end of 2021 was 82.3%. Such loans are usually used for infrastructure, pre-financing of investment projects (co-financed from EU funds) and regeneration and construction of housing stock. Municipalities also use these funds for the reconstruction of school facilities, sports grounds and other civic amenities.

124. A balanced budget rule applies. The Czech Fiscal Council came into being in January 2018, as an independent supervisory body for the performance of public finances including SNG finance Act No. 23/2017 Coll, on the rules of budgetary responsibility, introduced the so-called fiscal rule, which stipulates that if the debt of a local government unit (regions and municipalities) exceeds 60 % of its average revenue over the last 4 years, it is obliged to reduce this debt by the end of the following year by at least 5% of the difference between the current level of debt and 60 % of its average revenue over the last 4 years. If the local authority fails to reduce the debt by the mandatory minimum, the Ministry of Finance shall temporarily suspend the transfer of tax revenue equal to 5% of the difference between the current level of debt and 60% of the average revenue over the last 4 years. As Figure 2 shows bank balance significantly exceeds debt levels reinforcing the observation that Czech municipalities are generally financially conservative. During the visit and consultation procedure, criticism was made by the Ministry of Finance that at a time of high inflation, municipalities are losing part of their savings unnecessarily by leaving these monies unspent. Thus, there are differences in financial philosophy and economic approaches between some central and local government actors.

Figure 2. Total debt v bank balance



125. Local authorities in the Czech Republic adopt a cautious approach to borrowing and their actions are systematically monitored by the centre. Borrowing opportunities are available and the rapporteurs consider that Article 9.8 is complied with in the Czech Republic.

### 3.9 Article 10 – Local authorities' right to associate

#### Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

#### 3.9.1 Article 10.1

126. As stated earlier, the large number of municipalities in the Czech Republic leads to fragmentation. Many small municipalities are financially vulnerable and administratively challenged. Inter-municipal collaboration has become the norm with voluntary association of municipalities in vogue since the 1990s. The Municipalities Act created much more favourable conditions for municipal mergers and mutual cooperation but for historical and ideological reasons there is a reluctance to merge. However, joint activities in the form of inter-municipal cooperation have been supported in many ways by central government leading to innovative and effective forms of collaboration.

127. Municipalities cooperate in various fields. The Act on Municipalities No. 128/2000 Coll., focused on inter-municipal cooperation for the exercise of own competences. Each voluntary union of municipalities is a legal entity with a signed contract, a budget and is regulated by a municipal statute. Most inter-municipal collaboration occurs in the areas of waste management, water supply and sewerage, maintenance of public spaces, education, social care, health services, joint provision of social, cultural and leisure activities, development of tourism or landscape care. Cooperation takes various legal forms, from the establishment of a voluntary union of municipalities to commercial companies bringing together several municipalities and carrying out relevant activities in this legal form (e.g., sewage systems and water supply systems).

128. Plans are proceeding for the institutionalisation of collaboration. In cooperation with the Ministry of Regional Development, the Ministry of the Interior is looking for solutions to support strategically conceived inter-municipal cooperation in functional micro-regions and metropolitan areas. In addition, the Ministry of the Interior is currently preparing a new amendment to the Act on Municipalities, which should better establish the legal position of voluntary unions of municipalities and enshrine the carrying out of administrative activities by voluntary unions of municipalities or communities of municipalities, by means of a 'shared civil servant' or what some interlocutors referred to as a 'Flying Officer'.

129. In light of the above mentioned, the rapporteurs consider that Article 10.1 is complied with in the Czech Republic.

#### 3.9.2 Article 10.2

130. Local authorities in the Czech Republic are entitled and encouraged to belong to an association. The main associations representing regional and local governments are the Association of Regions of the Czech Republic and the Union of Towns and Municipalities of the Czech Republic and the Association of Local Authorities of the Czech Republic. Under the Legislative Rules of the Government, central government must consult these organisations and seek their comments on legislative proposals and the implications and prerequisites of the legislative proposals which would impact on sub-national government.

131. The Union of Towns and Municipalities represents more than 2,700 (approx. 44%) of the Czech communities, municipalities, towns and cities. They represent more than 8 million (79%) of the total population of the Czech Republic. The Association of Regions of the Czech Republic promotes the regions' joint interests, overseeing the overall development of the territory and responding to the needs of citizens.

132. These organisations are also involved in international associations. For example, the Union of Towns and Municipalities of the Czech Republic (SMO ČR) has been taking active part in activities of the Council of European Municipalities and Regions (CEMR) since 1992. SMO ČR representatives also work as delegates in the Committee of the Regions (CoR) and cooperate with the Congress of Local and Regional Authorities of the Council of Europe. The organisation is also involved in the global organization United Cities and Local Governments (UCLG).

133. The municipal and regional associations seem vibrant and influential at home and abroad. Consultation processes have been institutionalised. Lessons from management of the Covid-19 crisis and comments from

some interlocutors suggest that the consultative processes could be improved on emergency legislation. However, the Rapporteurs consider that Article 10. 2 is complied with in the Czech Republic.

### 3.9.3 Article 10.3

134. There are no institutional impediments to international collaboration. Municipalities may cooperate with other municipalities and with municipalities of other states and be members of international associations of territorial self-governing units. Unions of municipalities can cooperate with unions of municipalities in other states. The regions can cooperate with other regions and municipalities and with the territorial self-governing units of other states and be a member of international associations.

135. There is much international collaboration among Czech municipalities and regions, particularly under the aegis of the EU. Euroregions (or associations of municipalities) are an important part of cross-border cooperation in the Czech Republic. Projects are in place with Germany, Austria and Slovakia. According to interlocutors, the COVID-19 pandemic had a very negative impact on cross-border cooperation - it paralysed mobility (labour mobility and mobility of people), tourism (which is a significant economic activity of these regions), joint cross-border services and cultural activities, spheres which had been well developed prior to the pandemic.

136. Czech local authorities are entitled to co-operate with other local entities and have a specific right to form consortia and corporations. They are actively collaborating with their counterparts in other States.

137. The Contemporary Commentary on the Charter recommends assessment of the status of the Council of Europe's international co-operation instruments during monitoring visits. Interlocutors made it clear that it is not expected that a ratification process will be launched in relation to the Additional Protocol to the Outline Convention on Trans-frontier Co-operation between Territorial Communities or Authorities (CETS No 159). This Convention falls within the competence of the Ministry of Regional Development, which is of the opinion that the Convention and its additional protocols are already obsolete.

138. Notwithstanding the situation with regard to CETS No. 159, the rapporteurs conclude that the requirements of Article 10.3 are satisfied in the Czech Republic.

## 3.10 Article 11 – Legal protection of local self-government

### Article 11 – Legal protection of local self-government

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.

139. The Constitution guarantees local governments judicial protection against illegal state interference in the right to self-government. Territorial units have legal personality. Within the framework of the exercise of self-governance, they have the right to protect the self-governing rights assigned to them by law and the property that belongs to them before the independent court of law.

140. The Czech legal order offers several avenues for protecting rights of self-governing authorities:

- Constitutional complaints under Article 87 (1) of the Constitution and Section 72 (1) of the Constitutional Court Act.
- Disputes over competences under Article 87 (1) of the Constitution and Section 120 of the Constitutional Court Act.
- Action in matters of self-government (Article 67 b) of the Code of Administrative Justice.
- Action in matters of elections and referenda (Article 88 of the Code of Administrative Justice).
- Competence Lawsuits (Article 97 of the Code of Administrative Justice).

141. Article 10 of the Czech Constitution states that promulgated treaties, to the ratification of which Parliament has given its consent and by which the Czech Republic is bound, form a part of the legal order. Consequently, the Constitutional Court has referred to the Charter in a range of its decisions initiated by the Ministry of the Interior or by members of parliament or senators.

142. The rapporteurs consider that local (and regional) authorities' right of access to a judicial remedy is complied with in the Czech Republic.

#### **4. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT**

143. Over the last thirty years the Czech Republic has witnessed profound change but has shown itself to be resilient and pioneering in adapting to democratic structures. Systemic, legal, administrative and relational changes have been made to sub-national governance, some with immediate impact and other changes with evolutionary impact. The outcome is a robust but fragmented system which has proven itself adaptable.

144. A new government was installed in October 2021 and has an ambitious programme which will impact on local government. A government statement issued in January 2022 included in its different chapters, the following plans for changes to sub-national government:

- to improve the functioning of small municipalities. We will not merge municipalities, rather connect them on a voluntary basis.
- to strengthen the powers of local governments in the field of spatial planning.
- to support the return of water infrastructure to local government ownership
- to change the Building Act and maintain building authorities at the local level<sup>28</sup>

145. Previous governments had published a number of strategies which framed development. "The Czech Republic 2030" serves as a guide for the development of regions and municipalities and forms a basic framework for other strategic documents on national, regional and local levels. The Regional Development Strategy of the Czech Republic (2014-20) and the Regional Development Strategy of the Czech Republic 2021+ set objectives for regional development.

146. During the monitoring visit, central and local government were actively responding to the refugee crisis resulting from the Russian war against Ukraine, organising assistance such as accommodation, food and social and financial help for the influx of refugees. Great solidarity with the refugees was evident.

147. The Covid-19 pandemic had a profound impact on the Czech Republic. It particularly affected the functioning of municipal and regional authorities. Problems ranged from the practical (care homes, schools, etc) to the legal (e.g., absence of explicit regulation for the on-line conduct of municipal and regional authority business) and financial (funding for equipment, staffing etc.). Public services had to be limited (public transport, cleaning) or even completely suspended. Extra costs were mostly covered from the budgets of municipalities and regions (e.g., expenditures on hygiene measures, social services, health care, public transport, integrated rescue services etc.). Central government did compensate for the economic consequences of the coronavirus outbreak with special payments in both 2021 and 2022. As part of the crisis management, the state delegated certain new responsibilities to municipalities, such as responsibility for homeless citizens. Attempts by municipalities to minimise the spread of the coronavirus by means of own legislation proved problematic, both legally and practically. The pandemic led to a decline in tax revenues of municipalities. Central government put in place support programmes which aimed to compensate for the negative impact of the pandemic. These programmes resulted in a record budgetary surplus of 33.3 bn. CZK. Investment projects and cultural and tourism projects were halted due to uncertainty as well as capacity issues in the construction sector. According to interlocutors, the COVID-19 pandemic had a very negative impact on cross-border cooperation. Covid 19 crisis uncovered some problems in the consultative processes. Approval of legislation in an "emergency regime" did not require mandatory consultation so municipalities were not always informed or aware of the financial implications of the adopted legislation. It is expected that the consultation rights of associations of local and regional authorities will be strengthened to avoid such occurrences in the future.

148. Discussions with the various interlocutors elicited concerns about the challenges facing local and regional government. These include:

- the need to create a really effective system of inter-municipal cooperation - small municipalities do not currently have the opportunity, means or human resources to effectively develop their municipalities. Proposed amendments to the Municipalities Act, if implemented, should improve the situation
- financing of own and delegated competences
- the complexity of modern governance and the scarcity, at local level, of administrative staff with the requisite legal and financial expertise
- coping with rising real estate / housing prices
- the ageing population

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<sup>28</sup> Policy Statement of the Government of the Czech Republic(2022) available at <https://www.vlada.cz/assets/jednani-vlady/policy-statement/Policy-Statement-of-the-Government.pdf>



- lack of interest among citizens in participation in the public life at the local level, especially in small municipalities - at present, composition of small municipal councils does not change much and the interest of the citizens in participation is low
- impacts of climate change - drought, floods and other natural phenomena and implementation of climate protection policies - the objectives are too ambitious, and it is not possible to meet them within the set time milestones
- energy crisis - high price of energy
- insufficient financing of municipalities in connection with the inflation, economic and energy crises threaten opportunities for investment at the local level
- the inefficient, overcrowded system of local government controls and the poor coordination of the supervisory process
- the need to respond to turbulent changes and strengthen resilience

## 5. CONCLUSIONS AND RECOMMENDATIONS

149. It is to the credit of local, regional and national governments in the Czech Republic that so much progress has been made since the previous monitoring visit. For example, the 2020 Act on Territorial Division of the State completed the transition from districts to municipalities, thereby streamlining the system. However, the highly fragmented territorial organisation and the resultant complex administrative system remain problematic and lead to some inefficiencies. The very high number of municipalities makes coordination difficult. In addition, the small size of many municipalities results in limited administrative and financial capacity at the local level and a lack of economies of scale which can raise costs and reduce service range and quality. However, the high number of municipalities is perceived by many interlocutors as an important indicator of democracy and civil consensus. Therefore, in order to overcome the negative effects of the resultant territorial fragmentation, various tools and forms of delegation, association and cooperation in the delivery of services should be considered.

150. Despite economic upheavals, political changes, the Covid-19 pandemic and now the Russian war on Ukraine, sub-national government in the Czech Republic has managed to meet the needs of citizens, fulfil their administrative and political obligations and adapt and develop within the complex inter-governmental system. As a result of historical, geo-political and socio-cultural factors, sub-national government in the Czech Republic is fragmented, an issue recognised by all interlocutors. As a consequence of the fragmentation into 6,254 municipalities the 'municipal map' is disconnected from the functional and financial demands and exogenous challenges facing public administration. Yet, for historical and socio-cultural factors there is reluctance to merge the smaller municipalities. Voluntary associations of municipalities are common. Support and incentivisation of such collaboration could be designed so as to foster effectiveness and ensure availability of specialist staff to smaller municipalities.

151. The financing of delegated tasks remains contentious and warrants further negotiation. More clarity about the obligations that municipalities and central bodies have regarding delegated competences is also required because some ambiguities about delegated competences persist. There is some dissatisfaction about the designation of levels of responsibility for certain tasks.

152. The administrative capacity at the local level and the quality of public administration needs to be strengthened. This can be achieved by upskilling local employees and making greater use of digital technologies and e-government. Introduction of the Czech POINT network of public administration contact points has been beneficial to citizens and administrators alike. However, digitalisation would require improved access to broadband, which is variable, as became evident during the pandemic. Reinforcing the expertise of public officials and institutions has also been shown to foster public investment at the local level (OECD, 2014a) and is an aspiration in recent government strategies. The Client-Orientated Public Administration strategy seeks a 'reduction in the burden of state administration in small municipalities'<sup>29</sup>. There is ongoing revision of the Civil Servants Act to enable digitalisation of public administration and expand education and knowledge for local government officials, taking into account the particular issues of small municipalities.

153. The system of consultation between central and sub-national levels leaves room for development. Statutory requirements for consultation are observed and as part of the Regulatory Impact Assessment process, mandatory consultation is in place for new legislation affecting local and regional government. In practice, the system has weaknesses regarding the scope, nature and timeframe of the consultation processes and responsiveness to submissions and the failure to involve sub-national representatives in the preparation of emergency legislation which impacts on local self-government. The issue of consultation spans many Charter provisions. Article 4.6 (the right of local authorities to be consulted as a general principle), Article 5 (the right to

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29 Client-Oriented Public Administration 2030, p.7

be consulted on local authority boundaries) and Article 9. 6 (specific requirements for consultation re redistribution of resources). The high number of municipalities in the Czech Republic makes it more practical in many situations, to consult with the legitimate representatives of the municipalities and regions, i.e., the national associations with which good communication channels have already been established.

154. The system of inter-governmental supervision complies with Article 8 of the Charter but is complex and burdensome for all concerned. Consideration could be given to simplifying the system, particularly through increased use of technology.

155. Pursuant to a declaration submitted at the time of ratification, the Czech Republic does not consider itself bound by Article 4 (paragraph 5); Article 6 (paragraph 2); Article 7 (paragraph 2); Article 9 (paragraph 3, paragraph 5 and paragraph 6) of the Charter. In practice, several of these principles are complied with. Interlocutors informed the Rapporteurs that, on the basis of expert observations, the provisions, other than Article 9.5 with relation to horizontal financial compensation could be acceded to. This would be a positive step but would require significant changes such as giving fiscal powers to the regions in order to comply with Article 9.3.

156. Consideration should also be given to signing and ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of local authorities.

157. In addition, having considered the issues delineated in this report the rapporteurs consider that the Czech government should be invited to mitigate the effects of fragmentation by, for example, institutionalising inter-municipal co-operation over a legally defined set of public services. Meanwhile, provide smaller municipalities with training opportunities and greater access to development, management and technical support. Moreover, a system, which would ensure that any transfer of competences to local authorities is guaranteed by adequate financial resources, should be devised. It is also suggested to set standards and include criteria other than population, pupils and cadastral size for the implementation of the commensurability principle. The rapporteurs consider that it would be necessary to re-assess the system of supervising intergovernmental tasks which generally complies with Article 8 of the Charter but would benefit from simplification and elucidation so that the roles of ministries, auditors and regional and local authorities are clearer. Strengthening participatory and consultation rights by expanding the formal mechanisms of consultation with local and regional authorities (and their representative bodies), in particular, with regard to parliamentary proposals and emergency legislation which impacts on local self-government, would be very welcome. A financial equalisation system should be considered for the benefit of financially weaker authorities as well as implementing a robust consultation system to help ensure optimal allocation of distributed resources. Lastly, due consideration should be given to ratify the provisions of the Charter by which the Czech Republic is not currently bound but complies with in practice (notably, Articles 4.5, 6.2, 7.2).

## APPENDIX – Programme of the Congress monitoring to the Czech Republic

### PROGRAMME

#### CONGRESS MONITORING VISIT TO THE CZECH REPUBLIC *Prague, Brno, Velký Beranov (2-4 March 2022)*

#### FINAL PROGRAMME

#### Congress delegation:

##### Rapporteurs:

Mr Viorel FURDUI

Rapporteur on local democracy  
Chamber of Local Authorities, ILDG<sup>30</sup>  
Municipal Councillor, Straseni  
Republic of Moldova

Mr Jani KOKKO

Rapporteur on regional democracy  
Chamber of Regional Authorities, SOC/G/PD  
Regional Councillor  
Maakuntavakuttetu, Central Finland  
Finland

##### Congress Secretariat:

Ms Svitlana PEREVERTEN

Co-secretary to the Monitoring Committee

##### Expert:

Dr. Brid QUINN

Member of the Group of Independent Experts of the  
Congress on the European Charter of Local Self-  
Government (Ireland)

##### Interpreters:

Ms Renata DRAHOZALOVA

Mr Zdenek HOFMAN

The working language of the meetings will be Czech. Interpretation from and into English will be provided.

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<sup>30</sup> EPP/CCE: European People's Party Group in the Congress  
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats  
ILDG: Independent and Liberal Democrat Group  
ECR: European Conservatives and Reformists Group  
NR: Members not belonging to a political group of the Congress

**Wednesday, 2 March 2022  
Prague**

**JOINT MEETING WITH MEMBERS OF THE CONGRESS DELEGATION,  
NATIONAL ASSOCIATIONS, AND EXPERTS**

• **National delegation of the Czech Republic to the Congress**

- Mr Zdenek BROZ (L, ILDG), Mayor, City of, Sumperk, Head of National delegation
- Ms Radka TRYLCOVA (R, ECR), Regional Councillor, Plzensky; Deputy Head of the National delegation
- Ms Lenka DVORAKOVA (L, NPA), Mayor, Hazlov
- Ms Jana FISCHEROVA, (L, ECR), Municipal Councillor, Havlickuv Brod
- Mr Zdenek HRIB (L, SOC/G/PD), Mayor, Prague
- Mr Radim HOLIS (R, ILDG), President of the Regional Assembly, Zlinsky
- Mr Martin HYSKY, Councillor of Vysočina region

• **Union of Towns and Municipalities of the Czech Republic**

- Mr. Pavel DRAHOVZAL, SMOCR Vice-President and Mayor of Velký Osek
- Ms. Monika ŠTEPANOVA, Director of Section Section of Regional Development and International Relations
- Ms. Gabriela HULKOVA, Secretary of the Czech delegation

• **Association of Regions of the Czech Republic**

- Mr. Jan HODOVSKY, Director of the Association of the Regions
- Ms. Eva VRBOVA, AKCR office

• **Experts**

- Mr Lukas VANA, full member GIE
- Mr Jan BROZ, alternate member GIE

**CITY HALL OF PRAGUE**

- Mr Adam SCHEINHERR, Deputy Mayor for Transport
- Mr Jaromír BERANEK, Chair of IT and Smart City Committee of Prague City Assembly
- Ms Eva HORAKOVA, Chair of Social Policy Committee of Prague City Assembly
- Ms Michaela KRAUSOVA, Member of Prague City Assembly
- Mr Martin BENDA, Deputy Chair of Culture, Exhibitions, Tourism and International Relations of Prague City Assembly
- Mr Petr ZEMAN, Chair of the Committee for Spatial Development, Land Use Plan and Monument Care of Prague City Assembly

**THE PARLIAMENT**

- Mr Zbyněk LINHART, Chair of the Committee on Public Administration, Regional Development and the Environment of the Senate

**CENTRAL BOHEMIAN REGIONAL COUNCIL**

- Ms Petra PECKOVÁ, Governor
- Mr Věslav MICHALIK, Deputy Governor for Finance, Subsidies and Innovations
- Mr Karel BENDL, Governor for Road Traffic
- Mr Tomáš ZMUDA, Chairman of the Health Committee, Vice-Chairman of the Committee for Digitalisation and Smart Region
- Mr Jan LOUŠKA, Director of the Regional Authority Office
- Mr Vítězslav KALIBA, Deputy Director of the Regional Authority Office
- Mr Petr BORECKÝ, Councillor for Public Transport

**Thursday, 3 March 2020  
Prague**

**MINISTRY OF THE INTERIOR**

- Mr Robert KAŇA, Deputy Minister of the Interior
- Mr Ondřej MÁTL, Head of the Office of Deputy Minister of the Interior for Public Administration
- Mr Miroslav VESELÝ, Director of Department of Public Administration, Supervision and Control
- Mr Jan VĚVODA, Head of the Unit of Civil and Administration Legislative
- Mr Jakub JAŇURA, Head of the Unit for Coordination of Public Administration and International Relations
- Mr Petr FEITEK, Representative of the Czech Republic, European Committee on Democracy and Governance (CDDG), Department of Strategic Development and Coordination of Public Administration
- Ms Milena ECKOVÁ, Department of International Cooperation and European Union, Office of International Treaty Affairs
- Mr Vít POPOVIČ, Department of International Cooperation and European Union

**MINISTRY OF FINANCE**

- Mr Jiří VALENTA, Deputy Minister
- Mr Miroslav MATEJ, Director of the Department, Financing of Territorial Budgets
- Mrs Karla RUCKÁ, Head of the Unit „Cumulative Budgetary Relations of Local Budgets and Administration of Programmes within the General Treasury Administration (VPS) Chapter”

**MINISTRY OF REGIONAL DEVELOPMENT**

- Ms Marie ZEZŮLKOVÁ, Director; Regional Policy Department
- Mr Miroslav DANĚK, Regional Policy Department
- Ms Karin BRÁZOVÁ, Regional Policy Department
- Mr Pavel LUKEŠ, European Territorial and Interregional Cooperation Department

**Friday, 4 March 2020  
Jihlava Velký Beranov, Brno**

**CITY OF JIHLAVA**

- Ms Karolina KOUBOVÁ, Mayor
- Mr Petr Ryska, Deputy Mayor of Jihlava City
- Mr Martin Lastovicka, Deputy Mayor of Jihlava City

**VELKÝ BERANOV**

- Mr Jan PLEVCIK, Deputy Mayor

### **CONSTITUTIONAL COURT**

- Dr. Vlastimil GÖTTINGERr, Secretary General of the Constitutional Court,
- Mgr. Ľubomir MAJERČÍK, Head of the Analytics Department
- Dr. Pavel DVORÁK, Head of External relations and Protocol Department.

### **THE PUBLIC DEFENDER OF RIGHTS**

- Ms Jana MIKULČICKÁ, Lawyer, Department of Equal Treatment
- Mr Petr LESA, Lawyer, Department of Public Policy
- Ms Zuzana JARABINSKÁ, International Relations Officer