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## EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT IN THE CZECH REPUBLIC<sup>1</sup>

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### Annotation

The paper analyzes the application of the provisions of the European Charter of Local Self-Government in the Czech Republic. It focuses mainly on the scope of local government (Art. 4 of the Charter) and financial resources (Art. 9 of the Charter). The paper deals with the reservations which were done by Czech Republic to Art. 9 of the Charter. The aim of this paper is to bring readers selected specifics of local governments in the Czech Republic that in practice influence the fulfillment of Charter.

### Introduction

The primary function of public administration is providing of public goods and services for its citizens. The way how the responsibility for providing public

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goods is divided among various levels of government, is reflected in the structure of expenditure budgets of different levels. The trend of increasing the share of local budgets expenditures in total expenditures of the state, justified by the increasing decentralization of lower levels of government, in the wake of the crisis, slowed in recent years.

Local government is fundamentally influenced by organization of public sector in the state. Essential specifics that greatly distort and limit the application of global approaches in the organization, function and financing of local government in Czech Republic are two:

- number of municipalities (6253 municipalities in Czech Republic)<sup>2</sup>
- mixed model of public administration<sup>3</sup>.

The essence of the mixed model of public administration is the responsibility of the municipality for the execution of independent and delegated powers. Independent competence includes provision of public goods and services in pursuit of the rights of local governments. Delegated competence represents an “extended hand” of the state administration. *De facto* one entity is also responsible for state administration and also can decide independently on the areas covered by separate powers. A typical example of delegated competence is issuing identity cards or building permit proceedings. In these cases, the municipality is only executor of state power and cannot interfere in it. Mixed model of public administration is based on the constitutionally guaranteed principle laid down in Art. 105 of the Constitution: „*The exercise of state administration may be delegated to self-governing bodies only if such is provided for by statute.*“ With regard to this contribution method of financing of delegated powers (of the state administration) is particularly important. It is enshrined in Art. 62 of the Municipalities Act: „*The municipality receives from the state budget contribution to the fulfillment of tasks under delegated competence.*“<sup>4</sup> As its name indicates, it is only a contribution, not for reimbursement of costs related to the exercise of delegated competence. It is expected that the costs to the state administration, which spends municipality, the municipality will pay through other revenues, such as through shared taxes.

<sup>2</sup> Czech Statistical Office. [online]. Small Lexicon of Municipalities of the Czech Republic – 2014. [cited 4 January 2016] Site: <https://www.czso.cz/csu/czso/maly-lexikon-obci-ceske-republiky-2014-n-gdc2kaznu1>.

<sup>3</sup> E.g. KOPECKÝ, Martin. *Právní postavení obcí a krajů – základy komunálního práva*. Praha: Wolters Kluwer Česká republika, 2010. xii, p. 162 – 205. ISBN 978807357561.

<sup>4</sup> KOUDELKA, Zdeněk. *Samospráva*. Praha: Linde, 2007, p. 122 – 159. ISBN 978-80-7201-665-5. 8.

<sup>4</sup> Act no. 128/2000 Coll., on municipalities (Municipal Establishment), as amended.

## 1. European Charter of Local Self-Government like a part of Czech legal system

European Charter of Local Self-Government (hereafter „*The Charter*“) was published in the Collection of Laws under No. 181/1999 Coll. by a decree of the Ministry of Foreign Affairs. The part of the legal system of the Czech Republic it is from 1 September 1999. It is an international treaty to which Parliament has given its consent and the President of the Republic ratified, i.e. an international treaty under Art. 10 of the Constitution<sup>5</sup> except the provisions of Art. 4 par. 5, Art. 6 par. 2, Art. 7 par. 2 and Art. 9 par. 3, 5 and 6 of the Charter, to which the Czech Republic has made a reservation. This international agreement, up to the reservations made to it, is part of the legal system of the Czech Republic. The Charter does not have the nature of a self-executing treaty. This was expressed by the Constitutional Court.<sup>6</sup> In light of the foregoing, the Charter does not have priority over the laws of the Czech Republic within the meaning of Art. 10 of the Constitution, and it must be interpreted in the sense of Art. 1 par. 2 of the Constitution, which provides: „*The Czech Republic shall observe its obligations resulting from international law.*“

## 2. Concept and scope of local government in Czech Republic

With regard to the limited objective of this paper the scope of the provisions of the European Charter of Local Self-Government, which are under investigation, is limited. These are mainly Art. 3 and 4, which define the concept and scope of local government and Art. 9 Financial resources of local authorities, to which the Czech Republic has made reservations. The Charter defines the local government in Art. 3 par. 1 as „*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.*“ It is essential that it defines the local government not only as a “right,” but also as the “ability” to edit and manage a substantial share of public affairs. The scope of local government is subsequently concretized in Art. 4 and can be summarized as follows:

- 1) The basic competences and responsibilities are prescribed by the constitution or by law,

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<sup>5</sup> RYCHETSKÝ, Pavel. *Ústava České republiky: ústavní zákon o bezpečnosti České republiky : komentář*. Praha: Wolters Kluwer, 2015, xxv, p. 108 – 131. ISBN 978-80-7478-809-3

<sup>6</sup> Plenum of the Constitutional Court dated February 5, 2003, file no. Pl. ÚS 34/02 (published as no. 53/2003 Coll.).

- 2) Under the law, local authorities shall have discretion to exercise their initiative with the exception of cases that are excluded from the scope or assigned to other authorities,
- 3) The authorities who are closest to the citizens have particular responsibility,<sup>7</sup>
- 4) The competences that are granted to local governments, are usually full and exclusive,
- 5) The competences of local government can be intervened only if it is provided by law,
- 6) The local government is consulted on questions on matters that can be applied on it.

In the Czech Republic are clearly fulfilled points 1) to 5) corresponding to the respective paragraphs of Art. 4 of the Charter. Competences and responsibilities of the municipalities are determined by the Constitution and by legislation (e.g. Municipalities Act<sup>8</sup>). However, setting the competence to decide their cases is inadequate if the municipalities do not provide sufficient tools and resources to fulfill this right in practice. This is related particularly with the financing of municipalities, which is discussed in a separate attention in the framework of the Charter in Art. 9.

For fundamental lack of application of the Charter in the Czech Republic can be considered inadequate implementation of Art. 4 par. 6 of the Charter, which provides: *„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.“* This provision is not sufficiently reflected in the Czech legal regulation. The only mandatory consultation is included in Legislative Rules of the Government<sup>9</sup> in the preparation of legislation. Legislative rules of the Government (Art. 5 par. 1 point. c) provides that if the bill refers to independent or delegated competences of municipalities, is submitted for comments to the association of municipalities with nationwide scope. It is obvious that with regard to the number of municipalities in the Czech Republic is not expected

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<sup>7</sup> Art. 3 par. 2 of The Charter: *„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.“*

<sup>8</sup> Act no. 128/2000 Coll., on municipalities (Municipal Establishment), as amended.

<sup>9</sup> Legislative Rules of the Government approved by Government Resolution on March 19, 1998 as amended.

that all 6253 municipalities<sup>10</sup> will be obliged to comment the bills. Not only with regard to the complexity of the management of such extensive consultation process, but also to the lack of staffing at small municipalities. However, provision that point to which the legislative proposal is sent for comments is the association of municipalities with nationwide scope, without any other circumstances, cannot be considered as fulfilling the conditions set out in The Charter. Association of municipalities has its institutions, which will assess the bill. However, there is no set guarantee that the bill will be given to municipalities, for example, available for making their comments. In the Czech Republic there are two such associations: SMO (Svaz měst a obcí) with a substantial membership base, which includes the largest cities and SMS (Sdružení místních samospráv) uniting especially small municipalities. In practice, it may be (and is) a paradoxical situation where proposals submitted by these nationwide associations are opposed. It may be, for example, in the event of a bill regulating tax revenue, which leads to increases redistributed shared taxes (basic revenue budget of municipalities in the Czech Republic) in small municipalities at the expense of larger cities.

Another drawback is that the Legislative rules of the Government were approved as a resolution. It is not a generally binding regulation. Legislative rules of the Government must be observed only in the case of government bills (bill prepared by the departments). As regards other legislative's initiatives, consultations are not mandatory even at the level of nationwide associations.

We cannot expect that the number of municipalities in the Czech Republic declined significantly and it is therefore necessary that count in the implementation of relevant European legislation, including The Charter. As part of the legislative process it is therefore objectively consider the mandatory consultation with local authorities if they are to be regulated by legislation matters that directly affect them. This duty but cannot be determined at the level of Government resolutions. It should have the force of law to tie all the promoters, not only the ministries. The scope of these mandatory consultations should be the subject of analysis and particularly wide discussion with local authorities, i.e. municipalities, not only through their associations. It can also consider the strong position of the municipalities in the legislative process, for example through a "right of veto" if it is supported by a sufficient number of municipalities. The number of municipalities, which would be necessary for the activation of this right should be the result of proper analysis.

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<sup>10</sup> Czech Statistical Office. [online]. Small Lexicon of Municipalities of the Czech Republic – 2014. [cited 4 January 2016] Site: <https://www.czso.cz/csu/czso/maly-lexikon-obci-ceske-republiky-2014-n-gdc2kaznu1>.

### 3. Financial resources of local authorities in Czech Republic

As indicated above, for the proper exercise of the right to local self-government inclusion in the legislation or even in the Constitution is not enough. The basic premise is that the municipality will be guaranteed not only the right but also the ability to manage and control its affairs (based on Art. 3 of the Charter). That means that the municipality will be endowed with instruments that will allow effective practical application. Therefore it seems to be rather strange that the Czech Republic has made reservation to Art. 9 of The Charter. Czech Republic is not bound by the following provisions of Art. 9 of The:

- par. 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.“*
- par. 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.“*
- par. 6: *„Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.“*

These reservations point to the fact that the Czech law system does not establish adequate tools to municipalities through which should ensure the ability of municipalities to manage and govern their affairs independently. Made reservations allow lawmakers arbitrarily intervene in the municipal financing, thus determine from which taxes municipalities will be funded. And with regard to the reservation on par. 6 municipalities may not be even inviting to the debate on the amendment related to their financing. In this regard, very restrictive interpretation of the right to self-government uses the Constitutional Court: *„ statutory regulation of the financial designation could interfere with the right to self-government only if the income of local governments has fallen below the level of preventing the performance of local government“*.<sup>11</sup> According to this, the right to local self-government is limited only to the “right” to manage their own affairs, not the “ability” to manage them. The question is the extent to which the legal regulation of local government can be considered under the corresponding provisions of Art. 3 par. 1 of The Charter if it has made reservations to Art. 9 par. 3, 5 and 6.

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<sup>11</sup> Constitutional Court dated November 20, 2007 ref. Pl. ÚS 50/06.

The Charter is a part of the Czech legal system, although it does not have the nature of self-executing treaty. Therefore, it needed to be interpreted in accordance with Art. 1 par. 2 of the Constitution<sup>12</sup>. The Charter defines local government as a right, but also as the ability of municipalities to manage and control its affairs. Yet it honors the principle that local governments can regulate the states themselves, either in the Constitution or in the Acts. In the Czech Republic the ability of municipalities to manage and control its affairs is very limited due to the overall design of the system of financing municipalities, which led to the making of reservations of Czech Republic to Art. 9, par. 3, 5 and 6 of The Charter, governing the rules for funding local government, and in particular enshrine certain limits for legislators of signatory states in establishing the rules governing the financing of municipalities.

Application of Art. 9, par. 3 does not make trouble in the Czech Republic despite of the reservation. Municipalities are setting a rate for local charges within the legal limits.<sup>13</sup> Furthermore, municipalities have to partially influence the rate for the tax on immovable property and they can also multiply the resulting tax<sup>14</sup>.

The question is whether within the current system for funding the provisions of Art. 9 par. 5 of The Charter could be fulfilled. The basis for the revenue side of the municipal budgets in the Czech Republic is shared taxes (accounts for about 53% of total revenue of municipalities)<sup>15</sup>. One of the justifications for such a high percentage of shared taxes which cannot be affected by the municipalities is protecting financially weaker municipalities and correction of the unequal distribution of potential sources of finance and the financial burden mentioned in Art. 9 par. 5 of The Charter. Within the financial burden it is necessary to assess the amount of expenditure on delegated competences (state administration provided by municipalities), which is being partly funded through revenues from shared taxes and from contribution from the state budget for the exercise of delegated competences which does not cover the real need. Under the current system, the reservation is necessary because we cannot guarantee the condition laid down in The Charter, that the selected method of redistribution does not limit the discretion of municipalities within their own sphere of responsibility.

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<sup>12</sup> Act no. 1/1993 Coll., Constitution of the Czech Republic, as amended.

<sup>13</sup> Act no. 565/1990 Coll., on local charges, as amended.

<sup>14</sup> Act no. 338/1992 Coll., on tax on immovable property, as amended.

<sup>15</sup> Own processing on dates of State Treasury System (IISSP – Integrated Information System Treasury) and the central system of accounting information (CSÚIS) run by the Ministry of Finance. Site: <http://monitor.statnipokladna.cz/>.

Art. 9 par. 6 of The Charter is a special provision to Art. 4 par. 6 of The Charter which provides consultation with local authorities. Since revenues in the Czech Republic are redistributed especially under the laws, what has been stated above can be there applied. The degree of consultation with the local authorities cannot be considered as a satisfactory application of The Charter.

## **Conclusion**

Application of the provisions of The Charter in the Czech Republic faces two basic problems of public administration: high number of municipalities and mixed model of public administration which means that local government carries out a number of tasks within the state administration. It is a transfer of state administration to local authorities without adequate financial compensation. State provides to municipalities contribution to the exercise of delegated competences which does not cover all costs.

The high number of municipalities particularly complicates application of Art. 4 par. 6 and Art. 9 par. 5 and 6 of The Charter. In the event that the Czech Republic has not made reservation to the Art. 9 par. 5, fulfillment of this provision cannot be guaranteed without substantial change in the system of financing of municipalities. Nowadays, most municipal revenues come from shared taxes, which is justified by a significant number of municipalities that do not have a real opportunity to earn needed income in another way (especially the lack of human capacity) and a mixed model of public administration (state administration by local self-government). On the other hand the lack of fulfillment of Art. 4 par. 6 of The Charter, which governs participation in local government on matters that directly affect it through consultation cannot be justified in the same way. In this case, the high number of municipalities cannot be an insurmountable obstacle or legislature's excuse for its lax approach in this area.

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