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Local Self-Government in Czech Republic

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Abstract In this chapter, the authors conducted an analysis of how the principles set forth in the European Charter of Local Self-Government reflect in the Czech national legislation. First they outlined the historical development of the self-governance and state-administration, so that they could later focus on the regulation in force today. In so doing, they also pointed out several areas, in which the incorporation of the Charter into the Czech legal order could be still improved: constitution and legal foundation for local self-government, distinction between the state-administration and self-administration, local taxes, etc. In spite of all these challenges and imperfections of the complex incorporation of the Charter into the Czech legal order, it shall be emphasized that as for the self-governance at the general level, the legal order of the Czech Republic is a complex legal order of a modern state that follows the rule of law.

Keywords: • local self-government • history • legal foundation • European Charter of Local Self-Government • Czech Republic

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1 Introduction and history

The system of self-administration based on the original territory of historical lands, which had been established in the Habsburg monarchy, was also used by the legislation of the newly established Czechoslovakian Republic (the Art. 3 of the Act of the National Czechoslovakian Committee no. 11/1918 Sb.[1], on Establishing an Independent Czechoslovakian State). This system had its ground on the so-called Stadion´s constitution of 1848. The natural development of the democratic self-administration was, however, stopped during the era of the so-called Second republic (1938-1939); it did not exist even during the occupation of the Bohemia and Moravia by the German Reich (1939 – 1945). Based on the constitutional decree issued by the President in exile no. 18 of December 12, 1944, the original system of the local self-administration from the pre-war times was not re-established, but there was gradually established a system of national committees, presented as people´s administration which was inspired by the Soviet system. Similar situation was in the other countries of the Soviet bloc. The name "national committee" derived from the association of the Czech-Slavs political parties of 1916, which had been transformed into the National Czechoslovakian Committee. This body took over the state power in the newly established Czechoslovakia. The self-administering nature of the national committees was later gradually limited and after 1948, the committees represented the local state administration, rather than being self-governance bodies. Although the national committees were officially established as an elected body i, it was governed by the principle of so-called democratic centralism which subordinated local administration to the hierarchy of the instances of national committees. Aside from that the other core principle was the leading position of the Communist party, which meant that any important decisions of the national committees had to correspond with the official Communist party stance.

After the so-called Velvet revolution of 1989, new foundation for public self-administration, i.e. professional, local and interest self-administration. The reform of state administration, which was a part of the process of restoring democratic society, was not just a return to the traditional system of public administration of the pre-war Czechoslovakia, but it created a new modern system. A system that drew from the functioning of public administration in the Western democracies. Namely Austria was great inspiration for Czechoslovakia. Public administration in Austria has come from the similar cultural environment and following the restoration of the Austrian statehood and denazification (*Entnazifizierung*), the Austrian public administration has not faced any totalitarian deformation pressures. The gradual creation of modern democratic public administration in Czechoslovakia started in 1990 by means of the constitutional Act no. 294/1990 Sb., which had amended the then in force Constitution of the Czechoslovakian socialist republic originally from 1960 and the constitutional act on the federalization of Czechoslovakia of 1968. This amending constitutional act abolished the system of national committees as concentrated bodies of local state administration that had been in

[1] Sb. is a Czech shortcut for the Collection of Laws of the Czech Republic.

place for the preceding 45 years. Simultaneously, the constitutional act served as foundation for creation and formation of local self-governing (self-administering) units. Municipalities have now been considered the core units in self-governing association of citizen. These units have been capable of entering into legal relationships and have been able to own property. This step re-established the existence of so-called ´municipality property´.

Following the passage of the abovementioned constitutional act, the Czech Republic, as one of the two previous members of the Czechoslovakian federation, took further steps to embody the changes into its legal order. In 1990, the Act no. 367/1990 Sb., Municipalities Act (municipal system), was passed and in November 1990 entered into force. The municipalities and towns, in which previously the municipal or town national committees had existed, were now considered to be municipalities under this act. It was typical for the legislation of 1990s that its purpose was often to rectify the political, economic and moral grievances that the previous regime had caused. Hand in hand with returning the historical assets the municipalities had originally owned, there emerged a number of small independent municipalities – there were usually municipalities that had been – often against the will of their residents – merged in 1970s. Though this helped to repair some of the historical grievances, there has emerged a so-called ´atomization´ that remains till today; according to the data released by the Czech statistical office in 2017, there are 6,258 municipalities in which 10,578,820 citizens live (Czech Statistical Office 2018a). The smallest Czech municipality (village) is Vysoká Lhota, in which there lived only 15 residents as of January 1, 2017. As for the largest cities, we should mention Brno with 377,973 residents (Czech Statistical Office 2018b). In the capital city of Prague, there were 1,280,508 residents registered as of the beginning of 2017. Prague, however, has a specific status and it is subject of regulation by a special act.

With respect to the historical experience, it is very unlikely that any administrative merges of small municipalities into larger units would take place against the will of the residents of the municipalities. The existing regulation of the Municipalities Act (the Art. 21(1)), as amended by the Act no. 128/2000 Sb., at least prevented further dividing into smaller municipalities. Any municipality to exist by separation from a large unit shall have less than 1,000 residents.

The establishment of the core level of local self-administration in 1990 was still influenced by the former system of national committees and it was shaped with the help of the residents. Of course, the state could not create new municipalities without looking back at the former system of municipalities. The last time the state established a municipality was in 1955, when the new miners´ city of Havířov was built. The decision to start building this city was based just on will of the state and party´s leaders. Now, new municipalities may come to existence or may cease to exist either by merging the existing units or by division (separation). The respective laws, however, presume that there need to be ´will of the residents´ expressed in referendum.

Under the existing legislation, each municipality is a part of a higher self-governing unit. The Czech constitution sets forth that such a higher self-governing unit is a region. As for the constitutional grounds of local self-administration, the original text of the Constitution of 1993 recognised also lands or regions as the so-called higher territorial self-administering units. The restoration of the historical lands (Bohemia, Moravia and Silesia) within the Czech Republic was a very hot topic in the early 1990s. The discussion also covered the self-administering status of the particular lands; some even proposed that the extent of self-administration of the lands should be similar the one that the Austrian lands have. In 1990, the Federal assembly (the Parliament of the Czechoslovakian federation in 1969 – 1992) issued declaration of illegality of cancelation of the Moravian-Silesian land, which had taken place in 1949. The efforts to alter the Czechoslovakian federation consisting of two states, i.e. the Czech Republic and the Slovak Republic, which came into existence in 1969 in the form dictated by the Communist party when Gustav Husák´s personal influence was on the rise, to a federation consisting of more subject, i.e. three (Bohemia, Moravia – Silesia, Slovakia) or four (plus the city of Prague) had not, mainly due to the opponents from Slovakia, been accepted. After the collapse of Czechoslovakia, in the era of growing centralism, the idea of restoration of the lands within the Czech Republic was getting weaker. This kind of centralism also manifested itself in the continuously postponed realization of higher territorial self-administration.

In 1997, the Constitutional Act no. 347/1997 Sb. was passed. This act, having amended the Czech Constitution mainly by excluding the possibility that lands would have their own self-administration, stated that regions be higher territorial self-governing unit. The unit ´region´ (in Czech: *kraj*) had existed even then, but only as an administrative unit based on the act of 1960, which has remained in force until today, but it, however, did not correspond with the notion of region, as an self-administering unit. The structure of 1960 introduced the following three units – municipality, district and region. The Constitution of the Czech Republic recognizes self-governance only in two units, i.e. municipality and region. The constitutional act of 1997 recognized the territory of the self-administering regions differently from the regions deriving from the law of 1960. The number of regions and their territory were set without direct participation of citizens, i.e. not ´according to their will´, as it was with municipalities, but rather ´according to the will of the government´ approved by the constitutional majority in the Parliament. It is interesting that the number of regions, as set in 1997, is higher then what it was under the law of 1960. It can be said that the 1997 act brought the borders of the regions back to the regional arrangement of 1949. Both laws, i.e. the one of 1949 and 1997, did not however respect the historical borders of the lands nor the natural territories of the regions as they developed since the Middle Ages. The region of Vysočina is typical example of this approach. This region consists of districts that were pulled out from three original regions of 1960, surrounding both sides of the land border between Bohemia and Moravia. The regions are not balanced even from the economic perspective, as their size, number of residents and their economic potential is rather significantly different. The Constitutional act of 1997 introduced only formal establishment of the self-administering units. In reality, the regional self-administration was not implemented till the year of 2000, when

the Regions Act was passed. The territory of the particular regions was set with the help of the districts of 1960, but in the districts there was no self-administration established. Consequently, the district offices, which had been temporarily established after the district and regional national committees were abolished, were abolished. The new regions were not accepted with great excitement. Some municipalities asked to be made part of a different region, mainly due to their geographical or economic ties to the original regional city (employment, schools, health care, transportation). Some districts did not identify themselves with the names they had been given. As a result of this, there were certain changes introduced by the Constitutional Act no. 176/2001 Sb.

Regions were built upon similar principles as the municipalities. Hence their status and the structure of their bodies are similar. In both these units of self-administration, their bodies perform services belonging to exercise of self-administration and, aside from that, they are granted to carry out state administration and act on behalf of the state in some areas. This approach thus distinguishes services belonging to independent scope of authority (self-administration) and transferred authority (state administration).

The capital city of Prague has traditionally had a specific status. The abovementioned Municipalities Act and the Regions Act do not apply to the city of Prague. The capital is regulated by the Act on the Capital City of Prague (Act no. 131/2000 Sb.), as it was in the past. In the times of the state law changes in 1968, with the efforts to underline the importance of the second largest city in the then Czechoslovakia, as a significant industrial centre, a place in which international fairs take place and which is considered to be a traditional cultural and political centre of Moravia, there was passed by the Czechoslovakian parliament - National Assembly, the Act on the City of Brno (Act no. 175/1968). This act, however, due to the growing centralization, was abolished during the process of so-called normalization in 1971. No such act was later passed, not even after 1989.

2 Constitution and legal foundation for local self-government

The Art. 2 of the European Charter of Local Self-Government presumes that "*the principle of local self-government shall be recognized in domestic legislation, and where practicable* (preferably) *in the constitution*." The constitutional-level regulation of local self-government spans from the core legal grounds of division of power, to setting of the relationship between the individual and the state power (the right to self-government). It also outlines the goals and values by which the modern state is bound (self-government traditions). The legal norms should then adequately express the application of the principles of decentralization, autonomy and subsidiarity, incl. the division of power between municipalities and regions (Průcha 2011: 32). We especially agree with Průcha that local self-government might be considered as the fourth power in state,[2] besides the legislative, executive and judicial powers. According to the structure of the Czech

[2] Comp. Belgian Constitution of 1831 (Průcha 2011: 32).

Constitution, there are 2 more areas of public authorities that – from a certain perspective – might be seen as "powers": the fifth power might be the bank power, and the sixth the control power.

Generally, the right of autonomous local units to self-government is guaranteed by the Art. 8 of the Czech Constitution (Act no. 1/1993 Sb., The Constitution of the Czech Republic, as amended). Specifically, the principles of the local (territorial) self-government are set forth in Chapter 7 of the Constitution – the provision is rather strict. The Art. 99 states 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.*" In 1992, before the independent Czech Republic was established and during the process of preparation of the Constitution, it was unclear what the system of local self-government at the regional level would look like. It was possible to follow a "land" principle,", as there are 3 historical lands in the Czech Republic: Czechia, Moravia, and Silesia. Finally, the idea of having regions prevailed and was later realized by means of the Constitutional Act no. 347/1997 on Creation of Higher Local Self-Governing Units. This constitutional act established 14 regions. The borders of these regions, however, do not correspond to the historical borders of lands, nor to any previous territorial units. The regions are regulated in the Act no. 129/2000 Sb., on Regions, as amended, and the municipalities by the Act no. 128/2000 Sb., on Municipalities, as amended. The regulation thereof is rather very complex and very detail-oriented, especially taking into account an extremely high number of municipalities in the Czech Republic (almost 6,300).

The Art. 100 of the Constitution is not very systematic. It states that "*(1) Local self-governing units are territorial communities of citizens with the right to self-government. A statute (an act) shall specify the cases when they shall be administrative districts. (2) Municipalities shall always form part of a higher self-governing unit. (3) Higher self-governing units may be created or dissolved only by a constitutional act.*" It is important that this article introduces a definition of the local self-governing units (as a local community of citizens) and at the same time it gives the right to self-government to these units. The narrow definition of the local self-governing units is broadened in the Municipalities Act (Art. 1 and 2) and the Regions Act (Art. 1). It is laid down in these provisions that a municipality and a region are the basic local self-governing communities of citizens; they are public law corporations; they are entitled to own property and they manage their own budgets. Aside from all that they are capable of entering into legal relationships on their own behalf and on their bear own responsibility, etc. The Czech local self-governing units are built in the form of the so-called mixed model: the Constitution foresees that the state may also transfer the performance of the state administration to the local self-government and that therefore their territory can serve as a basis for defining the districts for the performance of the state administration. According to the Regions Act, a region is an administrative district in the exercise of state administration. As for municipalities, the problem is more complicated, as a large number of municipalities in the Czech Republic are not able to carry out state administration

effectively at the level of each municipality. Therefore, the Czech legislation sticks to a model in which some municipalities carry out state administration on the territory of other municipalities; their administrative district also covers the territory of these municipalities.

The principle that every municipality shall always form part of a higher self-governing unit is not fully stuck to as for the capital city of Prague: Prague has its own specific status regulated by the Act on the Capital City of Prague; Prague is not divided into separate municipalities, but into city districts.

The number of regions can change (increase or decrease) only by means of a constitutional act. This legislative requirement was realized by the Constitutional Act on Creation of Higher Local Self-Governing Units. This act established 13 regions and the city of Prague as a capital city. Unlike the changes in the number of regions, the area of the territory of the regions can be changed by regular acts (e.g. Act no. 387/2004 Sb.).

The same problem of inconsistency in the Art. 100 applies to the Art. 101 of the Czech Constitution: "*(1) Municipality shall be independently administered by its council. (2) Higher self-governing units shall be independently administered by its council. (3) Local self-governing units are public law corporations which may own property and manage their affairs on the basis of their own budget. (4) The state may intervene in the affairs of local self-governing units only if such is required for the protection of law and only in the manner provided for by the act.*" The Constitution deals only with the councils (municipal and regional), while all the other bodies (municipal council board, mayor, treasurer, regional council board, governor, etc.) are regulated only by the acts. The right to own property and to manage the affairs on the basis of own budget will be analyzed later and more detailed in the chapter on financial resources; at the moment, it should be mentioned that there is no definition or specification of sources of the property or the budget incomes. The relation between the State and the local self-governing units is quite week and the Constitution leaves the self-government in the hands of the legislature. The constitutional limits of the state's interference to the performance, but also to the establishment of self-government, are very small (Rychetský at al. 2015). The deficiency of constitutional regulation derives from the court decisions. However, these court decisions are not very stable.

The Art. 102 of the Constitution follows the regulation in the previous article on the councils, stating 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.*"

The Art. 103 of the Czech Constitution is no longer a part of the legal order. It had laid down that the regional council had the right to name a higher self-governing unit to its

regional council. But the members of the Parliament were wanted to avoid frequent changes of the title based on political will that they preferred to withdraw this right of the council.

The Art. 104 deals again with the (municipal and regional) councils. It states that "*(1) The powers of councils shall be provided for only by the act. (2) 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. (3) Councils may, within the limits of their jurisdiction, issue generally binding ordinances.*" The limitation that the powers of councils shall be provided for only by the act means that it is only the Parliament (i.e. legislative power) and not the Government, the Prime Minister, ministries, etc. (i.e. executive power) that can define areas to be managed by the self-government. However, the Constitution does not give us any guide to define the powers of councils. This role is rather played by the Constitutional Court. There are some issues falling within the area of financial law, in this respect, e.g. a question whether the municipalities can regulate places where video lottery terminals cannot be operated by their generally binding ordinances: the Constitutional Court stated without any doubts that this is the power of the municipal councils (CZ: Constitutional Court, Pl. ÚS 6/13; Radvan, 2017: 532-534). The principle stated in the second paragraph reflects the fact that there are no hierarchical relations between the municipalities as basic local self-governing units and the regions as higher local self-governing units. Their competencies are in no way overlapping, but passing (Rychetský at al. 2015).

The issue of generally binding ordinances has been quite problematic, especially because the competence of the councils is determined by means of the "regular" acts, i.e. not directly by the Constitution. In other words, the power to legislate is under the protection of the Constitution, while the content of this power is governed by the "mere" acts. (Rychetský at al. 2015). The Art. 10 of the Municipalities Act defines 4 areas to be regulated by municipal generally binding ordinances:

1. Ensuring local public order (municipalities may determine which activities may be exercised only at places and at times specified by generally binding ordinance or may provide that certain public areas in the municipality are prohibited from such activities);
2. Organizing, conducting and ending of sports and cultural activities to ensure public order;
3. Ensuring the cleanliness of streets and other public areas, protecting the environment, green areas and other public greenery, and using of community facilities serving the needs of the public;
4. Other areas only if they were empowered to regulate them by a special law.

During the first year of the existence of the Czech Republic, the Constitutional Court ruled (CZ: Constitutional Court, Pl. ÚS 5/93) that a municipality may issue generally binding ordinance containing the legal obligations only on the basis and within the limits of the act and that the municipality is entitled to issue a generally binding ordinance which

contains legal obligations only in the case of explicit legal authorization. In 2006 this, in our opinion unconstitutional interpretation of the Constitution, was changed (CZ: Constitutional Court, Pl. ÚS 45/06): the Constitutional Court acknowledged the generally binding ordinance the nature of the original norms, the creation of which are the municipalities empowered directly at the level of the Constitution and they do not require any other explicit authorization by law. However, there is one problematic aspect that still remains: is that really the Art. 10 of the Municipalities Act that limits the areas in the municipal life to be regulated by local bylaw, or shall we accept the bylaws issued to regulate whatever belonging to the self-governing competence of the municipality, as stated in the Art. 104(3) of the Constitution? The Constitutional Court insists on the first approach, while we prefer the second one.

The final article of the Czech Constitution dealing with the self-government is the Art. 105: "*The exercise of state administration may be delegated to self-governing bodies only if such is provided for by the act.*" In fact, this article follows the Art. 100(1) in fine, and was explained above as so-called mixed model.

As it is obvious from the text above, the Czech Republic is a specific country with its extremely high number of small municipalities. In many of them, it is really difficult to ensure the self-government because of personal reasons and lack of competences. Using the mixed model of state administration and local self-government (the state transfers the performance of the state administration to the local self-government units), with the combination of small municipalities, the legislator had to approach a model in which some municipalities carry out state administration on the territory of other municipalities.

The system of the Constitution of the Czech Republic and its articles concerning local self-government are unclear and often confusing. It is too brief and the Constitutional Court has to deal with many of the problematic issues as the Constitution itself does not give any answer. Still, there is no need for any amendment to the Constitution in this area, as we believe that any changes in the Constitution shall only be made if extremely necessary.

3 The scope of local self-government

Art. 4 of the European Charter on Local Self-Government introduces the core framework of local self-government. The section 1 of this article states that the basic powers and responsibilities of local self-administration authorities are to be recognized either by constitution or statute. In the Czech Republic, the powers of local administration are recognized by the Czech Constitution, in its Chapter 7 (the Arts. 99-105). By not including these provisions under the chapter regulating the executive power (the Chapter 3), the drafters of the constitution wanted to emphasize the relative autonomy of self-administration, as an independent authority, from state administration. The constitution recognizes two categories of local self-administration, i.e. municipalities and regions. These two are understood as territorial self-administering units. The constitution outlines

these self-administering units as territorial association of citizens which has a right to self-administration (the Art. 100 (1)). Under the Constitution, the bodies of self-administering units may be also granted by the legislative branch the right to carry out state administration. The constitutional guarantees of self-administration materialized namely in one of the constitutional principles setting the relationship between the state and the self-administration. According to this principle, the state may only interfere with the activities of the territorial self-administering units if it is required so by the law, and only within the limits set by the law (the Art. 101(4)). Aside from the constitutional protection, the Art. 4(2) of the Charter is also embodied in the Constitutional Act on Creation of Higher Local Self-Governing Units. This act, however, only names which particular regions are established and it, aside from amending the Constitution, deprived the possibility of establishing particular lands (as territorial units). Aside from that it removed the power from the higher self-administering unit to decide on its name. It did not introduce any further competences of the region. This act actually reflected the constitutional principle that the regions may only be established or abolished by means of a constitutional act. Hence, the detailed powers and competences of the municipalities and regions can be set by the statutes. The issues of self-administration may "only" be regulated by the constitutional act, regular statutes and other laws issued based on a special empowerment set forth in a statute. As for the transferred authority, the bodies of the municipality or of the region represent the state power and have to observe also government decisions and directives of the central administrative offices published in the Bulleting of the government for the bodies of the regions and municipalities. Next, they have to act in compliance with other measures issued by the bodies of public administration adapted during the review of the transferred authority. This principle is not included in the Constitution, but it is recognized by all the tree core acts regulating self-governance, i.e. in the Municipalities Act, the Regions Act and the Act on the Capital City of Prague.

In general, the independent powers of the municipalities cover the activities that are in the interest of the municipality and its residents. These activities do not represent exercise of the state power, but target the issues of self-administration. Some of these powers are carried out by the higher unit, i.e. by the regions (the Art. 5(1) of the Municipalities Act). As for the independent powers of regions, they mainly cover the issues in the interest of the region and its residents. These independent powers do not represent the state administration (the Art. 14(1) of the Regions Act). The territorial self-governance is of subsidiary nature. The local self-governance is in charge to carry out public administration always if not stated otherwise by the law. This complies with the Art. 4(3) of the Charter, as public administration is primarily carried out by those bodies of public self-governance which have the closest ties with the citizen. This approach also supports the existence of small municipalities, as communities with strong ties which are able to administer their issues with the best knowledge of its residents and with respect to the abilities of the municipality (Mrkývka 2000: 160).

The independent powers of municipalities generally cover the following:

- Finance, management and development;
- Establishment of entities or organizational units ensuring fulfilment the tasks of the municipality;
- Territorial changes within a municipality;
- Cooperation among municipalities and establishment of voluntary associations of municipalities;
- Granting of honorary citizenships and prizes;
- Issues of public order, health care, education, social services, transportation and others.

It is important to keep in mind that the role of self-governance is often limited to the question of establishment of an institution or carrying out of a certain service – further exercise is under the supervision or within the regime of state administration.

The same applies to the regions which, however, cannot interfere with the powers of the municipalities. Although a region is considered to be a higher self-governing unit, it does not means that it would be in a superior position towards the municipalities. It has certain self-governing competences also in the area of health care, education, social services and transportation, namely connected with establishing, abolishing and funding institutions that are to render services for the residents of the region. Others are connected with exercise of state administration.

The transferred authority, i.e. exercise of state administration in the municipalities and regions deals with two problems. When the tree-level system of the national committees (municipality – district – region) was abolished, there was no new three-level parallel introduced, in the same time. Since the self-governing municipalities had been introduced in 1990, it took ten years before the self-governing regions were established. There was no concentrated body of state administration established at the level of districts; only temporarily, there were the district offices. The issue is twofold, on the one side, there are municipalities or different sizes, on the other side, there are regions too big to be able to fulfil the principle embodied in the Charter, Art. 4(3), i.e. to have close ties with the residents. These regions, however, when compared with the regions of 1960 and the with the lands illegally abolished 1949, are so small that they had to associate in cooperation associations (NUTS II) in order to be able to use the funds from the EU funds. The Czech Republic has not introduced a system of concentrated bodies of local state administration which would be independent from the territorial self-administration bodies. Thus the municipalities and regions carry out agenda – by means of their bodies – which overlaps both the independent powers (self-governance) and transferred authority (state administration). This approach led to creation of the following categories of municipalities:

a) Municipalities carrying out state administration only in the basic extent, i.e. Only within their territory;

b) Municipalities with a so-called authorised (designated) municipal office (the art. 64);
c) Municipalities with extended competences of a municipal office (the Art. 66).

Classification of the municipalities according to the letter b) and c) is regulated by a special law.[3] The scope of their territorial competence is determined by Ministry of Interior by means of an ordinance. The towns which used to had a district office or in the years 1961 – 1990 the district national committee and the towns in which there had been the district national committee till 1960 (so-called small districts) are now considered to be the municipalities with extended competences of a municipal office. Nevertheless, when setting the scopes of territorial competences, the original borders of the districts were not followed. These district offices thus carry out state administration agenda for themselves and for the municipalities that were put by Ministry of Interiors into their territory. This solution is, however, not flawless. The problem is that even the exercise of state administration by the municipal offices is influenced by self-administration. This self-administration, as a part of self-governance is typically carried out by the elected bodies which arose from election in which the residents voted. If, however, the scope of competences touches other municipalities, the residents thereof do not participate – by voting – in personal composition of the office.

There are 205 municipalities with extended competences of a municipal office. In 2003, when the district office were abolished, these municipalities took over most of their competencies and only a smart part of them were granted to the regions offices. The Municipalities Act only lays down general issues of transferred authority, as most of this authority/power is regulated by special public administration laws. The transferred authority (state administration) carried out by the municipalities with extended competences cover, for instance:

- The evidence of the citizens;
- Issuance of the ID cards (citizens´ ID cards, passports);
- Administration of road transportation, issuance of driving licences, register of vehicles and certificate of technical compliance;
- Social security and social protection of children;
- Forest administration, administration of hunting and fishery;
- Water administration;
- Waste management;
- Environmental protection;
- Trade licence administration.

The same applies to the so-called municipalities with an authorised municipal office. This category of the municipalities, which often have a status of a town, carry out state

[3] The Act no. 314/2002 Sb., on determination of the municipalities with an authorised municipal office and of the municipalities with extended scope of authority.

administration in certain areas (such as building office, register office) for other municipalities.

When carrying out state administration, the municipalities are the offices of the first instance, regardless of which category of municipalities they fall into. The second instance in the state administration issues is typically the region office.

The regions and their region offices carry out state administration within the extent set forth in the Regions Act and other relating special laws. It has the competences that were not granted to municipalities or any special bodies of state administration (environmental protection, financial administration, customs administration, etc.), or if it does not fall within the competences carried out directly by the central office of state administration (ministries, etc.).

The municipalities, the capital of Prague and the regions can regulate the exercise of state administration within its competence by means of a decree if they were empowered to such a regulation by the law. Thus, the Czech Republic does not adheres to the principle embodied in the Art. 4(5) of the Charter and it stated that, under the Art. 12(1), it does not consider itself bound by this principle. The other sections of the Art. 4 are present in the Czech legal order. The autonomy of municipalities and regions when self-governing themselves and protection of responsibility of state administration in a so-called transferred authorities is granted by the constitutional order and regular statutes.

4 Protection of local authority boundaries

"*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.*", reads the Art. 5 of the European Charter of Local Self-Government. Well, as it is obvious from the text below, this principle is not fully respected in the Czech Republic.

The Art. 100(3) of the Czech Constitution limits the number of regions stating that the "*Higher self-governing units may be created or dissolved only by a constitutional act.*" The Constitutional Act on Creation of Higher Local Self-Governing Units established 13 regions and next to them the capital city of Prague. The borders of the regions were defined by the areas of the existing (state administrative) districts. This Constitutional Act defines the seats of each region; in fact, the title of the region was using its seat. In 2001, 4 regions changed their title (by the amendment to the Constitutional Act) to reflect the area of the region and not the seat.

Unlike the changes in the number of regions, their seats and titles, the delimitation of the territory of the regions can be changed by regular acts. This happened only once in the history of the independent Czech Republic: in 2004 by the Act no. 387/2004 Sb.:

- 25 municipalities were taken from the territory of the Vysočina Region and added to the territory of the South Moravian Region;
- 3 municipalities were taken from the territory of the Moravian-Silesian Region and added to the territory of the Olomouc Region.

There were 28 municipalities in which approximately 11,500 inhabitants live. All changes were based on the needs of the citizens declared by the resolutions of the municipal councils (only Vysočina Region disagreed). From a physical point of view, the basic criterion was the ride for work and services, transport accessibility and territorial slope (Government of the Czech Republic, 2004).

The second changes in the regional boundaries were effective since 2016, but these changes were rather technical, based on the changes in the military areas. The Act no. 15/2015 Sb. cancelled 1 military area at all and changed the borders of several others. As a result of this, there were 4 changes between 7 regions. Practically, these changes were based on the changes of the municipal borders (the former military area in one region became a part of the municipality in the second region). The criterion as the ride for work and services, transport accessibility and territorial slope were used, too (Government of the Czech Republic, 2015).

The Municipalities Act presumes that every part of the territory of the Czech Republic is a part of the territory of some municipality and at the territory of the municipality there is at least one cadastral territory. Two or more neighboring municipalities may merge, or one municipality may join the neighboring one, based on the contract. The contract must be based on the decisions of the municipal councils. Such a decision must be officially published for the period of 30 days; during this period, the citizens have right to submit a proposal for a local referendum.

A new municipality can be established by separating a part of the municipality, or by changing or canceling a military area (see above). As the existing problems of small municipalities were mentioned several times, there are quite a strict rules for a new separated municipality:

- To be neighboring with at least 2 municipalities or 1 municipality and 1 foreign state;
- To create a coherent territorial unit;
- To have at least 1,000 inhabitants (EU citizens, not only Czech citizens – based on the decision CZ: Constitutional Court, IV. ÚS 1403/09);
- To accept the creation of a new municipality by a local referendum.

A contract how to split the property must be made in advance. In case it is impossible to have such a contract, the law states substitute rules.

All the other changes of the municipal boundaries must be based on the contract between the municipalities, consulted with the cadastral office and announced to the Ministry of Finance, Czech Cadastral Office, local cadastral office and financial (tax) office.

5 Administrative structures and resources needed for the tasks of local authorities

From the two paragraphs of the Art. 6 of Charter, the Czech Republic considers itself to be bound only by the section 1. The municipalities and regions are able to set their own internal structure of administration and may adapt them to the local needs so that effective management is ensured.

Each municipality has a set of its bodies: local government, municipal board, mayor and municipal office. Their powers and the manner in which they are established or called to an office are set forth by a law (the Chapter IV of the Municipalities Act). Nevertheless, in the small municipalities, the municipal board is not established and the competences thereof are carried out by the mayor and municipal government (the Art. 99(3) of the Municipalities Act). This applies to the municipalities that have less than 500 residents. The number of the members of the local government is between 5 – 15. According to the financial ability, the local government may decide that its member shall hold its office as so-called "released member". It means that he or she would be temporarily release from the job and be paid for holding the office, i.e. for being a member of the local government.

The Municipalities Act states that local government shall establish several committees, as the so-called initiative and control bodies (the Art. 117 ae seq. of the Municipalities Act). The local government has a duty to establish financial and controlling committee (the Art. 117(2) of the Municipalities Act). The financial committee shall review how the municipality handles its property and financial sources. Aside from that, it carries out other tasks which were assigned to it by the municipality. As the Municipalities Act does not expressly set forth which committee shall prepare the draft budget of the municipality for the municipal board and for the local government, the financial committee may be assigned this task, i.e. to prepare the draft budget. The law states that the controlling committee has to check whether the decisions of the local government and the municipal board are fulfilled. Aside from that this committee also checks whether the other committees observe laws. The controlling committee may be also assigned other tasks.

If there are at least ten per cent of residents of a municipality who registered as non-Czech nationals and if an association representing the interests of a national minority requests so, the local government shall establish a committee for the national minorities. At least one half of the members of the members of the board should be the nationals of the national minority, if possible (the Art. 117(3) of the Municipalities Act). Municipalities may also establish other committees. The committees are entitled to present its opinions and proposals to the local government.

Another committee recognized by the Municipalities Act is a settlement committee (the Art. 120 of the Municipalities Act). This committee may be established by the local government only for a part of a municipality; for instance, only for part of the municipality that used to be an independent before or if such a part has some other specifics. Settlements were a traditional part of self-administration and were abolished during the World War II by the government decree no. 265/1941 Sb., which abolishes the settlements in the meaning of municipal arrangement. They have never been restored as an independent association of citizens. The settlement committee represents at least a hint of such restoration. The settlement committee (sometimes also called ´local committee´) is entitled to present opinions concerning the development of the part of the municipality and budget of the municipality to the local government, municipal board or to the other committees. Aside from this, it can present its view on the comments and incentives sent by the municipality residents. As opposed to the other committees, the chairman of the committee does not have to be a member of the local government.

The municipal board is an executive body. It may establish committees, as its initiative and counselling bodies (the Art. 122 of the Municipalities Act). The law may state that committees may be in charge of the abovementioned transferred authority (state administration). Such a committee shall be established by the mayor after discussion with the director of the regional office. The chairman of such a committee has to meet the requirements placed on an official engaged in state administration in municipalities. The scope of activities of the municipal board in which the committees may be engaged may be very wide. There are, for instance, economic, property, cultural, sport developing, information society developing, transportation and other committees.[4] The objective of the committees, the number of their members and its composition depend mainly on the municipal board and are based on the particular circumstances in the board.

Large cities and towns of special importance may be subdivided into town districts or quarters so that the administration thereof is able to meet the needs of the residents most effectively. This option has been given to 25 cities which the law calls ´statutory cities´ (the Art. 4 of the Municipalities Act). If the local governments of these cities decide for such a division, they shall approve a statute in which they define the division, the relationship of the sections to the city and possible transfer of the powers of the city to the bodies of the respective districts. The composition of these bodies copies the composition of a municipality. The town districts or quarters may establish their own committees according to their needs. There is no real difference between the town districts and city quarters, their name may be based on the historical tradition of the town.

The capital city of Prague has, under the Act on the Capital City of Prague, similar structure of the bodies, as it is in the statutory cities. Hence it is divided into town districts. The relationship between the city of Prague and its districts is mainly regulated by the Act on the Capital City of Prague and by the statute approved by the local government of

[4] For instance, see Brno 2018.

Prague. The Act on the Capital City of Prague, other relative special laws and the statute are grounded on the very special circumstances that influence the functioning of the capital city, which is very close to a region, as a higher unit of territorial self-administration.

As for the regions, the Regions Act recognizes similar bodies as those assigned to the municipalities, i.e. local government, board, regional president and regional office (the Chapter IV of the Municipalities Act). Aside from them, if stated by the law, there may be other special bodies established (the Art. 65 of the Regions Act).

The local government is obliged to establish a financial committee and controlling committee having similar functions and objective as the committees of the local government of the municipalities (the Art. 76-80 of the Regions Act). Next, it also has to establish a committee for bringing up, education and employment. This committee is supposed to consider the demographic development with respect to the development of the nets of the schools and the educational facilities and present its opinions on these issues. It may present its recommendations for improvement in the area of education, subsidies in the area of youths, physical education and sport. Aside from that it considers the report on achievements in the given areas and may be assigned other tasks (the Art. 78(6) of the Regions Act).

The local government can establish other committees according to its needs. The conditions for setting the committees are set forth by the law.

The municipal board can also establish its commissions. Establishment of such commissions depends on the needs and competences of the board. There may be, for instance, energetic commission, commission on transportation and local planning, investment or property commission, legislative, organizational commissions, commissions for the European funds, for culture and heritage administration, for inter-regional relationships, and many others (South Moravian Region 2018).

The Czech Republic obviously adheres to the principle set forth in the Art. 6(1) of the Charter. Aside from the obligatory bodies prescribed by the law, the municipalities and regions can establish their own internal administrative structures and adjust them to their local needs. The setting of general rules for establishing own committees and commission and for appointing persons to them thus guarantees the needed level of the management thereof.

Despite the fact that the Czech Republic excluded the legal effect of the Art. 6(2) of the Charter, the conditions for carrying out the administrative supervision over the activity of the municipal and regional offices and the self-governance responsibility of the municipalities and regions in the given scopes of authority comply with the unbinding principles. This practice may be deduced namely from the manner in which the officers (office employees) are hired and also from the conditions laid down in the Act on Officers

of Territorial Self-Administration Units (The Act no. 312/2002 Sb., as amended). This act regulates the employing and education of officers of the territorial self-administration units. It also introduces the conditions the municipalities and districts have to meet when applying this act. The conditions concerning the officers of the city of Prague and its districts are laid down in the Act on the Capital City of Prague.

6 Conditions under which responsibilities at local level are exercised

In its explanatory report of 15 October 1985, the Council of Europe explained that the Charter commits the parties to applying basic rules guaranteeing the political, administrative and financial independence of local authorities (Council of Europe, 1985). The Czech Republic considers itself bound the by the Art. 7(1 and 3). The Art. 7(1) sets forth that *"the conditions of office of local elected representatives shall provide for free exercise of their functions"* and the section 3 reads: *"Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles."* The Czech Republic does not consider itself bound by the he Art. 7(2), which ensures appropriate financial compensation for expenses incurred in the exercise of the office. Below, we will first outline the general purpose of these two sections so that we could later show how this objective reflects itself in the Czech legal order.

According to the interpretation introduced by the Council of Europe, the purpose of the Art. 7(1) is ensuring that elected representatives may not be prevented by the action of a third party from carrying out their functions. The purpose of the Art. 7(3) is to provide that disqualification from the holding of local elective office should only be based on objective legal criteria and not on ad hoc decisions. According to the Council of Europe, this normally means that cases of incompatibility will be laid down by statute or by non-written legal principles (Council of Europe, 1985).

The conditions of office of local elected representatives were laid down mainly in the Municipalities Act, Regions Act and the Act on the Capital City of Prague. Aside from that, there is general – most fundamental – protection of the rights mentioned in the Art. 7 of the Charter, in the Charter on the Fundamental Rights and Freedoms, which is a part of the constitutional order, i.e. part of the Czech constitution in broad sense.[5]

As for the Municipalities Act, it applies to the local authorities of municipalities. In general, any resident of the municipality older than 18 may run for the office, i.e. to become a member of the local (municipal) government. The election to the local governments itself is regulated by a special law – the Act no. 152/1994 Sb., on elections to local governments. A person elected becomes a member of the local government as at

[5] The Czech legal theory distinguishes between the Constitution in the narrow sense (sensu stricto) and the constitution in the broad sense (sensu largo). The former refers only to the official Constitution, i.e. the Constitutional Act no. 1/1993 Sb., whereas the latter refers to the entire constitutional order, i.e. all the constitutional laws including the Charter on the Fundamental Rights and Freedoms.

the day of election. In light of the Art. 7 of the Charter, the Arts. 69 and 70 of the Municipalities Act are important – they state that any member of the local government holds his or her office personally and shall not be obliged to follow any orders. A member of the local government cannot be deprived of any rights arising from his or her employment as a result of being elected and holding the office.

As for the financial remuneration, the Municipalities Act recognizes two options: (i) members of the local government who were "freed" from their employment so that they could fulfil the duties connected with holding the office and (ii) those who were not "freed" in such a way. The former shall obtain remuneration from the municipality, whereas the latter shall only be compensated by their employer for the time they spend working for the municipality; such a cost incurred by the employer shall be later compensated by the municipality. The Municipalities Act also sets forth the basic rules for calculating the compensation and remuneration. The "freed" member of the municipal board has a right to have five-week long vacation.

Similar regulation may be found in the Regions Act. Under the Art. 32 of the Regions Act, any member of the local government shall not be deprived of any rights arising from his or her employment as a result of having been elected and holding the office. The issue of remuneration/compensation for being a member of the local government is almost identical to the regulation described above with respect to the Municipalities Act. Even in this case, the law distinguishes between members "freed" from their employment duties and those who were not "freed" and go to their job regularly. The Regions Act, however, does not contain a clause that a member of the local government shall not be bound by any orders, as it is expressly stated in the Municipalities Act.

The Act on the Capital City of Prague contains very similar provisions regarding the issue in question. This Act, identically with the Municipalities Act, contains a provision stating that any member of the local government holds his or her office personally and shall not be obliged to follow any orders (Art. 51). As for remuneration, the provisions are almost identical to the regulation described above with respect to the Municipalities Act and the Regions Act. Even here, the distinguishing between "freed" members and those "not freed" from their employment is in place with similar solution as described above.

At the constitutional level, the principles set forth in the Art. 7(1 and 3) of the Charter, may be found in the Charter on the Fundamental Human Rights and Freedoms. The Art. 17 ensures freedom of speech and right to obtain information. Thus, the free exercise of the office may be derived also from these rights and freedoms. The Art. 21 of the Charter on the Fundamental Human Rights and Freedoms states that all citizens shall have an equal access to offices, i.e. any shall have a right to run for an office, for instance in local government. The observance of these rights and freedoms is reviewed mainly by the Constitutional court.

Thus, we may conclude that the principles set forth in the Art. 7 of the Charter, by which the Czech Republic considers itself to be bound (i.e. the section 1 and 3) are properly embodied in the Czech legal order and are subject to judicial review.

7 Administrative supervision of local authorities' activities

As for the Art. 8 of Charter, the Czech Republic considers itself bound by all the sections of that article. The principle anchored by the section one, i.e. the requirement that "*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*." The Arts. 8(2 and 3) state: "*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.*" and "*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.*"

As for the purpose of this article, the Council of Europe explained that the "*provisions are above all relevant to the philosophy of supervision normally associated with the contrôle de tutelle which have long been the tradition in a number of countries. They thus concern such practices as requirements of prior authorisation to act or of confirmation for acts to take effect, power to annul a local authority's decisions, accounting controls, etc.*" (Council of Europe, 1985). The idea connected with the first section of this article is that "*there should be an adequate legislative basis for supervision and thus rules out ad hoc supervisory procedures*" (Council of Europe, 1985). In general, the drafters of the Charter drew inspiration from the principle of proportionality, whereby the controlling authority, in exercising its prerogatives, is obliged to use the method which affects local autonomy the least whilst at the same time achieving the desired result (Council of Europe, 1985).

In the Czech legal order, this provision is fully implemented in several laws, both by the constitutional laws and by the "regular" statutes. As for the constitutional protection, the Constitution of the Czech Republic states that the state may only interfere with the issues of the self-governing units if it is necessary for protection of laws (statutes) and only in a manner stated by a statute. Here, we should emphasize that the term "statute" used in the provision shall be understood as a normative act of certain "legal power". 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 governments decrees. This core provision thus means that, for instance, the executive power (including the government or the president) are not allowed to infringe by their ordinances or decrees into the self-governing units´ issues without being empowered to

do so by either a statute or an constitutional act, i.e. by a normative act adapted by a legislature.

More particular manifestation of the principles embodied in the Art. 8 of the Charter may be found in the following statutes. Due to the two-fold powers of the self-governing units in the Czech Republic, i.e. carrying out of the powers that were transferred upon them by the state (state administration) and exercise of the powers assigned to them directly by law within the framework of self-governance (self-administration), the Municipalities Act has two areas dealing with the supervision. In the Arts. 123 and 124 and in the Art. 129a, there are provisions concerning self-administration, whereas the Arts. 125 and 129b concern the exercise of state administration and the supervision thereof. As for the provisions on self-administration, they provide the procedural steps to be taken by revoking a municipal ordinance which did not comply with the legal order; Ministry of Interior shall inform the municipality that its municipal ordinance is in such a breach and if not corrections are made within 60 days, the ministry may deprive the ordinance of its legal effects. If, however, the municipal ordinance was breaching the fundamental human rights, the legal effects of the municipal ordinance might be deprive without due delay, i.e. without the need to ask the respective municipality to correct it. Similar rules apply to any other decisions taken by the bodies of the municipality; they may also be revoked by the Ministry (normally after giving the municipality time to fix them, or without due delay if the decisions interfere with the fundamental rights). As for the exercise of state-administration, there are similar rules. The difference is, nevertheless, that the body having the power to deprive the municipal ordinances of legal effects has the higher body of state administration, i.e. mainly the regional office.

Very similar regulation may be found in the Regions Act. The issues concerning supervision of self-administration are regulated by the Arts. 81, 82 and 87, whereas the supervision of exercise of state-administration is regulated by the Arts. 83, 84 and 88. As for the city of Prague, these issues are similarly regulated in the Act on the Capital City of Prague; this act outlines the powers the ministry has when supervising the unit.

To summon, the supervising authority may usually interfere and deprive the ordinance (or a decision) issued by the unit of local self-governance, only if the unit was properly informed about a non-compliance with the legal order and after the unit was given time to fix it by itself (usually 60 days). Only then the supervising authority may intervene. If, however, the fundamental rights are endangered, then the steps by the supervising authority may be taken without having to undue delay.

8 Financial resources of local authorities and financial transfer system

The Art. 9 of the European Charter of Local Self-Government presents some principles of economic independence of local self-government units granting financial resources of local authorities. The Art. 9(1) states that "*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." Czech local self-government units have right to have their own financial resources, as indirectly expressed in the 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.*" There are additional legal acts expressing the principle of own financial resources, like Small Budgetary Rules (Act no. 250/2000 Sb., Budgetary Rules on Local Budgets), Municipalities Act, or Regions Act.

The construction of the local budget and the management of the funds of this budget are governed by a special act (Art. 44 of the Municipalities Act, Art. 22 of the Regions Act). This special act is the Act on Small Budgetary Rules. Its Art. 4 defines the budget of a territorial self-governing unit as a financial plan governing the financing of the activity of a territorial self-governing unit. The financial year is the same as the calendar year. The budget is usually compiled as balanced.

The revenues of the local budget are mainly incomes from own property and property rights, incomes from own economic activities, incomes from the economic activities of legal persons established by the municipality,[6] incomes from own administrative activities (administrative charges, selected fines and levies), incomes from local charges (in case of municipalities only), tax revenues or shares in them (according to the Act no. 243/2000 Sb., on Budgetary Designation of Taxes, as amended), subsidies from the state budget and from state funds, subsidies from the regional budget, received cash donations and contributions, etc.

The Czech legal order complies with the principle expressed in the Art. 9(2) of the Charter stating that "*Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.*"

This rule should be observed constantly, regardless of any changes in the legislation. Perhaps that is why there are frequent views tension between the state and local authorities when the other side points to the increase in power without adequate financial compensation. However, this principle must be observed: if there is the growing number of tasks and thus the responsibility of municipalities and regions to accomplish these tasks, there must be an increase of the financial resources. The crucial thing is who and when decides these issues: they are politicians who usually change these tasks and resources at the time of budget approval by amending individual legal acts. Then there is another question: who and how is liable for misuse of these resources? (Marková, 2005:3; Radvan, 2016: 71).

The Czech Republic when ratifying the European Charter of Local Self-Government made the notification, that the Czech Republic does not consider itself bound by

[6] Contributory organizations, organizational units, and companies under the Act in Business Corpotrations, institutes, school legal entities, public research institutions, special monetary funds (Kozieł, 2016).

provisions of the Art. 9(3) stating that "*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.*". There is no legal definition of local taxes in the Czech Republic. Radvan was dealing with these issues in his previous texts (Radvan, 2016: 72-74) concluding that there is no doubt that the municipality must be able to assess some local taxes, however, that their right will be limited by law with regard to the Art. 11(5) of the Charter of Fundamental Rights and Freedoms. In this case, it is more a political question as to whether and in what form and to what extent the municipalities will receive options to assess and / or collect local taxes. Radvan created his own definition, that the local tax is a financial levy, determined to municipal budget that can be influenced (talking about tax base, tax rates or one of the correction elements) by the municipality. It is not crucial whether the taxpayer obtains from the municipality any consideration or if it is a regular or a single levy – local taxes include the tax in the strict sense, so the fees (charges).

Local taxes are condition sine qua non for the economic autonomy of local self-government. Even though the Czech Republic announced that it does not consider itself bound by this provision, there are several local taxes in the Czech Republic. The most important one is the immovable property tax (Act no. 338/1992 Sb.). Even though this tax is not administered by the municipality itself, it has several possibilities to influence the revenue: there are three possibilities of exemptions (exemption of property attached by natural disaster, exemption of agricultural lands, and exemption of property as an investment incentive), and three possibilities to apply or change coefficients that can influence the tax rate (location rent, municipal coefficient and local coefficient) (Radvan, 2016: 74).

The Local Charges Act (Act. no. 565/1990 Sb.) provides for the power of municipalities to assess local charges by means of issuing their ordinances (bylaws). Such ordinances must specify the conditions for levying, the charge rate, the charge maturity and possible exemptions, if any. The ordinances may not exceed the limits defined by the Local Charges Act (such as, for example, the absolute charge rate and the types of charges permitted). Presently, the municipalities in the Czech Republic have the opportunity to levy only the following local charges (the list is complete, i.e. municipalities are not allowed to levy any other charges):

1. Dog charge;
2. Charge for spa and recreation stay;
3. Charge for using public places;
4. Charge on entrance;
5. Charge for housing capacity;
6. Charge on communal waste;
7. Charge for permission to enter selected places by motor vehicle;
8. Charge on appreciation of building land (Radvan, 2016: 75-76).

According to the above mentioned definition, there is no local tax at the regional level in the Czech Republic.

Concerning the diversified financial systems mentioned in the Art. 9(4) of the Charter ("*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.*") it should be noted that the diversity of potential incomes of the municipalities and regions is maintained and this principle is respected by the Czech Republic. In the Small Budgetary Rules, there is a list of the income sources, other sources of funding may be provided through the National Fund (fund allocating money form EU), or various forms of irrecoverable incomes (grants, loans, and the issue of municipal bonds). However, we can hardly speak about flexibility in the Czech Republic.

With regard to the principle of diversified financial systems, it is possible to talk about fiscal federalism within the budgetary system, where there are at least two levels of decision-making. Fiscal federalism reflects organization of the state, while creating the appropriate level of public budgets – the state budget, regional budgets and municipal budgets. Process, where the powers are transferred from the center (from the state) to lower territorial units, incl. appropriate resources and decision-making on their using, is known as fiscal decentralization. Central level ensures adequate resources to fulfil a certain standard of public services (for example, through vested taxes, shares of taxes, subsidies, etc.), while a lower level, which should have a better knowledge of the local situation, decides on the specific conditions of the services. In this context, in some cases, there is also the transfer of the taxation powers, i.e. a lower administrative level can levy their own taxes or impose a premium surcharge on central taxes and provide a large number of public goods and services (Široký, 2008: 205-206; Radvan, 2016: 76-77).

Key legal act determining the tax revenue is the Act on Budgetary Designation of Taxes. This act tries to spread the tax revenue so that the state budget and the budgets of local self-government units would be balanced. This requirement is achieved by widespread portfolio of shared taxes, which means that the share of municipalities and regions to progressive taxes as well as digressive taxes is guaranteed (Pařízková, 2005: 109).

Act on Budget Destination of Taxes, by its nature, regulates a system of vested taxes and shared taxes. The whole revenue of vested taxes is the income of municipal and regional budgets: the immovable property tax revenues are the income of municipal budget, the corporate income tax paid by municipality is the income of municipal budget, and the corporate income tax paid by region is the income of regional budget. The revenue from shared taxes (value added tax, personal income tax, and corporate income tax except taxes paid by municipality or region) is distributed among the different public budgets in the legal circumstances. Act on Budget Destination of Taxes regulates the determination only of a certain taxes (VAT, excise taxes, income taxes, immovable property tax and road tax); in other cases (tax on acquisition of immovable property) the revenue is the income of the state budget or municipal budgets (local charges, etc.) according to the individual act. Tax revenues of the regional budgets according to the Act on Budget Destination of

Taxes are share of value added tax, share of personal income tax, and share of corporate income tax. Tax revenues of the municipal budgets according to the Act on Budget Destination of Taxes are immovable property tax revenue (the beneficiary is the municipality, where the property is situated, share of value added tax, share of personal income tax, and share of corporate income tax. Other tax incomes of the municipalities according to the ordinance of the Ministry of Finance no. 323/2002 Sb., Budget Mix Ordinance, as amended, are local charges, resources gained by administrative activities, etc. (Radvan, 2016: 77-79).

The principle of protection of financially weaker local authorities is described in the Art. 9(5) of the Charter: "*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.*"

The problem is the differentiation of territorial units of the richer and poorer, which is the case of the many causes of whether affected (support for the construction leading to higher property tax revenue, their own economic activity), or not affected (setting the allocation of proceeds of centrally collected taxes) by the municipalities. Marková (2005: 5) refers to the balancing of conflicting principles of deserving and of solidarity when the latter is aimed at balancing the gap between poor and rich regions. Personally, we have to agree that the Czech Republic made the notification that it does not consider itself bound by this provision. The reason is the total number of municipalities in the Czech Republic; this number is almost 6,300 and it is the second highest number in the European Union (the first is France). There are too many small municipalities with the number of inhabitants not exceeding 1,000 people, there is even one village with only two inhabitants. Well, the economic pressure to force municipalities to merge could be the solution to decrease the number of municipalities in the Czech Republic. And of course large municipalities are offering more service to (not only their) inhabitants. On the other hand, the political solutions during the last ten years are very often opposite and small municipalities are receiving more from shared taxes at the expense of the largest four cities (Radvan, 2016: 79).

There is the same reason (too many municipalities in the Czech Republic) the Czech Republic made the notification that it does not consider itself bound by the provision dealing with consultations with local authorities in the Art. 9(6) of the Charter ("*Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.*"). To be honest, the debate is undoubtedly kept, and recently more and more views and needs of municipalities are taken into account.
The last two principles from the Art. 9 are fully respected in the Czech Republic. The rule on grants not earmarked for specific projects ("*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.") does not forbid subsidies in individual cases, but tries to minimize them in proportion to non-specific ones. The access to capital market ("*For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.*") is guaranteed, too. Grants, loans and bond issue are one of the possible sources of local self-government incomes (Janovec, 2016: 144). To all these possibilities, however, municipalities have approached with caution, because in all property relations the municipality acts in its own name, on its account, and above with its responsibility (Radvan, 2016: 80).

9 Local authorities' right to associate

Based on the Municipalities Act (Arts. 49-53), the municipalities may become members of the voluntary union of municipalities in order to protect and to promote their common interests. The union of municipalities is a legal entity registered in the register of unions of municipalities kept at the regional office competent according to the seat of the union of municipalities. To set the union of municipalities, the municipalities should sign a contract and the statute. The most common interests to create a union of municipalities are education, social and health issues, culture, fire protection, public transportation system, municipal property management, public order, or environmental issues incl. municipal waste management, water supply, and sewage treatment.

The statute should include the members of the union of municipalities, its name, seat, and the object of its activity, the bodies of the union of municipalities (incl. the way their establishment, their competence and the method of their decision-making), the property put into the union, sources of revenues, rights and obligations of member municipalities, the method of distribution of profits and the share of members in the settlement of the loss, conditions for joining and leaving the union, and the content and scope of the control of the union of municipalities by the municipalities that have formed the union. At least the two-thirds majority of the votes of the member municipalities is required for the amendment of the statute.

Small Budgetary Rules presume the same rules for the municipal budget and the budget of the voluntary union of municipalities, i.e. each voluntary union of municipalities has its own budget.

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 their international associations.
There are two associations of municipalities with nationwide scope: Union of Towns and Municipalities of the Czech Republic and the Association of Local Self-Governments of

the Czech Republic. Regions have their own Association of Regions of the Czech Republic.

10 Legal protection of local self-government

The principle laid down in the Art. 11 of the Charter reads: *"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."* The interpretation by the Council of Europe brings more clarity as to the a judicial remedy; the remedy means the possibility of a local authority to have an access to either a properly constituted court of law, or to an equivalent, independent, statutory body having the power to rule. The Czech Republic considers itself to be bound by this provision of the Charter. This principle is fully embodied in the Czech legal order.

It is again important to distinguish between the exercise of state-administration and the self-administration. In general, the municipalities, regions and the city of Prague are legal entities. They are recognized by the law (Municipalities Act, Regions Act, the Act on the Capital City of Prague). These legal entities are considered to be so-called public entities. In other words, the broad term of legal entities (legal persons) covers both private legal entities (such as corporations) and public legal entities (such as the territorial or other units). They enter into legal relationships and protect their rights before the court. The Czech Civil Proceedings Code (the Art 21b of the Act no. 99/1963 Sb.) sets forth that if a territorial unit is a party to court proceedings, it shall be represented by the one who is entitled to act on behalf of such a unit. For specification of such a person, we need to have a look into the respective laws, i.e. Municipalities Act, Regions Act or the Act on the Capital City of Prague. In most cases, the mayor will empower an attorney to represent the territorial unit before the court.

The territorial units can be a party to two basic types of proceedings. First, they may be a party to the proceedings in which they try to protect their rights against private entities or individuals. For instance, they can sue a contractor that he or she did not deliver as it was agreed in a contract for work. Secondly, they may be a party to a dispute with other territorial unit. This is typical within its exercise of self-governing powers. If there is any other either private or public entity encroaching on their rights connected with their self-governance, they are entitled to have a court of law to hear their case.

Majority of these cases fall within the scope of the Court Administrative Proceedings Code (the Act no. 150/2002 Sb.). In this code, there are outlined all kinds of proceeding to which a territorial unit may be a party. These proceedings span from competence disputes to disputes over division of the property of the territorial unit if divided into more units.
In general, within the framework of the exercise of self-governance, the territorial units have 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, as a regular parties. Hence, the principles laid down in the Art. 11 of the Charter seem to be adhered to in a sufficient manner.

11 Future challenges of the implementation of the European Charter of Local Self-Government in the Czech Republic

The European Charter of Local Self-Government is considered to be an important piece of legislation (sensu largo) in the Czech Republic. Despite the fact that the Czech Republic does not consider itself bound by some of the provisions of the Charter, the Charter has served as the grounds for the national regulation of the territorial units and for definition of their status. The core principles as laid down in the Charter were incorporated into the Czech legal order. The reservations made by the Czech Republic are mainly based on certain historical traditions connected with self-governance and with how the municipalities and regions functioned in the first years after the restoration of self-governance in the 1990s. It is however, important to underline, that although the Czech Republic made some **reservations** (it does not consider itself bound e.g. by the art. 4(5), 6(2), 7(2) and 9(3,5,6)), the Charter´s principles set forth in these – for the Czech Republic unbinding provisions – are more or less incorporated in the Czech legal order anyway. Hence, as for the protection of the values and principles of the Charter as a whole, we consider the Czech Republic to be complying. Nevertheless, we found several areas which might be understood as challenging and we outlined them below.

Concerning the **constitution and legal foundation for local self-government**, it must be taken into account that the Czech Republic is a specific country with its extremely high number of small municipalities. In many of them, it is really difficult to ensure the self-government because of personal reasons and lack of competences. Using the mixed model of state administration and local self-government (the state transfers the performance of the state administration to the local self-government units), with the combination of small municipalities, the legislator had to approach a model in which some municipalities carry out state administration on the territory of other municipalities. The system of the Constitution of the Czech Republic and its articles concerning local self-government could be seen as unclear and often confusing. Generally, the Czech Constitution is quite brief and the same applies to its parts dealing with the local self-government. As the Czech Constitutional Court stated, "*The Czech constitutional standard of local self-government is supplemented and enriched by a standard which arises from the international obligations of the Czech Republic, namely from the Charter of Local Self-Government.*" (CZ: Constitutional Court, Pl. ÚS 34/02) Many issues must be regulated in the regular acts and the Constitutional Court has to deal with many of the problematic issues as the Constitution itself does not give any answer. Still, there is no need for any amendment to the Constitution in this area, as we believe that any changes in the Constitution shall only be made if extremely necessary.

All courts, incl. the Constitutional Court must take into account that the principles expressed by the Charter are not self-executing; local self-government units cannot invoke these principles before national courts or before the European judicial authorities. These result were published by the Constitutional Court (CZ: Constitutional Court, Pl. ÚS 34/02) and in the scientific literature (Valachová, Liška, 2016: 220). The Charter does not have a priority over the laws within the meaning of Art. 10 of the Czech Constitution, and it must be interpreted in the sense of Art. 1(2) of the Constitution providing "*The Czech Republic shall observe its obligations resulting from international law.*" (Czudek, Kranecová, 2016: 27).

Dealing with the **protection of local authority boundaries**, especially one issue must be mentioned: the effort of parts of municipalities to become an independent municipality. As the existing problems of small municipalities were mentioned several times, there are quite a strict rules for a new separated municipality, especially to have at least 1,000 inhabitants. The Constitutional Court stated that these inhabitants might be EU citizens in general, not only Czech citizens (CZ: Constitutional Court, IV. ÚS 1403/09). But there are many existing municipalities of the population lower than 1,000 in the Czech Republic. Is not it discriminative to set the limit for new ones? The Constitutional Court stated it is not with several arguments, especially that it is necessary the local self-government fulfils all tasks effectively (CZ: Constitutional Court, IV. ÚS 1403/09).

The fact that the **distinction between the state-administration and self-administration** was not carried out in a strict manner is a problem. Both, the self-governance and the state administration powers are, to certain extant, conducted by the territorial units. The large municipalities were assigned the tasks of state-administration which they have to carry out for the residents of smaller municipalities. The crucial issue connected with this is that the exercise of the state administration is conducted by the officials elected by the residents of the larger municipalities. It means that the residents of the smaller municipalities have no power to influence it. For this concerns the exercise of state administration, it seems to be appropriate to establish a new concentrated body of state-administration for this task. The activity of such a concentrated body would be controlled by the government and adjusted with respect to the needs of the respective municipalities upon consultation with their representatives. This approach may draw from the experience of the former district offices which were a body of state-administration.

The issues of **financial resources of local authorities** and the economic autonomy of local self-government units are not really seriously considered in the Czech Republic (Kozieł, 2016). Especially in the context of the fact that the Czech Republic in ratifying the European Charter of Local Self-Government made the notification, that the Czech Republic does not consider itself bound by provisions of Arts. 9(3), 9(5) and 9(6). We believe it is quite reasonable that principles of protection of financially weaker local authorities and consultations with local authorities are not fully respected, because of a very high number of small municipalities. On the other hand, the principle of local taxes

is one of the most important principle and local taxes are condition sine qua non for right functioning of local self-government.

Example of further development in this area could be Slovakia. Local charges were simply renamed on local taxes and property tax was added to the group of local taxes. The fact that property tax is in group of local taxes means primarily the fulfilment of the principles of economic autonomy: municipalities are entitled not only to decide on the amount of the tax itself but also on the introduction of the tax. A similar change, connected with other amendments of the property tax (especially tax rates, may be tax base), if it was made in the Czech Republic, would mean a fulfilment of one of the four basic characteristics of real local self-government – economic independence (economic autonomy) of the municipalities. It must show not only in deciding on the expenditures of local self-government, but also in deciding on its incomes. Unfortunately, there were no essential legislative changes in this area between the years 2009 and 2018.

Czech local authorities have enough **rights to associate**, both at the national and the international level. The issue to be solved is partially connected with the Art. 4(6) of the Charter. The only mandatary consultation in the planning and decision-making process for all matters which concerns local authorities directly is included in the Legislative Rules of the Government in the preparation of legislation. Art. 5(1) of these Rules provides that if the bill refers to independent or delegated competences of the municipalities, it is submitted for comments to the association of municipalities with nationwide scope. Many times the proposals submitted by the nationwide associations (Union of Towns and Municipalities of the Czech Republic and the Association of Local Self-Governments of the Czech Republic) are opposed. Moreover, the Legislative Rules of the Government were approved as a resolution and not as a generally binding regulation. Legislative Rules must be observed only in the case of government bills (bills prepared by the departments – ministries). As regard other legislative´s initiatives, consultations are not mandatory even at the level of nationwide associations. (Czudek, Kranecová, 2016: 28-29)

In spite of all these challenges and – we might say imperfections of the complex incorporation of the Charter into the Czech legal order, it shall be emphasized that as for the self-governance at the general level, the legal order of the Czech Republic is a complex legal order of a modern state that follows the rule of law (Rechtsstaat).

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