LOCAL SELF-GOVERNMENT IN EUROPE
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The charter of Local Self-Government in Sweden

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Abstract Sweden ratified the European Charter of Local Self-Government in 1989 and committed itself to following all its articles. Sweden regarded itself as fully complying with all the Articles of the Charter, but emphasised that it was more relevant for other countries in Europe and the world. However, two monitoring reports from Congress, in 2005 and 2013, had been critical about implementation of the Charter. The Swedish government responded by gradually making further adjustments which generally increased the scope of local self-government. These included a major constitutional revision and changes in the Local Government Act. Changes have been largely inspired by the Charter but some essential features of the Swedish legal system, such as a lack of a significant judicial remedy have remained unaffected despite the demands of the Charter.

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

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1 Introduction and history

Local government in Sweden consists of two tiers – 290 municipalities and 21 regions, each corresponding to the area of a county[1]. They have a key role as providers of the welfare services that are relevant for individual citizens which, in the Nordic welfare system, are relatively generous. Municipalities are responsible for social services, care of the elderly and childcare and for primary and secondary education. They also provide water and sewerage, parks and recreation, and fire protection. Regions are in charge of primary healthcare and hospitals, but also of care of the disabled, regional culture and regional public transport. In addition, they are also responsible for regional development in their county.

Modern local government was established with the Local Government Ordinances in 1862. Based on a parish structure with roots in medieval times, four types of local government were introduced – rural municipalities, cities and small towns; the fourth type was a second-tier local government, the county council. In 1862 there were about 2,500 first tier municipalities. These were amalgamated twice, first into around 800 in 1952 and a second time in 1974 so that only 276 municipalities remained. In parallel, local government was given substantive responsibility for welfare tasks. De-amalgamations have subsequently increased the number to the present 290 municipalities.

Due to the extensive responsibility for welfare services, local government is relatively strong in Sweden. Of total public expenditure in Sweden, 49 percent concerns the local government sector, which is the second largest in Europe. Only Denmark, where local government has an additional function as provider of pensions, has a higher share[2]. Another sign of the relative importance of Swedish local government is that 83 percent of all public sector employees are employed in local government, which is the highest in Europe (Dexia, 2008). Indeed, this crucial position in the national welfare system could be seen as reflecting central government trust in local government.

Swedish municipalities and regions are also held in high esteem by the citizens. A survey carried out by the Eurobarometer indicates that 65 percent have high trust in local and regional government, which is among the highest in the EU and exceeded only by Denmark and Luxembourg (Eurobarometer, 2012). Additional studies suggest that local autonomy in Sweden is among the strongest in Europe. A recent attempt to establish a composite index of local autonomy identifies Sweden as having one of the most autonomous local governments in Europe, after Switzerland and Finland (Ladner, Keuffer & Baldersheim, 2016).

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[1] Regions were county councils before 2019. The first regions were set up in 1998 and the other county councils have gradually received status as regions. Gotland is both a municipality and a region.

[2] OECD Fiscal Decentralisation Database : Consolidated government expenditure as percentage of total general government expenditure (consolidated) [Table 5: 1969 - 2012] http://www.oecd.org/ctp/federalism/oecdfiscaldecentralisationdatabase.htm

For all these reasons, it would be easy to conclude that the Swedish system of local government is among the best in the world and that there is no need for improvement. Indeed, this also seems to have been the understanding of the Swedish government when the European Charter of Local Self-Government established by the Congress of Local and Regional Authorities of the Council of Europe was ratified in 1989. In the Government Bill, the minister in charge emphasised that the Charter "should be seen as a part of a pursuit for strengthening and developing local self-government and democracy in Europe and the world. Of course, Sweden as a nation should support these pursuits" (Regeringens proposition 1988/89:119, p. 7–8). With regard to Sweden, the minister stated that local self-government has a long tradition and therefore "the principles expressed in the Charter have for a very long time been integrated into the Swedish legal system and its general principles of public administration" (Regeringens proposition 1988/89:119, p. 8). Hence, the understanding was that this charter would help other countries to improve their systems and that Sweden would support such efforts. However, Sweden would not really be affected since the country already met all the criteria of the Charter. Sweden was a role model, rather than a learner.

This chapter aims to provide an overview of the implementation of the Charter in Swedish legislation and how this has changed from the time of the ratification. The assumption of the minister at that time, that the Swedish system of local self-government met all demands of the Charter and that the country had very little to learn, will be scrutinised on the basis of the comments and suggestions of the reports from the two monitoring missions that have been carried out and the changes in the position of local self-government that has occurred over the years. This connects to a more general question of whether the Charter has functioned as a standardising device only for new and less well-functioning democracies or if it has also had an impact on well-established democracies.

The decision to ratify The European Charter of Local Self-Government was taken by the Swedish Parliament on 10th May 1989. There was no debate on the matter and the decision was unanimous. The Charter would be applied to both municipalities and county councils (i.e. current regions). It had already been signed by the Swedish government on 4th October 1988 about one month after the Charter came into force. At that time, the Charter had already been signed by 16 of the 22 member states and ratified by seven. Hence, Sweden was not among the pioneers. After the decision in the Parliament, the Charter was ratified on 29th August 1989 and entered into force on 1st December 1989[3]. As mentioned, the Government claimed that the Swedish legal system fully complied with the demands of the Charter. Therefore, a Swedish ratification would not require any changes of laws. The Charter allows member states to abstain from ratifying certain articles, but Sweden decided not to use that option. Hence, Sweden is bound by all provisions of the Charter.

[3] It should also be noted that Sweden on the 5th of May 2010 signed the Additional Protocol on the right to participate in the affairs of a local authority, which came into force on the 1st of June 2012.

In the Swedish legal tradition, international agreements are as such not part of the internal Swedish hierarchy of norms. Instead, they have to be transformed into domestic legislation. After the Government has concluded the agreement and the Swedish Parliament approved it, such transformation can be carried out in two ways. Most commonly, the normative substance of the agreement is transformed into Swedish law, for example by adding new provisions to an existing act or ordinance or by enacting a new act or ordinance, which transforms the substance but not necessarily the wording of the international agreement. Alternatively, transformation can be achieved by explicitly deciding that the agreement shall be in force as Swedish law. In this case the text or texts of the agreement, and, if necessary, a translation of the text into Swedish is annexed to the transformation act. This method was used in 1994 for the transformation of the European Convention for the Protection of Human Rights and Fundamental Freedoms and the transformation of the Law of the European Union into internally applicable law.

As the Swedish government at the time of the approval of the European Charter of Local Self-Government in 1989 claimed that the 1977 Swedish Local Government Act and other regulations of local government were in line with the Charter, no substantial changes were considered to be necessary in Swedish legislation. The Charter and the Explanatory report were added as an appendix in the travaux préparatoires. However, as some adjustments were made in the 1991 Local Government Act as a result of the transformation (see below) it could actually be seen as being incorporated into the domestic legal system. However, is difficult to find 'hard' evidence for this transformation apart from the Parliament's approval of it and in references to the Charter and its Explanatory report in the preparatory works. But on the other hand, Swedish travaux préparatoires are usually viewed as vitally important for the interpretation of the enacted text – they are usually followed, not because they are formally binding but because it is the Swedish legal tradition.

However, despite being ratified, the European Charter of Local Self-Government seems to have no legal status in the courts. This is indeed the situation in all countries that lack systems for formal incorporation of charters into the domestic legal order and Sweden is no exception. These member states are bound to comply with the European Charter of Local Self-Government provisions under international law but have not adopted the treaty into national law. For this reason, the (very few) attempts by local governments to rely on its guarantees in court have failed (Boggero 2018).

As previously mentioned, the question of transfers of resources between municipalities was a controversial matter before the most recent revision of the Instrument of Government. Many municipalities argued that such transfers were unconstitutional and violated local self-government. Whether this was the case has never been tried or examined by the Swedish courts, since both the Supreme Court and the Supreme Administrative Court, when asked to try cases dealing with this issue[4], decided that the

[4] The references for these cases are in the Supreme Court case NJA 1998 s. 656 II and the Supreme Administrative Court case RÅ 2000 ref. 19.

complaining municipalities were not permitted to have their cases heard before those courts.

With regard to the case tried in the Supreme Court, the municipality of Vellinge first appealed the decision of the Fiscal Authority to transfer money from the municipality as part of the equalisation system, claiming that approximately 42 million SEK should be transferred back to the municipality. After the appeal had first been rejected by the Government, the municipality next turned to the Supreme Court. As part of the argument, the municipality claimed that Article 11 the European Charter of Local Self-Government applied, which said that "(l)ocal 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 Supreme Court stated that the European Charter of Local Self-Government had not been adopted into Swedish law and therefore the Charter was not of any relevance for the question of whether the court could try the case, since, with reference to the Explanatory report, it was possible for the municipality to have recourse to an extraordinary remedy for reopening of proceedings (resning) in the Supreme Administrative Court. Therefore, an administrative decision could not be tried by a general court based only on the grounds that a plaintiff claimed that the decision was in contradiction with the constitution.

The second case was tried in the Supreme Administrative Court and was initiated by the municipality of Täby. The municipality first appealed to the Government, but after having been rejected, it turned to the Supreme Administrative Court. The municipality referred to the extraordinary remedy for reopening of proceedings, and argued that the law was in contradiction with the Constitution and the European Charter of Local Self-Government. The Supreme Administrative Court found that the constitutional right for local government to levy taxes in order to manage their tasks on behalf of the citizens (Chapter 1, Article 7, The Instrument of Government) was of a general character and that it was not obvious that the system of financial equalisation between local authorities was violating the Constitution. Therefore the appeal was rejected.

Since formally being components of the State, the municipalities were also unable to bring their cases to the Strasbourg Court. It has been said that "(f)rom many points of view, it is regrettable that the courts refused to deal with the case in a manner that would, for the total effect considered, even amount to a kind of déni de justice" (Nergelius, 2011:95).

However, reference has been made to the Charter in proceedings in the Swedish Parliament. The Standing Parliamentary Committee on the Constitution (Riksdagens konstitutionsutskott) explicitly referred to the Charter as a reason for suggesting that a proposal from the government on interventions in how local government carried out responsibilities of public procurement should be rejected. This was seen as an infringement of Article 6, paragraph 1 of the Charter, on the right for local authorities to

determine their own internal administrative structure (Konstitutitionsutskottets yttrande 1993/94:KU3y). This contributed to the Parliament deciding to reject the proposal.

During the first decade of the existence of the Charter, the compliance by its signature states was investigated on an ad hoc basis and in particular when something had been brought to the attention of the Congress of Local and Regional Authorities of the Council of Europe that made it relevant to initiate a monitoring activity. However, the number of countries investigated were small and mainly concerned newer democracies. In order to avoid stigmatising individual countries but also to make it more comprehensive, a systematic monitoring system was introduced from around 1997 according to which all states would be monitored on a regular basis (Himsworth, 2015).

Sweden's compliance with the Charter has been monitored twice. The first monitoring visit took place in 2004, headed by the rapporteurs Dr. Ian Micallef (EPP/SD), Malta, and Karsten Behr (EPP/CD), Germany. They were assisted by Professor John Loughlin, Cardiff University, from the Group of Independent Experts on the European Charter of Local Self-Government. The recommendations based on the report were adopted by the Congress in June 2005 (Council of Europe, 2005).

Although recognising that Sweden on the whole complied with the Charter, they highlighted a number of issues that caused concern. For example, they criticised the tendency to introduce too much detailed regulation, that more legislation granting rights to citizens may reduce the scope for local self-government and that Sweden lacks a good way for local government to challenge national decisions that may threaten to limit local self-government. With regard to financial matters, the visiting mission was concerned with examples of tax capping, a partly unclear tax equalisation system and the increase of ear-marked grants.

The second monitoring visit was carried out in 2013 with Luzette Wagenaar-Kroon (L, EPP/CCE) from the Netherlands and Gudrun Mosel-Törnström (E, SOC), Austria, as rapporteurs. These were supplemented by Professor Renate Kicker, from the Group of Independent Experts. The report was submitted in early 2014 and was adopted by the Congress in March 2014 (Council of Europe, 2014).

In their report, the rapporteurs acknowledged that Sweden responded to the criticism from the first report in several respects. For example, it introduced a principle of proportionality within the frame of a new and separate chapter of the Constitution specifically devoted to local government. The proportionality principle calls on Parliament to be restrictive when limiting the scope of local self-government and when doing so, it must give the reasons for doing so. The report also noted that principles in the tax equalisation system had been clarified and that responsibilities for regional development functions had been gradually transferred to regional self-governments. In addition, and in contrast to many other European countries, local government in Sweden seems to have escaped financial cuts in connection to the 2008–2009 economic crisis. However, there were also points of

criticism in the report. For example, it recommended that the principle of subsidiarity should be strengthened, that a formal consultation procedure between state and local government was established and that state grants should be indexed.

Nevertheless, even if the rapporteurs had some points of criticism, and noted risks of infringements, their overall conclusion was that the Swedish system of local government now complied with the Charter.

The remainder of the chapter consists of an article-by-article review of how the Charter has been implemented in Swedish legislation. This also includes an overview of the major points of criticism from the monitoring visits and how Swedish legislation has been revised in areas where it has been criticised for not fully complying with the Charter.

2 Constitution and legal foundation for local self-government

The second article of the Charter establishes that the principle of local self-government must be protected through national legislation and if possible also in the constitution. At the time of the ratification, the Swedish government emphasised that the country's regulation complies with the Article through, in particular the first paragraph of the main constitutional document, the Instrument of Government (*Regeringsformen*)[5]. Here, it is stated that democracy in Sweden is realised through a representative and parliamentary form of government and through local self-government.

Local and regional self-government was first written into the Swedish Constitution in 1974, after a major constitutional reform. Before that, Sweden had a constitution dating from 1809. It was modern when it was established but gradually became obsolete. However, rather than changing it, it was reinterpreted in order to harbour the major political reforms of the 19th and early 20th centuries, such as the introduction of democracy, parliamentarianism and local self-government. There was no explicit mention of local self-government in the 1809 Constitution.

After a general agreement among all major political parties was reached on establishing a new and modern constitution, gradual reforms were carried out that eventually led to the 1974 Constitution. Right in Chapter 1, Article 1, it was stated that Swedish democracy is founded on the free formation of opinion and on universal and equal suffrage. This is realised through a representative and parliamentary polity and through local self-government and is carried out within the laws. In Chapter 1, Article 7, the Constitution stated that Sweden has local authorities at local and regional levels and that they are governed by elected councils. This paragraph also included a right for local government to levy taxes in order to manage their tasks (Gustafsson, 1996).

[5] Sweden has four constitutional laws, of which the Instrument of Government (*Regeringsformen*) is the most important. All further references to the Swedish Constitution in this text concern the Instrument of Government.

Hence, the principle of local self-government is one of the fundamental principles of the Swedish democratic system, and its constitutional regulation forms the basis of activities undertaken by the municipalities and regions. The inhabitants of each local authority elect their representatives to an assembly every fourth year through direct elections. In this way, inhabitants can influence how their elected councils fulfil their mandate.

Apart from the Constitution, local self-government is further regulated by the Local Government Act (Kommunallagen) and by various additional pieces of legislation. These include laws and ordinances covering specific areas of local and regional government responsibilities, e.g. the Social Services Act, the Planning and Building Act, the Education Act and the Health and Medical Services Act. Within the framework of these and a large number of other acts the municipalities and regions have significant freedom to organise their activities as they see fit.

At the time of the ratification of the Charter, the Local Government Act in force was one that had been adopted in 1977. The principle of local self-government was emphasised in Chapter 1, paragraph 4 which stated that municipalities and county councils had the right to manage their own affairs (Gustafsson, 1977). A new and revised Local Government Act came into force in 1991 following a revision aiming at further decentralising responsibilities. Perhaps the most important change was that local authorities were given greater leeway to set up their internal organisation. The principle of self-government was written into Chapter 1, paragraph 1 of the Act, which stated that the municipalities and county councils attend to the matters indicated in the Act or in special regulation and proceedings on principles of democracy and local self-government. The latest Local Government Act (Kommunallagen (2017:725)) was adopted in 2017 and came into force January 1st 2018. It is basically a modernised version of the 1991 Local Government Act. The constitutional basis of local self-government became a concern in 1995, in a political debate on the constitutionality of the Swedish system of tax equalisation. As the constitution states that local taxes can only be used for local purposes, it was questioned whether central government had the constitutional right to transfer local tax resources from one municipality to another. This led to the setting up of a parliamentary committee with the task of reviewing the constitutional protection of local self-government (Självstyrelsekommittén, 1996). In its report, the committee referred to the newly ratified Charter and emphasised that any changes in the Constitution would need to be in line with the Charter. The committee suggested some changes in the constitution but these were not implemented. Instead, they were included in a larger revision of the Swedish Constitution (see below).

The constitutional foundations of local self-government in Sweden was also addressed by the first monitoring report of Sweden's compliance with the Charter in 2005. One point of criticism was that the specification of the tasks and functions of local government in the Constitution was seen as being too ambiguous as it only states that these should be carried out “within the laws”. Although this creates flexibility, a simple majority in the Parliament could too easily restrict local self-government. Instead, the committee

suggested that the government should consider introducing more specific regulation in the constitution as a means of protecting local autonomy. However, despite this point of criticism, the rapporteurs concluded that Sweden complied with the second Article of the Charter.

In parallel, the pressure to review the Constitution continued. In the beginning of the 2000s the Swedish political parties had come to an agreement that the 1974 Constitution needed to be revised and updated. A parliamentary committee was set up in 2004 with the task of preparing such changes. The committee was not explicitly commissioned to review the constitutional protection of local self-government, but it had the right to take own initiatives beyond those specified in its directives. The debate on the constitutionality of the tax equalisation system had continued but in addition, the issue of whether temporary tax caps were in line with the constitution was also a matter of controversy. These events contributed to the committee's decision to include the protection and regulation of local self-government in its review (Grundlagsutredningen, 2008). The committee appointed an expert sub-committee with the specific task of looking into how the constitutional protection of local self-government could be strengthened.

In the report from the sub-committee, the points of views of the parliamentary committee from 1996 on the constitutional protection of local self-government, together with the monitoring report from the Council of Europe on Sweden and the government's response to this were taken into consideration. The suggestion from the rapporteurs to clarify the tasks and functions of local government, for example by adding a list of functions to the constitution, was rejected as making regulation too inflexible. However, the sub-committee and later the major Parliamentary committee suggested a number of other changes that would underline the importance of local self-government in the Swedish polity (Grundlagsutredningen, 2007). Many of these were subsequently enacted in the new Constitution that came into force in 2011.

A symbolic change was that most constitutional regulation of local and regional governments was collected in one chapter – Chapter 14 of the Constitution, which was seen as a way of enhancing the position of local self-government. It follows from Article 1 of that chapter that the decision-making power in the municipalities is exercised by elected assemblies and it follows from Article 2 that the municipalities attend to the matters indicated in special regulations and proceedings on principles of democracy and local self-government. Article 3 states that the legislator needs to take into account the principle of proportionality if there are any changes proposed that may affect local self-government and Article 4 provides a constitutional right to taxation. The previously controversial question of inter-municipal financial equalisation is regulated in Article 5, where it is stated that local government can be obliged, through an ordinary law, to contribute to cover costs in other municipalities, if this can be justified as a means of creating equal financial conditions. Article 6, finally, clarifies that the principles of local government border changes are regulated in ordinary law.

The second monitoring report, carried out in 2013, noted with satisfaction the many constitutional changes that had occurred. However, the rapporteurs were still critical of the constitution for not explicitly mentioning the principle of subsidiarity (see further below in connection to Article 3). Nevertheless, and on the whole, the Swedish government was seen as complying with Article 2 of the Charter.

3 Concept of local self-government

Article 3 of the charter states that local self-government has the right to manage a substantial share of public affairs and that this should be carried out by elected councils. At the time of the ratification, the Swedish government claimed that the Swedish legal system fully complied with this article as these matters were guaranteed by the constitution and by ordinary legislation such as the Local Government Act and through the law regulating elections.

The first monitoring report had no remarks on the Swedish implementation of this article and regarded Sweden as fully complying with it. This was also the conclusion of the second report although it pointed at tendencies of centralisation and the growing use of legislation that gave rights to clients, that potentially could limit the scope of local self-government (further discussed below in connection to Article 4).

4 Scope of local self-government

The scope of local self-government is regulated in Article 4, which consists of six paragraphs that specify a number of conditions about the tasks and responsibilities of local government that need to be met in order to safeguard the scope of local self-government. This includes having basic powers and responsibilities, that the powers should be full and exclusive and that responsibilities should be carried out as close to the citizens as possible. The article also emphasises the right for local authorities to be consulted on all matters that concern them directly. At the time of ratification, the Swedish government stated that local government in Sweden has a position that fully complies with the article. Most of its paragraphs correspond to regulation in the Constitution or the Local Government Act, for example the legal protection of local government to carry out its functions and its general competence. However, paragraph 3 on decision-making as close to the citizens as possible, and paragraph 6 on the right for local government to be consulted, were seen as being in line with the Swedish administrative tradition, rather than any specific law.

The first monitoring report in 2005 was critical of how Sweden complied with this article. As has already been mentioned in connection to Article 2, the rapporteurs were concerned with the arbitrariness of the regulation of the tasks and functions of local government. They also had a number of specific points of criticism that were seen as examples of unjustified central government interference in local matters.

Some of the examples dealt with highly politicised issues, where the Social Democratic government had imposed stricter controls over local councils with a non-socialist majority that wanted to carry out policies that the government could not accept. The government had decided to reduce general grants to the local authorities that sold off municipal housing, which would reduce the stock of housing for the less well-off. According to the rapporteurs, this was seen as interfering with paragraph 4 of Article 4, stating that powers to local authorities should be full and exclusive. Other examples were a new law ordering local government to set up a housing agency service and a law restricting the right of county councils to sell off acute care hospitals. In all these cases, the monitoring mission criticised the government for unduly interfering in local affairs.

The rapporteurs were also concerned with the increasing use of "rights legislation" that gives specific clients the right to particular services. This started back in the 1980s where the Social Services Act and legislation on disabled persons provided undisputable rights to certain services, independent of the resources available to local government. Although recognising that it was important to safeguard that people in vulnerable position receive the services that they are entitled to, the rapporteurs thought that this type of legislation might limit the scope of local self-government. Nevertheless, and despite their points of criticism, the rapporteurs concluded that the Swedish system of local government complies with Article 4 of the Charter.

The sixth paragraph of Article 4, about the right for local government to be consulted on matters of their concern was not explicitly addressed as a problem in Sweden in the first monitoring report. When the Charter was ratified, the government claimed that existing channels, for example the system of referrals (remiss) gave local government sufficient opportunities to give their view on matters that were relevant for them. Despite this, there were demands within Swedish public debate to strengthen the consultation process, in particular from the local government associations. A formalised process had existed during the 1980s and at the beginning of the 1990s but this had been abolished. It was now suggested that formal consultations should be reintroduced, as a way of strengthening the municipal influence over central policy-making. With direct reference to Article 4, paragraph 4 of the Charter, the sub-committee of experts reviewing how the new constitution could better protect local self-government discussed different ways to formalise a consultation procedure. It ended up suggesting that the constitution should explicitly mention the right for local government to be heard by the government. This has subsequently been included as part of Chapter 7, Article 2 of the Constitution.

The second monitoring mission, carried out in 2014, acknowledged this change in the Constitution. However, referring to the views of the Swedish Association of Local Authorities and Regions (SALAR)[6], it noted that there was still no formalised process and also that there was no time frame within which consultations should take place. The government had claimed that the regulation in the Constitution was sufficient as it allowed

[6] SALAR was established in 2007 through an amalgamation of the separate local government associations for municipalities and county councils.

for a flexible and non-formalised process. SALAR is invited to follow the work of those parliamentary committees which prepare proposals for new reforms affecting local authorities, and sometimes SALAR may be asked for their opinion on suggested policy changes (the "referral system").

The rapporteurs also noted that a principle of proportionality had been introduced in the revised Constitution but it was not pleased with how it had been applied and interpreted with regard to the scope of local self-government. It is entirely up to the State to determine which level of government is the most appropriate for a particular task. There is no principle of subsidiarity within the Swedish political system that would ensure that local functions are carried out by local government. They were critical of what they saw as a centralisation tendency and urged the government to add the principle of subsidiarity to the Constitution. The rapporteurs had identified several cases where local autonomy had been restricted by central government, for example in the regulation of the social sector, working conditions, healthcare and in particular the regulation of education and public procurement. Although the rapporteurs concluded that there is a risk that Article 4 of the Charter is infringed, their overall assessment was that Swedish law and practice in general complies with the article.

5 Protection of local authority boundaries

Article 5 emphasises that changes in the boundaries of local authorities require that affected local communities are consulted beforehand, if possible through referendums. At the time of the ratification, the Swedish government could refer to a law adopted in 1979 that made consultations mandatory, which meant that the Swedish legislation complies with the Article.

Before this law came into force, and during the last amalgamation reform in 1974, such consultation was not legally required. The law on boundary changes (originally from 1919) put the burden on affected local governments to protest if they were displeased with suggested border changes, but this could still be overridden by the government if it had good arguments. It is unlikely that the old law would have complied with Article 5.

In Chapter 14, paragraph 6 of the new Constitution, it is stated that the principles for border changes are regulated in law. Although this was also the case before the new constitution was enacted it means that such principles cannot be set up by the government without the approval of the Parliament.

Both monitoring missions have come to the conclusion that Sweden complies with this article of the Charter.

6 Administrative structures and resources for the tasks of local authorities

This article deals with the scope for local government to decide on its own administrative structure and to recruit high quality personnel. The Swedish government regarded both these conditions to be fulfilled at the time of the ratification, in spite of special regulation making six municipal committees mandatory. These committees included a School board and a Building and Planning board. The government referred to the Explanatory report of the Charter which stated that a limited number of mandatory committees were acceptable.

However, not long after the ratification, the Local Government Act was revised in a way that gave local government much more leeway in setting up its own political organisation. In the 1991 Act, only the executive committee and a committee with responsibility for election administration remained mandatory. Hence, if there were any doubts that the Swedish system would comply with Article 6 of the Charter, these were now removed. However, the changes were not motivated with reference to the Charter, but from experience of the "Free Commune Experiment", which allowed selected local authorities to be exempted from central regulation on an experimental and temporary basis (Baldersheim & Ståhlberg, 1984).

The two monitoring missions had no complaints with regard to the implementation of this article in Swedish legislation.

7 Conditions under which responsibilities at local level are exercised

Article 7 deals with the conditions for elected representatives, specified in three paragraphs. Local politicians should be able to freely exercise their functions and should receive appropriate financial compensation. Also, any condition that disqualifies the holding of elected office must be regulated in law.

In all three respects, the Swedish government regarded Swedish regulation to correspond with the requirements. The conditions for local politicians are relatively good in Sweden. They have the right to freely exercise their tasks and to be remunerated. The conditions were further strengthened in the 1991 Local Government Act where is was stipulated that local politicians had a right to be compensated for loss of income.

Both monitoring reports came to the same conclusion. Sweden complies with Article 7 of the Charter.

8 Administrative supervision of local authorities' activities

This article is about administrative supervision of local authorities by other levels of government. It emphasises that this should be carried out according to the law, that it should normally concern legality and not expediency and that any check should be in proportion to the interest it aims to protect, and with respect to local self-government.

When the Charter was ratified, the Swedish government argued that this kind of supervision, through checks prior to decisions and through approval of municipal decisions by upper levels of government, is very rare in Sweden. Swedish legislation was regarded to comply with the Charter in this respect.

As already been mentioned in connection to Article 4, the government introduced a principle of proportionality in the new Constitution from 2011 which can be seen as further strengthening Sweden's compliance with this article. None of the monitoring reports had any complaint with regard to how Sweden complies with this article.

9 Financial resources of local authorities and the financial transfer system

Article 9, on financial resources of local authorities consists of eight paragraphs on requirements for financially self-governing local authorities. These include the right to sufficient resources, that some of the resources should come from local taxes, the need for financial equalisation and that central government grants should be general rather than specific.

The Swedish Government regarded the system of financing local government in Sweden as being in line with all these provisions. The right to taxation is guaranteed by the Constitution and there are no limits on how high the tax can be. Although there were, at the time, a large number of specific grants, the government expressed an aim to replace them with more general grants, although it noted that the Charter allows for a small proportion of specific grants.

However, shortly after the ratification of the Charter, a number of revisions were made, which can be seen as further adjustments to the demands of the Charter. From 1993, twelve special grants were replaced by one general grant. At the same time the "funding principle" (finansieringsprincipen) was adopted by the Parliament, meaning that if central government allocate a new task to local government, it must also specify how it should be funded (Svenska kommunförbundet och Landstingsförbundet, 2003).

Nevertheless, the first monitoring report had several critical remarks on how Sweden complied with this article. Although it acknowledged that there was a move in the early 1990s towards general grants, as time went by the number of specific grants had begun to increase again. One example, that has already been mentioned, concerns the decision to withdraw grants to municipalities that sell off municipal housing. The rapporteurs were

also concerned with the financial consequences of the "rights legislation", already mentioned in connection to Article 4 and how it corresponds with the funding principle. As the legislation implies that responsibilities are imposed on local government there may be a risk that the funding principle is breached if adequate resources are not provided. Evidence given by the local government associations during the monitoring visit suggests that this is the case, but the view of the Government is that funding is sufficient. A problem, according to the rapporteurs, is that the Parliament is the final arbiter and that local government has no say over how the funding principle is interpreted. For this reason, the rapporteurs, and subsequently also the Congress, recommended that there should be an institutionalised way of evaluating the actual costs for providing right based services, perhaps an independent audit commission.

Another point of criticism of the rapporteurs concerned the introduction of temporary caps on the local government tax. Although the right to taxation is guaranteed by the constitution, the government introduced a moratorium on local government tax increases during the financial crisis in the years 1991–1993. Although the Standing Parliamentary Committee on the Constitution regarded a temporary capping to be acceptable, the rapporteurs thought that the conditions for limiting the right to taxation needed to be clarified, as new tax caps could be imposed in the future.

Finally, the monitoring report was also critical of the system of financial equalisation between local authorities. It was noted that the Charter, in Article 9, paragraph 5, allows for an equalisation system, but that the system in Sweden may be unconstitutional. Before the constitutional revision in 2011, tax levied in a local authority could only be used that local authority for its own purposes. Hence, transferring money from one local government to pay for services in another would not be allowed. Therefore, the rapporteurs suggested the Swedish authorities review the regulation in order to safeguard both that equalisation is constitutionally possible and that infringements on local autonomy are minimised. The best solution, they argued, was that funding for equalisation came from central government, rather than as transfers between municipalities.

In its reply to the monitoring report, the government stressed that there had been a move from special to general grants and that this perhaps was a less relevant issue in Sweden, where 70 percent of local government funding came from their own taxes. It was not deemed necessary to further regulate the right to local taxation as no tax caps were planned. The system of equalisation was under review, and the system that was considered at the time would have significantly reduced transfers between local authorities, hence being in line with the recommendation of the Congress (Grundlagsutredningen, 2007).

The second monitoring report, in 2014, also made a thorough review of how Sweden complied with Article 9 of the Charter. It noted that local government in Sweden had largely escaped the 2008–2009 financial crisis and that there had been no further tax caps. In addition, the principle of proportionality, that circumscribes Parliament in limiting the

scope of local self-government, seems to have contributed to strengthening local autonomy. They also acknowledged that financial equalisation is now regulated in the Constitution.

However, the rapporteurs were concerned with the adequacy of the financial resources available to local government, and the extent to which this corresponds to the requirements of Article 9, paragraph 1 of the Charter. Their first concern was that state grants were not indexed, i.e. do not increase with the rate of inflation. This will gradually undermine the financial basis for the local government services that are funded by state grants. Their second point of criticism is that local authorities are not involved in assessing the cost implications of new reforms which sometimes means that not all cost related factors are being taken into account. As the funding principle states that new tasks given to local government should be accompanied by sufficient resources this has led to situations where reforms are underfunded. Although the rapporteurs are critical of these matters, and this has been confirmed by the Congress, they still concluded that "all-in-all", Sweden complies with Article 9 of the Charter.

10 Local authorities' right to associate

Article 10 is about the right of local government to associate – with other local authorities, in national associations and through international cooperation. When Sweden ratified the Charter, the government argued that Swedish legislation was fully in line with these requirements. Local government in Sweden has the right to cooperate and to form the types of associations that are stipulated by the Charter.

The two monitoring missions had no remarks in this respect. In the second report, it was noted that although membership in the Swedish Association of Local Government and Regions is voluntary, all municipalities and regions are members.

11 Legal protection of local self-government

Article 11, on the legal protection of local self-government emphasises that local government should have a right to a judicial remedy if local self-government is violated. The Swedish government acknowledges that this provision is debatable from a Swedish point of view as there is no general provision for local government to bring an issue to a court in order to test its legality. Nevertheless, the government still regards Sweden as complying with the article as there is, as a final resort, a provision for a closed case to be re-opened if granted by the Supreme Administrative Court. This alternative is explicitly mentioned in the Explanatory report of the Charter as being in accordance with Article 11 of the Charter. However, the strength of this right may be rather weak if the Supreme Administrative Court does not change its view from 2000 when it, in response to a challenge from the municipality of Täby, turned out to be unwilling to re-open closed cases (see further discussion in the introduction).

The issue of the legal protection of local self-government through some kind of judicial remedy was also discussed in the report by the first monitoring mission in 2005. Although the rapporteurs acknowledged that local self-government had a constitutional protection, they suggested that this should be strengthened in several ways. One way could be to make it mandatory for the Parliament to refer to the Charter in all legislative matters that concern local self-government. Another would be a system of redress to a legal body to which local government could refer cases that they considered to be in conflict with the principle of local self-government, using the Charter as a benchmark. Although a Constitutional Court could be an appropriate body for such cases, the rapporteurs understood that this would lack political support in Sweden and was not even favoured by the local authorities themselves. Nevertheless, there is a need to even out the balance of power between Parliament and local authorities, not least in questions of funding. Therefore, the rapporteurs suggested the establishment of a Standing Parliamentary Committee on local self-government that could hear both sides, i.e. both the state and local government.

The rapporteurs also recommended that the then-newly set up committee on the revision of the constitution consider ways of improving the legal protection of local self-government. The committee followed the recommendation and various ways of achieving this objective were discussed in the expert sub-committee on constitutional protection of local self-government. The sub-committee considered the alternatives proposed by the rapporteurs but ended up with a weaker suggestion, namely to give The Council of Legislation (Lagrådet), a legal advisory body attached to the Parliament, an additional task of assessing how new laws affect local self-government. This was also later included in the revised Constitution (Chapter 8, Article 21).

The second monitoring mission, in 2014, was generally satisfied with the changes that had been made. The new function of the Council of Legislation was sufficient to please the rapporteurs and the Congress. It was also acknowledged that local government has a right to turn to the Supreme Administrative Court in case of violation of the "funding principle", i.e. the rule that central government should provide the necessary funding when giving local government new obligations. Therefore, Sweden was now seen as fully complying with Article 11 of the Charter.

12 Lessons learned from Sweden's compliance with the European Charter of Local Self-Government

When Sweden ratified the European Charter of Local Self-Government in 1989 the Government claimed that the legal system and the system of local self-government in the country were fully in line with the requirements of the Charter and all its articles. Hence, there was nothing to learn from the Charter that could improve the position of local government in Sweden. However, it was still important that Sweden ratified the Charter as this would help the development of local self-government and democracy in the rest of Europe and the world. This chapter has provided an overview of the Swedish

implementation of the Charter, and how this has gradually been modified through policy changes and in the light of the analyses carried out by two monitoring reports.

The initial claim that Sweden had nothing to learn from the Charter can be questioned. Some of the original grounds for ratification were clearly shaky, for example the requirement in Article 6 that local government should be able to determine its own internal structure which was seen as fulfilled by Sweden, despite the requirement of six mandatory committees in every municipality. The Explanatory report that the Swedish government referred to permitted "certain committees" to be compulsory, as long as they did not "impose a rigid organisational structure". These six committees made up the majority of the committees in most municipalities. It was also far from obvious that Sweden had the type of protection of local self-government through a judicial remedy that is described in Article 11. Further, the paragraphs in Article 4 stating that decision-making should be as close to the citizens as possible and that local government had a right to be consulted, were seen as corresponding to the Swedish administrative tradition, rather than any specific law.

However, following ratification, a number of changes have taken place that have brought the Swedish legal system more in line with the Charter. Indeed, there is a clear path of gradual improvement of the legal position of local self-government in Sweden over the last 40 years. Actually, some of the improvements took place even prior to the ratification. For example, before 1974, there was no constitutional protection of local self-government. Also, consultations in connection with border changes became mandatory in 1979, which was a requirement for ratification of Article 5.

In many of the changes of the position of the system of local self-government in Sweden, the Charter has had an important explicit or implicit role. Perhaps the constitutional revisions are the most striking example of where explicit reference is made to the Charter. However, the widening of local self-government that came with the revision of the Local Government Act in 1991 also increased Sweden's compliance with the Charter, although reference was not explicitly made to the Charter in the Government Bill. In 1993, compliance was also increased with Article 9 on the financing of local government, when a number of specific grants were replaced by one general grant and the "funding principle" was introduced by Parliament, meaning that allocation of new tasks to local government must be followed by a specification of how they should be funded.

Hence, the overall conclusion is that the Charter has contributed to adjusting the Swedish system of local self-government to a European standard, as expressed by the Charter. In this way, the Charter has had an important role as a standardising device, establishing convergence around fundamental principles of local self-government that is not only relevant for new democracies, but also for a well-established democracy such as Sweden. Although Sweden in many ways can be seen as a role model in terms of local democracy and self-government, it is definitely also a learner.

Although the European Charter of Local Self-Government lacks the status of a law in the Swedish legal system, its impact on changes in Swedish legislation is indisputable. It remains highly esteemed and references to the Charter are frequently made in the general debate and in policy documents on local self-government. There is no reason to expect that this will change in the near future. Neither are there any signs of further adjustments of the Swedish system in a way that could make it comply even more strongly with the Charter, for example by introducing a Constitutional Court.

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