

**Il Protocollo addizionale
alla Carta europea dell'Autonomia Locale
sul diritto di partecipazione a livello locale
Utrecht, 16 novembre 2009**

2010 – 1.4

Fogli di lavoro
per il Diritto Internazionale



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Pubblichiamo qui di seguito il testo del Protocollo addizionale alla Carta Europea dell'Autonomia Locale sul diritto di partecipazione a livello locale, aperto alla firma a Utrecht il 16 novembre 2009.

Le parti contraenti di questo Protocollo sono invitate ad adottare provvedimenti giuridici e altre misure necessarie per facilitare l'esercizio di tale diritto e renderlo effettivo.

Il Protocollo richiede inoltre che siano prese le misure necessarie per garantire che il diritto dei cittadini alla partecipazione non comprometta le norme etiche di integrità e trasparenza dell'esercizio dell'autonomia e delle responsabilità delle collettività locali.

La redazione

Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority

Utrecht, 16.XI.2009

Preamble

The member States of the Council of Europe, signatories to this Additional Protocol to the European Charter of Local Self-Government (hereinafter referred to as “the Charter”, ETS No. 122),

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that the right to participate in the conduct of public affairs is one of the democratic principles that are shared by all member States of the Council of Europe;

Considering that the evolution in member States has shown the pre-eminent importance of this principle for local self-government;

Considering that it would be appropriate to supplement the Charter with provisions guaranteeing the right to participate in the affairs of a local authority;

Bearing in mind the Council of Europe Convention on Access to Official Documents, adopted by the Committee of Ministers on 27 November 2008;

Bearing in mind also the Declaration and the Action Plan adopted at the 3rd Summit of Heads of State and Government of the Council of Europe (Warsaw, 16 to 17 May 2005),

Have agreed as follows:

Article 1 – Right to participate in the affairs of a local authority

1The States Parties shall secure to everyone within their jurisdiction the right to participate in the affairs of a local authority.

2The right to participate in the affairs of a local authority denotes the right to seek to determine or to influence the exercise of a local authority's powers and responsibilities.

3The law shall provide means of facilitating the exercise of this right. Without unfairly discriminating against any person or group, the law may provide particular measures for different circumstances or categories of persons. In accordance with the constitutional and/or international obligations of the party, the law may, in particular, provide for measures specifically limited to voters.

4.1Each Party shall recognise by law the right of nationals of the party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside.

4.2The law shall also recognise the right of other persons to so participate where the party, in accordance with its own constitutional order, so decides or where this accords with the party's international legal obligations.

5.1Any formalities, conditions or restrictions to the exercise of the right to participate in the affairs of a local authority shall be prescribed by law and be compatible with the party's international legal obligations.

5.2The law shall impose such formalities, conditions and restrictions as are necessary to ensure that the ethical integrity and transparency of the exercise of local authorities' powers and responsibilities are not jeopardised by the exercise of the right to participate.

5.3Any other formalities, conditions or restrictions must be necessary for the operation of an effective political democracy, for the maintenance of public safety in a democratic society or for the party to comply with the requirements of its international legal obligations.

Article 2 – Implementing measures for the right to participate

1The Parties shall take all such measures as are necessary to give effect to the right to participate in the affairs of a local authority.

2These measures for the exercise of the right to participate shall include:

i empowering local authorities to enable, promote and facilitate the exercise of the right to participate set out in this Protocol;

ii securing the establishment of:

a procedures for involving people which may include consultative processes, local referendums and petitions and, where the local authority has many inhabitants and/or covers a large geographical area, measures to involve people at a level close to them;

b procedures for access, in accordance with the Party's constitutional order and international legal obligations, to official documents held by local authorities;

c measures for meeting the needs of categories of persons who face particular obstacles in participating; and

d mechanisms and procedures for dealing with and responding to complaints and suggestions regarding the functioning of local authorities and local public services;

iii encouraging the use of information and communication technologies for the promotion and exercise of the right to participate set out in this Protocol.

3The procedures, measures and mechanisms may be different for different categories of local authorities, having regard to their size and competences.

4In the planning and decision-making processes concerning measures to be undertaken to give effect to the right to participate in the affairs of a local authority, local authorities shall be consulted insofar as possible, in due time and in an appropriate way.

Article 3 – Authorities to which the Protocol applies

This Protocol applies to all the categories of local authorities existing within the territory of the Party. However, each State may, when depositing its instrument of ratification, acceptance or approval, specify the categories of local or regional authorities to which it intends to confine the scope of the Protocol or which it intends to exclude from its scope. It may also include further categories of local or regional authorities within the scope of the Protocol by subsequent notification to the Secretary General of the Council of Europe.

Article 4 – Territorial application

1Any State may at the time of signature or when depositing its instrument of ratification, acceptance or approval, specify the territory or territories to which this Protocol shall apply.

2Any Party may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Protocol to any other territory specified in the declaration. In respect of such territory the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to

the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.

Article 5 – Signature and entry into force

1This Protocol shall be open for signature by the member States of the Council of Europe signatories to the Charter. It is subject to ratification, acceptance or approval. A member State of the Council of Europe may not ratify, accept or approve this Protocol unless it has, simultaneously or previously, ratified, accepted or approved the Charter. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2This Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date on which eight member States of the Council of Europe have expressed their consent to be bound by the Protocol in accordance with the provisions of paragraph 1.

3In respect of any member State which subsequently expresses its consent to be bound by it, the Protocol shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.

Article 6 – Denunciation

1Any Party may at any time denounce this Protocol by means of a notification addressed to the Secretary General of the Council of Europe.

2Such denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 7 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance or approval;
- c any date of entry into force of this Protocol in accordance with Article 5;
- d any notification received in application of the provisions of Article 3;
- e any other act, notification or communication relating to this Protocol.

In witness whereof the undersigned, being duly authorised thereto, have signed this Protocol.

Done at Utrecht, on the 16th day of November 2009, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe.