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Is the European Charter of Local Self-Government an effective instrument for the protection of Local Self-Government? Empirical data from administrative and judicial practice in Poland.

Abstract

European Charter of Local Self-Government, an international treaty adopted under the auspices of the Council of Europe in 1985 is perceived as the main source of international standards for the functioning and protection of Local Self-Government. However, there is still little data concerning the application of the Charter in the reality of the administrative and judicial procedures.

The main research questions of this paper are: Is the Charter in practice an effective instrument for the protection of the autonomy of the LGs in Poland? What is the contribution of Polish judicature and administrative practice for the understanding of the general principles of the Charter? To answer the research questions the qualitative and quantitative research of the caselaw is carried out.

The Charter is present in the judicature of the Constitutional Tribunal (22 judgments), administrative courts (166) and of the organs of public administration supervising the LGs (49). The number is significant when compared to the practice in other CoE countries. On the other hand, it might be perceived low if we consider that every year the administrative courts decide nearly one thousand disputes between the LGs and the supervisory authorities. The administrative courts seem to be more eager to adjudicate in favour of LGs on the basis of Charter. They also tend to apply the Charter ex officio.

Specific Polish input to the application of Charter is the frequent use of the principle of proportionality of supervision of LGs, which serves to courts as a perfect tool of resolving ‘hard cases’ between the organs of LGs and central administration. In recent years in several important judgments, the Article 11 concerning the judicial protection of LG was invoked and served as the instrument of effective striking down of the law limiting the LGs’ access to court in specific cases.

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