Civil Participation in Finnish Municipalities in Relation to the Additional Protocol to the European Charter of Local Self-Government

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Institute for Human Rights Working Paper

No. 1/2024

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1. Introduction

The human right to participation and, also, the fundamental right to participation as formulated in many constitutions, is a broad concept that encompasses the traditional forms of participation through elections and referendums as well as other forms of participation.[1] As implied by the common focus on elections and referendums, the other forms of participation have been identified on the basis of a negative definition of what there exist in terms of participation beyond elections and referendums.

Article 25 of the International Covenant on Civil and Political Rights (the CCPR) contains rules and principles about participation in the conduct of public affairs. The provision creates an obligation for states to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects. According to General Comment no. 25, adopted by the UN Human Rights Committee concerning the interpretation of Article 25 of the CCPR, "[t]he conduct of public affairs (…) is a broad concept which relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers. It covers all aspects of public administration, and the formulation and implementation of policy at international, national, regional and local levels. The allocation of powers and the means by which individual citizens exercise the right to participate in the conduct of public affairs protected by article 25 should be established by the constitution and other laws".[2] In addition to traditional direct participation as voters in elections and in referendums, "[c]itizens may participate directly (…) in bodies established to represent

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[1] This piece is based on a presentation of the author at the research seminar organized by the Åbo Akademi University Institute for Human Rights on Civil Participation in Local Decision-making on Fundamental and Human Rights Issues. The research seminar was part of the Council of Europe Human Rights Day, held for the first time in Turku, on 4 May 2023.

[2] General Comment 25, para. 5, in UN Human Rights Committee (HRC), *CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote), The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service*, 12 July 1996, CCPR/C/21/Rev.1/Add.7, [accessed 12 December 2023].

citizens in consultation with government".[3] In the context of our analysis, civil participation is mainly linked to the exercise of administrative powers at local level by municipalities.

A more coherent positive definition of these other forms of participation has emerged as a result of the adoption in 2017 of the Council of Europe Guidelines for civil participation in political decision making.[4] The term civil participation, as developed in the Guidelines, can be presumed to cover a substantial part of what earlier was referred to as other forms of participation. According to the Guidelines, civil participation means "the engagement of individuals, NGOs and civil society at large in decision-making processes by public authorities. Civil participation in political decision-making is distinct from political activities in terms of direct engagement with political parties and from lobbying in relation to business interests."[5]

Although the Council of Europe is a human rights organization with its own Convention on Human Rights and Fundamental Freedoms (the ECHR), the scope of participatory rights in the ECHR has been limited to elections to legislative bodies under Art. 3 of the First Protocol to the ECHR. The provision in the ECHR excludes even referendums from its ambit and says nothing about other forms of participation or about participation at the local level, which is normally of a non-legislative kind. No doubt, the Council of Europe has a number of other conventions with a human rights dimension, but it is notable how narrow the main human rights treaty is in its approach to participation with its sole focus on elections to legislative organs.

The 1985 European Charter of Local Self-Government understands local self-government as a principle of organization based on elections of decision-makers, mainly of the members of the municipal council, potentially also the mayor. In this sense, self-government equals elections in Art. 3 of the Charter, where the concept of self-government is defined. However, according to para. 2 of the provision, it shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where such participation is permitted by statute. "Other forms of citizen participation" were thus contemplated in the Council of Europe context for local self-government already when the Charter was drafted and approved.

Over the years, the understanding about the other forms of citizen participation grew within the Council of Europe to the extent that the Additional Protocol to the European

[3] General Comment 25, para. 6.

[4] Guidelines adopted by the Committee of Ministers on 27 September 2017 at the 1295th meeting of the Ministers' Deputies (CM(2017)83-final).

[5] Guidelines 2017, para. II 2 a.

Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) was adopted in 2009. According to the Additional Protocol (the AP) and the Explanatory Memorandum,[6] this right to participate in the affairs of a local authority is an individual right that the States Parties shall secure to everyone within their jurisdiction and contains, with regard to the implementing measures mentioned in Art. 2 of the AP, measures that as to their substance appear to fall within the purview of the concept of civil participation as defined in the above-mentioned Guidelines. The AP entered into force in 2012 when eight States had ratified it. By the end of 2023, 22 of the 46 States that are members of the Council of Europe have ratified the AP, while an additional four States have signed the AP. According to the Preamble to the AP, the right to participate in the conduct of public affairs is considered as one of the democratic principles that are shared by all Member States of the Council of Europe. According to Art. 1 of the AP the 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.

Art. 2, para. 2 ii a-d, of the AP lists measures for the exercise of the right to participate in a non-exclusive manner:

> These measures for the exercise of the right to participate shall include (…) 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.

The measures mentioned in the provision are relatively concrete and establish a fairly solid standard at the level of international law that the parties to the AP are obligated to establish by law in their internal legal orders in a non-discriminatory manner. This includes that any 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

[6] Explanatory Report to the 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, [accessed 12 December 2023].

with the party's international legal obligations. The Monitoring Committee of the Congress of Local and Regional Authorities will probably specify the meaning of the measures in its future interpretations.

Against this background, the questions are as follows: How is the right to participate at the local government level by means of these measures recognized in the Constitution Act and the ordinary legislation in Finland and to what extent are the measures present in the current law applicable in relation to local self-government? How has the Monitoring Committee of the Congress of Local and Regional Authorities dealt with the AP and the measures for the exercise of the right to participate and what are its recommendations in the context? What kind of legal issues are brought up as a consequence of civil participation and how have the courts of law in Finland dealt with such cases? What are the forms and practices of civil participation at the local level?

Aspects of civil participation at the local government level is not a widely researched legal topic. Only a limited number of literary sources exist.[7] Therefore, the analysis is mainly based on the relevant preparatory materials and a relatively low number of court cases and cases from the highest supervisors of legality (the Parliamentary Ombudsman and the Chancellor of Justice).

2. Finland and the Additional Protocol

Finland ratified the AP in 2012,[8] apparently confident that the internal legal order of the country was in conformity with the AP already prior to ratification.[9] Without doubt, that may have been true already pursuant to the 1995 Local Government Act (the LGA) that was in force at the time. However, more or less at that point of time, in 2012,

[7] See, e.g., *Beyond elections: The use of deliberative methods in European municipalities and regions*. Congress of Local and Regional Authorities of the Council of Europe. Strasbourg: Council of Europe, 2022. However, the OECD has worked with civil space issues during the past years and has produced a number of reports (*inter alia*, Portugal, Romania and Finland) on the topic. For Finland, see *Civic Space Scan of Finland*. OECD Public Governance Reviews. Paris: OECD, 2021 [accessed 8 February 2024]. See in particular Chapter 6: Civic Participation in Finland and its subsection entitled "Municipal-level participation practices", including the references mentioned therein for more empirical assessments of civil participation at the local government level in Finland.

[8] See Act on Bringing into Force those Provisions that Belong to the Area of Legislation in the Additional Protocol the European Charter of Local Self-Government on the Right to Participate in the Affairs of a Local Authority (1335/2011) and the Decree of the President on Bringing into Force the AP and the Act (103/2012). As a consequence of this, the AP has the norm-hierarchical position of an Act of Parliament in the legal order of Finland.

[9] See Government Bill RP 268/2014 rd proposing the enactment of a new LGA, where, on p. 15, the Government writes that the local government in Finland normally fulfills well the requirements of the Charter.

preparations were underway for the enactment of a new LGA, passed by the Parliament of Finland in 2015. It is, therefore, noteworthy that there is no reference to the AP in the preparatory documents to the current LGA (410/2015), although the Government makes the point in the Government Bill that in comparison with application in courts of law of the Charter, the Charter has most importance when laws are enacted.[10]

Actually, the Constitution of Finland promotes civil participation in many of its provisions. According to Section 2(2) of the Constitution, democracy entails the right of the individual to participate in and influence the development of society and his or her living conditions, and under Section 14(4), the public authorities are expected to promote the opportunities for the individual to participate in societal activity and to influence the decisions that concern him or her. Additionally, according to Section 20(2), the public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence the decisions that concern their own living environment. These constitutional provisions facilitate civil participation from a general point of view, although the law-maker is not placed under any explicit duty to legislate on these forms of participation.

For municipalities at the local government level, provisions concerning civil participation exist in the 2015 LGA (and some of them existed already in the 1995 LGA) despite the fact that the Constitution does not establish any explicit requirement of regulation by means of an Act of Parliament and despite the fact that the 2015 LGA was adopted without any mentions of the AP in the Government Bill. The 2015 LGA contains several provisions in the area established by the AP in Art. 2, para. 2 ii a-d. Also, according to Section 37 of the LGA on the municipal strategy document, such a strategy shall take into account, *inter alia*, the opportunity of the inhabitants of the municipality to participate in and influence the municipality's decision-making.

Section 22 of the LGA lists opportunities to participate and exert influence, but opens up in subsection 1 by establishing that a municipality's residents and service users have the right to participate in and influence the activities of the municipality.[11] Moreover,

[10] Government Bill RP 268/2014 rd, p. 15. The Government also states that the Charter is in principle directly applicable in courts, but that the definitions in the Charter are of such a general nature that they in practice are mainly applied as principles of interpretation that support self-government. In principle, the AP is also directly applicable law in courts, as evidenced by some court cases referenced in this article.

[11] It should be noted that the concept of the resident of a municipality is not limited to natural persons. According to Section 3 of the LGA, natural and legal persons resident in a municipality are: 1) persons whose municipality of residence as referred to in the Municipality of Residence Act (201/1994) is the municipality in question (residents of the municipality); 2) corporate entities and foundations whose domicile is in the municipality; 3) parties that own or control real property in the municipality. Political participation is normally a right for natural persons, but the concept of civil participation may extend it

local councils must ensure that there are diverse and effective opportunities for participation. This provision functions as a backdrop to civil participation at the local government level, facilitated by provisions in Section 29 on how information about decision-making processes in municipalities shall be communicated to the public. According to subsection 1, residents, service users, organizations and other corporate entities must be informed about the municipality's activities. The municipality must provide sufficient information on the services it arranges, the municipality's finances, matters under preparation in the municipality, plans concerning these, the processing of these matters, the decisions taken and their effects. Most importantly, municipalities must provide information on how to participate in and influence the preparation of decisions.

To facilitate participation in the preparation of decisions, municipalities must, according to subsection 2 of Section 29, ensure that the necessary information about preparatory work concerning matters for consideration by decision-making bodies is given out in a public information network once the meeting agenda is ready in order to satisfy the general need for information.[12] In addition, Section 109 of the LGA contains the requirement that relevant information about the services that the municipality is arranging and about the activities of the municipality shall be published in the public information network (the internet). Moreover, the provision contains a listing of those pieces of information that at least must be accessible over the internet. In communications, clear and comprehensible language must be used and the needs of the municipality's different groups of residents must be taken into account.

The listing of the opportunities to participate in subsection 2 of Section 22 is actually phrased more as a set of examples, because the provision holds that participation and exerting influence can be furthered especially by six different measures, which are as follows:

1) arranging opportunities for discussion and for views to be presented, and setting up local resident panels;

beyond individuals to NGOs and civil society in large, as established in the 2017 Guidelines concerning civil participation.

[12] However, in their online communications, municipalities must, according to the provision, ensure that information which is required to be kept secret is not released in a public information network and that privacy protection is observed in handling personal data. According to the Constitutional Law Committee of Parliament in GrUU 63/2014, where it was recommended that the text of the Bill (RP 268/2014 rd) would be modified, the general aim is to support the principle of transparency in the activities of a municipality while at the same time tending to the needs not to spread around personal information. Therefore, after the Parliament added a clause in the provision with regard to privacy concerns, there appears to exist an appropriate balance in Section 29 between the principle of transparency and the protection of privacy.

2) finding out residents' opinions before taking decisions;

3) electing representatives of service users to municipal decision-making bodies;

4) arranging opportunities to participate in the planning of the municipality's finances;

5) planning and developing services together with service users;

6) supporting independent planning and preparation of matters by residents, organisations and other corporate entities.

All these examples are conducive to fulfilling the aims of the AP and they are used in practice in the around 300 municipalities of Finland, but not necessarily so that all of them are in use all the time in all municipalities. For that reason, it is probably difficult to establish a systematic view of the extent to which these measures of civil participation are in use in Finnish municipalities. As pointed out by Harjula and Prättälä, despite the compelling wording of the provision, it is the municipal council that decides on the extent and forms of direct democracy.[13] Because the above examples are included in a listing of potential measures of participation, it may also happen that some other participatory measures not mentioned in the listing are in use in the municipalities.[14]

In addition to these perhaps semi-voluntary mechanisms of participation, made somewhat more compelling for municipalities by the reference to the right to participate in and influence the activities of the municipality, the LGA contains a set of similarly worded provisions on particular councils that the board of each municipality must establish, namely a youth council (Section 26), an older people's council (Section 27) and a disability council (Section 28).[15] Two or more municipalities can also have joint

[13] Heikki Harjula & Kari Prättälä, *Kommunallag – bakgrund och tolkningar*. Helsingfors: Finlands Kommunförbund, 2017, p. 256. As mentioned in the Government Bill to the LGA, RP 268/2014 rd, pp. 124, 154, the provisions proposed in the Bill are mainly of a facilitating nature, which give the municipalities (municipal councils) sufficient margin of appreciation, *inter alia*, regarding which forms of participation to use. It is possible to think even with regard to obligatory provisions (e.g., on the youth council) that municipalities are given sufficient right to decide about the practical implementation on the basis of local conditions. Concerning the social consequences of enlarged participatory mechanisms, see also p. 128 of the Bill.

[14] Harjula & Prättälä 2017, p. 257. See also Government Bill RP 268/2014 rd, p. 154. As pointed out on p. 156, inhabitants of the municipality are not the only instance that can be active actors in the democracy at the local level, but also organizations and other associations such as village and suburb associations, various civic organizations, associations and networks of those who utilize municipal services, projects, campaigns, business enterprises and foundations. In relation to Section 22, even business enterprises are within the societal units entitled to participate, while business enterprises are not mentioned among those who have the right to initiative under Section 29.

[15] These councils of youth, elderly and disabled existed already prior to their inclusion in the LGA, but in three pieces of material legislation dealing with the youth, the elderly and the disabled. See, e.g., Government Bill RP 268/2014 rd, p. 261.

councils for the groups indicated in each provision. These councils for various groups have a similarly worded basis in the relevant provisions of the LGA, but the provision on the youth council is somewhat more elaborate than the provisions concerning the other councils. Generally, councils for the relevant group must be given the opportunity to influence the planning, preparation, execution and monitoring of the activities of the municipality's different areas of responsibility in matters of importance to the well-being, health, education, living environment, housing or mobility of the municipality's residents. In addition, youth councils can act also in other matters that the youth council considers to be significant for children and young people. Youth councils must be involved in the municipality's work to develop children's and young people's participation and the opportunities for their views to be presented.

At its face, the LGA appears to be relatively well in tune with the AP as concerns civil participation. However, a closer analysis of law and practice is needed in order to create the whole picture of how Finland may or may not comply with the provisions in the AP. Such an analysis also includes the Åland Islands, for which Finland is internationally responsible.

The Åland Islands is an autonomous part of Finland and has, according to Section 18, para. 4, of the Self-Government Act of the Åland Islands (1144/1991) legislative competence in the area of local government. The Åland Islands has acceded to the AP by giving its consent to the AP on the basis of Section 59 of the Self-Government Act, as mentioned in Section 2 of the Decree of the President on Bringing into force the AP (103/2012). Although the LGA of the Åland Islands (1997:73) displays many similarities with the LGA of mainland Finland, several differences exist. In the area of civil participation, the Ålandic LGA contains several provisions, but they are not quite as specific and varied as in the LGA of mainland Finland. Section 31 of the Ålandic LGA creates a general framework for participation and influence, Section 31a establishes an older people's council and Section 32 provides for the right of initiative, while Section 33 obliges the municipality to provide information to the inhabitants. It is nevertheless possible to conclude against this background that the Ålandic LGA appears to be in harmony with the AP. Therefore, the remainder of this article deals only with the LGA of mainland Finland.

3. The Measures of the AP in relation to Finnish Law and Practice

3.1. Consultative Processes

The consultative processes mentioned in Article 2, para. 2 ii, sub-para. a of the AP are not defined in the AP. This means that the consultative processes may entail whatever

forms of consultation. From a Finnish point of view, the general mechanisms mentioned in Section 22 of the LGA are channels of participation that fall within the purview of consultative processes. In addition, the three types of mandatory councils that municipalities must appoint for dealing with matters relating to youth, older people and disabled persons are consultative in nature.

The reference to consultation means that there is no expectation of a final result that is the same as the view expressed through the consultation mechanism. Instead, the consultation renders information that is or is not relevant for the decision that is being prepared within the municipal administration. In that sense, civil servants and even politicians in local government involved in the preparatory stages of the decision are probably in most cases at some liberty to either consider or not consider the opinion communicated to the decision-making process.[16] Also, the material legislation controlling the contents of decision-making may contain requirements that opinions presented in consultative processes cannot override other information. Sometimes, the municipality may give at least factual decision-making power to such consultative processes, e.g., when determining, for the purposes of participatory budgeting, a certain sum of money that a youth council may allocate to purposes approved by the youth council. In those cases, it can be supposed that the decision of the youth council is not the legally binding decision that can be directly executed, but that decision is taken by some other body within the municipal organization.

As evidenced by the judgment of the Supreme Administrative Court (SAC) in the case KHO 2019:171, a consultative mechanism may gain a procedural status: an opportunity to influence should have been given when a Waste Management Committee had adopted a waste transport system that was different from the one publicly communicated and discussed. The lower administrative court had overturned the decision of the Committee, and the SAC confirmed the decision of the lower instance on arguments that may be relevant in the context of the above-mentioned councils, although reference was not made to the LGA, but to provisions about involvement of inhabitants in decision-making according to Section 38 in the Waste Act (646/2011)[17]

[16] For citizen panels as a deliberative means of participation, see Kimmo Grönlund, Kaisa Herne, Maija Jäske, Mikko Värttö, 'Can politicians and citizens deliberate together? Evidence from a local deliberative mini-public', in 45 *Scandinavian Political Studies* (2022), 410–432, Kimmo Grönlund, Kaisa Herne, Maija Jäske och Mikko Värttö, *Handbok om medborgarpaneler i kommunerna*. Helsingfors: Kommunförbundet, 2022, and Kimmo Grönlund et al., *Implementing a democratic innovation: Online deliberation on a future transport system*. Urban Research Programme, Research Reports 4/2020. Turku: City of Turku, 2020. Citizen panels can be regarded as consultative mechanisms in the meaning of the AP, but at least the byelaws of the City of Turku do not recognize such panels as a mechanism of participation. The situation may be the same in other municipalities.

[17] Section 38, Municipal decision-making concerning property-specific waste transport: "Prior to making or amending a decision referred to in section 35, subsection 4, and in section 37, the municipality shall

and Section 41 of the Administrative Procedure Act (434/2003)[18]. A Waste Management Committee, organized as a joint operation between several municipalities in Southwest Finland, had reserved an opportunity for all interested, as established in Section 38 of the Waste Act, to be informed and to give their opinion in the matter before the decision about waste transport from the properties was made. This opportunity had, however, not covered the report by the consultancy group Ramboll Ltd that had constituted a central supporting piece of information for the eventual decision of the Committee. On the basis of the consultancy report by Ramboll Ltd, the Committee had decided to adopt a different waste transport system than what had been presented in the public announcement that included a report drawn up by civil servants. The SAC opined that the inhabitants and others significantly impacted by the decision on waste transport should have been given the opportunity to influence also the new conclusions drawn after the new report that had been given the key role as the basis of the decision of the Committee.

What this decision means, notwithstanding the content of the opinions delivered to the decision-making process, is that while procedures of civil participation may be of a consultative nature only without any expectation concerning the result of the decision to be made, the opportunities to influence matters pending in the administration should not be set aside, at least not if specific provisions in material legislation underline the importance of the opportunities to participate. The decision of the SAC, which in fact does not make reference to the LGA or to the AP, at the same time highlights the fact that civil participation is not only regulated in the LGA, but also in material legislation, in this case in the Waste Act, and in general administrative legislation such as the Administrative Procedure Act. Hence although the AP may be understood as a binding document that mainly addresses itself to the legislation on local government, and in this case the Waste Act is materially of such a nature, it is not to be excluded that general administrative legislation, such as the Administrative Procedure Act, contains provisions to that effect, albeit in a manner that presupposes mechanisms of participation of this kind to exist in all spheres of administration, not only in the context of local government.

provide all those whose circumstances are significantly affected by the decision-making with the opportunity to access information and express their opinion about the matter. Provisions on opportunities to exert an influence are laid down in section 41 of the Administrative Procedure Act (434/2003). The municipality shall publicly inform its inhabitants of a decision referred to above and publish the decision on an information network."

[18] Section 41, Provision of opportunities to exert an influence: 1. "If the decision made on a matter could have a significant effect on the living environment, work or other conditions of persons other than the parties, the authority shall provide such persons with an opportunity to obtain information on the bases and objectives of the consideration of the matter and to express their opinion on the matter." 2. "Information on the pendency of the matter and on exercising opportunities to exert an influence shall be provided in a manner consistent with the significance and extent of the matter."

The provision on participation in the Waste Act is formulated in a relatively compelling language, so too the provision in the Administrative Procedure Act. The provisions of the LGA are potentially less compelling. Therefore, it remains an open question whether such decision-making by local government bodies that sets aside the provisions on civil participation in the LGA can lead to overturning decisions by the courts in the same manner as concerning the decision taken on the basis of the special provision in the Waste Act. Thus at the same time as the ruling of the SAC is interesting, it may be advisable not to stretch its impact to the area of the general local government law.

A discussion between the terms "organ of the municipality" and "committee of the municipality" carried out in the Constitutional Law Committee of the Parliament of Finland may be illuminating when considering the position of the councils for the youth, the elderly and the disabled, although the thematic context is different. While a committee of a municipality, appointed by the municipal council, may be delegated public powers by the council under the law, another organ of the municipality established to influence decision-making in a municipality, such as the above-mentioned councils that are appointed by the municipal board, appear not in that capacity qualified to assume tasks that imply the exercise of formal public powers based on an Act of Parliament. In addition to the Government Bill for the LGA,[19] the discussion was carried out on the basis of a couple of Government Bills which, in the context of transfer of social welfare and healthcare services from municipalities to regional self-governing bodies, proposed that linguistic minorities, in particular the Swedish-speakers, would be accorded a mechanism of influence.[20] The Constitutional Law Committee opined that such organs of influence can be characterized as advisory organs that may end up having a marginal position only in the regional organizations and that they might not be able to compensate the decrease in the opportunities of the Swedish-speaking population to

[19] According to Government Bill RP 268/2014 rd, the councils for youth, elderly and disabled are not such organs of the municipality as referred to in Section 30 that are public authorities of the municipality and exercise public powers. It is, according to the Government Bill, therefore not possible to delegate decision-making power to the youth council. These organs can work within less formal frames, because the provisions and formalities of the meeting procedure and administrative procedure in the LGA and the Administrative Procedure Act do not need to be followed. Because the members of these councils are not in positions of trust in the manner intended under Section 69 of the LGA, they do not fulfil their duties under the provisions of public liability of civil servants. They are also not comparable to a municipal planning and decision-making organ referred to in Section 4 a, subsection 1, of the Act on Equality between Men and Women and therefore, the gender quota of 40 % is not applied to their composition (however, the aim is to have both sexes equally represented in the councils).

[20] See, e.g., Government Bill RP 15/2017 rd to the Parliament on Legislation concerning the Creation of Regions and on the Reform of Social Welfare and Healthcare and for Submitting a Notification according to Articles 12 and 13 of the European Charter of Local Government. According to the motivations to Section 26 of the proposed Act, the organs of influence would not be such organs of the region that would be public agencies of the region and that could exercise public powers. According to the Bill, no public authority could therefore be delegated to such organs of influence.

influence matters. The Committee proposed, against the background of the linguistic rights and the right to exert influence, that such advisory bodies should be strengthened into organs that can be comparable to regular municipal committees.[21] By implication they could then be delegated public powers by the region.[22]

The Government Bill to the LGA has a similar point of departure: the three councils are not to be understood as official organs of the municipality.[23] Against the background of the above discussion, it is possible to conclude that the councils for the youth, the elderly and the disabled are advisory bodies that cannot be furnished with formal decision-making powers leading to decisions that are appealable to the administrative courts.[24] In that capacity, advisory bodies are clearly less important than ordinary committees of municipalities. This difference is also embedded in the fact that the committees are appointed by the municipal council, while the advisory bodies are appointed by the municipal board.[25]

However, this does not necessarily mean that the position of councils for the youth, the elderly and the disabled would be entirely marginal.[26] The municipal council may entitle a representative of each of the councils to be present and speak at the meetings of the

[21] Constitutional Law Committee of Parliament, GrUU 26/2017 rd, GrUU 65/2018 rd.

[22] In the legislation that was finally adopted and that entered into force on 1 January 2023, the regional organ for the linguistic minority is fashioned as a committee of the region that may be delegated public powers.

[23] Government Bill RP 268/2014 rd, p. 103.

[24] Harjula & Prättälä 2017, p. 269.

[25] The City of Turku/Åbo has in its byelaws a set of Common Rules of Procedure for Organs of Influence, adopted in 2021, that elaborate somewhat differing rules for different councils. The Youth Council is established for 13–18 year old inhabitants of the municipality. The members of the Youth Council are elected at secondary schools, high schools, vocational schools, the Steiner School of Turku, the teacher training school of Turku and the international school of Turku. Five seats are reserved for such candidates of secondary schools who received most votes in the elections in schools and the same principle is used for high schools, while 22 representatives are appointed from different schools. The term of mandate of the 32 members is two years. According to Section 129 of the local byelaw (1.1.2023), the representative of the Youth Council has the right to be present and to speak in the meetings of the Municipal Council. The Elderly Council of Turku/Åbo has appointed members from associations of the elderly and *ex officio* members from the City of Turku, which means that the Elderly Council is a collaborative organ. The same is the case with the Disability Council of Turku/Åbo, which has members from associations in the disability area, civil servants and persons in positions of trust in the City of Turku. In addition, the City of Turku has some voluntary organs not required by legislation, namely the Children's Parliament with 12 appointed members from primary schools and the Multi-cultural Council, which is a collaborative organ of migrants, civil servants and persons in positions of trust in the City of Turku/Åbo.

[26] For a review of the elderly councils in Finland, see *Vanhusneuvostojen rooli ja vaikutusmahdollisuudet ikääntyneiden asumisen ja elinympäristöjen kehittämisessä*. Ikääntyneiden asumisen kehittämisohjelman 2013–2017 työpapereita 1/2017, ympäristöministeriö, 5.4.2017.

municipal council and of the various committees. The right to speak in the meetings of formal organs of the municipality may underline the importance of the three councils.

3.2. Local Referendums

The reference in the AP to local referendums would appear to cover both decisive and advisory local referendums.[27] In Finland, referendums at the local level are regulated in Section 25 of the LGA, where subsection 2 identifies such referendums as advisory. Decisive referendums are therefore not possible in Finland and the arrangement is based on the idea that the inhabitants of the municipality cannot challenge the highest decision-making body of the municipality, the municipal council, which represents the inhabitants and expresses the right of self-government of the municipality. An advisory referendum is normally held in the entire municipality, but the provision also allows for such votes in a certain part of the municipality.

The Act on the Procedure for Holding Municipal Consultative Referendums (656/1990) regulates the manner in which the referendum is organized. Advisory municipal referendums shall not be arranged in conjunction with local government elections or parliamentary elections. The advisory nature of a municipal referendum is probably enhanced by the requirement that in addition to the material alternatives presented for the voters, the voter should always be presented with the alternative that he or she does not support any of the material alternatives. This method of organizing referendums leads to multiple alternatives in the vote and thus probably to a result where none of the alternatives receives more than 50 per cent of the vote.

According to Section 24 of the LGA, the decision to arrange an advisory referendum is made by the municipal council. The provision contains an unusual prohibition not found in conjunction with any other matter dealt with in the LGA: a decision by the municipal council about arranging a referendum (and also about not to arrange a referendum) is not appealable. Such a prohibition of appeals can be motivated by the role of the municipal council as the main repository of the right of municipal self-government. A possibility for an external instance other than the law-maker to potentially change the locus of municipal self-determination from the council to the voters (albeit in an advisory capacity) is prevented. In fact, the practice with referendums shows that the municipal councils have not always followed the advice of the inhabitants, but have

[27] See also *Holding referendums at local level*. Congress of Local and Regional Authorities of the Council of Europe. Strasbourg: Council of Europe, 2022.

instead made decisions that deviate from their advice.[28] This underlines the advisory nature of the referendum.

The decision to organize a referendum is made by the council also in the event that the referendum has been requested by at least four per cent of the inhabitants of the municipality. This means that an initiative from the inhabitants to arrange an advisory referendum is not necessarily going forward to an actual referendum about the issue designated by the initiators. Instead, a municipal council can turn down a referendum initiative, which is a relatively common result. An interesting feature of the referendum initiative in Section 25 of the LGA is that inhabitants who are 15 years or older can sign an initiative for an advisory referendum, although the age of maturity and also the voting age is 18 years. The aim of the arrangement is to open up avenues of participation also for young persons.

There is no material delineation concerning the issue of the referendum in Section 24. Instead, the provision opens up advisory votes generally for matters concerning the municipality, which means that the referendum issues may deal with matters within the general competence of municipalities, but also with matters that are based on the competences delegated to municipalities under a material Act.[29] By the end of 2023, 63 referendums have been arranged.[30] Most of them have dealt with mergers of municipalities and are at least in part based on special legislation concerning mergers of municipalities where the referendum may assume a more decisive character. In addition, a couple of advisory referendums have dealt with the options for building a road, one about the border of administrative jurisdictions at the regional level, one about building an incinerator and one about the name of a town.[31] It appears against the background of actual referendum practice over three decades that the advisory referendum is not a very common form of participation in Finnish municipalities. Also, the results of the referendums that have been held have not become politically or morally binding for the municipal councils, which means that the advisory nature of the local government referendums has been preserved.

[28] Harjula & Prättälä 2017, p. 264.

[29] See Harjula & Prättälä 2017, p. 264.

[30] Kunnalliset kansanäänestykset (website of the Ministry of Justice in Finland), [accessed 9 February 2024]. See also Harjula & Prättälä 2017, p. 264. According to Marianne Pekola-Sjöblom, Kuntalaisten osallistuminen ja vaikuttaminen 2015. Arttu2 –tutkimusohjelman julkaisusarja 1/2016, [accessed 9 February 2024], p. 5, opinion polls show that inhabitants of municipalities would appear to wish that the referendum would be used more than is the case.

[31] Harjula & Prättälä 2017, p. 264.

3.3. Petitions

In addition to specific petitions in the form of referendum initiatives dealt with above, Section 23 of the LGA provides for a right to present initiatives that in the terminology of the AP are denoted with the term petition. The right is of a general nature, not limited to the physical inhabitants of the municipality, but instead extended to incorporated entities and foundations operating in the municipality. The mention of incorporated entities and foundations underlines the importance of civic activities in the municipality and draws a boundary in the direction of commercial activities where business enterprises organized as companies have the dominant role. The right to present initiatives is also granted to those who are not inhabitants of the municipality but who own or are in possession of real property, which means that all those inhabitants of the municipality that are referred to in Section 3 of the LGA have the right of initiative. This broad scope of the right to present initiatives may also imply a liberal attitude towards the age of those who want to submit an initiative,[32] whereby it would be possible for persons under the age of 18, that is, persons below the voting age, to submit initiatives.[33]

An initiative has to deal with the activities and tasks of the municipality, that is, the statutory activities and tasks or activities and tasks which the municipality may undertake pursuant to its general competence. Those who are utilizing the services of the municipality have the right under subsection 2 to file initiatives that relate to the services in question. The recent transfer of tasks from municipalities to the wellbeing services counties in the areas of social welfare, healthcare and rescue services has drastically limited the range of statutory activities that could produce initiatives. However, Section 30 of the Act on Wellbeing Services Counties (611/2021) contains a similar provision about the right to initiative as the LGA, so in material terms and from the point of view of the individual, the scope of the initiative has not diminished, only been split between two different organizations.

According to the Government Bill on the LGA, an initiative is treated as a matter under Section 16 of the Administrative Procedure Act, which means that the initiative has to include a formulation of the issue at hand, the name of the person who filed the initiative and contact information of that person, and the filing of an initiative can take place either by means of traditional or digital techniques. An initiative distinguishes itself from an application in that the public authority is under the duty to give a reply to the person who filed the initiative, but not to carry out a material inquiry into the issue

[32] Harjula & Prättälä 2017, p. 259.

[33] This was the interpretation already on the basis of the previous LGA, but the Government Bill to the current LGA makes the point in a clearer manner. See RP 268/2014 rd, p. 156.

stated by the initiative nor to make a decision on the issue. According to the Government Bill, an initiative does not need to lead to measures taken by the municipality. However, an initiative must be dealt with by the organ of the municipality that has decision-making powers in such matters.[34]

According to Section 23, subsection 1, of the LGA those who took the initiative must be informed about the measures that have been taken on the account of the initiative. The Government Bill makes reference to the requirement of good administration practices when stating that the person who filed the initiative should receive, within a reasonable time, information about which municipal organ will deal with the initiative and within which timeframe. After the initiative has been dealt with, the person shall be informed about the measures that perhaps are taken or have already been taken or be told that the initiative does not lead to any measures.[35] In a case concerning the closing of a school, where the right to initiative was used in relation to the preparation of the matter in municipal organs, the Parliamentary Ombudsman found illegality on the part of the City of Vantaa/Vanda when those who filed the initiative had not been informed in the manner established in the LGA about the estimated time that the handling of the initiative would take and which organ of the municipality is taking care of the matter. In addition, the reply given to the initiative had not been sent to those who filed it. The Ombudsman concluded that these omissions were illegal and show a disconcerting negligence towards the right of direct participation of the inhabitants of the municipality and towards their opportunity to influence municipal decision-making.[36]

Although the expectation is that every initiative can be tied to at least one person identifiable on the basis of contact information, it may happen that initiatives are received where no such identification information is provided in conjunction with the signatures. In a case complained to the Chancellor of Justice as the highest supervisor of legality, an initiative with 700 signatures had been filed with a municipality, but because the contact information had been lacking, the municipality had not fulfilled its duties concerning information about the handling of the initiative. The Chancellor of Justice held that in such a case with a significant number of inhabitants, information on the handling of the initiative should have been provided through the general information channels normally used by the municipality.[37] The omission of information on the part of the municipality in the context of the handling of initiatives is often held to be not in

[34] For instance, if the issue of the initiative belongs to the competence of the council, the municipal board cannot decide that the initiative does not cause measures to be taken. See Government Bill RP 268/2014 rd, p. 156.

[35] Government Bill RP 268/2014 rd, p. 156.

[36] Parliamentary Ombudsman, EOAK/3925/2016.

[37] Chancellor of Justice, OKV/1320/1/2013.

compliance with the principle of good government, originally established in Section 21 of the Constitution of Finland.[38]

What happens with an initiative in a municipality is partly regulated in the byelaws of the municipality and partly laid down in the LGA. As required by Section 90, subsection 1, lit. 2(n), the byelaws shall include provisions on the handling of initiatives referred to in Section 23 and on the information that shall be given to the person filing the initiative. This means that the mechanisms for processing initiatives vary between municipalities. In addition, Section 23 of the LGA stipulates that the local council shall be informed at least once a year about the initiatives that have been filed in matters that belong to the competence of the council and about the measures that have been taken on the account of the initiatives. This means that there is at least some measure of central control on the part of the council concerning the initiatives filed with the municipality.

In case the initiative does not lead to any measures, the decision not to take action is not appealable, as pointed out by the Supreme Administrative Court in the case KHO 2008:24. A person had filed an initiative to the section of culture and leisure time of the Committee of Education of the City of Porvoo/Borgå, requesting that a part of the annual subsidy to an association maintaining a museum would instead be paid to a foundation commemorating a historical figure in the town. The section of the Committee declined to take measures based on the initiative, and so did the Committee in the review procedure and the regional administrative court. The Supreme Administrative Court held that although an inhabitant of a municipality has a right under the LGA to file initiatives in matters that belong to the activities of local government, the opinion of the organ not to take further measures is to its material contents comparable to a resolution that relates to the preparation of a matter. Such a resolution does not contain a decision on the basis of which it is possible to file a request of review to the Committee or an appeal to the administrative court. Therefore, the SAC dismissed the appeal and explained that the Committee and the administrative court should never have dealt with the review and the appeal, respectively. This decision by the SAC indeed defines the position of an initiative and lowers the level of expectation amongst the inhabitants of the municipality as concerns the effects of initiatives: they may form a part of the preparation of a decision, but they do not carry any independent meaning surrounded by a strong legal protection.

An amendment of the LGA in 2021 made the right of initiative somewhat less compelling than was previously the case. A subsection that was repealed held that if the number of

[38] E.g., in the joint cases of OKV/1832/10/2022 and OKV/1832/10/2022-OKV-2, the Chancellor of Justice gave the City of Porvoo/Borgå and its Director a reprimand for setting aside good government when the Director had not responded to the petitioner's multiple queries.

persons filing an initiative exceed two per cent of the inhabitants of the municipality, the issue must be taken up within six months after it was initiated. This form of the initiative had thus some agenda forming consequences. What was dropped was the number of initiators and the time frame for bringing up the issue onto the agenda of the appropriate body of the municipality,[39] which means that the procedure for dealing with initiatives is more open under the current provision, subject to information about the initiatives delivered to the municipal council. The right of initiative thus no longer carries the potential of influencing the decision-making agenda of municipal bodies in the same manner as prior to 2021.

3.4. Proximity Measures

3.4.1. Sub-Territorial Referendums and Organs

The AP mentions measures to involve people at a level close to them as a mechanism of participation. Such mechanisms include 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. The referendum is in this regard fashioned not as a decisive mechanism, but as an advisory referendum in Section 24, subsection 3, of the LGA according to which a referendum in a municipality may be held across the entire municipality or in a sub-area of the municipality. A sub-area of the municipality is in that case composed of one or several polling station areas used in municipal and other elections (which means that the districting does not have to coincide with the borders of sub-territorial organs, if such exist). Only those persons who live in such a part of the municipality where a sub-territorial referendum is held have the right to vote in the advisory referendum. However, it is not known to the present author that such sub-territorial advisory referendums would have been held.

Legislation preceding the current LGA already contained explicit mentions of municipal administration in various parts of a municipality, but that option has never become widely used in Finland. The current LGA nevertheless contains provisions in Section 36 for sub-territorial organs, either committees or management boards,[40] that the municipal council can appoint to further the opportunities of the inhabitants in a part of the municipality to influence matters. Sub-territorial organs would be in charge of

[39] For the previous procedure, see also Harjula & Prättälä 2017, pp. 261–262.

[40] While the members of municipal committees must be inhabitants of the municipality, membership in municipal management boards is more liberal. Therefore, also persons who are not inhabitants of the municipality but registered as inhabitants in some other municipality, such as summer-house owners spending less than six months per year in the municipality, may be appointed to directions. See Harjula & Prättälä 2017, p. 320.

interaction between the area in question and its inhabitants, on the one hand, and the municipality and other organs, on the other, so that the opinions of the inhabitants in the sub-territorial area are transmitted to the decision-makers of the municipality.[41]

The municipal council can decide to appoint the members of sub-territorial organs on proposal by the inhabitants of the sub-territorial area. With a view to the drive during the past decades to merge municipalities to larger ones, it is possible that particular needs to create sub-territorial organs arise.[42] Because sub-territorial organs of the municipality, the borders of which are decided by the municipal council, may be asymmetrically organized so that proximity measures are implemented only in a part of the municipality and not everywhere,[43] the measures are not termed subsidiarity measures in this context, although subsidiarity may well be appropriate, too.

The sub-territorial organ has the task to influence decision-making in the municipality and to develop the sub-territorial area in the municipality. Such an organ shall be provided with the opportunity to submit its opinion in conjunction with the preparation of the municipal strategy, the budget of the coming year and the financial plan for the longer term. The same applies to pending decisions that may significantly impact on the environment, employment or other circumstances of the municipality's inhabitants and service users. The advisory procedure involving a sub-territorial organ is not insignificant, because the procedure is, according to the Government Bill to the LGA, comparable to the procedure of influence established in Section 41 of the Administrative Procedure Act. It would thus be a formal error to entirely disregard the procedure in Section 36 of the LGA, creating an effective argument in support of an appeal to an administrative court over a municipal decision that should have included a consultation with a sub-territorial organ.[44]

However, because such a sub-territorial organ is either a committee or a management board of the municipality, the members hold a position of trust under Section 30 of the LGA, which means that such organs can also be furnished with public powers. A municipality that has created sub-territorial organs may therefore, pursuant to Section 91 of the LGA, specify the other tasks and competences of such organs in the byelaws of the municipality.[45] Examples of public powers that could be delegated to a sub-territorial organ are decisions to grant subsidies on the basis of a budget entry in the

[41] Government Bill RP 268/2014 rd, p. 167.

[42] Harjula & Prättälä 2017, p. 320.

[43] Government Bill RP 268/2014 rd, p. 167. See also Harjula & Prättälä 2017, p. 320.

[44] Government Bill RP 268/2014 rd, p. 167.

[45] Government Bill RP 268/2014 rd, p. 167.

municipal budget and service tasks of different kinds, for instance, tasks related to zoning and planning.[46] A sub-territorial organ should be given sufficient resources for the tasks it is intended to take care of.[47] Despite this possibility of delegating public powers to sub-territorial organs, it appears uncommon to do so in those few instances where sub-territorial organs have been created.

3.4.2. Sub-Territorial Organs Created and Dismantled

Sub-territorial organs may be relevant in situations where two or more municipalities merge into a larger one as an attempt to uphold the continued relevance and character of the former municipalities in the aftermath of the merger. This is and especially was the case, for instance, in the municipality of Pargas, which prior to a municipal merger was an area that consisted of five small municipalities, the town of Pargas, Nagu, Korpo, Houtskär and Iniö. All of these municipalities were located off the coast of mainland Finland and were characterized by their archipelagic nature, forming a string of islands from Southwest Finland halfway to the Åland Islands. After the merger a good decade ago, the new municipality of Pargas, which obviously is archipelagic in nature, decided to create a sub-territorial committee in each of the four former municipalities outside the main centre of the municipality, Pargas. Apparently, a perceived problem with the sub-territorial committees was that they had no decision-making powers and no budgetary resources to carry out projects and similar matters.[48]

As of 1 January 2023, the four sub-territorial committees were merged into one committee entitled the archipelago committee, in spite of opposition from the sub-territories. The byelaws of Pargas do not specify any particular territorial area as the sphere of activity of the archipelago committee, but establish in Section 20 tasks and competences of this committee in a manner that appears to cover the entire area of the municipality. For that reason, the archipelago committee might be a regular committee of the municipality. However, the provision in the byelaws does not grant any public powers to the archipelago committee but establishes it primarily as an advisory body focusing on keeping matters of archipelagic importance on the agenda in the

[46] Government Bill RP 268/2014 rd, p. 168.

[47] Government Bill RP 268/2014 rd, p. 168.

[48] See, e.g., the sub-territorial committee Nagunämnden 03.09.2020 § 26, Revidering av förvaltningsstadgan (159/00.01.01.00/2020), [accessed 9 November 2023]. See also Nagunämnden 27.01.2021 § 5, included in the same document, where the sub-territorial committee of Nagu proposes that instead of the archipelago committee, the municipal council should continue to appoint sub-territorial committees for each of the former municipalities.

municipality, such as environment, zoning, services, trades, tourism, projects, traffic and other communication, digital infrastructure and development of the archipelagic villages. In addition, it appears that the members of the archipelago committee are selected from the archipelagic areas, while the preparation of decisions by the committee is done by civil servants of the municipality.

Therefore, the archipelago committee might perhaps be regarded a sub-territorial organ of Pargas, not a regular committee with powers, and as such a potential proximity measure under the AP, despite the fact that it is a committee of sorts in the municipality. Against the background of the AP, this dismantling of the proximity measure for the areas that were former municipalities may be a measure that works in the opposite direction from what might be expected under the AP, although it is also clear that the AP does not contain any provision that would stop the dismantling of a concrete civil participation arrangement as long as the law contains provisions that make possible such arrangements. However, it would be the task of the Monitoring Committee of the Charter of Local Government to express itself on whether dismantling of existing proximity measures might in some way be incompatible with the AP. A mitigating factor could be that at the same time, the municipality of Pargas maintains offices in the four parts of the municipality outside the centre of the town of Pargas, namely Nagu, Korpo, Houtskär and Iniö.

3.4.3. Continued Relevance of a Historical Grant of Self-Government?

There exists an interesting legal-historical example that perhaps could be connected to Section 36 of the LGA in a manner that provides a modern justification for the existence of an ancient arrangement (provided that it is felt necessary to find some additional justification for the arrangement), although the arrangement may also be a stand-alone structure without any connections to provisions in the current LGA. Kallankarit, a joint name for two small islands (Maakalla and Ulkokalla) in the Gulf of Bothnia some 16 km off the town of Kalajoki in the mid-western part of Finland, emerged from the sea with the rising land (which is a geological feature of this part of Finland) and started to be used as fishing sites in the 16th–17th century. Apparently, there existed other similar fishing sites off the coasts of the then Kingdom of Sweden,[49] because the king issued a

[49] See Kustaa Vilkuna, *Kallan kalastajayhdyskunta*. Ylivieska: KL-Paino 1994, p. 26, where he mentions Maluri outside Tornio, in current Finland, and Uddskär and Rödkallen off Luleå in current Sweden. Ulvö hamn in Örnsköldsvik, current Sweden, may have been similarly arranged. See also Outi Tuomi-Nikula, *Keskipohjalaisen kalastajan vuosi – Keski-Pohjanmaan suomenkielisen rannikon ammattimaisen kalastuksen ja hylkeenpyynnin muuttuminen 1800- ja 1900-luvulla*. Kansatieteellinen arkisto 32. Helsinki: Suomen muinaismuistoyhdistys, 1982, pp. 110, 129–134, 151–153, 154–157. Tuomi-Nikula 1982, pp. 155–156, mentions Tankar, some 15 km outside of the town of Kokkola/Karleby in Finland as a similar fishing

decree in 1771 that arranged the life of fishermen in these fishing sites according to self-government of these fishing communities in a general way.[50] The royal decree contains stipulations about rule-making, administration and judicial powers grounded in the self-government of the fishing communities in matters that relate to fishing in one way or another. Formally a part of the municipality of Kalajoki, the fishermen's community has maintained its self-government through the centuries and lived through a number of changes in the legal environment surrounding it, including transfer from Sweden to the Russian Empire and later into a part of the independent Finland. These changes include constitutional amendments through which rules and practices originally based on a royal decree from the old Kingdom of Sweden have been modified. However, the two islands have probably been property of the state (or the crown) from the beginning.[51]

It is probably safe to say that many of the original powers of the fishermen's community are today entirely obsolete, such as the exercise of judicial powers, but the existence of a fishermen's community on Kallankarit is actually confirmed by the Supreme Court of Finland in a judgment from 1989. The Court found that Kallankarit is to be regarded as a village in the meaning of the Water Act in relation to the water area surrounding Kallankarit and that the meeting of the community of fishermen can appear as a party in legal proceedings regarding the water area.[52] As of 2021, the community of fishermen is organized as an incorporated association under private law according to a charter

community, but indicates that the administration vanished in the 1920s. It is therefore possible that Kallankarit is the only one still in existence.

[50] Kongl. Maj:ts förnyade Hamn-Ordning, den 24 Januarii 1771. The decree replaced an older set of rules from 1726. According to Vilkuna 1994, p. 23, such a royal decree was given already in 1669 during the reign of Charles XI of Sweden. See also Axel Wilhelm Ljungman, 'Till Konungen', *Bohuslänsk fiskeritidskrift* 1894–1895, pp. 111–112, according to which the royal order of 1669 was given mainly due to the annexation of the formerly Danish province of Bohuslän, on the west coast of current Sweden. Bohuslän then became a province of Sweden, where herring fishing was very important. It was discovered later that there existed a need for a general regulation of fishing communities in the entire realm, hence the later royal decrees of 1726 and 1771. The reason for organizing the life of fishing communities was that they functioned on islands where no local government existed. The royal decree of 1669 was preceded by a regulation of fisheries from 1450.

[51] The state is identified as the owner of Kallankarit in the judgment of the Supreme Court, no. 3253/1989 of 24 November 1989. In 2023, the larger island, Maakalla (64°18,9' N, 23° 30,9' E), is registered in the land register as parcel no. 208-893-10-2 and identified as forestry land of the state, which means that the state has the title of ownership. On the smaller island, Ulkokalla (64° 19,9' N, 23° 26,8' E), where an old lighthouse is placed, a parcel is registered in the land register as parcel no. 208-407-1-57 and identified since the year 2000 as property of the private association Pro Ulkokalla. This registration indicates that the state has sold the parcel on the smaller island to a private entity. The ownership statuses of the two islands indicate that the self-governing structures of the fishermen are disconnected from the ownership over the islands and that the self-government continues also on Ulkokalla in spite of the change in the ownership of a part of that island.

[52] Supreme Court, Judgment 3253/1989 of 24 November 1989.

connecting the arrangement to and grounding it in the royal decree of 1771.[53] At the same time, the municipality of Kalajoki is not interfering in the management of Kallankarit, although the municipality in principle has competence in the entire municipality, including in Kallankarit, in matters such as zoning and building permits, waste management and a number of other issues. Fishing is, of course, not a task of local government, but certain matters dealt with by the self-governing bodies of Kallankarit are municipal tasks in other parts of the municipality of Kalajoki and in other municipalities. It appears that the municipality of Kalajoki has traditionally allowed the fishermen's community of Kallankarit to manage its own administrative matters, even those normally managed by the municipality, by means of the decision-making structure dating back to the royal decree of 1771, including the annual meeting of the fishermen as the main decision-making forum of the self-governing entity.[54] From time to time, the municipality of Kalajoki and also various state agencies approach Kallankarit with requests of opinions concerning administrative measures, such as the Natura 2000 network, establishment of wind power stations and other similar matters.

This arrangement could today be interpreted as a local administrative custom that is connected to the modern legal order through Section 36 of the LGA with respect to those tasks managed by Kallankarit that are managed by the municipality elsewhere in Kalajoki. It is proposed here that this could be so despite the fact that the byelaws of Kalajoki do not contain any explicit provision relating to Kallankarit that would mention the arrangement or create tasks for the village of fishermen. None of the fishermen is a permanent resident of Kallankarit, because all the fishermen live on the mainland and stay in Kallankarit in their private fishing huts mainly for the purposes of fishing.[55] In terms of administration of the islands, the traditional functioning of Kallankarit with respect to municipal tasks could thus continue for several reasons: the royal order from 1771 is still followed in Kallankarit, the arrangement has been and continues to be tolerated and respected by the municipality of Kalajoki concerning some municipal tasks, such tolerance and respect of the arrangement could fall within the purview of the right of municipal self-government in Section 121 of the Constitution of Finland and Section 7 of the LGA, and the LGA contains a provision in Section 36 within which the

[53] The name of the association is Maakallan kalastajain yhteisö ry.

[54] According to Vilkuna 1994, p. 4 (esp. fn. 1), the king of Sweden granted in 1620 the inhabitants of the town of Kokkola/Karleby the right to fish in Kallankarit when the town was chartered. The right to fish was thus a right connected to the status of being an inhabitant of a local government entity, termed in later law a municipality.

[55] The fishing huts are not considered real property of the fishermen, but are possessed by them on the basis of usufruct that is usually transferred as inheritance to a suitable person in the next generation. However, the decision-making bodies of Kallankarit may interfere in the possession of the huts, for instance, because of problems with the maintenance of a hut, and in principle, the possession of a fishing hut could be shifted from one person to another selected by the community of fishermen.

self-governmental tradition of Kallankarit could be fitted.[56] Without doubt, arguments to the contrary could also be relevant: the municipal council has not appointed the decision-making body of Kallankarit, the administration of Kallankarit does not have a link to the municipal administration of Kalajoki but has its focus on the private matters of the fishermen, and the byelaws of Kalajoki do not recognize Kallankarit in any way. It is thus debatable whether the arrangement in place in Kallankarit can be linked to Section 36 of the LGA, but the bold submission here is that the unusual legal-historical arrangement could, in addition to its own continuity and taking into account the principle of municipal self-government, also find a modern legal platform in Section 36 of the LGA notwithstanding the above arguments to the contrary.

3.5. Access to Official Documents

There is a long and well-entrenched tradition of transparency in local government in Finland in a manner that fulfils the expectations under the AP. The Constitution of Finland contains, in Section 12(2), a provision according to which documents and recordings in the possession of the authorities are public, unless their publication has for compelling reasons been specifically restricted by an Act of Parliament. Local government authorities are entities included within the sphere of this Section. The main Act specifying the constitutional provision is the Act on the Openness of Government Activities (621/1999), where Section 4 defines municipal authorities as authorities within the purview of the Act. Access to official documents therefore applies also at the local government level. The compelling reasons for specific restrictions of access to public documents is regulated in Section 24 of the Act on Openness, where a list of some 32 grounds for secrecy, to be narrowly interpreted, is provided. The secrecy grounds most relevant for municipal decision-making and access to documents are likely to relate to, e.g., specific educational situations concerning pupils in the schools and to business secrets of private enterprises discussing projects with the municipality prior to decision-making. The Public Procurement Act (1397/2016) contains specifications for the publicity of the bidding documents and the documents of the selected contractor, and the General Data Protection Regulation of the EU[57] contains data protection rules that may impact on the access to information at local government level.

[56] The limited administrative self-government of Kallankarit is thus of an entirely different order in comparison to the self-government of the Åland Islands, which contains formal legislative and administrative powers recognized in the Constitution of Finland (731/1999) and in the Self-Government Act for the Åland Islands (1144/1991) and also in EU-law and in public international law.

[57] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

However, the LGA contains additional transparency provisions concerning the open nature of meetings and within the broad area of communication, dealt with above (see section 2). As concerns meetings of municipal bodies, Section 101 stipulates that the meetings of the municipal council are open to the public, except if the Act on Openness and its secrecy provisions necessitate a closed decision-making procedure. In such a situation, also the documentation is under the secrecy provision. Meetings of other municipal bodies are open to the public only if the organ so decides and the meeting does not deal with matters that are under secrecy stipulated by the Act on Openness. Although the meetings of other organs are not open to the public, the official documents dealt with by the organ are still public and accessible, unless qualified as secret under the Act on Openness.

The main constitutional right relevant for the inhabitants and for persons not inhabitants of a municipality is also formulated in Section 12(2): everyone has the right of access to public documents and recordings. Considering that the case law on access to documents is vast, it should be sufficient in this context to report only one case by the Supreme Administrative Court, KHO 2018:164, where a reporter had requested from the City of Oulu a set of memos drawn up in conjunction with the internal auditing of the ownership steering by the City in relation to companies the City owns. The issues in the memos dealt with procurement of services by a limited share company that the City owned in its entirety, which means that the company was a subsidiary of the City of Oulu. According to Section 4 of the Act on Openness, the Act is not applied to companies owned by a municipality unless the companies take care of public functions or exercise public powers. The specific company in question was not an entity to which the Act on Openness would be applicable. However, the request of documents was not directed towards the company, but towards the City of Oulu, which was in the possession of the memos requested by the journalist. According to the SAC, a municipality functions as a public authority also in a context where it is engaged in steering of its subsidiaries and initiates internal auditing of such a subsidiary. The SAC therefore ruled that the Act on Openness was applicable on the memos although they contained information about a company subsidiary to the City.

The international legal obligations concerning access to official documents have increased and the area of transparency appears to be in an emergent state on the international level. Without going to a detailed review of the documents, some examples can be mentioned in this context, such as the Tromsø Convention and the Århus Convention.

The Tromsø Convention, or the Council of Europe Convention on Access to Official Documents (CETS No. 205), entered into force on 1 December 2020 and has 15 parties, including Finland, where it is incorporated in the legal order of Finland at the level of an

Act of Parliament. The Convention recognises to everyone the right to access official documents held by public authorities regardless of the requesting person's status or motives in seeking access. It has the same point of departure as the Finnish law in that all documents held by public authorities are in principle public and can be withheld subject only to the protection of other rights and legitimate interests specifically listed in the Convention. Finland submitted its first state report to the Council of Europe Group on Access to Information (AIG) on 31 January 2022, so opinions of the AIG concerning compliance at the local government level are pending.

The 1998 Århus Convention, or the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (2161 UNTS 447), entered into force on 30 October 2001 and has 47 parties, including Finland, which has incorporated the Convention in its legal order at the level of an Act of Parliament (Finland has also approved a Protocol to and an amendment of the Århus Convention). It appears that the compliance of Finland with the Århus Convention has not yet been reviewed by the treaty body.

However, on the basis of a case resolved by the Supreme Administrative Court (KHO 2019:97), the conclusion can be drawn that the Convention is noted as a relevant legal document by the courts of Finland. In the case, standing was granted to a Polish foundation promoting environmental protection that had, in its charter, definition of "Poland and other countries" as its geographical area of operation. The appeal to the regional administrative court against the decision of a regional state administrative agency to grant a permit for placing a gas pipeline on the bottom of the Baltic Sea within Finland's exclusive economic zone and the potential environmental consequences of the activity were thus in an area which belonged to the geographical sphere of activity of the organization. According to the SAC, the regional administrative court had erred in thinking that the geographical sphere of activity of the foundation was limited to Poland. The SAC also held that the provision concerning standing should not be interpreted in a narrow fashion when considering Article 9(2) of the Århus Convention, where the aim is to guarantee a broad right of appeal, and when taking note of the case law of the Court of Justice of the European Union on the right of appeal for environmental organizations in environmental matters related to the EU's environmental legislation. Therefore, the SAC overturned the judgment of the regional administrative court that had denied standing. At the same time, the SAC decided to try the appeal as to its material aspects and passed a negative ruling, which meant that the original administrative permit remained in force. Such broad standing for environmental organizations is an encouraging development from the point of view of civil participation.

The UNECE has established the Task Force on Public Participation in Decision-making under the authority of the Working Group of the Parties to the Århus Convention. The

UNECE has also issued the Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters, prepared under the Aarhus Convention,[58] with several recommendations concerning the public participation procedures specified in the Convention. The Recommendations, *inter alia,* make the point in recommendation 22 that "public authorities may find it useful to involve NGOs or other members of the public with relevant expertise in advisory bodies related to the decision-making procedure (e.g., general environmental protection councils, public councils, specialized EIA commissions, genetically modified organism (GMO) commissions or water committees)". The Recommendations also elaborate on the meaning of the concept of "access to all relevant information", as established in Article 6, paragraph 6, of the Århus Convention.

3.6. Persons with Particular Obstacles in Participation

While there exist different categories of persons with particular obstacles in participation, the main focus here is on the council for disabled persons, required under Section 28 of the LGA and dealt with already to some extent above in section 2. According to subsection 1 of Section 28, the municipal board must set up a disability council to secure the opportunity for people with disabilities to participate and exert an influence, but as a practical matter, a disability council can be a joint council for two or more municipalities. People with disabilities and their relatives and disability organizations must be adequately represented on the disability council. The municipal board must ensure the operational preconditions for the disability council.

As to its functions, the disability council must be given the opportunity to influence the planning, preparation and monitoring of the activities of the municipality's different areas of responsibility in matters important to the well-being, health, inclusion, living environment, housing or mobility of people with disabilities or to their coping with daily activities, or in terms of the services they need. It appears that the scope of activities of the disability council is relatively broad. In spite of this relatively specific determination of the tasks of the disability council, the Supreme Administrative Court found in its decision KHO 23.11.2015 T 3387 that the disability council was not a body that had to be heard separately when the municipality was making zoning decisions.

A person opposed to a zoning decision of the town of Äänekoski maintained that the zoning did not provide for safe access to a school in a manner that would have fulfilled the requirement of equal treatment of everyone. Because of insufficient inquiry into the

[58] UNECE, Maastricht Recommendations on Promoting Effective Public Participation in Decision-making in Environmental Matters, [accessed 13 November 2023].

matter by the municipality, it was not possible to know whether the requirements of the Land Use and Building Act were fulfilled. During the preparation of the decision, the town had heard the committee of leisure time, but not the disability council. The applicant submitted that the disability council of Äänekoski had not been heard in the process leading up to the zoning decision. The regional administrative court, as confirmed by the SAC, opined that the disability council is not such an instance which should have been heard separately when the zoning decision was prepared. The disability council had had the same opportunity as other interested parties to express its opinion and to submit a notification about the zoning proposal during the zoning procedure. The administrative court found no procedural error in the case.

Moreover, the administrative court explained that the detailed planning of the street will be implemented by means of a street plan that is drawn up pursuant to the Land Use and Building Act. The zoning decision under appeal prepared the circumstances so that the access to the school can be organized in a manner that serves all groups in society. The requirement of equal treatment was therefore not violated. As a consequence, the zoning decision was not against the law. The SAC agreed with the lower court. The decision of the SAC can be seen as one that does not strengthen the entitlement of a disability council beyond what is foreseen in Section 28, which is an advisory role in material issues. The decision does not grant a disability council any procedural role in relation to zoning decisions (or in relation to any other decisions, for that matter) in a manner that could lead to an enhanced position. The other similar bodies, the youth council and the elderly council, would thus also not have any procedural position beyond the advisory role they have under Section 28 of the LGA.

At the same time, the disability council may be understood as an organ instituted in accordance with Article 29(b) of the United Nations Convention on the Rights of Persons with Disabilities.[59] The Article deals with participation in political and public life and places the States Parties under the obligation to guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, *inter alia*, by means of actively promoting an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs. Considering the advisory nature of disability councils, they are evidently not a very effective mechanism of participation for persons with disabilities, but such councils offer an avenue for information from persons with disabilities in a municipality to the formal decision-making organs of the municipality.

[59] Finland ratified the Convention in 2016, after it was incorporated into the legal order of Finland at the level of an Act (373/2015) and Decree (27/2016).

3.7. Complaints and Suggestions

The Finnish law contains an array of mechanisms and procedures for dealing with and responding to complaints and suggestions regarding the functioning of local authorities and local public services. Some of them have already been touched upon, such as petitions and initiatives as suggestions in section 3.3.

A general right to file “informal” complaints can be based on the freedom of speech and of the press, implying that a municipal authority, when receiving such a reaction from a person, is under the duty to give a reply. This right is formalized in Section 53a of the Administrative Procedure Act and the higher municipal authority receiving such a complaint is under the duty to give a reply to the person who presented this form of complaint. However, this is not an ordinary complaint procedure that could lead to, for instance, the revocation or amendment of an original administrative decision or unlawful conduct, and the reply given by the higher municipal authority is not appealable to an administrative court. The fact that this mechanism of reaction is not limited to formal decisions enlarges the object of complaints to all kinds of measures taken by a municipality.

Section 10, subsection 2, of the LGA tasks the regional state administrative agency with receiving complaints filed by individuals and with determining if a municipality has acted in compliance with the law. This complaints procedure is also of a kind that cannot lead to revocation or amendment of a municipal decision, but only in opinions about whether the actions of the municipality have been legal. This mechanism is for oversight of legality concerning municipal activities, but of another order than the internal complaints dealt with above, because the determination of legality is done by a public authority external to the municipality. The highest supervisors of legality, the Parliamentary Ombudsman and the Chancellor of Justice, have a somewhat similar role in resolving free-form complaints from inhabitants of municipalities (for examples, see section 3.3. above). In instances where the two highest supervisors of legality could initiate review upon their own motion, even without a complaint from an inhabitant of a municipality, the regional state administrative agency is limited to reactions from inhabitants of municipalities. For these complaint mechanisms, the scope of complaints is not limited to formal decisions of the municipality.

The formal appeals mechanisms are, in principle, of two different kinds, the appeal against a municipal decision under Section 135 of the LGA and the appeal against an administrative decision under the Administrative Judicial Procedure Act (808/2019). The latter is used to file formal appeals with the regional administrative court for legality problems in formal administrative decisions in matters that are decided by municipal organs on the basis of legislation that grants special competence to the municipality

(education, building permits, etc.), while the former is used to file appeals with the regional administrative court for legality problems in formal administrative decisions in matters that are decided by municipal organs pursuant to the LGA or, as sometimes may be the case, special legislation (zoning decisions). In most cases, these appeal procedures are not directly available after a decision has been made in a municipality, but presuppose an internal administrative review procedure and only after that has been completed is it possible to file the appeal, if need be, by parties.

One of the principal differences between appeals over municipal decisions taken within the ambit of the self-government of the municipality and general administrative appeals is that appeals over municipal decisions can be filed by any inhabitant of the municipality who is 18 years old, while administrative appeals can be filed only by the party or parties to the decision whom the decision concerns or whose right, obligation or interest is directly affected by the decision. Compared to the state administration, where only administrative appeals by the party or parties are allowed, the appeal over municipal decisions constitutes an *actio popularis* that makes possible a reaction from any member of a municipality dissatisfied by a formal decision of the municipality. Such a broad right to appeal is well in line with the right of self-government of municipalities, established in Section 121 of the Constitution of Finland, according to which the inhabitants of the municipalities are entitled to self-government at the municipal level but also have to carry the consequences of municipal decisions. Another distinctive feature of appeals over municipal decisions is that the administrative court cannot amend the original decision of the municipality because of the right of municipal self-government, only revoke it (or revoke and return to the municipality for a new decision), the expectation being that the municipality will determine by itself the new contents of the next decision. With administrative appeals, there is the possibility that the court will make a material amendment to the original decision.

Although administrative appeals in matters that a municipality decides under its special competence can be filed by the party or parties only, some exceptions to that main rule exist, such as the special right to appeal in environmentally relevant matters by environmental organizations at a local or regional level, as evidenced by the Supreme Administrative Court case KHO 2019:113. The owners of a property had applied for a special permit to transform their summerhouse, situated by a lake, into an all-year inhabitable house. The environmental committee of the municipality of Ruovesi granted the exception from the general zoning decision for shoreline areas, a zoning decision made the same year as the application for exception was filed. The local chapter of the Finnish Nature Conservation Association in Virrat-Ruovesi appealed against the decision to a regional administrative court and claimed, *inter alia*, that granting the exception endangered the implementation of the zoning decision and violated the equal treatment

of property owners in the area. The administrative court repealed the decision of the environmental committee and denied the original application.

The SAC granted the right of appeal to the property owners but only concerning the claim that the local chapter of the nature conservation association had not in its appeal to the regional administrative court presented any circumstances that would endanger the aims of environmental or nature conservation in the area concerned. The property owners also pointed out that it was not the task of the local chapter to supervise in its area of activity such matters as the requirement of equal treatment of property owners or the appropriate organization of land-use. The SAC noted that the right of appeal of the local chapter of the Finnish Nature Conservation Association in Virrat-Ruovesi is based on a special provision in Section 193, subsection 1(6), of the Land Use and Building Act, according to which the right of appeal is possessed by a registered association, within its area of activity, the aim of which is to promote environmental or nature conservation or to preserve cultural values or to otherwise influence the quality of the living environment. The SAC inquired whether the appeal of the association should have been thrown out to the extent the claim of revocation of the municipal decision of exception had been justified by circumstances that could be viewed as not being relevant to environmental or nature conservation.

The SAC made the point that concerning administrative appeals, the grounds of appeal that can be presented have not been limited and that new grounds can be presented even after the set time for appeal, provided that the case is not changed to another one because of the new grounds. The right of appeal of the local chapter is based on a particular provision concerning the right of appeal from which it is not possible to infer limitations to the grounds of appeal. The SAC then presented a *dictum* saying that the circumstances that are legally relevant for the success of the claim presented in an appeal must be separated from the right to present claims. In addition, the SAC also opined that in zoning and building matters, all other issues than procedural ones are not readily distinguishable from aims that are related to the promotion of environmental and nature conservation. Therefore, according to the SAC, there existed no reason to throw out some of the grounds of appeal presented by the local chapter.

It thus appears that the right of appeal in such matters is quite broadly defined for a local chapter in the area of environmental and nature conservation. Such special standing provided for an association which aim at promoting values of environmental and nature conservation underline the position that civil participation is gaining as a general mechanism for the common good in society, also at the local government level. Not all associations have such a standing, but in some pieces of law, similar mechanisms are designed.

4. Monitoring of Compliance with the AP

The monitoring of compliance concerning the Charter of Local Self-Government is the task of the Monitoring Committee. The Monitoring Committee, *inter alia*, carries out a general regular country-by-country monitoring mission to each Member State approximately every five years, may examine a particular aspect of the Charter and sends fact-finding missions to examine specific cases of concern by decision of the Bureau of the Council of Europe. In its work, the Committee takes into account the conclusions and recommendations of the Congress of Local and Regional Authorities concerning election observation missions to the human rights situation at local and regional level in Europe and prepares a regular report on this specific issue.

Probably because of the fact that the AP is still a relatively new document, it is not much featured in monitoring as of yet, although several countries, such as the Netherlands,[60] North Macedonia[61] and Finland, have submitted information on the implementation of the AP to the Committee. In fact, it is possible to claim that the Monitoring Committee has not given any substantive comments as of yet concerning the implementation of the AP in the various countries. As concerns countries that by the time of monitoring had signed the AP (e.g., France, Georgia, Iceland, Malta, Portugal, Serbia, Ukraine), ratification of the AP was recommended. The Committee has noted ratifications with satisfaction or welcomed ratification (e.g., Bulgaria, Estonia, which noted that the AP is a valid norm for constitutional review, Lithuania, Montenegro, Switzerland). In some cases the Monitoring Committee made no comment at all in its monitoring reports with regard to the AP despite the fact that the AP had been ratified (e.g., Armenia, Cyprus, Hungary, Norway, Slovenia, Sweden).

As concerns Finland, some substantive references are made in the monitoring report of 2017.[62] The Committee held that Finland's ratification on 1 February 2012 of the AP "shows a political will to strengthen local democracy". In para. 147, the Committee says that the "rapporteurs welcome the efforts that have been made by Finnish authorities

[60] For the Netherlands, see the comments of the Monitoring Committee 2021, paras. 249–256, in *Monitoring of the application of the European Charter of Local Self-Government in the Netherlands*. Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee) 41st SESSION, Report, CG(2021)41-05prov 22 September 2021, [accessed 12 December 2023].

[61] For North Macedonia, see the comments of the Monitoring Committee 2021, paras. 38–39, in *Monitoring of the application of the European Charter of Local Self-Government in North Macedonia*, Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee), 41st SESSION, Report, CPL(2021)41-02final, 22 September 2021, [accessed 12 December 2023].

[62] *Local and regional democracy in Finland*. Monitoring Committee, Monitoring report concerning Finland, CG32(2017)08final, 28 March 2017, [accessed 12 December 2023].

to strengthen direct democracy at local level through the introduction in the new Local Government Act of diversified and effective opportunities for participation". However, the Monitoring Committee does not dwell into the more particular issues of the AP, although there is, as we have seen above, quite a lot to say about the various aspects of civil participation at the local government level.

The AP is still a relatively recent international document. For that reason, the AP has not yet had time to manifest itself as a platform for the activities of the Monitoring Committee. Against the background of this review, it is to be expected that the AP will be featured more frequently in the state reports to the Monitoring Committee and also in the opinions of the Committee.

5. Conclusions

As pointed out in the Government Bill concerning the LGA, the various provisions of the LGA reviewed in this article strengthen the opportunities of the inhabitants of municipalities to participate in and influence the development of the municipality and the local environment.[63] This is relevant not only for the inhabitants, but also for those who use the municipal services and for organizations, associations and foundations with activities in the municipality. Some of the provisions establish obligatory mechanisms of participation, that is, mechanisms that a municipality must offer. The obligatory dimension is important, according to the Government Bill, with a view to the practical implementation of the right to participate and influence and for strengthening equal opportunity to participate, but municipalities are in no way prevented from going beyond the obligatory requirements of the LGA in this respect, because they can also institute non-obligatory mechanisms of participation.[64] At the same time, and keeping in mind that the right to participate is an evolving right at the level of implementation, steps forward in increasing civil participation may also in some situations entail steps back, and it remains to be seen how the Monitoring Committee under the Charter of Local Self-Government will deal with concrete instances of dismantling of mechanisms that once have been established at the local level.

The general idea behind the provisions is to increase the interaction between the inhabitants of a municipality and the municipality and to strengthen civil society and representative democracy. This is a feature of decision-making supported by several provisions in the Constitution of Finland and, of course, by the AP. The experiences of

[63] Government Bill RP 268/2014 rd, p. 128.

[64] Government Bill RP 268/2014 rd, p. 128.

the inhabitants and users of municipal services can be funnelled to the preparation and decision-making in the municipal organization, making possible the use of the knowledge of the inhabitants concerning decisions and their consequences. An expected long-term impact of these mechanisms of participation is the strengthening of the trust of inhabitants in the functioning of the municipality and in political and other decision-making.[65]

Despite the provisions concerning civil participation, at the end of the day, a decision has to be made in a matter by the municipal decision-making bodies or civil servants of the municipality. Such a decision is made by the decision-making bodies defined in and designated pursuant to the Local Government Act, such as the municipal council, the board, a committee or other decision-makers as defined by the byelaw. Until the moment of decision, civil participation is possible, but only as input to the process in which the matter at hand is progressing towards the decision. Hence, civil participation is possible, but there is no obligation of result for civil participation of the kind that would compel the actual decision-maker to reach a particular substantive decision. The position of civil participation in making a municipal decision is therefore advisory and its function is to funnel information to the decision-making process. In that capacity, the advice accrued by means of mechanisms of civil participation may or may not lead to adjustments in the contents of the decision.

The formal decision-making body may take into account input from civil participation but must consider all the material elements that the law requires from the decision to be made. This is a dimension that could create disillusionment among those who engage in civil participation if the ideas, proposals and information accrued through civil participation are not leading to results expected by the active inhabitants of a municipality. In addition, input from civil participation may sometimes even be outside of the range of issues that can be taken into account by the formal decision-maker, and it may be difficult to explain why the final decision deviates from the input from civil participation. In such cases, it would probably be beneficial for the legitimacy of the decision-making process if the justifications for the decision contained explicit

[65] Government Bill RP 268/2014 rd, p. 128. According to Pekola-Sjöblom 2016, pp. 7–9, just over 80 % of inhabitants of municipalities included in a query had, during one year, used at least one of the 16 mechanisms of participation listed in the query, and it appears to be normal to use various mechanisms. Surprisingly, many of the least used mechanisms of participation belong to the ones covered in the LGA (and this article), such as the initiative, appeal, request of internal administrative review, and membership in a council for the elderly, disabled or young persons. Among the most used mechanisms of participation the following were featured: replies to queries of the municipality concerning experiences among customers/users of services, participation in the activities of an association, participation in voluntary work, participation in the parents' evening of a school or a day-care unit, and contacts to a civil servant of the municipality. It appears that various "private" mechanisms of participation are more popular than the "formal" ones organized under the LGA.

explanations on why the input from civil participation mechanisms is not considered when the decision is made.

What the review shows, however, is that civil participation is a procedural form of participation that cannot be completely side-lined despite the fact that there is no obligation of result attached to civil participation. Under the AP, the state is under an obligation to provide in law for mechanisms of participation at the local government level, but the AP itself does not appear to provide for rights that are directly actionable by the inhabitants of a municipality. A municipality should therefore provide mechanisms of participation that involve its inhabitants, such as consultative processes, local referendums and petitions, proximity measures, access to official documents, measures for meeting the needs of persons who face particular obstacles in participating and various mechanisms and procedures for dealing with and responding to complaints and suggestions. If and when established, a municipality should not set aside the results from such processes. Some court practice even indicates that in very clear cases, setting aside opinions produced in a participatory process may constitute a procedural error that causes the municipal decision to be overturned. The Monitoring Committee of the Charter of Local Self-Government has not yet reached any significant level of interpretation concerning the AP, but it can be expected that, given the likelihood of increasing attention by the Monitoring Committee towards the AP in the future, more solid pronouncements will emerge at some point in the future. Such pronouncements will be important in clarifying the different elements of civil participation embedded in the AP.