

Monitoring Committee

Original

CG/MON/2015(29)5

Restricted

Post-monitoring Armenia Road map

Rapporteurs¹: Rapporteur, (tbc), (L)
Gunn Marit HELGESEN, Norway (R, EPP/CCE)

¹ L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group
ILDG: Independent Liberal and Democratic Group
ECR: European Conservatives and Reformists Group
NR: Members not belonging to a political group of the Congress

I. General considerations and post-monitoring dialogue.

1. The situation of local democracy in the Republic of Armenia was the subject of a visit to monitor the country in November 2013. This resulted in Recommendation 351 (2014) on Local and regional democracy in Armenia, adopted by the Congress on 26 March 2014.

2. Such monitoring visits are organised by the Congress on the basis of Article 2, paragraph 3 of Statutory Resolution CM/Res(2011)2 which stipulates: “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”.

3. Recommendation 351 (2014) calls on the government of Armenia to address 12 points identified by the rapporteurs as requiring further action so as to bring practice in line with the European Charter of Local Self-Government (hereafter “the Charter”). In 2013 the Congress elaborated a procedure for those countries wishing to develop a political dialogue so as to facilitate the implementation of the monitoring recommendations. Resolution 353(2013)REV on Congress post-monitoring and post-observation of elections sets out the post-monitoring procedure.

4. It is a great pleasure for the rapporteurs that Armenia has shown a readiness to avail itself of this procedure by a formal request in November 2014, accepted by the President of the Congress, Mr Jean-Claude Frécon, in December 2014. The ensuing post-monitoring programme (PMP) agreed in concert with the national authorities focused on the main areas identified in the Recommendation: a review of legislation; territorial governance; consultation; administrative supervision; own financial resources, the tax mechanism and financial equalisation. These were organised into two post-monitoring units (PMUs) one treating the questions concerning finance (PMU1) and one grouping the subsidiarity issues and the review of legislation on these issues (PMU2). The constitutional reforms were also considered as an overarching theme to this PMU.

5. The post-monitoring programme took place in Yerevan on 1 October 2015 and the rapporteurs noted with great satisfaction that the Armenian government had already begun adoption of measures in the spirit of Congress Recommendation 351(2014) on Local Democracy in Armenia. Most notably, a comprehensive constitutional reform implemented by the Armenian Government on 6 December 2015, with relevance for the scope of local and regional self-government in the country. In parallel, an intense reform programme was initiated, and is still in progress, for the development of local self-government in Armenia aimed at a comprehensive territorial re-structuring by merging many of the fragmented and smallest municipalities².

6. The aim is to create new relationships among central government; decentralised state administration and its territorial entities (marzes) as well as sub-national entities; territorial structures of co-operation; the functioning of self-government bodies, financial management and financial supervision and including the regulation of consultation and co-ordination procedures.

7. Pilot projects for territorial mergers of 14 communities are already under way, 3 of which have been implemented (22 former communities merged into three ones) and are discussed *infra* under territorial governance (see paragraph 23 ff). The government has elaborated and presented a workplan of “Envisaged Actions” for implementation of Congress Recommendation 351(2014). The delegation sees this as evidence of a determination to improve the situation of local self-government (LSG) in the country and that much has already been commenced or accomplished.

8. The Armenian partners have also underlined that the post-monitoring dialogue is seen as a unique opportunity for demonstrating a willingness to receive external support in the form of guidance (such as on priorities), comments and assistance for their reform programme. The Congress, for its part, aside from its monitoring and post-monitoring role, is also involved in managing a range of co-operation programmes in Armenia³ aimed at strengthening the capacity of the government’s consultation partners at local government level.

9. Since the post-monitoring visit, the rapporteurs were informed that on 8 December 2015, the National Assembly of the Republic of Armenia has ratified the four provisions of the Charter which

³ See the Council of Europe Action Plan for Armenia 2015-2018.

were not yet ratified, namely Article 5, 6, 7 paragraph 2 and 10 paragraph 3. Therefore, as of January 2016, Armenia is bound by the Charter in all its provisions. This act of ratification reflects the significant developments achieved by the Republic of Armenia in the field of local democracy.

10. The Congress delegation welcomes the positive spirit in which the Armenian Government has embraced the post-monitoring process, favouring a deepened political dialogue so as to more rapidly implement the Congress recommendations.

The Congress rapporteurs notice a real political will on the part of the Armenian government, in particular the Ministry of Territorial Administration and Development, to co-operate in improving the structure and functioning of local self-government in Armenia.

They welcome the use of the impetus of reform to invigorate Armenia's international commitments with a view to creating sustainable democratic structures at state and local level, in compliance with the European Charter of Local Self-Government (ETS 122) and its Additional Protocol on the right to participate in the affairs of a local authority (CETS 207), as well as with Congress recommendations on local and regional democracy.

In this regard, the rapporteurs also express pleasure in the introduction of a new article in the revised Constitution which states under "The Hierarchy of Legal Norms" that the norms of international treaties apply in the case of contradiction with those of national law (Article 5 of the revised Constitution).

II. Follow-up to Congress Recommendations

- i. **Constitutional reform and general overview**
- ii. **Governance**
- iii. **Finances**

i. **Constitutional reform and general overview**

11. The Charter in its Article 2 indicates a clear preference for states party to the Charter to include the principle of local self-government within the constitution: "The principle of local self-government shall be recognised in domestic legislation and where practicable in the constitution". Where this is the case, the Congress praises such an initiative.

12. Concomitant with the Congress monitoring visit in 2013, the President of Armenia began preliminary discussions on the question of constitutional revision with a request to the Council of Europe's Venice Commission for assistance. The comprehensive revision that has ensued and is still currently under way includes amendments to the provisions regarding the Chapter on Local Self-Government in Armenia's Constitution⁴⁵. It forms the constitutional basis for the comprehensive reform process and the subsequent review of legislation to better implement the principle of subsidiarity (see *infra* Congress Recommendation 7a). Thus, it is of utmost importance that (new or amended) constitutional principles are in conformity with the Charter and its Additional Protocol on the right to participate in the affairs of a local authority (hereafter the Additional Protocol). Constitutional reform and the amended principles are also important indicators for a systemic approach to reform. Indeed the rapporteurs have the impression that the government is guided by the objective of a systemic reform of local self-government (LSG) in Armenia in order to create the necessary capacities at community level and to modernise local administration.

13. Thus, before going into the details of the plans for the reform process in ordinary legislation and implementation regarding the recommendations included in the two post-monitoring units on Territorial Governance the Financial Situation of LSG, the general picture and approach to reform as well as the

⁴ Currently Chapter 7; proposed Chapter 9.

⁵ The reference document for the proposed amendments to the Armenian Constitution used in this text is contained in Venice Commission document CDL-REF(2015)042 of 16 October 2015, being the text adopted by the National Assembly on 5 October 2015, for submission to national referendum on 6 December 2015.

fundamental principles laid down in the Constitution are briefly examined and commented on, in particular with a view of their conformity with principles of the Charter.

14. The Congress experts have certain comments as regards the draft Chapter on Local Self-Government: In relation to direct elections of community councils, they welcome the proposed Article 7 on Suffrage Principles which states: "Elections of the National Assembly and community councils, as well as referenda shall be held on the basis of universal, equal, free and direct suffrage, by secret vote".⁶ They further state that, in relation to proposed articles concerning "Community Issues and Powers of Local Self-Government Bodies",⁷ where "...The community mayor shall be accountable before the community council", that the extent of mayors' accountability should be clarified, particularly if it includes their dismissal or removal (see further *infra* under Administrative supervision, paragraph 52).

15. Regarding the division of powers and functions of communities into three groups: own mandatory, own voluntary and those delegated by the state,⁸ the Congress delegation calls for a clarification of the distinction between mandatory own functions and powers delegated by the State does not seem clear and its justification questionable. Further clarification is also required in relation to financing and the freedom of local authorities to determine local taxes.⁹

16. The government provided the following explanations and clarifications:

- The direct election of mayors and councils is still the preferred option of the government, and indirect election following the Yerevan model may become an option for big cities (such as Gyumri, Vanadzor and large communities), with flexibility being the reason for the chosen formulation.
- Concerning the distinction and delimitation of "mandatory" "own" and "delegated" powers, an amendment to the Law on Local Self-Government is envisaged by the government in order to clearly distinguish these powers and the mechanisms for their exercise, which the rapporteurs would welcome (see further *infra*: the review of legislation).
- The government explained that the reform provides for voluntary powers to become the prerogative of councils (not of mayors, as it is now). Delegated powers shall be circumscribed and delimited in legislation; the draft amendment links delegated tasks to the requirement of more effective exercise – it provides a conceptual link to the subsidiarity principle as a guideline for policy decisions. The financial consequences of delegation are regulated in that "The powers delegated to communities by the state shall be subject to mandatory financing from the state budget".¹⁰

17. The rapporteurs point out that with regard to community ownership (of land and other property)¹¹ and the Community budget, local taxes duties and fees,¹² the constitutional provisions on the budget and the financing of communities¹³ (sources of revenue) complement each other and should be read together. In addition, as the community council shall set local taxes and duties "within the scope of rates prescribed by law"¹⁴ this suggests that communities will be bound by (maximum or minimum) rates fixed in legislation which may reduce local tax autonomy considerably (see further *infra*: the tax mechanism)

18. As regards the merger and separation of communities:¹⁵ The government pointed out that after the constitutional reform, local surveys will suffice for territorial mergers and to change communities' boundaries, making consolidation easier. This appears to the rapporteurs to be in line with the consultation requirement laid down in the Charter (Article 5) and, although in the future the consultation will be non-binding in character, there seems to be no difference in substance to the current referenda where the Parliament may also not take the results into account. The government

⁶ See also the Venice Commission's adopted Opinion CDL-AD (2015)038 (28 October 2015) on Constitutional reform in the Republic of Armenia, Chapter 9.

⁷ Article 182.4 last sentence

⁸ Article 182.1

⁹ Particularly Articles 185.3 and 186.1

¹⁰ Article 186.2

¹¹ Article 184.3

¹² Article 185

¹³ Article 186

¹⁴ Article 185.3

¹⁵ Article 190

emphasised that consultation will occur with the concerned population through polls, surveys and other forms of direct participation guaranteeing their involvement, with more emphasis on substance, rather than a merely formal approach with a (non-binding) plebiscitary decision. The Congress delegation highlights the importance of the new legislation on implementation to provide for as much transparency as possible, as well as guaranteeing procedures for inclusion of the whole electorate at local level, in the planned instruments for consultation.

19. The delegation takes note with satisfaction that the referendum on constitutional reform has been already conducted on 6 December 2015. Presently, adaptation of the whole corpus of legislation on local self-government and regional administration will be the necessary consequence and the rapporteurs are pleased to see that preparations for the necessary legislative changes are already under way. The delegation praises this determined approach for providing a clear constitutional basis for the current reform process, which will form the basis for further implementation of decentralization.

20. The Armenian authorities informed the delegation that following implementation of constitutional and legislative reform on local self-government, the role of the *marzes* will be examined and adapted. Under the current constitutional reform they continue to implement the regional policy for the government.¹⁶ However, the results of the consolidation of communities will first have to be evaluated, as current capacities of most communities do not allow for IMC - after consolidation, greater capacity can be expected.

21. The delegation is delighted to learn that the National Assembly of Armenia has already ratified previously non ratified articles of the Charter. The delegation feels this shows a genuine political will of the government to apply 100% of the Charter.

Recommended actions on constitutional reform and the general overview:

- **While continuing with the process of constitutional reform, the Government should take account of the above-mentioned comments (paragraph 12 ff) on Local Self-Government.**
- **With regard to constitutional reform, special attention should be given to implementing legislation, most notably on the distinction and delimitation of powers; inter-municipal co-operation; administrative supervision; financial equalisation and the scope of tax rates. This legislation should be drafted carefully and with precision.**
- **The form and procedures for consultation in case of mergers of communities should be regulated by law, guaranteeing transparency and inclusion in reasonable time, in order to be effective and to reflect the will of the population concerned by territorial re-organisation.**
- **Keep the Congress informed on developments in the concept on regional reform including when a strategy or legislation is expected**

ii. Governance

22. The post-monitoring programme for Armenia has identified the following articles of Congress Recommendation 351 (2014), as key to improving governance:

- the review of legislation
- territorial governance
- consultation procedures
- administrative supervision

¹⁶ Article160

1. Review of legislation

Rec 351 (2014) invites the Armenian authorities to:

7a. review the legislation in order to better implement the principle of subsidiarity and to allow the local authorities to regulate and manage a substantial share of public affairs under their own responsibility and in the interest of the local population;

23. The Charter in Article 4 paragraph 3 states that in preference, those authorities closest to the citizen should exercise public responsibilities.

24. As a general observation, the rapporteurs welcome that the constitutional amendments reflect the principle of subsidiarity as the guiding principle for the distribution of powers and functions, including in the field of delegated functions. However, they suggest the distinction between “mandatory” “own” vis-à-vis “delegated” powers in the constitutional amendment¹⁷ should be specified, circumscribed and exactly delimited in legislation (see further *supra* under constitutional revision paragraph 13, and *infra* under administrative supervision paragraph 43 ff.). Moreover, this is the right moment to decide whether some “delegated” powers may be transformed into “mandatory own” powers leaving more autonomy and discretion to communities. A similar approach was taken with the revision of the 2008 Law on Yerevan and the conversion of certain powers.

Recommended actions on the review of legislation:

- **To clearly distinguish each of the two different categories of powers of the communities (mandatory own and delegated) and to circumscribe the mechanisms for their exercise in the amendment to the Law on Local Self-Government, which should implement the amended Constitution as to “Community issues and powers of local self-government bodies” (current proposed Article 182).**
- **To consider transforming certain delegated powers into mandatory own powers of (consolidated) communities, thus strengthening local autonomy and clarifying the distinction between mandatory own and delegated powers.**

2. Territorial governance

Rec 351 (2014) invites the Armenian authorities to:

7b. improve and strengthen territorial governance in order to make it more effective through, for instance, inter-municipal co-operation or mergers of small communities and to mitigate the over-centralisation of public administration.

25. The delegation agrees with the government’s assessment that the process of territorial reform is essential for overcoming the current fragmentation of communities and for creating the necessary capacity of communities to provide a number of services and functions. The fact that the reform will change the territorial structure of the country considerably is reflected in the constitutional provision on consolidation of communities¹⁸. The delegation appreciates this constitutional guarantee as well as the gradual implementation of territorial reform with many measures already under way. The process began at the end of 2013 with the political decision to begin the merger of small communities gradually in a number of pilot projects. Fourteen cluster projects have been initiated in seven *marzes*, with only three *marzes* not included. A local referendum has already been held in three clusters: Tumanyan (+ 6 villages), Dilijan (+ 6 villages) and Tatev (8 rural communities). All three voted in favour of a merger.

26. The rapporteurs are pleased to note that this procedure is in conformity with Article 5 of the Charter which states: “Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.”

¹⁷ Article 182

¹⁸ Article 190

27. In consequence, by the end of September 2015, the government had approved a reform package of legislation related to LSG which has been adopted on 24 November 2015. This reform package comprises amendments to the following laws:

The Law on Administrative Territorial Division

The Law on Local Self-Government (LSG)

The Law on Municipal Service

The Law on Public Service

The Law on Local Duties and Fees

The Law on Development of Dilijan Community and Adjacent Areas in the Tavush Marz of Republic of Armenia and Boosting Investments

28. After the adoption of these legislative amendments, local self-government elections in the consolidated communities of the three clusters were held on 14 February 2016. The official publication of the election results would be the final step of forming LG bodies of consolidated communities. Further, investment programmes will begin in the communities.

29. In parallel, work on the remaining eleven clusters has begun with measures for awareness-raising within the local populations including dissemination of information about the reform in order to form public opinion¹⁹.

30. The Congress delegation was informed that the three remaining marzes submitted proposals for inclusion in the pilot merger and this is envisaged for the near future. This first requires a decision by parliament to extend the reform to the whole country.

31. Territorial reform through mergers raises the issue of the perceived or real loss of vicinity, representation by elected representatives and possibilities for participation by the population of settlements which lose their status as autonomous communities. Currently, there are 915 communities in Armenia, out of which 61 communities already contain several settlements. After the reform, communities will typically include several settlements, with the consequence that many communities will lose their autonomous status being reduced to a settlement within a larger cluster forming the new community. One example is Dilijan, one of the three pilot clusters, where one cluster centre (Dilijan) is merged with six rural communities around. There will also be one local representative or settlement mayor appointed by the Dilijan mayor (after consultation with the settlement population) with sufficient powers for interaction with the local population in the settlement.

32. The delegation was informed by the government that the reform also addresses the effect of consolidation on elected councils and other holders of office, as well as the potential disturbance to the inter-relationships of formerly autonomous communities, which henceforth will have a reduced status as a settlement.

33. After the reform, all settlements regardless of size will have an opportunity to be represented by at least one member in the consolidated community council elected by the settlement's population. This might even lead to more competitive elections than today, where in small communities there is hardly any opposition and elections are been dominated by (the same) few families.

34. The delegation made enquiries about the experience of inter-municipal co-operation (IMC) which it is pleased to see mentioned in the Constitutional revision (Article 189). However, at present the main focus of IMC is restricted to the joint management of the database on land and property taxes and joint waste management programmes. According to the government, currently 500 communities are handling data bases in the inter-municipal unions (IMUs)²⁰, in future this function will be carried out by consolidated communities only. Even fewer IMUs exist for waste disposal, which will become the task of consolidated communities after the reform. The delegation takes note that IMC is not seen by the government as a sufficient alternative to the consolidation programme in the country as a whole for improving the efficiency and capacity of communities. Consolidation is considered essential as the first step to strengthen capacity by creating larger units fit for large-scale decentralisation. The transfer of social security tasks and services from delegated to mandatory functions provides an example. This will enable consolidated communities to address the whole range of social services at community level, such as child protection and care for elderly, and help to integrate the consolidated social

¹⁹ The Congress' co-operation activities also include a field project dedicated to involving local populations in local matters of concern to them, as well as consultation with mayors and regional governors.

²⁰ Often called inter-community unions in the Armenian context.

service provision established at state level. Amendments have been proposed to the Law on LSG to this effect.

Recommended actions on territorial governance:

- **Continue measures for raising awareness and acceptance of the territorial reform while sustaining the process of territorial re-organisation and consolidation on the basis of the amended Constitution in relation to inter-community unions (current proposed Article 189).**
- **Design and put in place an action plan to evaluate how the consolidation reform functions in practice, so as to keep the programme on track.**
- **Analyse the potentially negative effects on the relations between formerly autonomous communities within the newly consolidated communities to check that the mitigating procedures in place - such as guaranteed representatives and local branch offices in settlements - are sufficient and work satisfactorily.**
- **To improve and reinforce capacity through inter-municipal co-operation as incorporated in the proposed amended text of the Constitution (Article 189). This may already be prepared through appropriate legislation in the current implementation process.**

3. Consultation procedures

Rec 351 (2014) invites the Armenian authorities to:

7f. set up a formal consultation mechanism in domestic law, to ensure that local authorities and national associations of local authorities are duly consulted on matters which concern them directly "in due time and in an appropriate way", and that central government decisions are accessible to local elected representatives and their associations, which should be considered in practice as privileged and active partners.

35. The Charter recognises that local authorities may be particularly affected not only by matters coming within their scope, but also matters which are outside their scope. Article 4 paragraph 6 of the Charter stipulates that *"Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly."* This text is carefully worded to provide that the manner and timing of consultation should be such that the local authorities have a real possibility to exercise their influence²¹. The rapporteurs consider institutionalised consultation of local government as a core element of the local self-government reform currently under way in Armenia. In this context the rapporteurs would like to highlight a support project being run by the Congress in Armenia to strengthen the capacity of the CAA within a formalised consultation process.

36. As the aim of consultation of local self-government (LSG) authorities is to make sure that the opinions of the local level are reflected and its interests represented, the rapporteurs note with satisfaction that the CAA as well as the CFOA and AMCA were asked to present their opinion to the Ministry (MTAD) on the constitutional amendments and that they participated in public hearings on proposed amendments organised by the Parliamentary Constitutional Commission.

37. The rapporteurs note in this context that the main objectives of consultation with LSG association(s) in CoE Member States in general are:

- to discuss issues with a territorial dimension;
- to analyse the subjects that require liaison between the different levels of government or regulate the performance of the local entities;
- to explain and consult on political strategies and programmes affecting territorial development;
- to discuss strategies of co-operation between different tiers of territorial government.

²¹ The Charter explanatory memorandum, Article 4.6.

38. These objectives can be best attained through the combination of a differentiated network of non-institutionalised, informal consultation practices with pre-established formal procedures in legislation in order to help local communities present their views on a variety of governmental or legislative reform projects.

39. The Ministry has already established a “collegium” as a formal consultative body at the MTAD. The rapporteurs express their satisfaction that the collegium is composed of the NGOs from the field such as Association of Communities of Armenia, Communities Finance Officers Association, Association of Councils of Armenia, Municipal Lawyers Association, Association of Women with University Education.

40. While the current post-monitoring programme is concerned only with implementation of Congress recommendations related to the Charter which, with respect to consultation solely concerns local authorities²², the rapporteurs would like to comment on initiatives taken by the government of Armenia relating to formal consultations of the population at community level. This is the subject of an Additional Protocol to the Charter ratified by Armenia on 1 September 2013, on the right to participate in the affairs of a local authority. Elements of formal consultation of the population at community level have been introduced through amendments to the Law on LSG (2013) on participation within communities. The delegation welcomes these amendments as implementation measures following Armenia’s ratification of the Additional Protocol. The rapporteurs are interested to hear further how these new instruments are being used in practice.

41. Following the planned consolidation of communities under the mergers mentioned *supra* (see paragraphs 16, 22 ff), a new momentum is expected in the larger communities that ensue as a result of the increased critical mass of the local population. The delegation notes with satisfaction the introduction of a statutory duty to organise public meetings at community level on major initiatives which have an impact at community level, such as the budget and the four-year development plan.

42. Consultation is facilitated by transparency and easy access to information. A “Municipal management information system” is a new initiative/strategy to guarantee the continuous flow of information by the government including data exchange with communities. Hardware procurement is completed and software now installed for the 580 communities included in the pilot scheme. The transformation of the data base on land tax into the general IT network will enable it to interact with national information systems such as the land cadastre and national electronic document management system²³. Since 2014 the community SMS micro-survey system is applied. Currently, an extension to the pilot project relating to administrative and tax duties, and available for consultation by citizens, is another step towards creating a consolidated system to facilitate exchange of and access to information.

Recommended action on consultations processes:

- **Evaluate the benefits of the effective implementation of the Charter relating to consultation, (including in primary legislation) with bodies representing local self-government interests knowing that certainty through legal guarantees is considered good practice in the legislation of many CoE Member States and consider making an assessment at the end of the first parliamentary term of office regarding how the consultation and co-ordination instruments function, regarding all of the associations representing local self-government interests.**

4. Administrative supervision

Rec 351 (2014) invites the Armenian authorities to:

7g. ensure that the administrative supervision of local authorities is limited to a review of the legality of the local community's action, and that the controlling authority's intervention is kept in proportion to the importance of the interests which it is intended to protect.

43. The Charter in its Article 8 regulates administrative supervision over the activities of local

²² The Charter, Articles 4.6 and 9.6

²³ “Mulberry” (e-Governance regarding documents etc.: <http://www.earmeniaproject.am>)

authorities. Paragraph 1 of the Article stipulates that there should be an adequate basis for supervision, such as in the constitution or in statute, thus ruling out ad hoc supervisory procedures. In this respect the rapporteurs have welcomed the draft amendments to the Armenian Constitution on “Legal and Professional Oversight”²⁴ which take into account this Article of the Charter.

44. Supervision of the activities of local authorities distinguishes between firstly, ensuring compliance with the law and constitutional principles - a control of legality over the exercise of “own” powers - and secondly, administrative supervision exercised by higher level authorities of tasks delegated to local authorities - a control of expediency over “delegated” tasks (Charter Article 8.2). The explanatory report to the Charter is clear that; “Administrative supervision should normally be confined to the question of the legality of local authority action and not its expediency”.

45. Legal supervision relates to lawfulness in the exercise of own powers by the community mayor; in addition, those tasks delegated by central government are also subject to professional supervision, in essence a control of effectiveness and efficiency.

46. The *Marzpetaran* (regional) governor offices are the competent authorities for administrative supervision, the highest body being the Ministry of Territorial Administration and Development (MTAD). Professional supervision is carried out by the relevant line ministry, but according to Presidential Decree no. 728/2014 (Government and administration in *Marzes* (regions)) such supervision is now co-ordinated by the MTAD. Should a line-Ministry intend to examine a particular situation (professional supervision), it may proceed only after formal agreement with MTAD as supreme supervisory authority.

47. The delegation welcomes the government’s adopted measures for the improvement and development of administrative supervision skills, such as training, including anti-corruption training, of staff and officials of the *Marz* government as well as for councillors.

48. Financial audits follow different procedures and are managed separately by the Ministry of Finance and the Supreme Chamber of Audit, which are the authorities foreseen for the oversight of the financial management of communities.

49. The community council supervises implementation of the four-year community development plan. Since the visit, the rapporteurs have been informed that a Law on Making Amendments to the Law on Local Self-Government was adopted on 7 December 2015, which stipulates that the community head must present to the community council a report on the progress of implementation of four-year development plan (FYDP) for the reporting year, which is subject to publication in the manner prescribed by the law. Also based on the results of that report a power to make changes in FYDP has also been envisaged upon the proposal of the community head or at least one-third votes of the community council. A FYDP development methodology guide was developed by the Ministry and provided to the community heads.

50. With regard to the legal protection of local authorities, Article 8, paragraph 3 of the Charter states that administrative supervision should be “kept in proportion to the importance of the interests which it is intended to protect.” The explanatory memorandum on that article develops this further so that “the controlling authority...is obliged to use the method which affects local autonomy the least...” In Armenia judicial remedies against the improper exercise of supervisory measures foresee direct appeal to the supervisory authority against the contested measure, followed by the possibility to file a complaint in court.

51. The procedure to conclude administrative supervision of community authorities envisages a protocol drawn up by the supervisory commission (established by the *Marz* Governor), to be signed off by the mayor. In case of disagreement, the mayor is not obliged to sign and has three days for appeal to the *Marz* regional government. Should the complaint be rejected and the protocol is confirmed, the mayor may challenge the decision in Court.

52. At present, the Community Council may remove the mayor by a motion to the *Marz* Governor who will examine it and then forward the motion to the Ministry (MTAD).²⁵ An opinion by the Constitutional Court is required before the government can issue the decree for the mayor’s

²⁴ Article 188

²⁵ Law on Local Self-Government (2002), Article 73.

dismissal.²⁶ The Congress delegation appreciates that such a procedure may act as a deterrent against hasty or arbitrary decisions. The rapporteurs also recognise that democratic local self-government and its institutions benefit from stronger safeguards in a system, which is still consolidating after democratic transition when constitutional regulation carries significant symbolic value.

53. The rapporteurs point out that in the case of an elected mayor, dismissal should be determined by a court procedure, and this would also provide protection against arbitrary accusations or dismissal by the Council.

54. The proposed constitutional revision currently provides: "The community mayor shall be accountable before the community council".²⁷ As stated *supra* under constitutional reform, paragraph 13, the rapporteurs emphasise the need to clarify the extent of the mayor's accountability, particularly if it includes dismissal or removal.

Recommended action on administrative supervision:

- **In drawing up the legislation and amendments to implement the constitutional reform on legal and professional oversight, carefully formulate the consequences of the different types of supervision - whether of legality or expediency - and bear in mind the principles laid down in the Charter, in particular the principle of proportionality so that the supervisor's intervention is kept in proportion to the importance of the interests it is intended to protect.**
- **Elaborate relevant legislation on the dismissal or removal of the mayor which would entail a court procedure as second stage for the dismissal or removal of a mayor.**
- **Design a methodology to create a coherence practice by communities in the development plans of their communities and consider the best way to implement it, such as adopting guidelines through a ministerial decree.**

iii. Finances

55. The post-monitoring programme for Armenia has identified the following articles of Congress Recommendation 351 (2014), as key to raising the standards of finance:

- "own" financial resources
- financial equalisation
- the tax mechanism

56. Based on OECD/DAC criteria the Republic of Armenia is classified as a lower middle income country with a GDP per capita of US\$ 3,720 in 2013²⁸, and US\$ 3,873.5 in 2014. The share of local communities in public finances is still at a low 9.7%, thus indicating that local communities do not yet manage a "substantial share" of local affairs – the concept of local self-government defined in Article 3 of the Charter.

1. "Own" financial resources

Recommendation 351 (2014) invites the Armenian authorities to:

7h. increase the "own" financial resources of local authorities as required above (see 7. a and c);

(7. a relates to legislative review for better implementation of subsidiarity and 7c relates to an increased capacity of community councils).

57. The Charter, in Article 9.1, provides that local authorities are entitled to adequate financial

²⁶ The Constitution of Armenia (2005 version), Article 109.

²⁷ Article 182.4.

²⁸ World Bank data.

resources of their own, based on the premise that legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out.²⁹ Current draft amendments to the Constitution provide for the law to “define such tax and non-tax sources that are necessary for ensuring the performance of communities’ tasks³⁰. The main sources of income for local authorities at present are the following:

- Government grants and subsidies for local self-government, have been consistently increasing: from Dram 17 billion (€ 33 million) in 2008, to Dram 45 billion (€ 86.8 million) in 2014, and to Dram 47 billion (€ 91.2 million) in 2016³¹;
- Land tax revenues, in particular for communities composed of several settlements or after merger, otherwise often negligible;
- Property tax on real estate and vehicles (with most revenue from the latter);
- Lease of land.

In future new sources may be added such as a hotel tax (when implementing legislation has been approved by parliament).

58. The delegation acknowledges that, according to information provided by the government on the *Concept Paper of Local Duties and Fees* developed, there have been several fundamental changes starting with the definition of “local tax or duty”, including a list of local duties and fees additional ones are envisaged). Once it is formally approved by government, the plan is to completely revisit the Law on local duties and fees.

59. The delegation also welcomes that vital record and notary duties collected by communities are allocated to community budget.

60. After consolidation and territorial re-organisation through mergers, services and associated costs in consolidated communities should create more financial and professional capacity without necessarily creating more costs. The transformation of delegated powers into own powers for consolidated communities should be accompanied by budget appropriations; assets should also increase in larger communities (for example land lease, for some up to Dram 200 million for a community with a budget of Dram 5 million).

61. The community budget consists of two segments; their distinction should protect against abuse:

(a) the administrative budget covering the running costs is financed from subsidies and tax revenues and can be managed with full local discretion; however, sometimes these financial sources are not sufficient: in these cases, the council may forward a request to government with a project description and ask for authorisation of use of funds from programme budget;

(b) the substantive/programme budget for capital expenditure (no salaries maybe drawn from this part) is mainly financed from two sources: sale of community assets and surplus from administrative budget; local communities have only limited discretion regarding this segment of the budget.

62. However, the rapporteurs were informed that there are only 200 communities which have a fund budget so that while Dilijan’s administrative budget amounts to Dram 500 million, the settlements in the surrounding area each have administrative budgets of Dram 5 million.

63. The proposed new constitutional text on the “Community Budget, Local Taxes, Duties and Fees”³² only refers to “mandatory financing from the State budget” for communities exercising delegated powers.³³ The delegation notes that the criteria and procedures for subventions and other grants do not appear to be regulated in legislation (besides one small regulation on technical matters for the transfer of subvention money).

²⁹ Explanatory report of the Charter, Article 9.

³⁰ Article 186.1

³¹ Approximate Euro rates. Currency conversion on 20.11.2015 at 100 Dram = €0.19, then rounded up.

³² Article 185.

³³ Article 186.2.

Recommended actions on own financial sources:

- Pursue the ongoing reform on local finance in order to create a stable revenue source for communities which is their own and over which they have the power to determine the rate.
- As provided for in Article 9.2, 9.3 and 9.4 of the Charter, list and define sources of revenue, guaranteeing financing commensurate with responsibilities provided for by the constitution and the law, thereby implementing the new constitutional provisions³⁴ (proposed Article 186.1).
- In order to create legal certainty, the criteria and procedures for subventions and other grants should be clearly regulated in legislation, in particular for delegated tasks and functions (proposed Article 186.2).

2. Financial equalisation

Recommendation 351 (2014) invites the Armenian authorities to:

7j. review the financial equalisation mechanism to implement it in a more appropriate way, and develop measures for the allocation of equalisation grants on the basis of fiscal capacities and financial needs of communities, in order to correct the effects of the unequal distribution of potential sources of finance, in accordance with Article 9.5 of the Charter.

64. The Charter, in its Article 9.5, provides for the protection of financially weaker local authorities through the institution of financial equalisation procedures.

65. The rapporteurs were pleased to hear from the Government representatives that an Equalisation Law has already been drafted and will be adopted in the course of 2016. This Equalisation Law should be based upon the respective constitutional provision which in its current draft form states: “to the extent its resources permit, the state shall allocate funds for ensuring the proportionate development of communities”.³⁵ The stated aim for this new law is to distribute funds in a more equitable and targeted manner. In addition to the current criteria – size of population and land (as the capacity for creating revenue) – the draft law should also consider new elements, such as expenditure, specific needs (including, for instance, elevation above sea level and long winters), the distance from regional centres and Yerevan, and the demographic profile of communities (including children, kindergartens and seniors), so as to determine the necessary services and related expenditure.

66. The Congress delegation welcomes this approach, which should allow for more differentiated consideration of the real needs of communities, and declares itself ready to provide an assessment of the draft law if so requested.

67. Armenian Territorial Development Fund (ATDF) has been established in order to finance infrastructure projects from the State budget and through Donors. The World Bank has guaranteed a \$ 55 million commitment for tourism and regional development, and USAID has committed additional \$ 8.6 million to this Fund (only for consolidated clusters).

68. The needs in consolidated clusters have to be identified through a participatory process, which is already included in Law on LSG.

69. The rapporteurs welcome these concrete measures in the important area of infrastructural investments and improvements as well as the co-ordination of national and international financial means available.

70. The rapporteurs and the government representative also discussed the issue of subsidies regulated in the law on financial equalisation: while these are targeted for specific purposes, communities will have full discretion in their use, according to the information provided by government.

³⁴ Article 186.1

³⁵ Article 186.3

The delegation recommended establishing the procedural details for the transfer of funds in legislation which should provide the criteria (equalisation formula), as this will guarantee certainty as well as effective discretion of communities within the framework of the purpose of these earmarked grants.

Recommended action on Financial equalisation:

- **Elaborate a regulation of the detailed mechanism for the transfer of earmarked funds in legislation which shall provide details about criteria and the equalisation formula in order to create certainty and respect discretion in use of these funds.**
- **The Congress stands ready to read through and comment on the draft Law on Financial Equalisation in due time before the debate scheduled in Parliament for spring 2016.**

3. The tax mechanism

Recommendation 351 (2014) invites the Armenian authorities to:

7i. improve the efficiency of the tax mechanism in municipalities, by allowing them the right to determine the rate within reasonable limits set by law in order to strengthen their autonomy.

71. The Charter recognises that the political choice to be made by weighing the benefit of services provided against the cost to the local taxpayer or the user is a fundamental duty of local elected representatives. Article 9.3 of the Charter states that “Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.

72. In Armenia the reliance on State grants and subsidies appears too strong which may compromise autonomy and create dependency of local authorities. Thus, as already mentioned *supra* the objective should be to guarantee a mix of different resources for communities, including a share in some significant taxes. The delegation expressed its opinion that the Article on Financing of Communities in the proposed amendments to the Constitution³⁶ (see *supra*) should be understood in these terms.

73. The community council is not at present free to set the exact rate for local taxes and duties. This includes the local duty for construction permits as well as a local duty for permits for catering businesses and the use of the community’s name in the brand name (introduced in December 2012). The rapporteurs point out that too detailed regulations on the range of rates which communities must respect for such local duties and taxes, leaving a narrow margin of choice by the local authority, could result in a reduction of local autonomy.

74. In addition, it appears that for land and property taxes no range is described providing an example for possible deregulation leaving autonomy to communities regarding financial resources. The delegation expresses the hope that this approach may be extended and offers the expertise of the Congress for an assessment of possible options.

According to the revised Constitution, “the community council shall set local taxes and duties” within “the scope of rates prescribed by law”.³⁷

Recommended action on the tax mechanism:

- **In the spirit of the Charter, give more discretion to local communities in setting the rate for local taxes and duties: the current system of a predetermined range of rates curbs local tax autonomy. The elaboration of a study, with the technical support of experts from Congress, could be helpful in this respect.**

³⁶ Article 186

³⁷ Article 185.3

III. Timeline

75. Referendum on the constitutional amendments was held on 6 December, 2015. The New Constitution includes sufficient changes in the Chapter on Local Self-Government. With the view of implementing constitutional amendments as well as taking into consideration the Congress Recommendations, it would be necessary to adapt the legislation accordingly. The delegation notes with satisfaction that a Reform Package of five laws concerning law self-government has already been elaborated, while further statutes or amendments are in preparation.

76. On the whole, the constitutional reform and the legislation on implementation appear to be generally in line with the principles of the Charter. The delegation welcomes the systemic approach taken, very much based upon territorial reform, in order to overcome fragmentation by merging communities into fewer and bigger ones having the capacity of providing more services more effectively.

77. Bearing in mind this situation, further follow-up to Congress Recommendations under this Road Map requires differentiated approaches for evaluation and comment, in particular as some reform measures are based upon the future situation after territorial reform.

78. As discussed during the post-monitoring meeting, the Government's timeline for the reform of local self-government is currently as follows:

- Review of related legislation for implementation in the course of 2016;
- Consultation process and direct participation in progress, formalisation of procedure (territorial reforms) implemented;
- Legislation on financial issues (notably on financial equalisation) (in the course of 2016).

79. Thus, the road map with the Congress should focus on expertise and review of draft legislation, including the following elements in particular:

- Reform legislation package and amendments of legislation on implementation to be sent to the Congress for review;
- The draft law on Financial Equalisation to be sent to the Congress for review;
- Following approval of the Concept note on local duties and fees (presented at the end of September to government for discussion), revise the necessary laws (7-8);
- Amendments to Law on Municipal Service.

In the spirit of the fruitful and constructive dialogue during the post-monitoring meeting, the Delegation trusts that this timeline will be adhered to and that the positive further developments raised in the course of the discussions will be accomplished in the near future.