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Local and regional democracy in Croatia

Monitoring Committee

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Summary

This report concerning the monitoring of local and regional democracy in Croatia is the third since the country ratified the Charter in 1997. The report notes that the Charter was ratified in its entirety in 2008, reflecting a trend towards decentralisation in the country and reinforced legislative protection for local and regional self-government. The delegation also noted with satisfaction that direct elections for mayors and prefects had been introduced since the last monitoring visit in 2007, along with the implementation of a financial equalisation policy. The rapporteurs similarly welcome the adoption, in September 2015, of legislation concerning voluntary mergers of local government units so as to simplify the territorial divisions and the provision of public services. However, the report raises certain concerns regarding the inadequacy of resources available to local and regional authorities for the exercise of their powers, a reduction in local tax revenues and the lack of formal consultation of local and regional representatives. In addition, there are territorial disparities and the notion of a universal level of public service is still far from being reached.

Consequently, it is recommended that the Croatian authorities review the division of responsibilities between the central and subnational levels of government so as to avoid any overlap. With regard to the financial aspect, the rapporteurs recommend providing sufficient financial resources commensurate with the responsibilities of local authorities and which they can dispose of freely. It is also recommended that the conditions governing local taxation be reviewed, as well as the 2015 law on the voluntary merger of local government units, with the aim of making voluntary mergers more attractive. Lastly, the government is urged to sign and ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

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

RECOMMENDATION 391 (2016)²

1. The Congress of Local and Regional Authorities of the Council of Europe refers to:

a. Article 2, paragraph 1.b of Statutory Resolution [CM/Res\(2011\)2](#) relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3 of Statutory Resolution [CM/Res\(2011\)2](#) relating to the Congress, stipulating that “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”;

c. Resolution 307 (2010) REV2 on procedures for monitoring the obligations and commitments entered into by the Council of Europe member States in respect of their ratification of the European Charter of Local Self-Government;

d. the appended explanatory memorandum on local and regional democracy in Croatia.

2. The Congress notes that:

a. Croatia acceded to the Council of Europe on 6 November 1996. Croatia signed and ratified the European Charter of Local Self-Government (ETS No. 122, hereafter “the Charter”) on 11 October 1997, which entered into force in respect of this country on 1 February 1998. At that stage Croatia had not accepted to be bound by certain articles of the Charter however, on 1 October 2008, Croatia ratified these remaining articles, meaning that as from that date Croatia has declared itself to be bound by all of the articles of the Charter;

b. Croatia ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 106) on 7 September 2003. However, it has not signed or ratified the Additional Protocols to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 159, 169 and 206). Croatia has also not signed or ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

c. the Monitoring Committee decided to review the situation with regard to local and regional self-government in Croatia in the light of the Charter. It appointed Ms Luzette Kroon (Netherlands, L, EPP/CCE) and Mr Ole Haabeth (Norway, R, SOC) as co-rapporteurs respectively on local and regional democracy in Croatia. They were tasked with drawing up a report on local and regional democracy in Croatia and submitting it to the Congress;³

d. the monitoring visit took place from 2 to 4 March 2016 in the Capital City of Zagreb, the cities of Rijeka and Krk, Zagreb county, Primorje-Gorski Kotar county and the municipality of Omisalj. During the visit, the Congress delegation met with representatives of various political institutions such as the Ministry of Public Administration, the Ministry of Finance, the Ministry of Regional Development and EU Funds, the Parliament, as well as representatives of the judiciary from the Constitutional Court; the State Audit Office, the Office of the Ombudsman and local and regional authorities. The detailed programme of the visit is appended;

e. the delegation wishes to thank the Croatian authorities at central, regional and local level and the persons met during the visit for their readiness to assist and the information they supplied. The delegation also thanks the Croatian delegation to the Congress and the national associations of local and regional authorities who contributed to the organisation and smooth running of the visit.

² Debated and adopted by the Congress on 20 October 2016, 2nd sitting (see document [CG31\(2016\)11final](#), explanatory memorandum), co-rapporteurs: Luzette KROON, the Netherlands (L, EPP/CCE) and Ole HAABETH, Norway (R, SOC).

³ They were assisted by Mr David Melua, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Secretariat of the Monitoring Committee of the Congress.

3. The Congress notes with satisfaction:

a. the status of the Charter which is fully integrated into Croatian domestic legislation pursuant to Article 141 of the Constitution of Croatia;

b. Croatia's ratification, on 1 October 2008, of the remaining articles of the Charter (Article 4, paragraphs 3, 5 and 6; Article 8, paragraph 3; Article 9, paragraphs 4, 5, 6, 7 and 8 and Article 10, paragraph 2) so as to be bound by the Charter in its entirety – which shows an inclination for full decentralisation;

c. the legislative protection of local and regional self-government which is rather high overall in Croatia;

d. the introduction of direct elections for mayors and prefects since the last monitoring visit in 2007, as well as the implementation of a financial equalisation policy;

e. the adoption in September 2015 of the legislation for voluntary mergers of local government units so as to rationalise the territorial divisions and the provision of public services;

f. the proposed fiscal decentralisation reform which is currently being prepared and analysed;

g. the commitment of the government to consult local and regional authorities on government initiatives that will affect them directly;

h. the introduction of the open data initiative incorporating *inter alia* the e-citizens and the e-consultations portals, providing easier access to public services and information for citizens.

4. The Congress expresses its concern at:

a. the fact that competences are often imprecisely allocated between the various levels of government, as already indicated in 1998 and 2007, and their exercise is hampered by a still over-centralised state organisation (Articles 4.4 and 8.3);

b. the inadequacy of resources available to local and regional authorities to exercise their powers, leading to a dependency on the state (Articles 6.1, 6.2 and 9.2);

c. the cut in local tax revenues – which provide the main source of revenue for local units – brought about by amendments to the Income Tax Act with effect from 1 January 2015, while the top rate chargeable for local surtax on income tax, a further own revenue for local units, was also reduced (Articles 9.1 and 9.3);

d. the lack of formal consultation with local and regional representatives, also indicated in 2007, notably on financial and fiscal matters (Articles 4.6 and 9.6);

e. the insufficient implementation so far of the legislation on voluntary mergers of local government units adopted by Parliament in September 2015;

f. the territorial disparities and the notion of a universal level of public service which is still far off.

5. In the light of this, the Congress asks the Committee of Ministers to invite the national authorities to:

a. revise the breakdown of responsibilities between the central and subnational levels of government so as to avoid all overlapping of responsibilities, by establishing a clear list of the allocation of powers to the different levels of government, in consultation with those concerned, and so as to keep state intervention proportional to the interests which it is intended to protect;

b. draw up legislation setting out the procedures for consulting local and regional authority representatives to ensure that they are effectively consulted, that is in due time and in an appropriate manner, on all questions directly concerning those authorities, in particular on financial questions;

c. provide adequate financial resources for self-governing authorities, in particular financial resources, to be commensurate with their responsibilities and which they may dispose of freely within the framework of their powers;

d. in respect to the current reform and revision of legislation concerning fiscal decentralisation to reconsider the conditions governing local taxation and, in particular, the setting of tax rates by local authorities in order to give these authorities greater freedom of action with regard to their own resources and thus to move away from dependence on the state in this regard;

e. re-consider the 2015 law on the voluntary merger of local government units with the aim of making voluntary mergers more attractive by disseminating information relating to the benefits of the mergers to communities, including their public services, or considering the implementation of other incentives;

f. sign and ratify in a near future the Additional Protocol to the Charter (CETS No. 207) on the right to participate in the affairs of a local authority insofar as the relevant legislative provisions in force in Croatia, as well as current practice, appear to render the situation consistent with the requirements of this Protocol.

6. The Congress calls on the Committee of Ministers to take account of this recommendation on local and regional democracy in Croatia and the accompanying explanatory memorandum in its activities relating to this member State.

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1. INTRODUCTION: AIM AND SCOPE OF VISIT, TERMS OF REFERENCE

1. In accordance with Article 2 of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (hereinafter "the Congress") regularly prepares reports on the state of local and regional democracy in the member states and candidate countries. The present report on local democracy in Croatia follows on from Recommendation 226 (2007) adopted on 20 November 2007.

2. Croatia joined the Council of Europe on 6 November 1996 and signed and ratified the European Charter of Local Self-Government (CETS No. 122, hereinafter "the Charter") on 11 October 1997. The Charter entered into force in respect of that country on 1 February 1998 and declared itself to be bound by following articles:

- Article 2;
- Article 3, paragraphs 1 and 2;
- Article 4, paragraphs 1, 2 and 4;
- Article 5;
- Article 6, paragraphs 1 and 2;
- Article 7, paragraphs 1, 2 and 3;
- Article 8, paragraphs 1 and 2;
- Article 9, paragraphs 1, 2 and 3;
- Article 10, paragraphs 1 and 3,
- Article 11.

On 1 October 2008 Croatia declared itself to be bound by the remaining articles as follows and thus adheres to the Charter in its entirety:

- Article 4, paragraphs 3, 5 and 6;
- Article 8, paragraph 3;
- Article 9, paragraphs 4, 5, 6, 7 and 8;
- Article 10, paragraph 2.

3. Croatia acceded to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 106) on 7 May 1999. The Outline Convention entered into force on 18 December 2003. Croatia has not yet signed the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 159, 169 and 206). Croatia has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

4. The previous recommendation on local and regional democracy in Croatia was adopted by the Congress in 2007 (Recommendation 226 (2007)).

5. The Congress delegation visited Croatia from 2 to 4 March 2016 to examine the situation of local and regional democracy in the country in the light of the Charter. The Monitoring Committee appointed Ms Luzette KROON (Netherlands, L, EPP/CCE) and Mr Ole HAABETH (Norway, R, SOC) as co-rapporteurs for local and regional democracy. The rapporteurs were assisted by Mr David MELUA, consultant and member of the Group of Independent Experts on the European Charter of Local Self-Government, and by a member of the Congress secretariat.

6. During this visit the Congress delegation met representatives of the associations of local and regional authorities, mayors and municipal and regional councillors, representatives of the government, ministries and other institutions. The detailed programme of the visit is appended to the present report.

7. The rapporteurs wish to thank all the interlocutors met during these visits for their availability and the information they kindly provided to the delegation. They also thank the Croatian Delegation to the Congress and the associations of local and regional authorities, who contributed to the organisation and smooth running of the visit.

2. HISTORICAL, POLITICAL AND CONSTITUTIONAL CONTEXT

2.1 *International situation and relations with neighbouring countries*

8. The modern state of Croatia dates from its formal declaration of independence from the then Federal State of Yugoslavia on 25 June 1991. Many continuing features of the law, politics and economy of Croatia are influenced by the heritage of the former Yugoslavia and indeed by earlier stages of Balkan history. The Constitution of 1990 established the Republic of Croatia as a “unitary and indivisible democratic and social state”. Initially, the Croatian Parliament (*Sabor*) was a bicameral institution (including a second House of Regional Representatives) but the second house was abolished by constitutional amendments of 2001. The Parliament’s Committee for Local and Regional Self-Government continues to play a potentially important role in relation to law and policy in the sector.

9. Croatia is a member of the European Union (EU), United Nations (UN), NATO, the World Trade Organization (WTO), Union for the Mediterranean as well as a number of many other international organizations. As of 2015, Croatia has established diplomatic relations with 174 countries. The main objective of Croatian foreign policy is the positioning within the EU institutions and, in the region, co-operation with NATO partners and strengthening of multilateral and bilateral co-operation.⁴

10. Relations with neighbouring countries have normalised somewhat since the breakup of Yugoslavia. Work has begun — bilaterally and within the Stability Pact for South Eastern Europe since 1999 — on political and economic co-operation in the region. Discussions continue between Croatia and Bosnia and Herzegovina on various sections of the border, the longest border with another country for each of these countries. Sections of the Una River and villages at the base of Mount Plješevica are in Croatia, while some are in Bosnia, which causes an excessive number of border crossings on a single route and impedes any serious development in the region. The Zagreb-Bihać-Split railway line is still closed for major traffic due to this issue.



Map 1. Republic of Croatia

11. The relations between Croatia and Italy have been largely cordial and friendly.

2.2 *Internal political situation and elections*

12. The politics of Croatia are defined by a parliamentary, representative, democratic republican framework, where the Prime Minister of Croatia is the head of government in a multi-party system. Executive power is exercised by the Government and the President of Croatia. Legislative power is vested in the Croatian Parliament. The judiciary is independent of the executive and the legislature. The parliament adopted the current Constitution of Croatia on 22 December 1990 and decided to declare independence from Yugoslavia. The declaration of independence came into effect on 8 October 1991.

13. The President of the Republic is the head of state and the commander-in-chief of the Croatian armed forces and is directly elected to serve a five-year term. The government is headed by the prime minister, who currently has two deputy prime ministers. Seventeen ministers are in charge of particular activities. The executive branch is responsible for proposing legislation and a budget, executing the laws, and guiding the foreign and internal policies.

14. The parliament (*Sabor*) is a unicameral legislative body – The number of representatives ranges from 100 to 160; they are elected by popular vote to serve a four-year term. Currently 140 members of parliament are elected in ten multi-seat constituencies, which are defined on the basis of the existing county borders, with amendments to achieve a uniform number of eligible voters in each constituency to within 5%. Citizens of Croatia living abroad are counted in an eleventh constituency; however, its number of seats was not fixed for the last parliamentary election. The powers of the

⁴ Senada Šelo Šabić “Croatia’s foreign policy after the EU accession” 2014

legislature include enactment and amendment of the constitution and laws; adoption of the government budget, declarations of war and peace, defining national boundaries, calling referenda and elections, appointments and relief of officers, supervising the Government of Croatia and other holders of public powers responsible to the *Sabor*, and granting of amnesties. The Croatian constitution and legislation provides for regular presidential and parliamentary elections, and the election of county prefects and assemblies, and city and municipal mayors and councils.

15. Croatia has a three-tiered independent judicial system governed by the Constitution of Croatia and national legislation enacted by the parliament. There are commercial courts and misdemeanour courts, the Administrative Court and the Croatian Constitutional Court. The Supreme Court is the highest court of appeal in Croatia.

16. Croatia has a multi-party system, with numerous parties in which no one party often has a chance of gaining power alone, and parties must collaborate in order to form coalition governments. Between January 1990, when political parties were legalised in Croatia, and March 2015, 264 political parties were registered, out of which 118 have since been struck from the register. There are the following major political parties in Croatia: The Croatian Democratic Union (HDZ) is a conservative political party and the main centre-right political party in Croatia; The Social Democratic Party of Croatia (SDP) is a social-democratic political party and the largest party of the Croatian centre-left; Bridge of Independent Lists (Most) is a party platform in Croatia founded in 2012 as a regionalist political platform mostly new to political life; The Croatian People's Party – Liberal Democrats (HNS) is a liberal political party in Croatia founded from 1841. Croatian Democratic Alliance of Slavonia and Baranja (*HDSSB*) is a regionalist and right wing populist political party in the Eastern Croatian region of Slavonia. It was formally founded on 6 May 2006. The Istrian Democratic Assembly (IDS) is a regionalist and liberal political party in Croatia operating in the Istria region. Alongside there are number of small national and regional parties, the vast majority of which have never been represented in the national parliament.⁵

17. The 2015 Croatian parliamentary election was held on 8 November 2015. All 151 seats in the Parliament were up for election. This parliamentary election was the 8th since the 1990 first multi-party election and the first since Croatia joined the European Union in 2013. The ruling center-left Croatia is Growing coalition, led by Prime Minister Zoran Milanović (SDP), was challenged by the center-right Patriotic Coalition led by the Croatian Democratic Union (HDZ) and headed by its party chairman Tomislav Karamarko, and also faced several other new political coalitions.

18. The elections produced a hung parliament, with the ruling Croatia is Growing Coalition winning 56 seats in the 10 electoral constituencies within Croatia and 3 of the 8 representatives of national minorities. The opposition Patriotic Coalition won 56 seats within Croatia and all three seats allocated to Croatian citizens living abroad, winning 59 seats, technically tying with the ruling coalition.

19. The third-placed MOST led by Metković mayor Božo Petrov, which won 19 seats, was expected to be the deciding factor in the formation of the next government of Croatia.⁶ After weeks of negotiation this finally happened on 23 December when MOST gave its support to a government with the HDZ and the coalition was further supported by the party of labour and solidarity of Croatia and two independent minority representatives, giving them 78 seats in Parliament. The new majority nominated a Croatian-Canadian named Tihomir Orešković to be the next Prime Minister of Croatia. The new government was finally formed and adopted by the parliament on 22 January 2016 as the 11th Prime Minister took office, after 76 days of negotiations.

2.3 Previous reports and recommendations

20. Periodic monitoring visits were made by the Congress of Local and Regional Authorities to Croatia from 1993, prior to accession to the Council of Europe on 6 November 1996 and implementation of the Charter from 1 February 1998. The conclusions of these visits were adopted by the Bureau in the report 1996 CG/BUR (2)101rev.

21. In the year that the Charter entered into force in Croatia the Congress adopted Recommendation 46(1998) pointing to the low level of local democracy and systemic shortcomings

⁵ A New Croatian Right: Nationalist Political Parties and Contemporary Croatian Politics, Christopher Lamont, 2015.

⁶ Republic of Croatia, Parliamentary elections 8 November 2015. OSCE/ODIHR Election Assessment Mission Final Report.

of local self-government. In particular, the Congress called upon the Croatian authorities to ratify Article 4 paragraphs 3, 5 and 6; Article 8 paragraph 3 and Article 9 paragraphs 5 and 7 of the European Charter of Local Self-Government. It was also recommended to change the procedure for election of the Mayor of the City of Zagreb and country prefects, to define the criteria of revocation of the local election results, to develop the mechanisms of the constitutional protection of local self-government bodies and to clearly delineate the powers of local authorities of different levels.

22. The next Congress monitoring delegation visited Croatia in 2007 resulting in the adoption of Recommendation 226 (2007) and its report on local and regional democracy in Croatia CG (14)21 REP. Particular attention was paid to the authorities' apparent commitment to establish real autonomy of operation at local and regional level and that Croatia had signed and ratified the European Outline Convention of Transfrontier Co-operation between Territorial Communities or Authorities.

23. The recommendation also noted that despite the fact that the Congress, in its Recommendation 46 (1998), had called upon Croatia to extend the scope of applicability of the Charter as rapidly as possible, this was not done; the complete independence of local authorities from the central authorities, as well as a clear-cut delimitation of powers between various levels of local authorities were not achieved; the budgets of local authorities were not independent; Croatian legislation did not contain sufficient provision for the consultation of local authorities in the matters which concern them directly.

24. Correspondingly, the Congress recommended to the state authorities of Croatia to undertake a general and more systematic review of the territorial organisation of local and regional government; investigate and report on the constitutionality of some of new allocations of powers; take measures, so that the apparent sharing or concurrency of functions between local and regional authorities is avoided; increase significantly the local resources and budget independence as required by the Charter.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS

3.1 *Level of incorporation of the Charter*

25. The principles of the European Charter of Local Self-Government are incorporated in Article 4 of the Constitution of the Republic of Croatia which states that the government is "limited by the constitutionally-guaranteed right of local and regional self-government". Article 135 further states that in determining the powers, "priority shall be accorded to the bodies which are the closest to the citizen". This provides evidence that the principle of local-government and subsidiarity has been fully realized in the Constitution of the Republic of Croatia. Article 133 of the Constitution also categorically defines: "The right to local and regional self-government shall be exercised through local and/or regional representative bodies, composed of members elected in free elections by secret ballot on the grounds of direct, equal and general suffrage".

26. The Law of Croatia on Local and Regional Self-Government also recognises the principles of the European Charter of Local Self-Government concerning the independence and financial security of local authorities. Both the Constitution and the Law on Local and Regional Self-Government state that self-government has the right of recourse to the Constitutional Court.⁷

27. Article 141 of the Constitution establishes that all international treaties which have been signed and ratified by the Croatian authorities and parliament shall be an organic component of the domestic legal order "and shall have primacy over domestic law". The European Charter of Local Self-Government represents exactly such an international legal act and is correspondingly fully integrated into the legislative system of Croatia. However, many local experts and associations of local self-government state that this incorporation has a rather low influence on the sectorial legislation of Croatia.⁸

⁷ The Local and Regional Self-Government Act (Official Gazette "Narodne novine" no. 33/01, 60/01, 129/05, 109/07, 125/08, 36/09, 150/11, 144/12, 19/13 – consolidated text and 137/15 – correction).

⁸ Decentralization in Croatia: problems and possible solutions. Institute of Economics, Zagreb 2012.

3.2 Constitutional and legislative developments

28. Following the 2007 monitoring visit, Croatia implemented a number of legislative changes. These include the Law on Direct Election of Mayors and County Prefects adopted in 2007, taking effect from the elections of 2009. In 2012 the Law on Local Elections was adopted to regulate elections of the local executive bodies as well as the local representative bodies. Since 2006 the Croatian government has actively worked with the Venice Commission on the examination of the Law on Direct Election of Mayors and County Prefects.⁹ The Venice Commission gave a generally favourable assessment of the law adopted in 2009, although a number of comments were made, including in terms of the low accountability of the elected mayors/prefects.¹⁰

29. In 2007, the Croatian Parliament adopted the Planning and Building Act, under which counties and large towns were assigned the new “delegated functions” in the building permit granting and regulation sphere. The act did not, however, apply to municipalities and small towns. In 2014 a Law on Youth Advisory Boards was adopted, the aim of which is to promote the involvement of the youth in the local decision-making process.

30. In 2009, the Law on Regional Development was adopted, under which the Nomenclature of Territorial Units for Statistics – NUTS level 2 and NUTS level 3 - were legally introduced in the country; the Regional Competitiveness Index serving as a basis for the financial equalisation system of the local and regional authorities was also adopted. Amendments were made to the Law Concerning the Financing of Local and Regional Self-Government Units and shared taxes and financial equalisation were introduced. The rate of salaries of local self-government servants was legally determined.

31. In 2010, the Croatian authorities approved the Guidelines for decentralisation and territorial reform. According to this document, the authorities intended to carry out the reform in the following three directions:

- a.) Functional decentralisation;
- b.) Fiscal decentralisation,
- c.) Territorial decentralisation.

A special working group was set up for preparing the reform. The group drafted an action plan. However, no package of essential reforms has been implemented as a result of the group’s work and neither has the requirement of Congress’ Recommendation 226(2007) concerning the clear-cut delimitation of powers and financial independence of self-government been met.

32. The Act on Regional Development (OG147/2014) was promulgated on 4 December 2014 to take effect from 1 January 2015. (See further Chapter 5 “Regional Democracy”).

33. The Act on the Territories of Counties, Towns/Cities and Municipalities in the Republic of Croatia was amended by Parliament most recently in September 2015 (OG no. 110/15) to introduce a mechanism for voluntary mergers of local self-government units. However no financial incentives were included in the measure.

3.3 Local authorities: territorial structures and powers

34. Croatia is a unitary state with a decentralised administrative structure formed by central, regional and local governments. The central government administration itself is de-concentrated, with administration offices located in each of the 20 counties, besides ministry representation and autonomous central agencies distributed throughout the territory. The activities and structure of state administrative offices are regulated by the decree “on internal organisation of state administration offices in counties” (OG40/23; 51/12).

35. Territorial organisation of the Republic of Croatia is established by the act on “Territories of counties, cities and municipalities in the Republic of Croatia” (No: 86/06, last amended 110/15). There is two-tier system of sub-national authorities in Croatia consisting of 20 counties (*zupanija*), the Capital City of Zagreb (with the status of county and municipality), and 555 local authorities. According to the Constitution of Croatia, the 21 counties, including the 792,875-inhabitant city of Zagreb that has county status, constitute the second level of sub-national government and have the status of regions. Towns (128, mainly urban, 3 million people) and municipalities (428, mainly rural,

⁹ County elections in Croatia: on the path of genuine regional policy. Kopriv, Dubajic, Tomic, 2015

¹⁰ Decentralization and regional policy in Croatia, LSEE, 2012

1.4 million people) represent the first level of local self-government. More than two-thirds of these units are less than 5,000 people and more than 40 per cent less than 3,000. There is a great disproportion in size, population and population density among local and regional government units.

Table 1. Subnational levels in Croatia

Type Subnational levels	Number of units	Total Number of inhabitants
Second level		
<i>Counties (Zupanije)</i>	20	3,492,024
<i>Capital city of Zageb</i>	1	792,875
First level		
	Number of units	Population range
<i>Towns</i>	110	<10,000 and >30,000
Ordinary towns	17	<30,000
Big towns		
<i>Municipalities</i>	273	>3,000
Small	149	<3,000 and >10,000
Medium	6	<10,000 and >30,000
Big		

36. Municipalities and towns perform tasks of local significance, which directly address the needs of citizens and which are not assigned to state bodies by the Constitution or by the law. Big cities (cities with more than 35,000 inhabitants) and county centres are responsible for all local tasks and services for their citizens, including public roads maintenance and issuing of building and location permits¹¹. Counties in their self-governing scope of authority are responsible for the functions of regional character (see Table 2). Towns with more than 35,000 inhabitants may be also responsible for functions which otherwise fall within the competence of counties, as long as they ensure the necessary conditions for performance of these services. Towns and municipalities also perform so called decentralized functions that are assigned to local authorities by the following sectorial laws: the physical planning act (OG153/13), the construction act (OG 153/12), fire fighting acts (OG 80/10), the social welfare act (OG 5,12) and the primary and secondary education act (OG 152/14).

Table 2. Distribution of mandatory powers at sub-national governments (by size and status)¹²

Municipalities and towns	Big cities and county centres	Counties
Community and housing planning	Community and housing planning	Education
Physical planning and zoning	Physical planning and zoning	Health care
Utility services	Utility services	Physical planning and zoning
Child-care	Child-care	Economic development
Social welfare	Social welfare	Traffic and transport infrastructure
Primary health care	Primary health care	Maintenance of public roads
Primary school education	Primary school education	Planning and development of the network of educational, medical, social and cultural institutions
Culture, physical culture, and sport	Culture, physical culture, and sports	Issuing of building and location permits and other document in relation to construction in the county area excluding the area of a big city
Consumer protection	Consumer protection	
Protection and improvement of the natural environment	Protection and improvement of the natural environment	
Fire protection and civil defence	Fire protection and civil defence	
Local transport	Local transport	
	Public roads maintenance	
	Issuing of building and location permits	

11 Central government and local self-government in Croatia: Decentralization and democratization. Atric T. University of Zagreb 2011.

12 Regionalism in Croatia, Magas D, AER 2014.

37. The municipal council, town council and county assembly are representative bodies of citizens and bodies of local or regional self-government that pass by-laws in the range of the scope of the unit of local or regional self-government and perform other tasks in accordance with the law and statute of the unit of local or regional self-government.

38. The number of members of the representative body must be uneven, and it is determined by the Act on local and regional self-government (2012 amendment), thus:

Table 3. Number of members of the representative bodies of local and regional self-government

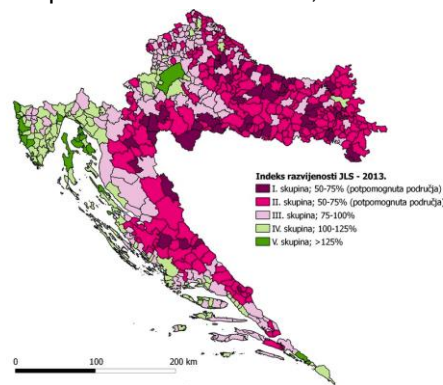
Size of LRGU (number of inhabitants)	Number of members of the representative body
< 500	7
> 500 - 1.000	9
> 1.000 - 2.500	11
> 2.500 - 5.000	13
> 5.000 - 10.000	15
> 10.000 - 20.000	17
> 20.000 - 35.000	21
> 35.000 - 60.000	31 (county)
	25 (town)
> 60.000 - 100.000	35 (county)
	31 (town)
> 100.000 - 200.000	41 (county)
	35 (town)
> 200.000 - 300.000	45
> 300.000	51

39. The mandate of a member of the representative body of a unit of local and regional self-government is four years. The representative body is headed by a president and up to two vice-presidents, elected with the majority vote of all the members of the representative body. The representative body of local and regional governments has a mandate to: adopt the statute of local/county governments; adopt decisions and by-laws on issues that fall under the mandate of local/county authorities; endorse the composition of local/county administrative bodies and regulate their activities; establish municipal entities and adopt relevant regulations for their operation.

40. The head of the local executive and supreme official is the mayor in towns and municipalities and the prefect in counties. Mayors and prefects are elected directly with a 50% +1 vote electoral barrier. The county prefect and municipal/town mayor represent the municipality, town or county and co-ordinates activities of local administration. The county prefect and municipal/town mayor are responsible to the Ministry of State Administration of Croatia for the performance of the tasks delegated to local and regional authorities from central government agencies. The term of office for directly elected mayors is 4 years. They can be dismissed on the basis of a local referendum called for by the local deliberative bodies as prescribed by the Law on Local and Regional Self-government of 2001 together with the amendment to the Act in 2007, Article 40b. The Constitution prescribes a further method of dismissal via the President of Croatia. The Croatian Government may also dissolve a representative body on the proposal of the Ministry of Public Administration as prescribed by Article 84 of the 2001 Act on Local and Regional Self-Government as amended in 2007. In 2012 amendments were made to the Law on Local and Regional Self-Government introducing the possibility of simultaneous dissolution of the representative body and the dismissal of the municipal prefect, the mayor or county prefect under certain conditions and on the proposal of the Ministry of Public Administration. An action against this decision is possible through the High Administrative Court.

41. Executive tasks in a municipality/town are performed by municipal/town mayor and by the prefect in a county who lead administrative bodies based on public service and professional career. In a municipality with less than 3,000 inhabitants the local administrative body may be called a Single Administrative Department. A municipality with over 3,000 inhabitants may also establish a Single Administrative Department by statute (Article 53). Members of the local administrative body are accountable to the local representative body but they are subordinated to municipal/town mayor and in the case of a county executive to the prefect. Under Article 54 municipalities, especially neighbouring ones may establish a joint administrative structure for implementation of specific tasks.

42. Towns and municipalities also have sub-municipal territorial units. There is a long *tradition* of sub-municipal government in Croatia. During the socialist period there were 3,950 territorial communities under different names and with different roles with an average of 1,150 inhabitants. They had legal personality, their own property and financial sources. Croatia introduced a new system of local governance in 1993 converting old territorial legal bodies into sub-municipal structures. Since the 1993 reform there is no legal obligation for municipalities and towns to establish them, but they do exist in the majority of local units. As of today there are 2,452 of them in 349 local units. The City of Zagreb has two-tier sub-municipal organisation with 17 urban quarters and 218 neighbourhood boards.



43. Fiscal decentralisation started in Croatia from 2001. In the first phase of fiscal decentralisation, 33 financially stronger cities, the City of Zagreb and all of 20 counties in Croatia were assigned additional responsibilities to provide some public functions locally. The adopted model of decentralisation implied that expenditures for material expenses and capital investments in primary education were transferred to 32 big and/or financially stronger cities and counties' budgets, as well as expenditures for material expenses and capital investments in secondary education, health care and social welfare sector were transferred to the counties budgets. Financing of fire protection was transferred to local governments in 2003.

44. The Law on Local and Regional Self-Government Financing is the main legal framework of the local government finance system. This law defines sources for financing for the operation of municipalities, towns and counties. Fiscal instruments consist of various types of taxation with the equalization fund distributed among the different levels and non-tax income as given in the table below:

Table 4. Revenues of Local and county budgets¹³

Tax revenues	<p>Municipal, town and city taxes:</p> <ul style="list-style-type: none"> Surtax on income tax Consumption tax Tax on vacation homes Tax on firm or name Tax on the use of public surfaces <p>County taxes:</p> <ul style="list-style-type: none"> Tax on inheritance and gifts Tax on motor vehicles Tax on boats and vessels Tax on gambling machines
Non-tax revenues	Local government units' revenues for which the purpose is set in advance (20 types of special purpose revenues out of 245 non-tax revenues which are in the Ministry of Finance (2010) Register of Non-tax Revenues).
Capital revenues	Revenues from financial assets (profit revenues of municipal owned companies) Revenues from non-financial assets (rental revenues)
Shared taxes	<p>Personal income tax:</p> <ul style="list-style-type: none"> Central state – 0 per cent Counties – 16.5 per cent Municipalities and towns – 60 per cent City of Zagreb (with the status of county and municipality)– 76,5 per cent <p>Decentralized functions –6per cent (for primary and ,secondary education; social care; health care and fire fighting)</p> <p>Equalisation fund (line-item in the state budget) –16 per cent¹⁴</p>

¹³ Central government and local self-government in Croatia: Decentralization and democratization. Antic T. University of Zagreb 2011.

	Aids given for projects co-financed by the EU – 1,5%
	Tax on real estate: Central state – 20 per cent Municipalities and towns – 80 per cent
Grant revenues	Grant revenues from the state budget allocated to the counties, cities and municipalities which belongs to the first and second category of special state concern. Grant revenues from the state budget allocated to the cities and municipalities for the personal income tax returns in the area of special state concern and in the hill and mountain areas. Grant revenues from the state budget allocated to the cities and municipalities for the profit tax returns in the area of special state concern and in the hill and mountain regions. Grant revenues from the state budget of other public bodies allocated to the cities and municipalities for the local development projects. Grant revenues from the state budget as equalisation fund allocated to the cities, municipalities and counties for financing decentralized functions.
Borrowing	Previous approval by the Government of the Republic of Croatia for sub-national government borrowing. Total borrowing limit of local and regional self-government units for the fiscal year: up to 20 per cent of the outturn of current revenues in the previous fiscal year. Additional borrowing limit for local and regional self-government unit: up to 2.3 per cent of outturn of current revenues in previous fiscal year of all sub-national government units. (The percentage is determined annually by the Act on the State Budget Execution).

45. At sub-national government level in Croatia there is no autonomy to determine the basis and rates of tax revenue. The rates of shared taxes and of county taxes are completely prescribed by the state government. The rates of municipal, town and city taxes are on the whole determined by the municipal or city authority, but within the framework of the limits set by central government. The tax rate on the use of public space is determined independently by the local government.

46. Local government units autonomously determine the rates of surtax on income tax within the limits (the maximum possible rate of surtax) set by the central government. From 2001 all local self-government units could introduce surtax. The current maximum rates of surtax have been reduced for Zagreb City since 2015 and are now (previous rates in brackets): 10 per cent for municipalities, 12 per cent for towns up to the 30,000 citizens and 15 per cent for cities with more than 30,000 citizens, and up to 18 (30) per cent for the City of Zagreb. In general tax revenues are much higher in big cities and counties rather than in municipalities.

Table 5. Percentage structure of revenues at local and county levels in 2009¹⁵

	Municipalities (428)	Towns and cities (126)	The City of Zagreb	Counties (20)	Total local budgets (575)
1. Operating revenues	93.06	94.13	99.03	99.64	96.22
Tax revenues	43.40	53.37	72.22	81.19	61.14
Income tax and surtax on income tax	36.05	45.89	67.00	76.36	55.13
Taxes on profits	0.11	0.50	0.00	0.00	0.02
Taxes on property	6.10	5.18	3.03	0.07	3.88
Taxes on goods and services	1.12	1.39	2.19	4.76	2.11
Other taxes	0.02	0.86	0.00	0.00	0.00

¹⁴ The association of Cities of Croatia has commented that 16% is registered as central government PIT revenue and that the equalization fund line item in the central government budget has no direct relation with revenue line item (in 2014 they state a difference of 30 million Euro). In addition they note that 16% of PIT allocated for joint capital projects on islands is central government revenue which is then distributed back to select islands as a grant. They find the system heavily fragmented and recommend it should be streamlined.

¹⁵ Political budget cycles at the municipal level in Croatia. Mucki V. University of Zagreb 2014.

Grants from foreign governments and from other general government units	21.60	8.76	0.93	11.75	8.74
Property income	8.44	8.23	7.52	3.32	7.93
Administrative fees	19.62	23.77	18.36	3.38	18.41
2. Revenues of nonfinancial assets sales	6.94	5.87	0.97	0.36	3.78
TOTAL REVENUES	100.00	100.00	100.00	100.00	100.00

47. Among total expenditures the highest share at 30.5 per cent, related to *material expenditure*. The expenditure for services, specifically for current and investment maintenance, and material and energy expenditure were prevalent in the structure of the material expenditure. All the local units have high material expenditures. The local government units also spent a lot on *purchasing non-financial assets*.¹⁶ These expenditures accounted for 23.2 per cent of the total expenditure of the local units. These expenditures mostly regard acquisition of the tangible fixed assets that is, purchase of buildings. Also, the towns and municipalities spend significantly more for these purposes than the counties. The third largest item of the expenditure was *the expenditures for compensation of employees*, which in 2009 represented 18.4 per cent of the total expenditure. These expenditures relate to salary and wages in local government units, as well as taxes and contributions. The largest share of expenditure was for general public services, then housing and communal services and economic activities, while in the counties the main part of expenditure is for education and general public services.

Table 6. Percentage of total expenditure of local and county budgets in 2009 by functional classification¹⁷

	Municipalities (428)	Towns and cities (126)	The City of Zagreb	Counties (20)	Total local budgets (575)
General public services	25.28	17.06	15.30	18.33	18.05
Defence	0.01	0.02	0.00	0.01	0.01
Public order and safety	2.51	4.54	1.23	0.76	2.68
Economic affairs	21.16	14.67	17.56	10.10	15.92
Environmental protection	5.65	6.92	0.85	2.29	4.25
Housing and community amenities	24.93	19.36	24.58	2.74	19.41
Health	0.36	0.74	2.05	12.02	2.70
Recreation, culture and religion	7.39	16.20	14.76	4.84	12.70
Education	8.35	14.80	18.06	38.98	18.22
Social protection	4.36	5.68	5.62	9.93	6.06
TOTAL EXPENDITURE	100.00	100.00	100.00	100.00	100.00

48. Local elections in Croatia were last held on 19 May 2013 and the second round was held on 2 June. The turnout was 47% (run-offs: 43%). HDZ (Croatia Democratic Union) won majority of seats in 13 county councils and in 10 counties prefects were also elected from HDZ. SDP received a majority in 5 county councils and SDP prefects won in 4 counties¹⁸. The HSS (Croatian Agrarian Party) and the IDS (Istria's Democratic Assembly) came third.

¹⁶ Budget Transparency in Croatian counties, cities and municipalities (2014-15) ott k, Bromic M. Institute of Public finances 2015.

¹⁷ Central government and local self-government in Croatia: Decentralization and democratization. Atric T. University of Zagreb 2011.

¹⁸ The Economic and Political Situation in Croatia, directorate general for internal policies policy department d: budgetary affairs. European Parliament.

4. ARTICLE-BY-ARTICLE ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY IN THE LIGHT OF THE EUROPEAN CHARTER OF LOCAL SELF-GOVERNMENT

4.1 Article 2 – Principle of local self-government

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

49. The Constitution describes Croatia as a “unitary and indivisible democratic and social state”. Although the state is unitary, the Constitution declares (Article 4) that “government shall be organised on the principle of separation of powers into the legislative, executive and judicial branches, but limited by the constitutionally guaranteed right to local and regional self-government” Article 133 states “citizens shall be guaranteed the right to local and regional self-government”. According to this article, the right to local and regional self-governance is to be realised through local and regional representative bodies elected in free elections. Citizens are also stated to be able to “directly participate in administering local affairs, through meetings, referenda and other forms of direct decision-making, in conformity with law and statute”. The Constitution, *inter alia*, sets out that the rights specified in Article 133 of the Constitution must be exercised by the European Union nationals in compliance with law and the EU *acquis communautaire*.

50. The formulation of Article 4 of the Constitution - “limited by the constitutionally guaranteed right to local and regional self-government” and the content of Article 135 of the Constitution that upon defining competences of local self-government “priority shall be given to the bodies which are the closest to citizens” provides evidence that the principle of local governance and subsidiarity is fully realized in the Constitution of Croatia.

51. Croatia thus fully complies with Article 2 of the Charter.

4.2 Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

- 1 Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
- 2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

52. Article 135 of the Constitution of Croatia states that “units of local self-government shall administer affairs of local jurisdiction by which the needs of citizens are directly fulfilled”. The organic Law on Local and Regional Self-government (No. 01-081-01-1100/2, 2001, as amended in 2005) defines that “municipality, town and county are independent in making decisions about tasks from their self-governing scope in accordance with the Constitution of the Republic of Croatia and this Law” (Article 18).

53. On the question of delegated powers, line ministries exercise close control over the functions transferred to self-governing authorities. The State Administration Offices present in the counties act on the line-ministries’ behalf and have the authority to exercise administrative and financial control over both levels of self-government (Act on the State Administration System, No. 190/03 as amended of 2007 No. 79/07). The same law defines that a regional state administration office may have departments in cities and municipalities which shall be accountable to the head of the regional state administration office; that the state administration exercises control over the execution of delegated powers by local self-government and indicates the local self-government officials who should be involved in the execution of the delegated powers of the local self-government – giving them the status of public servant.

54. The existence of a dual public administration (local self-government and state administration) at a regional level makes relations between the local self-government and the state administration regional office rather complicated. Representatives of local self-government note that the administrative and

financial control exercised by the regional state administration office greatly interferes with the process of decision-making at a local level and runs counter to the provision of Article 3.1 of the Charter. This peculiarity of the Croatian public administration system is indicated in Congress Recommendation 226 (2007) on Local and regional democracy in Croatia, which called on the Croatian authorities “to ensure that the clarification of powers to different levels of government leaves room for the autonomous exercise of powers by the municipalities” (Article 8.j. Rec.226(2007). In exchanges with the delegation during the current monitoring visit all of the interlocutors observed that the country is still overall very centralised. The rapporteurs note that government ministries have a high involvement in defining the limits of usage of certain powers – finance is an example – which, with the austerity measures as a result of the financial crisis, have become even more restrictive. The Charter sets out that the legal right to manage a substantial share of public affairs under local authorities’ own responsibility must be accompanied by the means of doing so effectively¹⁹. It further explains that “under their own responsibility” emphasises that local authorities should not be limited to merely acting as agents of higher authorities and this concerns both the first and second levels of self-government.

55. The rapporteurs conclude on Article 3 paragraph 1 that although the legislation on local self-government is in place, practice indicates that local authorities are not able to manage a substantial share of public affairs under their own responsibility. For this reason the rapporteurs conclude that Croatia is only partially in compliance with Article 3 paragraph 1.

56. Article 133 of the Constitution of Croatia states that: “The right to local and regional self-government shall be exercised through local and/or regional representative bodies, composed of members elected in free elections by secret ballot on the grounds of direct, equal and general suffrage”. The organic Law on Local and Regional Self-Government (2001, as amended in 2005) establishes the functions of the local representative body and also the right of the local representative body to define the structure and method of local administration.

57. Article 39 of this law also states that “The head of the municipality, the city mayor and county prefect are the executive bodies of the unit of local and the unit of regional self-government (Article 39). Article 42 of the same law states that “The head of the municipality, mayor or county prefect are responsible to the central bodies of state administration for the performance of the tasks of state administration transferred to the scope of the bodies of the municipality, town or county”.

58. Croatia places high legitimation on the mayor/prefect being elected by a direct ballot and therefore is directly answerable to the electorate, as the top executive of the local and regional self-government, while still being accountable to the council which can propose a motion for recall, which must be confirmed by a local recall referendum.

59. The rapporteurs therefore conclude that Croatia fully conforms to Article 3 paragraph 2 of the Charter.

60. To summarise, the rapporteurs’ conclude partial conformity on Article 3 paragraph 1 where the necessary legislation is in place but where further efforts need to be made so that local authorities are able to regulate and manage a substantial share of public affairs under their own responsibility. They conclude full compliance by Croatia with Article 3 paragraph 2 of the Charter.

4.3 Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.

¹⁹ In this respect, see the Explanatory Report on the European Charter of Local Self-Government

4	Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5	Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6	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.

61. Article 135 of the Constitution of the Republic of Croatia establishes that units of local self-government (towns and municipalities) shall administer affairs of local jurisdiction by which the needs of citizens are directly fulfilled. Under the same article, regional self-government shall administer affairs of regional significance. The constitution lists the purview of both local and regional self-government. Article 135 further defines that when powers are delegated, priority shall be accorded to the bodies which are closest to the citizens.

62. The Law of Croatia on Local and Regional Self-Government specifies the powers of local self-government. Article 19 defines the following as competence of a town and municipality:

- Organization of settlements and housing,
- Town and urban planning,
- Utility services,
- Child-care,
- Social welfare,
- Primary health protection,
- Pre-school and primary-school education,
- Culture, physical culture and sports,
- Consumer protection,
- Protection and improvement of natural environment,
- Fire-protection and civil defence
- Transport in their area
- Other activities in accordance with special laws

63. Article 19a of the same law lists the competences of big cities (more than 35 000 residents) and county seats with less than 35,000 inhabitants.²⁰ These are the same as for municipalities as above and add public roads maintenance and the issuing of building and location permits.

64. The Law of Croatia on Local and Regional Self-Government defines as competences of regional self-government bodies the following:

- Education,
- Medical care,
- Town and urban planning,
- Economic development,
- Traffic and traffic infrastructure,
- Maintenance of public roads
- Planning and development of the network of educational, medical, social and cultural institutions.
- Issuing of building and location permits and other document in relation to construction in the county area excluding the area of a big city
- Other activities in accordance with special laws

65. Both articles of the law include a record saying that special laws will define the rules and procedures for exercising the powers of local and regional self-government and establish which structural subdivision of the specific self-government is responsible for exercising a specific task within the scope of specific powers.

66. The rapporteurs conclude that Croatia's legislation is in line with Article 4 paragraph 1 of the Charter. They would like to point out however that this conclusion is tempered by their findings on Article 4 paragraph 3 *infra* concerning decentralisation.

²⁰ Big cities have are also called large towns. According to the Local and Regional Self-Government Act, large towns have over 35,000 inhabitants and are economic, financial, cultural, health, transport and scientific centres of development of a wider area? There are 17 of these big cities and 8 county seats with less than 35,000 inhabitants.

67. As regards Article 4 paragraph 2 Croatian legislation is fairly silent on the right of local authorities to exercise initiatives on the matters which are not excluded from their competences nor assigned to any other authority. However Article 19 of the Law on Local and Regional Self-Government stipulates “The special laws regulating particular activities as per Paragraph 1 of this Article shall determine the tasks, the performance of which by a local self-government unit shall be obliged to organize, as well as the tasks a local self-government unit may perform, if it has ensured the conditions for their performance” (Paragraph 1 provides a list of tasks which the local self-governing unit has responsibility for). This means that local authorities have the right to implement own initiatives only when a specific legislation adopted by the central government bodies allows it. Such strict regulation partially coincides with the requirements of Article 4 paragraph 2 of the Charter as it gives hypothetical right but not discretion to local authorities for implementation of own initiatives with regard to any matter which is not assigned to any other authority.

68. The rapporteurs therefore conclude that Croatia partially conforms to Article 4 paragraph 2.

69. Article 4 paragraph 3 articulates the general principle of decentralisation where tasks should generally be entrusted to the most local level of government although this requirement may be negated by other factors, such as limits due to nature and size of certain local authorities.

70. Local self-government units in Croatia are comprised of municipalities and towns. The average size of a town is slightly below 24,000 inhabitants but the majority have a population below 15,000. There are approximately 17 big towns with a population of over 30,000 inhabitants. There is therefore a high share of very small towns in Croatia. Municipalities, usually rural, are more consistent with an average of around 2,000 - 3,000 inhabitants per municipality although approximately 270 municipalities still have less than 3,000 inhabitants. Legislation does not provide a clear distinction between towns and municipalities in relation to competencies and function. In its 2016 country report on Croatia the European Commission confirms this view stating that a central register that lists competencies and functions for each local administrative unit is not available so it is unclear which local government unit is responsible for which function.²¹

71. In addition, local self-government units of cardinaly different sizes and territorial borders provide a challenge for an effective allocation of powers. The existence of many tiny municipalities seriously impairs the implementation of public functions on their part. Indeed, the delegation heard that residents of rural areas have complained to the office of the Ombudsman about villages without electricity, without access to potable water, public transport and with unrepaired roads.²² The Congress called on the Croatian central authorities in Recommendation 226(2007): “to undertake a general and more systematic review of the territorial organisation of local and regional government as a possible solution to the problem of the ineffective tiny municipalities”. A response to this issue in outlying urban areas was taken under the previous government in 2014 through the Act on Regional Development which, *inter alia*, created four urban agglomerations in Zagreb, Split, Rijeka and Osijek. The present government continues to promote the agglomeration project, which entails co-operation between towns and adjacent municipalities on the joint implementation of competences. The delegation had the opportunity to visit the town of Rijeka with its agglomeration project in progress. The city mayor was satisfied with the way co-operation among the municipalities was progressing although he considered that there had not been enough consultation prior to the legislation being put in place. It should be noted here too that the Government is attempting to encourage municipal mergers by voluntary means, and a law on the legal framework for voluntary mergers of local government units was adopted by parliament in 2015. However with a lack of incentives to accompany the measure there has been little improvement.

72. The asymmetric allocation of powers according to the size of a self-government unit deserves a separate mention. As a rule, counties and large towns exercise more powers than municipalities and small towns, which may be appendages of the regional government with many functions of the municipality being exercised by the county. This phenomenon is especially noticeable on islands where municipalities may establish a common organization that renders services throughout the island (e.g. the provision of kindergartens on the Island of Krk). As the main source of revenue for self-governing units is personal income tax (see further under Article 9 *infra*) this leads to a wide regional disparity in the provision of public services which cannot be categorised as universal.

²¹ 2016 European Commission country report on Croatia, p.73.

²² This appears in the 2015 report of the Ombudswoman, rejected by Parliament on 20 May 2016.

73. It can be concluded that Croatia remains highly centralised and this was freely admitted by interlocutors (at all levels) that the monitoring delegation met during their visit. At present the local government units have been allocated a number of functions and responsibilities but, as can be seen under the examination of Article 9 of the Charter *infra*, these remain largely funded by central government. Therefore decentralisation in Croatia can be characterised as incomplete.

74. The rapporteurs therefore conclude that Croatia partially complies with Article 4 paragraph 3 of the Charter.

75. Article 4 paragraph 4 of the Charter is concerned to avoid any tendency towards a progressive dilution of responsibility exercised by local authorities and therefore powers should not overlap or be duplicated but should normally be full and exclusive. The Charter also recognises that complementary action is required by different levels of authority in certain fields but that this requires clear legislative provisions.²³

76. It is inevitable that for a responsibility such as education involving primary and secondary schools and higher education, as well as a national curriculum, several levels of authorities both at central and sub-state level will be involved and this situation is similar to that in other European countries. The Ministry of Public Administration notes in terms of education that primary education tasks (under the Primary and Secondary Education Act of 2008, amended in 2014) are not completely decentralised: the state level is responsible for payroll and compensation of employees' travel expenses, funding of special programmes and capital construction projects, while counties and cities founders of primary schools are responsible for planning the schools network and funding material costs, maintenance costs, capital investments for school equipment and transport of pupils.²⁴ Nevertheless the delegation heard from other interlocutors of another difficulty concerning education – in that collective agreements for teachers (employees) are negotiated at central level whereas the county (in this particular case) is liable through the courts for compensation resulting from any breach of the agreement.

77. The Congress already identified overlapping responsibilities as a challenge for Croatia in Recommendation 226(2007) which resulted from its last monitoring visit. The Croatian government was recommended "to ensure that the clarification of allocation of powers to different levels of government leaves room for the autonomous exercise of power by the municipalities». Following the meetings during the current monitoring visit the rapporteurs feel that this is still an issue that has not been resolved. In Croatia there are inconsistencies that go beyond the division of competences and, where the same competence is concurrently exercised by several administration units, it can be difficult to identify which share of public affairs is being administered by which specific administration body. As mentioned above under Article 4 paragraph 3 the European Commission has also made this observation.²⁵ This can lead to an impression that functions may be assigned to the self-government body only nominally, with no real, inherent power. These inconsistencies are compounded in that the exercise of authority of both local and regional self-government is further restricted by the regulatory and control function of the central ministries. Such spheres as urban planning and urban development are limited by a mandate to build (construction permit) to be issued by the central authorities. This is further explored in the examination of Article 8 and Article 9 of the Charter *infra*.

78. For the reasons stated above the rapporteurs find that clarification is still required in the allocation of powers to different levels of government and for this reason conclude that Croatia is not in conformity with Article 4 paragraph 4 of the Charter.

79. The issue of what in Croatia is called decentralised powers should also be raised. These are the competences that the ministries delegate to self-government bodies and correspondingly a more accurate name for these powers is "delegated" rather than "decentralised" powers. In this report they are called delegated powers and they are treated *inter alia* under Article 4 paragraph 5 of the Charter. They are neither elaborated in the Constitution of Croatia nor in the organic Law on Local and Regional Self-Administration, which is not uncommon in Europe.

80. The following are delegated powers: the granting of building permits, social protection, education and fire safety. According to the Ministry of Finance of the Republic of Croatia, in 2011 these delegated powers were enforced by 153 units,²⁶ only regional self-government exercised all the

23 In this respect, see the Explanatory Report on the European Charter of Local Self-Government.

24 In a written reply to questions.

25 EU commission country report 2016, p.73.

26 Decentralization and regional policy in Croatia: the impact of EU accession and prospects of territorial reorganization Malkovic S. Piljiz S. Bartlett W. LSEE papers 2011.

above-listed powers. Only 66 towns (generally large towns) were engaged in the granting of building permits, education and fire safety and 67 municipalities exercised fire safety tasks only. This picture shows that the active units of government in Croatia are large towns and regions, although their autonomy in exercising these powers is limited to a certain extent by control and direct administrative intervention on the part of ministries.

81. The Charter states that the delegation of powers should be carried out according to the law. Delegated powers in Croatia are defined under ministerial decisions rather than by parliamentary acts. Article 4 paragraph 5 of the Charter intends that recourse to delegation to local authorities does not excessively impinge on the sphere of independent authority at the local level and that, where possible, the latter should be allowed to take account of local circumstances in exercising delegated powers. According to the existing practice in Croatia, local self-government bodies may only adapt the delegated powers to local interests by obtaining a preliminary consent from the ministries.

82. For the reasons stated above the rapporteurs consider that local authorities are very restricted in their exercise of delegated powers locally and conclude that Croatia does not comply with Article 4 paragraph 5 of the Charter on the powers delegated to local authorities by central government.

83. Article 4 paragraph 6 of the Charter concerns matters which come within the scope of local authorities, as do the other paragraphs of Article 4, but also matters which are outside their scope but by which they are particularly affected. Consultation with self-government bodies and their associations has traditionally been weak in Croatia where it is generally agreed that, despite decentralisation initiatives through different governments, the country structure remains centralised. Nevertheless, all of the Associations agree that there has been an improvement in information concerning new state laws, reforms and strategies which has arisen out of the public e-consultation code of conduct. Zagreb City further details that "Article 11 of the Act on the Right of Access to Information (Official Gazette 121/11 and 85/15) lays down that state administration bodies, other state bodies, local and regional self-government units and legal persons with public authority are obliged to conduct public consultations prior to the adoption of acts and subordinate legislation, and in the adoption of general acts or other strategic or planning documents where these affect the interests of citizens and legal persons. This Article also stipulates that the state administration bodies shall conduct public consultations via the central state website for public consultations by publishing the draft regulation, general act or other document, with a substantiation of the reasons and objectives to be achieved through adoption of the regulation, act or other document, and inviting the public to submit their proposals and opinions. This establishes the legislative framework for using the system of "e-Consultations", which provides an overview of the open public consultations concerning the proposals of acts and subordinate acts, as well as active participation in their creation. The City of Zagreb is registered in the application of e-consultations and actively participates in public consultations, by giving comments and proposals for draft acts, other regulations and documents. It also participates in the consultations by supplying comments and proposals to draft acts, other regulations and documents via the Associations of Cities and the Croatian County Association, of which it is also member".²⁷

84. While the Association of Counties say that they are "regularly consulted" on new state laws, reforms and strategies, the means of providing their opinion is mainly through public e-consultation websites as well as their own initiatives on lobbying or promotional activities and consulting with experts etc.²⁸ In the meeting with the delegation they also said they had been involved in discussions on the Act on Local and Regional Self-Government as well as the Act on Local Elections and themselves were investing more effort into making their voice heard. Nevertheless on other consultations they have been completely side-lined, in particular in relation to finance, which is discussed under Article 9 (cf *infra* para 139 ff).

85. As for the Association of Towns of Croatia and the Association of Municipalities of Croatia, they are dissatisfied with the low frequency and character of consultations. The municipality representatives note that they frequently lack information about decisions made by the government and mention that they can familiarize themselves with governmental decisions and draft laws/bills only after their promulgation. A further example on the absence of consultation was mentioned to the delegation pertaining to The Act on Salaries in the Local and County (Regional) Self-Government passed in 2010 (see *infra* under Article 6 paragraph 2). Nevertheless, pursuant to the Act on the Right of Access to Information, a draft law, before being passed, must be made public - which happens through the e-consultation system. A complaint by the Associations is that they do not receive separate notification

²⁷ Responses in written replies to questions.

²⁸ Responses in written replies to questions.

of publication of the draft acts that concern them but must trawl indiscriminately through the websites hoping to find relevant information on which they will react and make their opinions heard. There is no system for pre-warning the associations of relevant draft legislation and in any case once the legislative text has been opened for wide public consultation, drafting has already reached an advanced stage. The Ministry of Public Administration for its part, says it, and other state administration bodies, regularly consult local and regional self-government units on matters which directly concern them, as a rule through their national associations. Furthermore, according to the Ministry, local and regional self-government representatives get involved in the work of expert working groups during the development of laws and regulations which concern them.²⁹ Nevertheless these practices are not yet institutionalised and depend on the whim of the authority.

86. The Congress in its previous Recommendation 226(2007) called on the Croatian authorities to “make a general legal provision for the consultation of local and regional authorities in the planning and decision-making processes for all matters which concern them directly. A legal provision for consulting local and regional authorities is still lacking. A consultation process for the public at large is not an adequate replacement for consultation of local self-government bodies (and their associations). The Charter requires local authorities to be consulted in due time and in an appropriate way. This requirement of the Charter means that self-government bodies (or their associations) should have the right and possibility to consult a draft governmental decision so as to prepare their respective recommendations and have a real possibility to exercise influence.³⁰ The right provided for by Article 4 paragraph 6 of the Charter entails the organization of consultations between two parties – local or regional and central governments – and is in no case limited only to e-consultation or a Code of Practice on consultation which are designed for informing and consulting the general public on draft laws.

87. The rapporteurs also note that a new government arrived in power at the end of January 2016, just a few weeks before the visit of the monitoring delegation. The new Minister of Public Affairs, in discussions with the delegation, has pledged a desire for greater consultation with self-government and its associations, in particular in relation to a “Decision on the implementation of reform measures for the improvement of the public administration system” adopted by the new government in February 2016 and which forms a component part of the National Reform Programme of Croatia. Before any final decisions are made on these reform measures she has said that discussions will be held with all the relevant parties – municipalities, cities and counties so as to find the best solution.³¹ The rapporteurs welcome this development and would like to be informed on this.

88. In conclusion the rapporteurs find that Croatia is partially in compliance with the Charter concerning Article 4 paragraph 6 on consultation and would recommend institutionalising a consultation procedure with local and regional authorities, through their associations, so as to provide a guarantee of their inclusion in the decision-making process on all matters concerning them directly.

89. To sum up, the rapporteurs conclude that Croatia partially complies with Article 4 of the Charter:

- Croatia does not comply with Article 4 paragraph 4 and paragraph 5
- Croatia partially complies with Article 4 paragraph 2, paragraph 3 and paragraph 6
- Croatia complies with Article 4 paragraph 1.

4.4 Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

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.

90. The Croatian Constitution and the Law on Local and Regional Self-Government do not define how borders of a local or regional self-government unit should be established and/or changed. A procedure for changing the border of local and regional self-governing regions/counties is regulated by a special law (The Act regulating the Territory of Counties, Towns and Municipalities in the Republic of Croatia) that provides for the holding of consultations with the public.

²⁹ In the written reply of the Ministry of Public Administration.

³⁰ See the Explanatory Report on the European Charter of Local Self-Government.

³¹ also referred to in a written reply of the Ministry of Public Administration.

91. The Referendum Act of Croatia is rather complex and strictly regulates the referendum procedures. This act defines three forms of direct democracy at a local level: the referendum, public consideration and petition. As for the central government, it can call a so-called “facultative³² referendum”. Article 57 of the Referendum Act says: “The Government can call a facultative referendum in the territory of one or more units of local self-government or local government in order to obtain the opinion of inhabitants of the respective area concerning its territorial organization. All residents of the territorial unit are eligible to vote, and the decision is reached by a majority of votes cast.” The institute of facultative referendum itself means that its outcomes will have only consultative force and they may not be taken into account, although such a precedent has never occurred in Croatia.

92. The use of the referendum for a public consultation prior to changes to local authority boundaries as specified by law is thus in full compliance with the provisions of Article 5 of the Charter.

4.5 Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

93. Pursuant to Article 28 of the Law of Croatia on Local and Regional Self-Government, the numerical composition of the representative body is determined by the Law on Local and Regional Self-Government and it is associated with the population ranging from 7 members for the smallest units under 500 inhabitants up to 51 members for units over 300 000 inhabitants, for example Zagreb. For units of up to 35 000 inhabitants and for those over 200 000, no distinction is made between counties or cities. So for example a unit with between 2 500 and 5 000 inhabitants will have 13 members, while one with between 20 000 and 35 000 inhabitants will have 21 members. For units between 35 000 and 60 000 inhabitants, a county will have a 31-member assembly while a city will have 25 members in its council and a unit with between 100 000 and 200 000 inhabitants will have 41 members in the county assembly and 35 members in the city council.

94. The structure of departments and services is determined by a statute approved by the local representative body. Croatian legislation also defines a dualistic statute of local officials. In particular, on fulfilment of delegated tasks, the status of a local official/servant is equated with the status of a public servant/official.

95. The rapporteurs conclude that local authorities have certain discretion in relation to their own administrative structures and therefore consider that Croatia complies with Article 6 paragraph 1 of the Charter.

96. The guarantees of the social and career development of local government servants depend to a great extent on the size of the territory and financial possibilities of the local self-government unit. During their visit the delegation had the impression that the financial provisions and career development of local government servants in Zagreb and other large towns are higher and frequently better than conditions of those employed in the central government agencies; the same cannot be said of the municipal servants employed in small units. Their remuneration and social conditions lag behind the conditions of those employed in counties and large towns. Such a difference in the social and career development of municipal servants opposes the universal principle of the Charter requirements. The on-going reforms for the improvement of public administration provide an opportunity for the Croatian government to effectively address these issues and ensure equal conditions for local government servants, as well as for consolidating tiny municipalities. Associations also make the point concerning local government employees that for decentralisation to be effective it is important to strengthen the capacity of local and regional public servants to be able to take over the responsibilities from the central administration.³³

³² Optional.

³³ Written replies from the Croatian County Association.

97. The Act on Salaries in the Local and County (Regional) Self-Government passed in 2010 has been criticised by local self-government associations as further intensifying the disparity between the large and small, in particular the tiny, municipalities. The act has introduced the maximum pay of local government servants as well as restrictions in the municipalities where the central government's budgetary aid exceeds 10%. The Associations further complain about this Act that they were not consulted during the law-making process (in this respect see further comments on Article 4 paragraph 6 *supra*).

98. Although certain difficulties have been highlighted in relation to small municipalities, the rapporteurs conclude that overall Croatia is in conformity with Article 6 paragraph 2 of the Charter.

99. In summary, the rapporteurs conclude that Croatia complies with Article 6 paragraph 1 and paragraph 2 of the Charter.

4.6 Article 7 – Conditions under which responsibilities at local level are exercised

Article 7 – Conditions under which responsibilities at local level are exercised

- 1 The conditions of office of local elected representatives shall provide for free exercise of their functions.
- 2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
- 3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

100. During meetings with the delegation certain experts made the point that council members cannot exercise own powers in relation to municipal companies and local budget control, nevertheless local representatives were satisfied in general with the conditions under which they exercise their functions.

101. The rapporteurs consider that Croatia complies with Article 7 paragraph 1 of the Charter.

102. In Croatia the executive bodies, such as the mayor, are salaried positions. Other members of the local representative body (councillors) are not paid but are given financial compensation for the expenses incurred in exercising their powers as prescribed by the law. The law clearly defines the conditions for exercising the powers of locally elected persons. In 2009 the introduction of direct election for mayors and prefects brought discord between the local representative bodies and the elected mayors, even causing a government crisis in the City of Zagreb³⁴. This was due to a problem of cohabitation – where the mayor and the council majority represented different political options. In order to harmonize relations between the elected mayor and members of the representative body, the Parliament of Croatia, in December 2012, passed amendments to the Law on Local and Regional Self-Government and increased the powers of the elected mayors.

103. The rapporteurs are satisfied that Croatia complies with Article 7 paragraph 2 of the Charter.

104. The term of the mandate of elected members of the local representative bodies and the regime to implement their functions' are established by the Law on Local and Regional Self-Government. Local representatives are elected for a term of 4 years (Article 29). Article 30 of the same law clearly defines a procedure for preventing a conflict of interests and incompatible activity.

105. The rapporteurs consider that Croatia complies with Article 7 paragraph 3 of the Charter.

106. From the foregoing it can be concluded that Croatia complies with Article 7 of the Charter governing the conditions under which those holding local elective office exercise their responsibilities.

³⁴ Directly elected mayors and problem of cohabitation. The case of the Croatian capital Zagreb. Podorjac P. & Gordasevic D. (online) 20 (2013).

4.7 Article 8 – Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities' activities

- 1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
- 2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
- 3 Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

107. Article 8 is concerned with supervision of local authorities' activities by other levels of government, such as requirements of prior authorisation to act or of confirmation of acts to take effect, accounting controls or power to annul a local authority's decisions etc.³⁵

108. Article 137 of the Constitution provides that in performing their functions units of local and regional self-government shall be autonomous and subject only to review of the constitutionality and legality by the authorised national government bodies. The 2001 Law on Local and Regional Self-Government, in its Chapter X, regulates state supervision and protection of local and regional self-government and states – in Article 78 – that supervision of the work and acts of local and regional self-government units shall be conducted in the manner and the procedure determined by the law regulating the state administration. Pursuant to Article 79 of the Law of Croatia on Local and Regional Self-Government, supervision is performed by the body of the central state administration in charge of local and regional self-government, which is the Ministry of Public Administration. This article further defines the head of municipality, mayor and county prefect shall be obliged to forward, within eight days from the day of adoption, the statute and general acts adopted by the representative body of the local or regional self-government unit, to the head of the county office competent for the tasks of general administrative affairs. This refers to the State Administration Office in the county (hereafter the Regional Office) which is responsible to the Ministry of Public Administration in particular but also to other line ministries.

109. The procedure for the supervision of the legality of general acts is set out in Articles 79 to 82. Should the decision contradict the Constitution or other legislation, the Regional Office shall decide on its suspension and forward a respective direction to the mayor/prefect of the self-government body. The decision on suspension of the act shall be communicated to the Ministry of Public Administration. The latter examines the Regional Office's conclusion and decides in 8 days on the merits of the decision on suspension made by the self-government body. Where the Minister considers that the decision on suspension of the act adopted by the self-government body is unjustified, they notify the corresponding Office and the self-government unit in writing. Where the self-government's decision is in conflict with legislation, the Minister addresses the government to decide on referral to the Constitutional court. The final decision on revocation of the self-government's act is made by the Constitutional Court. If within 30 days from the decision on suspension of the act the central government fails to address the Constitutional Court, the suspension of the act is no longer valid.

110. A further procedure, under Article 84, provides for dissolution of the representative body under certain circumstances. A 2012 amendment to the Local and Regional Self-Government Act further provides for simultaneous dismissal of the local elected body and the directly elected head of executive.

111. It should be noted that prior to 2013 the Constitutional Court maintained supervision over all local regulations but since 2013 it supervises only the local statutes. Following the entry into force of the Administrative Disputes Act (1 January 2012), the High Administrative Court has been given the competence to review the legality of general acts of the units of local and regional self-government, legal persons vested with public power and legal persons performing public services.

³⁵ See the Explanatory report on the European Charter of Local Self-Government

112. The rapporteurs conclude that Croatia fully complies with Article 8 paragraph 1 of the Charter whereby administrative supervision must be exercised according to the constitution and to statute.

113. As concerns the supervision of the performance of the transferred tasks of the State administration, this is regulated by the 2001 Law on Local and Regional Self-Government, Article 83 whereby the competent ministry may issue orders to the head of the municipality, mayor and county prefect. In essence this is a binding direction and instruction for implementation of delegated powers, the personal responsibility for enforcing which is assigned to the mayor/prefect. According to this procedure local self-government bodies simply enforce the decisions of the central government rather than making decisions within the scope of delegated powers. Therefore the direct control is exercised over enforcement rather than administrative supervision in the sphere of delegated powers in Croatia. The control over execution of delegated functions is thus directly delegated to the mayor/prefect, acting in this case as the central government's representative.

114. The Croatian government shall dissolve a representative body on the proposal of the Ministry of Public Administration if the representative body of local self-government unit has taken a decision that endangers sovereignty and territorial integrity of Croatia or if the representative body:

- a. fails to adopt statute within 60 days,
- b. is regularly adopts acts that are in contradiction with the constitution and laws of the Republic of Croatia,
- c. the representative body loses the necessary quorum for adoption of decisions,
- d. fails to adopt local budget for the next financial year during a 3 month period.

115. The amendments to the Law on Local and Regional Self-Government of 2012 introduced simultaneous dissolution of a local deliberative body and dismissal of a directly elected mayor/prefect in case when a local authority fails to adopt the annual budget or act on temporary funding for the next financial year for the above-mentioned period of time. The head of a dissolved local deliberative body or/and dismissed mayor/prefect may apply to the High Administrative Court of the Republic of Croatia within 8 days from the adoption of decision of Government of Croatia on simultaneous dismissal of local self-government bodies. The High Administrative Court must take a decision on the matter no later than 30 days after the appeal is filed.

116. Although the authority delegating the powers is entitled to exercise some supervision in the way in which the delegated task is carried out, Article 8 paragraph 2 of the Charter still requires that the local authority should not be prevented from exercising a certain discretion as provided for in Article 4 paragraph 5 of the Charter³⁶. As concerns the law, it is not clear whether Article 83 paragraph 2 of the Law on Local and Regional Self-Government allows for the exercise of such discretion. There is also common practice to consider. The delegation observed that in some cases the local authorities themselves are unaware of how intrusive central state intervention can be in affairs that should essentially be under their own responsibility - notions of self-government have no doubt been limited by past experience in a centralised state and in the more recent uneven decentralisation and they do not always make the necessary demands to uphold their rights. This is further developed under Article 8 paragraph 3 below. Big cities such as Zagreb are more active in defending their rights before the courts.

117. In conclusion, owing to the detailed legislation framing the supervision of delegated powers the rapporteurs' conclude conformity with Article 8 paragraph 2 of the Charter but insist that this conclusion be read in the light of their remarks on Article 8 paragraph 3 below concerning the proportionality of administrative supervision.

118. Article 8 paragraph 3 of the Charter draws on the principle of proportionality whereby the controlling authority, in exercising its prerogatives, is obliged to use the method which affects local autonomy the least whilst at the same time achieving the desired result. It has already been mentioned under Article 4 paragraph 5 *supra* that in Croatia self-government in the sphere of delegated powers often just carries out the directions of the central government channelled through the State Administration Office which, as the delegation heard during its visit, actively instructs self-government on such issues *inter alia* as education and planning and zoning. The education system belongs to the area of shared competence between counties and central government but the decision making power of counties in the area of education is nominal and the system is governed by decrees of the line ministries. As for urban planning and architecture, that belongs to the own

³⁶ See the Explanatory report on the European Charter of Local-Self Government

competence of cities and municipalities but there are national regulations issued by the ministry of construction and physical planning that substitute for the decision-making role of municipalities when it comes to development of the land use plan and construction zoning of the territories of cities and municipalities. The delegation heard a further example during the visit concerned the decision by a local authority to change a one-way street in the town. Not only does it not have the authority to implement that decision under its own authority but the delegation was told that 40 decision-stages at central government level and under different ministries are required before the authorisation can be given. This is an extreme example which has probably come about as a result of piecemeal revision of sectorial laws but nevertheless it represents a real obstacle to local authorities trying to manage their own affairs.

119. Under Charter Article 8 paragraph 2 *supra* the delegation also observed during the visit that the remnants of a centralised culture concerning the relationship between central and sub-state entities still lingers in Croatia. This remark also extends to the State Administration Office at county level and its role in state supervision of local authority activities. The rapporteurs feel that the personnel of these offices also need to become aware of their more decentralised role and in this regard the current public administration reform provides an ideal opportunity to tackle these issues.³⁷ The National Reform Programme of Croatia recognises that a rationalisation is required of regional units of state administration central bodies and aims to reduce their number by 20% (starting January 2016) so cutting out certain steps in decision-making so that the processes more efficient. The same Programme admits to an “excessive rigidity in organisational structures”.³⁸

120. In relation to Article 8, paragraph 3 the rapporteurs conclude that the possibility of simultaneous dismissal of both the local elected body and the directly elected head of the executive as provided for in the 2012 amendments to the Law on Local and Regional Self-Government and as described under Charter Article 8, paragraph 1 above, may not be considered as proportional and reasonable and is therefore contrary to Article 8, paragraph 3 of the Charter. Secondly, the rapporteurs consider that there is a disproportionate state supervision, particularly through the State administration offices at county level, in relation to the importance of the interests it is intended to protect and is also therefore contrary to Article 8, paragraph 3 of the Charter.

121. The rapporteurs therefore conclude that Croatia is not in conformity with Article 8, paragraph 3 of the Charter.

122. In summary of Article 8 of the Charter, the rapporteurs conclude that Croatia complies with Article 8 paragraph 1, and Article 8 paragraph 2, but this last paragraph is to be read in the light of Article 8 paragraph 3 where the rapporteurs consider that Croatia is not in conformity with the Charter.

4.8 Article 9 – Financial resources of local authorities

Article 9 – Financial resources of local authorities

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 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.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
- 5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.

³⁷ International conference organised by the Croatian Government, 22 April 2016, "The reform of the public administration - prospects and challenges".

³⁸ 2015 National Reform Programme of Croatia.

6	Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7	As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8	For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

123. The principle behind Article 9 of the Charter is that the legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out.³⁹ Legal authority for own financial resources in Croatia is provided by the Constitution of Croatia under Article 138 which states that units of local and regional self-government are entitled to their own revenues, proportional to their powers, and to dispose of them freely in the performance of their tasks; the Law on Local and Regional Self-Government repeats this in Article 68; the Law on Financing of Local and Regional Self-Government Units of 2008 regulates local finances and budgets, and the Budget Act of 2008 which *inter alia* regulates the 3 year budget plan of adoption for one year and projection for the next two years, at both the state and local unit levels. The Act on the Amendments to the Budget Act then defines more precisely the goals and priorities of the development of local units.

124. Self-government responsibilities that have to be financed derive from Article 135 of the Constitution as well as from the Law of Croatia on Local and Regional Self-Government of 2001, of which Article 19 defines the following as competences of a town and municipality:

- Organisation of settlements and housing,
- Town and urban planning,
- Utility services,
- Child-care,
- Social welfare,
- Primary health protection,
- Education and primary-school education,
- Culture, physical culture and sports,
- Consumer protection,
- Protection and improvement of natural environment,
- Fire-protection and civil defence.

125. Article 19a (2005) prescribes that large towns in addition to town and municipality performs also:

- Maintenance of public roads
- Issuing construction and location permits and other acts related to construction and spatial planning

126. The following are competences of regional self-government bodies:

- Education,
- Medical care,
- Town and urban planning,
- Economic development,
- Traffic and traffic infrastructure,
- Planning and development of the network of educational, medical, social and cultural institutions
- Maintenance of public roads
- Issuing construction and location permits and other acts related to construction and spatial planning.

127. The sources of funding of local and regional self-government budgets include grants; shared taxes including personal income tax (PIT) and tax on real estate transactions; revenue from property sales and leases; own taxes, fees and other charges, borrowing receipts and other revenues. For the Charter these sources must not only be adequate for the tasks above, and in particular in relation to functions that have been specifically assigned to the local authority.

³⁹ Explanatory Report.

128. In relation to Article 9.3, the Law on Financing of Local and Regional Self-Government Units defines the following types of local revenues: local tax revenues and dues, shared taxes, central government grants and revenues operable by own property. The following are local tax revenues of the regional level:

- The inheritance and gifts tax
- The road motor vehicle tax
- The vessels tax
- The coin operated machines for games for amusement tax

129. Local tax revenues of municipalities and towns consist of the following taxes:

- Surtax on personal income tax (PIT)
- Consumption tax
- Second [vacation] home tax
- Trade name tax
- Tax on usage of public land

130. The rates for the taxes are fixed by the organic Law on Financing of Local and Regional Self-Government Units. Surtax on PIT is also ranked according to the size of a local authority. For municipalities it forms a maximum of 10 % and for the City of Zagreb it forms a maximum of 18 % (previously 30%).

131. In addition to taxes, municipalities and towns are authorized to collect duties, which include:

- Fines and confiscated pecuniary gains for offences prescribed by local regulations
- Administrative charges
- Sojourn charges (hotel tax)
- Municipal economy fees, contributions and other charges as defined by the domestic legislation
- Fees for the use of public, municipal or city land

132. The Croatian public finance system makes use of the institute of shared revenues, which consists of two segments – shared fees and charges and shared tax. Shared fees include:

- a. fee on the use of mineral and thermal water resources, one half of which is directed to the local budget and the other half to the central budget;
- b. fee on the use of drinking water resource, 30% of which goes to the local and 70% to the central budget.

133. Shared tax includes income tax and property transfer tax. 80% of the property transfer tax is retained at the first level of self-government (town, municipality) and 20 % goes to the central budget. As regards personal income tax (PIT), the following system of allocation is in operation:

- 60 % of personal income tax is retained at the first level of self-government (municipality and town)
- 16.5% is retained at the second level of self-government (county)
- 6% of which is designated for the delegated functions
- 16 % is used for the equalisation fund for delegation competences
- 1.5% is used for the EU project co-financing fund.

134. The redistribution of the 6 % earmarked for fulfilling the delegated functions is also clearly specified in the law and has to be spent on the following:

- Elementary education
- Secondary education
- Welfare centres
- Homes for the elderly and infirm
- Health care
- Fire services: Public fire departments

135. Accordingly, the largest recipient of personal income tax, owing to its status both as a self-governing local unit and a county, is the City of Zagreb. The smallest recipients of income tax are

counties however they gain a larger part from the fund financing the delegated functions, as the most of these functions are fulfilled by counties.

136. On Article 9 paragraph 1 it is clear that, within the national economic policy, self-government units (hereafter local authorities) do have financial resources of their own and these are enumerated above. The question then arises as to whether these financial resources may be considered adequate so that local authorities are free to determine their expenditure priorities.⁴⁰

137. Article 9 paragraph 2 further requires that the resources are commensurate with the local authorities' responsibilities which are listed above, and particularly in relation to the functions that have been assigned to it. In this regard, the local authorities complain that they are assigned more and more tasks but that sufficient funding doesn't necessarily follow.

138. Article 9 paragraph 3 provides that such resources should also derive from local taxes and charges and the authorities should be able to determine the rate. As shown above, Croatia does indeed provide for taxes and charges to be collected both at local and county level but the rates are generally set by statute. In any case, overall these do not amount to more than 10% of the local authorities' budgets, which low in comparison with other the EU member states, and therefore their impact on local financial autonomy is restricted. Here it may also be noted that the share of local governments' revenues in Croatia amounts to less than 6 per cent of GDP (2014), which is one of the lowest in both the Council of Europe and the European Union member States While the local authorities do collect personal insurance tax this is not totally controlled by the local authorities but a large portion returns to the State in the so-called "shared taxes" and the rate is fixed by the state. The major portion of the local budget, for most local authorities, derives in one form or another from the state - including line-ministries for the delegated functions – and in financial equalisation transfers and grants etc. which are generally earmarked and limited in some way. In addition, the Law on Financing of Local and Regional Self-Government Units actually specifies in advance how and in what proportion the grants received for enforcing the delegated functions should be spent. Furthermore the Ministry of Finance strictly controls the volume of budget expenditures of local and regional authorities, which limits the local self-government's right to decide on the budget expenditure priorities independently and under their own responsibility. As the rates are fixed either by law or by the Ministry of Finance, there is little room for manoeuvre for the local units to determine the rate as called for under the Charter. The Institute of Public Finance in Zagreb has criticised the use of tax sharing as an instrument for redressing economic inequalities and financing capital projects in addition to its purpose as a mechanism to finance delegated functions. It suggests that PIT revenue should be left entirely to the local authorities who collect them and that tax sharing should be used only to correct vertical fiscal imbalance, meaning the shortfalls in revenue required for funding delegated functions.⁴¹

139. Article 9 paragraph 4 requires that the local authorities' financial systems should be sufficiently diversified so that they keep pace with the cost of providing services. The limited nature of own-resources has been shown above (see *supra* para 129 ff). In addition these resources have been drastically cut since 2015 by changes in the personal income tax rates (see further Article 9 paragraph 6 below) – and this forms the major source of revenue for municipalities in particular. On the diversification of sources of income there is a wide disparity between big and small municipalities, big cities (including the capital city of Zagreb) where more diversified sources of income may guarantee more financial autonomy while municipalities and small cities, as well as counties from less favourable economic areas, face enormous difficulties to pay their operational costs and nearly 80% of their budgets are composed by the financial aid from the central government.

140. Government, local and county interlocutors in meetings with the delegation all recognised that Croatia in general and its finance system in particular, are still over-centralised. This is one of the reasons why fiscal decentralisation reform, the major preoccupation for the interlocutors the delegation met, is currently on the statute books so as to bring about change. This entails:

- Redefining the jurisdiction of the local and regional authorities
- Redefining the tasks of central government bodies responsible for fiscal relations
- Introducing or changing the financial equalisation mechanism system
- Changing the taxation system for the lower level units

⁴⁰ See the Explanatory Report on the European Charter of Local Self-Government.

⁴¹ Institute of Public Finance press release number 72 of 5 December 2014.

- Introducing or changing the fiscal rules for the lower level units.⁴²

141. The rapporteurs find this encouraging and would be grateful to be kept informed of developments. However, their conclusions are confined to the evidence gathered during the monitoring mission and on this basis, in the light of the foregoing, they conclude that Croatia is not in conformity with Charter Article 9 paragraph 1 concerning adequate financial resources for local authorities, paragraph 2 concerning financial resources commensurate with local authorities' responsibilities, paragraph 3 on local authorities control over local taxes and charges and paragraph 4 on concomitant revenues.

142. As concerns Article 9 paragraph 5 of the Charter, the Constitution of Croatia defines under Article 138 that the state shall provide financial assistance to weaker units of local and regional self-government in compliance with the law. As in other European countries this is managed through a financial equalisation fund. It has been shown above that the financial equalisation system is based on the collection by the central government of 16% of the personal income tax revenues of self-government units which is then pooled in the special equalisation fund set aside for decentralised functions. The basis for distributing the general equalisation fund changed in 2014 from granting of preferential tax revenue founded on the status of areas of special national concern and hill and mountain areas, to a distribution based on a new development index determined under the Decision on the Classification of Units of Local and Regional Self-government according to the Level of Development (Official Gazette 158/2013). This also entailed amending the Act on the Financing of Units of Local and Regional Self-Government. This development index is used to calculate financial grants to individual towns, municipalities and counties using the following classifiers:

- a. unemployment rate,
- b. per capita income,
- c. local/county budget per capita income,
- d. population change
- e. share of population with higher education aged 16-65.

143. The development index is then established for each unit and the mean national indicator is also calculated. The unit's indicator is compared as a percentage to the national average and allocated to a Group. For the local self-government units (municipalities and towns) there are five groups:

- Group I - 50% of the national average
- Group II between 50% and 75% of the national average
- Group III 75-100% of the national average
- Group IV 100-125% of the national average
- Group V the development index is over 125% of the national average.

Only 4 groups are designated for counties:

- Group I incorporates counties whose development index is less than 75% of the national average,
 - Group II – 75%-100%,
 - Group III – 100%-125%,
 - Group IV – over 125%.of the national average
- The development index is updated once every 5 years.

144. In the case of towns and municipalities the general financial equalisation fund will be disbursed for Groups I and II, and in the case of counties – only for Group I – through a differentiated sharing of the PIT (88% to Group 1 and 2 according to development index) and direct grants from the central government budget. The towns, municipalities and counties in those groups receive aid from the equalisation fund. In 2013 Group I of the development index incorporated 48 municipalities, and Group II – 216 municipalities and towns. In the same year 12 counties received the equalisation fund (Group I). As for Group V (over 125% of the national average), it incorporated only 26 municipalities and towns, which in itself indicates a substantial territorial imbalance in Croatia and a failure to ensure the homogeneity of development throughout the country. Grants, incentives and subsidies, such as increased revenue from income tax distribution for example for island municipalities or for hilly mountainous areas may be used to top up the insufficiencies of the equalisation transfer, and are discussed further under Article 9 paragraph 7 below.

⁴² including in written replies from the Croatian County Association.

145. The monitoring delegation heard many criticisms of the financial equalisation system during the visit – including that it does not take account of population density nor topographical features. The Association of Counties further states that the fiscal capacities of individual local governments are ignored and therefore the direct grants from central government do not serve as proper grants. Furthermore, it has been said that the rates are not dependable as they change regularly and for the past 5 years the portion fixed by the state has reduced by 13%. In addition it was said that the amount of state aid for single projects has also varied on a year-by-year basis, depending on the projects the state has accepted to finance and this makes planning difficult for the self-government units concerned. Simply put, critics find the equalisation system unsatisfactory as it has not managed to reduce the differences between the units of local and regional self-government⁴³. Some of these criticisms are based on a practice before the introduction of the development index. Nevertheless, the Institute of Public Finance has welcomed the new measures as supporting inadequately developed units of local self-government through the establishment of measurable indicators leading to preferential financing.⁴⁴

146. In conclusion, the rapporteurs find that Croatia is making an effort to find objective and measurable indicators to provide for a more homogenous development of its territory. This has certainly not been achieved at this stage but the new system has not yet been in place for a sufficient period of time to test its real efficacy. On this basis the rapporteurs conclude that Croatia partially complies with Article 9 paragraph 5 of the Charter.

147. As regards Article 9 paragraph 6 of the Charter, the rapporteurs are concerned in particular about information provided by the associations of local and county authorities that the central government fails to comply with this provision on holding consultations with local authorities on the way in which redistributed resources are to be allocated to them. The associations, as well as the interlocutors individually, say they were not involved in the 2015 personal income tax reform which had dramatic and instant impact on their activities. During the monitoring visit many complaints were heard about the manner in which the changes to the income tax laws were made in 2015, in particular as concerns the portion intended to finance delegated competences. This dropped suddenly and without consultation from a 12% to a 6% share of the income tax in the middle of the financial year, cutting 2 billion Krone from state transfers. The City of Zagreb alone estimated that this induced a drop of HRK 330 million in 2015 as compared to 2014 and the shortfall had to be financed from own non-dedicated resources⁴⁵. The City of Zagreb estimates the impact of reduction of tax revenues following amendments to the Income Tax Act and the Act on Financing of Units of Local and Regional Self-Government was in 2015 alone approximately HRK 780 million. The City of Rijeka lost 10% of its budget in the same reform and stopped some development projects with immediate effect. Apart from this, as of 1 January 2015, the state limited the income tax surcharge rate to 18%, which directly affected only the City of Zagreb, as it is the only town with the maximum income tax surcharge rate since the start of fiscal decentralisation in 2001⁴⁶. Many interlocutors also complained about the number of times that laws having an impact on their budgets changed – citing three times in the last eight years, making budget planning really difficult.

148. The consultation process of local authorities regarding the setting out of grants and tariffs is also a weak point. The associations have complained about this lack of consultation before the Constitutional Court. The only consultation mechanism currently operating in Croatia, according to the Congress delegation's interlocutors, is the special law on public consultation, under which any legal act shall be made public so that citizens are entitled to comment. This is further discussed under the Charter Article 4, paragraph 6 *supra*. The self-government associations believe that this mechanism fails both to ensure outcome-oriented consultations and to protect local self-government.

149. Accordingly, the practice of consultation by the central authorities of Croatia in relation to the self-government representatives, in particular as regards the exclusion of representatives of self-government in the consultation process in relation to the Act on Financing of Units of Local and Regional Self-Government and the 2015 Income Tax Act, contradicts the requirements of Article 9.6 of the Charter.

150. The rapporteurs conclude that Croatia has not acted in conformity with Article 9 paragraph 6 of the Charter.

43 In written replies from Primorje-Gorski Kotar County and the Croatian County Association.

44 Institute of Public Finance press release number 72 of 5 December 2014.

45 also included in written replies from the City of Zagreb.

46 also included in written replies from the City of Zagreb.

151. Local taxes constitute only an insignificant part (10%) of the local budget and the existing financial equalisation system, explained above, does not respond to the actual needs. Croatia makes use of special-purpose funding, such as grants/subsidies allocated to counties and towns to attempt to make up the shortfall and cover current expenditures. In addition, different line-ministries assign transfers to towns and counties for the exercise of delegated functions and direct how the funding is to be used. As shown above, the major part of the local budget is allocated to financing pre-school and school education, 33% is earmarked for services and acquisition of products, followed by the administrative costs (wage and salary disbursements) at 21% while 19% is spent on increase/decline of non-financial assets. The highest cost for the counties is the spending on education and road infrastructure.

152. In addition, the Law on Financing of Local and Regional Self-Government Units actually specifies in advance how and in what proportion the grants received for enforcing the delegated functions should be spent. The Ministry of Finance strictly controls the volume of budget expenditures of local and regional authorities, which limits the local self-government's right to decide on the budget expenditure priorities independently and under their own responsibility. The multilevel financial control system which comprises the regional State Administration Office, the Ministry of Finance and the State Audit Office allows little room for manoeuvre. The latter controls both the expediency of funds spent as well as auditing the management performance and exercise of own competences in local self-government units and, in the view of the delegation, has a more interventionist role than is common in other European countries.

153. It would be unrealistic to expect no earmarking of grants to self-government units. Nevertheless, the principle behind this article of the Charter is that excessive recourse to earmarking of grants or other restrictions will severely limit the authorities' freedom to exercise its discretion with regard to expenditure priorities. In Croatia such an overall and vertical control system, in the view of the rapporteurs, undermines the effective activity of local authorities within their own sphere of competence and contradicts the provision of Article 9 paragraph 7 of the Charter.

154. The rapporteurs therefore conclude that Croatia is not in conformity with Article 9 paragraph 7 of the Charter.

155. As concerns Article 9, paragraph 8, the power of Croatian municipalities to borrow from the private capital market is subject to regulation - as in many other European countries. Borrowing is allowed at the rate of 20% in respect of the consolidated indicator of the previous financial year and requires a preliminary consent of the Croatian central government. The rapporteurs heard no complaints from interlocutors about the system operating in Croatia.

156. The rapporteurs conclude that Croatia complies with Article 9, paragraph 8 of the Charter.

157. In conclusion on Article 9 of the Charter the rapporteurs stressed that all interlocutors emphasised during the meetings planned during the visit that Croatia is still an over centralised state and that decentralisation has in the past been approached in too piecemeal a fashion - not allowing for a coherent transfer of powers from the State. Indeed the most recent decentralisation initiatives, and the new government's commitments to continue reform, including on fiscal decentralisation which was the number one priority for the self-government authorities the delegation met, are evidence of an admission that more still needs to be done. Accordingly, the current proposals in Croatia for the reform of fiscal decentralisation provide an excellent opportunity to remedy the issues mentioned above under Article 9 of the Charter. The rapporteurs will follow progress with great interest and would be grateful to be kept informed of developments.

158. Croatian counties, towns and municipalities do not currently avail of adequate financial resources to exercise their own powers, a theme repeatedly mentioned in the exchanges of views with the delegation and explained in detail above. Own tax revenues do not exceed 10% of local budget revenues which is mostly composed of the equalisation transfer from shared taxes and the delegated function grants and ministerial transfers. At under 6% of GDP the local authorities' share of national resources is one of the lowest in Europe and the overall situation does not match up to the expectations of the Charter in Article 9.

159. For these reasons the rapporteurs conclude that Croatia is not in conformity with Article 9 paragraph 1, paragraph 2, paragraph 3, paragraph 4, paragraph 6 and paragraph 7 of the

Charter. Croatia is partially in conformity with Article 9 paragraph 5 of the Charter and fully conforms to Article 9 paragraph 8 of the Charter.

4.9 Article 10 – Local authorities' right to associate

Article 10 – Local authorities' right to associate

- 1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
- 2 The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
- 3 Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

160. Article 12 of the Law of Croatia on Local and Regional Self-Government states that for the purpose of promoting common interests and improving co-operation, municipalities, towns and counties may establish a national association of municipalities, a national association of towns and a national association of counties. The national association will be established if the decision is passed by more than half of the local and regional self-government units of the appropriate type (town, municipality and county).

161. There are three local government associations in Croatia, the Croatian County Association, the Association of Cities of the Republic of Croatia and the Association of Municipalities of the Republic of Croatia. All three associations are well institutionalised and enjoy the status of a national association. These associations carry out important activities to protect the interests of their members, although the practice of a dialogue and consultation with the central government is still weak. All three associations unanimously note that the central government has little political will to involve them in the decision-making process. The associations have been isolated from the process of making such important decisions as the 2009 reform of salaries in the local and county self-government and in personal income tax reform. The associations made an active use of the Constitutional Court and international cooperation to promote and protect the associated municipalities and their interests. The associations enjoy good mutual relations and may take joint initiatives towards central government on issues that concern them all.⁴⁷

162. Articles 14, 15, 16 and 17 of the organic Law on Local and Regional Self-Government regulate the co-operation between local authorities to ensure effective implementation of joint activities. There is no need for the municipalities to obtain consent or approval from state administration bodies for intermunicipal cooperation falling under their self-government scope⁴⁸. The central government promotes the development of the institute of agglomeration; a whole series of municipal services at the regional level, such as kindergartens, cleaning, sewerage, are rendered by joint services. Croatian municipalities are also entitled to co-operate with their counterparts in other states, although the rapporteurs note that so far the government has neither signed nor ratified the two Protocols to the European Outline Convention on Transfrontier Co-operation.

163. In the light of the foregoing it can be said that Croatia fully complies with Article 10 paragraph 1, paragraph 2 and paragraph 3 of the Charter.

4.10 Article 11 – Legal protection of local self-government

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

⁴⁷ including in written replies from the Croatian County Association.

⁴⁸ included also in replies from the Ministry of Public Administration.

164. Article 129 of the Constitution of the Republic of Croatia states that the Constitutional Court of the Republic of Croatia “shall decide on constitutional petitions against individual decisions taken by governmental agencies, bodies of local and regional self-government and legal persons vested with public authority where such decisions violate human rights and fundamental freedoms, as well as the right to local and regional self-government guaranteed by the Constitution of the Republic of Croatia”. Article 137 of the same constitution defines that “In administering the affairs within their jurisdiction, units of local and regional self-government shall be autonomous and subject only to the review of the constitutionality and legality by the authorized national governmental bodies”.

165. The Constitutional Court shall, as in the case of a violation of rights, have the right of final verdict in the sphere of supervision of legality. Local authorities may resort to the Constitutional Court in two ways. According to Article 36 of the Constitutional Act on the Constitutional Court of the Republic of Croatia, “If the representative body of the unit of local and regional self-government in the Republic of Croatia considers that a law regulating the organisation, competence or financing of units of local and regional self-government is not in accordance with the Constitution, it may present a request to the Constitutional Court to review the constitutionality of that law or some of its provisions”.⁴⁹ Article 38.1 of the same Constitutional Act reads as follows: “Every individual or legal person has the right to propose the institution of proceedings to review the constitutionality of the law and the legality and constitutionality of other regulations”.

166. On the basis of Article 36, from 2010-2015, 23 appeals were filed with the Constitutional Court but no proceedings were instituted thereon. On the basis of Article 38 regarding a review of constitutionality 108 recourses were filed with the Constitutional Court, of which 91 concerned adopted laws and 17 concerned bylaws adopted by different level authorities. With regard to administrative supervision of local self-government bodies from 2010 to 2015, 21 claims were filed of which 18 were immediately adjudged and 3 cases are pending. In the same period, 240 appeals concerning constitutionality were lodged by citizens (natural persons) of which 110 have been adjudged, and 130 are being processed, out of which 127 are from the City of Zagreb.

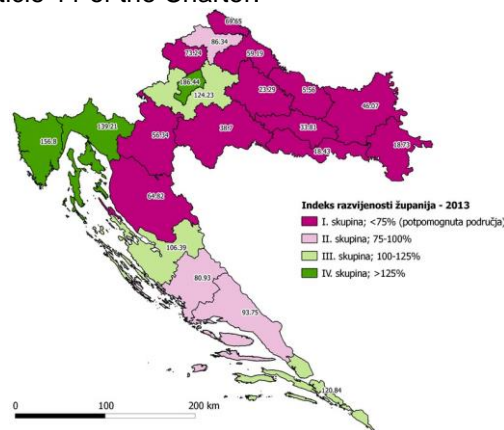
167. It should be noted that with the entry into force of the Administrative Disputes Act (1 January 2012), the High Administrative Court was given the competence to review the legality of general acts of the units of local and regional self-government, legal persons vested with public power and legal persons performing public services. On this authority the High Administrative Court shall repeal a general act or some of its provisions with a judgment if it establishes that it is not in conformity with law or the statute of the body of public law. Before the entry into force of this act the constitutional court maintained supervision over all local regulations but since 2013 it supervises only the local statutes.

168. The High Administrative Court also has a role in providing recourse to judicial remedy as regards state supervision when the Ministry of Public Administration issues a decision declaring the session of the representative body (the council) null and void. Whilst an appeal against the decision is not possible, an administrative dispute may be instituted before the High Administrative Court of the Republic of Croatia. The law also ensures legal protection against a Government decision on dissolution and dismissal of local bodies where the High Administrative Court may be seized of an action against the decision.

169. Local authorities therefore have the right of recourse to judicial remedies and the rapporteurs conclude that Croatia fully complies with the obligations of Article 11 of the Charter.

5. REGIONAL DEMOCRACY

170. Croatia consists of 4 historical regions. These are: Croatia proper, Dalmatia, Slavonia and Istria. These regions are further divided into up to more 17 small sub-regions. Today Croatia does not use these regions either for administrative, nor managerial or statistical purposes. According to the Act on Regional Development, Croatia is divided into NUTS 3 and NUTS 2 regions. There are two NUTS 2 regions in Croatia – Adriatic and continental.



⁴⁹ The Association of Cities of Croatia cruises the Constitutional Court for not acting in the 30 day period when the Act concerned in the complaint does not bear “local and regional government” explicitly in the title. Ministry of Justice of Croatia

These territories do not belong to the administrative-territorial units. NUTS 3 regions are the administrative units and in Croatia they number 20, the 21st being the Capital of Croatia, Zagreb. According to the Law of Croatia on Local and Regional Self-Government, these territories are named as a “region”, although in the Croatian language their name is *županije* representing more a county than a region and indeed many laws, as well as the Constitution, refer to them as counties.

171. The latest law to be passed is the Act on Regional Development (Number: 71-05-03/1-14-2) which was promulgated on 4 December 2014 and took effect from 1 January 2015. Article 1 defines its scope as to regulate “objectives and principles of regional development management of the Republic of Croatia, planning documents of regional development policy, institutions responsible for regional development management, assessment of the development level of the local and regional self-government units, methods for determination of urban and assisted areas, supporting development of the assisted areas, implementation, monitoring and reporting on regional development policy aiming on utilisation of the EU funds in more efficient manner. Article 2 further develops the objectives behind the Act: “The objective of the regional development policy is to contribute to the socio-economic development of the Republic of Croatia, in accordance with principles of sustainable development, by creating conditions which enable strengthening of competitiveness and realisation of own development potentials of all parts of the country.” As part of these objectives Article 14 states that urban areas are constituted with the purpose of more efficient planning, harmonising and implementation of regional development policy. The definition of urban areas is: urban agglomerations, larger urban areas and smaller urban areas. Four urban agglomerations were introduced by the Act: Zagreb; Split; Rijeka and Osijek. A procedure is in place for other cities to request agglomeration status upon the decision of the Minister and after obtaining the prior opinion of all local self-government units included in agglomeration and the ministry responsible for spatial planning. The other urban areas defined in the Act are larger urban areas – towns with more than 35,000 inhabitants and not included in an urban agglomeration, and smaller urban areas are towns with less than 35,000 inhabitants with more than 10,000 inhabitants in central settlement or county seats.

172. Croatian counties have a local representative body that is authorised to adopt local laws, also a local executive elected by a direct ballot –the prefect (*zupan*)⁵⁰, a local budget and local tax revenues. Although in contrast to European regions, Croatian counties lack the authority to administer a substantial share of public affairs; the only state competence partially ascribed to counties is in the sphere of education. Moreover, the county’s competence runs concurrent with the competences of municipalities and it is rather hard to define in Croatia where the county ends and the municipal power begins. In addition, a county is rather weak financially and depends on both the equalisation system as well as the funds allocated from the central ministries. A deconcentrated state administration body operates within a county to provide oversight on activities carried out by the county.

173. Thus Croatian counties correspond less to regions standard approved by the Council of European but more to the upper level of local management assigned to consolidate administration of local affairs over tiny municipalities. This is also evidenced in that the impact of a county on the cities with over 35000 inhabitants is minimal, while in relation to tiny municipalities the county’s functions are strong.

174. The Croatian administrative system continues to consider counties as a part of the vertical administration of the central government and as an instrument of the first level management and co-ordination of local authorities. The new authorities of Croatia stated that their aim is to transform the Croatian counties into full-value regions and to consolidate the 20 counties into 7 larger regional units, although the elaboration of a feasible reform plan is not immediate. Meanwhile the Croatian counties with limited and concurrent capacities and poor finances cannot be regarded as a full regional administration level.

175. The capital city of Zagreb has the status of a county in the Croatian public administration system, which is guaranteed by a special Act of the City of Zagreb. The subject of sharing and concurrence of powers is less urgent here since Zagreb concurrently represents a body of local self-government (city) and a body of county self-government. Zagreb has a mayor elected by a direct ballot and a council elected under a proportional procedure. It has higher revenues than other municipalities or counties of Croatia. There is also a Zagreb County which is a separate body and its relations with the City of Zagreb are rather vague, although both now have units included in the

50 This term does not equate to the French term for prefect who is a representative of the State.

Zagreb agglomeration and have established a joint council to resolve issues of common interest. According to interlocutors such a division and separation of the city from the county of the same name adversely affects the economic and administrative resources of Zagreb County.

176. The City of Zagreb performs a significant part of state administration tasks for their citizens within the transferred scope. These are state administration tasks which are otherwise performed by state administration offices in counties, but also include some other state administration tasks established by special laws, the performance of which is delegated to the City of Zagreb authorities. The performance of transferred tasks is delegated to the administrative bodies of the City of Zagreb, in accordance with the law governing the state administration system.

177. The 2014 Act on Amendments to the City of Zagreb Act introduced the a co-ordinator of state administration tasks for the territory of the City of Zagreb, who co-ordinates the co-operation of the administrative bodies of the City of Zagreb, in the performance of delegated state administration tasks, with competent central state administration bodies and state administration offices in counties. The co-ordinator is appointed by the Mayor of the City of Zagreb from the ranks of heads of the administrative bodies which perform only state administration tasks.

178. The City of Zagreb is divided into 17 districts and 218 communal committees. The City of Zagreb Statute stipulates that a city quarter, inter alia:

- Proposes the concept of development for its territory within the City of Zagreb development plan;
- Proposes solutions of interest to its territory in the procedures of development and adoption of physical and other planning documents and their realisation;
- Monitors the situation in utility infrastructure on its territory and proposes utility infrastructure development programmes;
- Takes care of the renovation of settlements, quality of living/housing, public utility objects, infrastructure and the performance of utility services and other service activities of importance for the city quarter;
- Takes care of meeting the needs of inhabitants in the area of pre-school education, public health services, social welfare, culture, technical culture and sport, which are of importance for the city quarter;
- Monitors measures and actions for the protection and improvement of environment and improvement of living conditions;
- Proposes measures after considering the state of safety and protection of persons and property on its territory;
- Proposes measures for more efficient functioning of utility services;
- Proposes the establishment of institutions in the field of care for pre-school children, education, public health services, social welfare, culture, technical culture and sport, monitors the work of institutions in those areas which were established to meet the needs of inhabitants on its territory, and proposes measures for the improvement of their work;
- Proposes the naming of streets, public traffic surfaces, parks, sports fields, schools, kindergartens, cultural institutions and all other objects on its territory;

179. The communal committee performs the following tasks:

- considers issues which affect the lives and work of citizens living on the territory of the communal committee directly and daily, especially with regard to the renovation of settlements, protection of children, youth and the elderly and care for them, and healthcare, cultural and sports needs of citizens;
- convokes communal citizens' assemblies;
- proposes measures for the improvement of living and working conditions to bodies competent to address them;
- proposes to the city quarter council a plan of small communal actions for their territory;
- organises and implements civil protection on its territory;
- performs other tasks delegated to it through city decisions and other regulations.

180. In the performance of their role, city districts and communal committees must respect the interests of the City as a whole.

181. The city's executive body supervises activities of the city districts and of economic subjects established by the Zagreb Municipality. The city also exercises the "decentralised functions", the

most important of which is urban planning and issuance of building permits. By its development index Zagreb belongs to the group V of municipalities and the group IV of counties (the average national over 125%). In spite of the fact that Zagreb has more powers as compared with other self-government units, it lags behind other European capitals by its scope of authority. Such weak authority is a serious problem for the city's development.

6. CONCLUSIONS

182. In conclusion, Croatia has certainly the legislative protection in place to be in conformity with the Charter on Article 3 however improvements are needed to bring practice in line with the spirit of the Charter. The new government of Croatia appears willing to address these challenges and the associations of local and regional authorities declare themselves ready to take over tasks from the state to allow for real decentralised responsibilities.

183. The Croatian local and regional self-government system is a dynamically developing democratic institute of both successes and challenges. Following the 2007 monitoring visit, Croatia has made significant progress: direct elections for mayors and prefects were introduced in addition to a financial equalisation instrument; additional (decentralised) powers were transferred to counties and large cities; shared taxes and a development index, which is an important indicator of the equalisation policy. The government promotes inter-municipal co-operation, of which the Island of Krk is recognised as a notable best practice example. The degree of incorporation with the European Charter of Self-Government in Croatian legislation is rather high.

184. In spite of this progress, Croatian self-government still faces a whole series of challenges that adversely affect the quality of local and regional democracy in the country and are in conflict with the European Charter principles, in particular:

- The division of powers between local and regional authorities is vague. It is unclear why units of the same status but of different size are vested with powers of different scope and have certain powers transferred to the county level;
- The administrative and territorial structure of local self-government is complex and rigid. The existence of many rather different (in terms of territory and economy) units makes effective management impossible and causes inequality between the bodies of local government. The same is true of counties in relation to their territorial and economic scale.

185. Central authorities' influence over local authorities is rather high. Delegated tasks are implemented in accordance with the instructions of the central authorities rather than in the local interests. The dual responsibility of the elected mayor/prefect creates a closer relationship than is usual to the central authorities.

186. The financial autonomy of local and regional self-government bodies is weak - municipalities are fully dependent on the funding received from the central (line) ministries and counties. The large cities and counties are comparatively better off, although the share of local tax revenues in their budgets is also very low. Local autonomy also suffers from the practice of determining in advance how the money received from shared taxes should be spent so that local government has no authority freely to dispose of those resources.

187. The process of property transfer to local and regional self-government bodies is still under way; according to mayors, the procedures of transfer of property from the central to local authorities is rather complex, as a result of which unused property falls into ruin thereby depriving local government of any economic benefit.

188. The consultation process between the central and subnational authorities is weak as is the dialogue between the central government and associations of local government. Wide public consultation is not sufficient for the purpose of holding consultations with self-government bodies in a timely and appropriate manner and a more institutionalised procedure is required.

189. In order that the foregoing limiting factors are eliminated, the Croatian authorities announced a new plan of decentralisation. From the point of view of the rapporteurs, when implementing this plan, particular attention should be paid to:

- a. The clear-cut and full division of powers between different levels of government;
- b. Increasing the discretion of local authorities, including in respect of the tasks delegated by the central authorities;
- c. Reviewing the local and regional territorial organization for the purpose of setting up more efficient and capable units;
- d. Rationalising the internal structure of local and regional authorities and increasing the accountability of elected mayors to the council;
- e. Revising the current provision in the legislation for simultaneous dismissal of local self-government bodies in order to introduce new regulations for dismissal that is based on principles of proportionality.

190. Priority should be given to the implementation of fiscal decentralisation. Local self-government bodies should be more autonomous in determining the parameters of own budget revenues and expenditures. The procedures of transfer to local self-government bodies of the state property located on their territory should be simplified. The administrative supervision and financial control of local self-government should be liberalized in order to avoid implementation of the parallel and disproportionate control on the part of central agencies. A streamlined system of dialogue and consultation between the local and central authorities should be created, which will ensure a due regard for the interests of local authorities and irreversible decentralisation reform. The Congress stands ready to actively cooperate with the Croatian authorities in this regard, through the post monitoring procedure for instance, so that the decisions made within the future reform meet with the interests of Croatia, its municipality's cities and counties, on the one hand and the principles of the European Charter of Local Self-Government on the other.

Appendix – Programme of the Congress' monitoring visit to the Republic of Croatia

CONGRESS MONITORING VISIT TO THE REPUBLIC OF CROATIA Zagreb, Rijeka, Primorje-Gorski Kotar, Omisalj, Krk (2 – 4 March 2016)

PROGRAMME

Congress delegation:

Rapporteurs:

Ms Luzette KROON⁵¹

Rapporteur on local democracy
Chamber of Local Authorities, EPP/CCE⁵², Netherlands
Member of the Monitoring Committee of the Congress
Mayor of Waterland, Netherlands

Mr Ole HAABETH

Rapporteur on regional democracy
Chamber of Regions, SOC⁵³, Norway
Member of the Monitoring Committee of the Congress
County Mayor, Ostfold County, Norway

Congress Secretariat:

Ms Jane DUTTON–EARLY

Co–secretary to the Monitoring Committee of the Congress

Consultant:

Mr David MELUA

Member of the Group of Independent Experts
on the European Charter of Local Self-Government (Georgia)

Interpreters:

Ms Davorka CURKOVIC
Ms Irena MARKOVIC

⁵¹ Owing to serious family circumstances the rapporteur was unable to participate in the visit.

⁵² EPP/CCE: European People's Party in the Congress.

⁵³ SOC: Socialist Group in the Congress.

**Wednesday, 2 March 2016
Zagreb**

- **National Delegation of the Republic of Croatia to the Congress (NDC)**
- **Croatian County Association (CCA)**
- **Association of Cities of the Republic of Croatia (ACC)**
- **Association of Municipalities of the Republic of Croatia (AMC)**
- **Expert**

Ms Visnja IVACIC, Deputy Head of NDC, Mayor, Municipality of Pribislavec
Mr Matija POSAVEC, Prefect of Medimurje County
Ms Durdica ISTEJ-BENSIC, Deputy County Prefect, Bjelovar-Bilogora (CCA)
Mr Ivan HANZEK, Mayor of Zabok (ACC)
Mr Duro BUKVIC, President of AMC, Mayor of Lukac Municipality
Mr Bruno HRANIC, Secretary General of AMC, Mayor
Mr Anteo MILOS, Mayor (ACC)
Ms Nives KOPAJTICH-SKRLEC, Coordinator (ACC)
Mr Ivan NEKIC, Advisor (CCA)
Mr Dario RUNTIC, Advisor (ACC)
Mr Marko ERCEGOVIC, Advisor (ACC)
Mr Mladen IVANOVIC, Secretary, NDC and AMC
Mr Zvonimir LAUC, Member of the Group of Independent Experts of the Congress

- **Zagreb County**

Mr Stjepan KOZIC, Prefect of Zagreb County
Mr Rudolf VUJEVIC, Deputy Prefect of the Zagreb County
Mr Damir TOMLJENOVIC, Deputy Prefect of the Zagreb County
Mr Mato JURIC, Head of Administrative and Professional Services
Mr Josip KRALJICKOVIC, Head of the EU funds, regional and international cooperation
Ms Mirjana OSTREC-BOSAK, Head of the Office of the County Prefect
Mr Ivica BOSAK, Head of Finance

- **City of Zagreb**

Mr Milan BANDIC, Mayor of the City of Zagreb
Ms Jelena PAVICIC-VUKICEVIC, Vice President of the City Assembly
Mr Slavko KOJIC, Head of City Office for Finance
Ms Mirka JOCIZ, Head of City Office for Economy, Labour and Enterprises
Ms Dianora KOBIA LULIC, Deputy Head of the Professional Service of the Mayor
Ms Andrea SULENTIC, Senior advisor for local administration and legal affairs
Ms Elizabeta KNORR, Head of Department for promoting human rights and gender equality, relations with national minorities and religious communities and civil society development
Mrs Vesna SIMIC, Head of Department for Intercity and International Relations
Mrs Daniela JUROS-PECNIK, Assistant to the Head of the City Office for Finance

- **The Ombudswoman of Croatia**

Ms Lidija LUKINA KEZIC, Deputy Ombudswoman
Ms Suzana TURCIC, Advisor to the Ombudswoman
Ms Monika CAVLOVIC, Advisor to the Ombudswoman
Ms Ivana BULJAN-AJERIC, Advisor to the Ombudswoman

Thursday, 3 March 2016
Rijeka City, Primorje-Gorski Kotar County, Omisalj Municipality and Krk Town

- **Rijeka City**

Mr Vojko OBERSNEL, Mayor of Rijeka
Ms Dorotea PESIC-BUKOVAC, President of the Rijeka City Council

- **Primorje-Gorski Kotar County**

Mr Erik FABIJANIC (SDP), President of the County Assembly
Ms Marina MEDARIC, Deputy County Prefect, Member of the NDC
Mr Krešimir PARAT, Head of Department for Budgetary and Financial Affairs
Mr Ljudevit KRPAN, Head of Department for Regional Development, Infrastructure and Project Management and
Ms Ana STEFANCIC-MODRIC, Senior Advisor for International Cooperation and Protocol

- **Omislalj Municipality**

Ms Mirela AHMETOVIC, Mayor of Omislalj Municipality
Ms Maja MAHULJA, Head of the Administrative Department

- **Town of Krk**

Mr Darijo VASILIC, Mayor of Krk
Mr Marinko PAVLIC, President of Town Council
Mr Josip STANICIC, Former President of Town Council
Mr Čedomir MILER, Deputy Mayor
Mr Marinko BAJCIC, Head of administrative department of town of Krk

Friday, 4 March 2016
Zagreb

- **Ministry of Public Administration**

Ms Dubravka Jurlina ALIBEGOVIĆ, Minister
Mr Boris MILOSEVIC, Assistant Minister,
Ms Anita MARKIĆ, Head of the Sector for Local and Regional Government

- **Ministry of Regional Development and EU Funds**

Ms Marija VUKOVIĆ, Deputy Minister

- **Ministry of Finance**

Mr Niko RAIC, Head of Sector for Budget Preparation and Financing of Local and Regional Self-Government Units
Mr Ivan LAZETA, Head of Department for Analyses of Fiscal Capacity of Local and Regional Self-Government Units

- **Constitutional Court of the Republic of Croatia**

Mr Antun PALARIC, Judge
Mr Teodor ANTIC, Secretary General

- **State Audit Office of the Republic of Croatia**

Ms Lidija PERNAR, Assistant Auditor General
Ms Nada SVETE, Assistant Auditor General
Ms Vesna KASUM, Assistant Auditor General
Mr Bozo VULETIC-ANTIC, Assistant Auditor General

- **Croatian Parliament**

Mr Zeljko REINER, Speaker of the Croatian Parliament
Mr Tulio DEMETLIKA, Chair of the Committee on Local and Regional Self-Government
Ms Josipa RIMAC, Member of the local and regional self-government of the Croatian Parliament
Mr Damir MATELJAN, Member of the local and regional self-government of the Croatian Parliament