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Local and regional democracy in Serbia

Monitoring Committee

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Summary

This is the second report on local and regional democracy in Serbia since the country ratified the European Charter of Local Self-Government in 2007. The report notes that Serbia has responded positively to most of the previous recommendations made by the Congress in 2011, in particular by ratifying the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and by signing the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. In addition, a number of important legislative steps have been taken in order to modernise and strengthen local self-government, notably the adoption of the law dealing with the status of local government staff. The rapporteurs underline the importance of further implementing the Public Administration Reform Strategy and encourage the Serbian authorities to continue their efforts aimed at fighting corruption, including at local level.

The rapporteurs draw the authorities' attention to the temporary ban on recruitment, the possibility of dismissal of local government assemblies and the lack of transparent criteria for allocating State grants and resources from the reserve fund. The Congress recommends that the Serbian authorities provide adequate resources for local government to carry out its functions and maintain full responsibility for healthcare and education at the local level. Finally, it also urges Serbia to clarify and improve the financial situation of the Autonomous Province of Vojvodina.

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 403 (2017)²

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

a. Article 2, paragraph 1b of Statutory Resolution CM/Res(2015)9 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(2015)9 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 409 (2016) of the Congress on the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, in particular Chapter XVII on the organisation of the monitoring procedures;

d. Recommendation 219 (2007) on the status of capital cities;

e. Recommendation 316 (2011) on local and regional democracy in Serbia;

f. Congress Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy [MCL-16(2009)11] in its monitoring activities, and the reply by the Committee of Ministers to Congress Recommendation 282 (2010) [[CM/Cong\(2011\)Rec282 final](#)], which encourages the governments of member States to take account of the abovementioned Reference Framework in connection with their policies and reforms;

g. The explanatory memorandum on local and regional democracy in Serbia drawn up by the rapporteurs Lucia Kroon, the Netherlands (L, EPP/CCE) and Sören Schumacher, Germany (R, SOC) following a visit to Serbia from 28 February to 2 March 2017.

2. The Congress recalls that:

a. Serbia signed the European Charter of Local Self-Government (ETS No. 122; hereinafter the Charter) on 24 June 2005 and ratified it on 6 September 2007. The Charter came into force in Serbia on 1 January 2008. In accordance with Article 12, paragraph 1 of the Charter, the Republic of Serbia declared itself not bound by Article 4, paragraphs 3 and 5, Article 6, Article 7, paragraph 2 and Article 8, paragraph 3 of the Charter;

b. Serbia 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) on 8 March 2017;

c. The Monitoring Committee instructed Lucia Kroon, the Netherlands (L, EPP/CCE) and Sören Schumacher, Germany (R, SOC) to prepare and submit to the Congress, as rapporteurs, a report on local and regional democracy in Serbia;

d. The Congress delegation³ carried out a monitoring visit to Serbia from 28 February to 2 March 2017, visiting Belgrade, Novi Sad and Kovačica. During this visit, the monitoring delegation met representatives of the Standing Conference of Towns and Municipalities (the association of local and regional democracy in the country), the national delegation to the Congress of Local and Regional Authorities, mayors and municipal councillors, regional representatives and representatives of the government and ministries, national parliament and other central institutions of Serbia.

² Debated and adopted by the Congress on 18 October 2017, 1st sitting (see Document [CG33\(2017\)19final](#), explanatory memorandum), co-rapporteurs: Lucia KROON, the Netherlands (L, EPP/CCE) and Sören SCHUMACHER, Germany (R, SOC).

³ In their work, the rapporteurs were assisted by Prof. Anders LIDSTRÖM, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress secretariat.

3. The Congress wishes to thank the Permanent Representation of Serbia to the Council of Europe, the Serbian authorities at the central, regional and local levels, the Standing Conference of Towns and Municipalities of Serbia, and all the other parties whom the delegation met during the visit, for their valuable co-operation and for the information provided to the delegation.

4. The Congress notes with satisfaction:

a. the ratification of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and the signature of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority;

b. the initiatives taken by the government with a view to modernising and improving the local self-government system on the basis of the Public Administration Reform Strategy;

c. the adoption of the legislation dealing with local government staff;

d. the existing good practices in terms of responding to the specific needs of a culturally diverse population and of protecting minority languages, notably in the Autonomous Province of Vojvodina.

5. The Congress notes that the following points call for particular attention:

a. the lack of adequate resources available to local self-government units for carrying out their functions due to a drastic reduction in financial resources in recent years (Article 9, paragraphs 1 and 2);

b. the lack of clarity in applying in practice the temporary recruitment ban within local authorities (Article 4, paragraph 2);

c. the proposal to transfer responsibility for appointing healthcare and education boards and directors from local to central government, which would undermine local self-government functions (Article 4, paragraph 4);

d. the absence of a legal clarification of the powers of the temporary body that may be convened by the government under certain conditions to replace an elected local assembly (Article 8, paragraph 1);

e. the failure to implement the constitutional provision concerning the budget of the Autonomous Province of Vojvodina and, as a consequence, the lack of concomitant financial resources made available to the province (Article 9, paragraphs 1 and 2);

f. the lack of transparency surrounding the system of equalisation and the distribution of state grants, in particular the lack of clarity in the criteria for distributing resources from the reserve fund of the Ministry of Finance (Article 9, paragraphs 5 and 7).

6. The Congress recommends that the Committee of Ministers invite the Serbian authorities to:

a. further pursue the declared objectives of the Public Administration Reform Strategy by finalising the legislative projects related to local and regional democracy and decentralisation and ensuring their effective implementation;

b. despite the austerity measures which are necessary, allocate financial resources to local authorities which are commensurate with their powers and responsibilities, thus lifting financial restrictions on local government;

c. clarify and improve the transparency of the criteria for approving the hiring of local government staff under the temporary recruitment ban;

d. keep responsibility for appointing boards and directors in healthcare and education at local level, in order to avoid undermining local government functions;

e. clarify the powers of the temporary body that may be convened by the government under certain conditions to replace an elected local assembly;

f. settle the dispute about the constitutional provision on the budget of the Autonomous Province of Vojvodina by enacting a Law on Financing the Autonomous Province of Vojvodina, in order to ensure that the province has sufficient resources to carry out its functions;

g. establish clear and transparent criteria for the distribution of state grants and the allocation of resources from the reserve fund of the Ministry of Finance.

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

EXPLANATORY MEMORANDUM

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

1. In accordance with Article 2 of Statutory Resolution CM/Res(2015)9 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe ("the Congress") regularly prepares reports on the state of local and regional democracy in all Council of Europe member States.

2. Serbia and Montenegro joined the Council of Europe on 3 April 2003. Following the declaration of independence of the Republic of Montenegro on 3 June 2006, and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the Committee of Ministers of the Council of Europe adopted a declaration at its 967th meeting on the continuation of Serbia's membership of the State Union of Serbia and Montenegro in the Council of Europe and the continuation of ensuring its obligations and commitments.

3. Serbia signed the European Charter of Local Self-Government (ETS No. 122) ("the Charter") on 24 June 2005 and ratified it on 6 September 2007. The Charter came into force in Serbia on 1 January 2008. In accordance with Article 12 of the Charter, the Republic of Serbia declared that it considered itself bound by the following provisions of the Charter:

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

4. The European Charter of Local Self-Government is applied in a monist way in national legislation. According to the Serbian Constitution (Article 16, paragraphs 2 and 3), generally accepted rules of international law and ratified international treaties are considered as integral parts of the Serbian legal system and are applied directly. Nevertheless, according to the Constitutional Court, the Charter has not yet been referred to in any legal case.

5. A previous recommendation on local democracy in Serbia was adopted by the Congress on 18 October 2011 (Recommendation 316, 2011), after a monitoring visit carried out by a Congress delegation.

6. Serbia signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority on 8 March 2017. The rapporteurs welcome this important step forward for local and regional democracy in Serbia.

7. Serbia ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), which entered into force on 16 June 2016.

8. The Monitoring Committee decided to review the situation of local and regional democracy in Serbia in light of the Charter. It appointed Lucia Kroon, the Netherlands (L, EPP/CCE) and Sören Schumacher, Germany (R, SOC) as co-rapporteurs. They were tasked with drawing up a report on local and regional democracy in Serbia, to be submitted to the Congress. The rapporteurs were assisted by Prof. Anders Lidström, Sweden, who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress Secretariat.

9. The Congress delegation carried out a monitoring visit to Serbia from 28 February to 2 March 2017 (visiting Belgrade, Novi Sad and Kovačica). During this visit, the monitoring delegation met the Serbian national delegation to the Congress of Local and Regional Authorities, representatives of the Standing Conference of Towns and Municipalities, mayors and municipal councillors, regional representatives, and representatives of the government and ministries, national parliament and other central institutions of Serbia. The detailed programme of the visit is appended to the present report.

10. This report was drafted on the basis of information collected during the Congress monitoring delegation's visit to Serbia, as well as a survey of relevant legislation, other relevant information and documents provided by those with whom the delegation had contact in Serbia.

11. The rapporteurs wish to thank the Permanent Representation of Serbia to the Council of Europe, the Serbian authorities at the central, provincial and local levels, the Standing Conference of Towns and Municipalities of Serbia, the National Alliance for Local Economic Development, the experts and other interlocutors for their assistance with the organisation of the monitoring visit and their cooperation throughout the visit, as well as all persons involved in the visit for their availability and contribution to the smooth running of the visit.

2. HISTORICAL AND POLITICAL BACKGROUND, REFORMS

2.1. *Historical background*

12. Serbia is the legal (state) successor to the former Federal Republic of Yugoslavia and the State Union of Serbia and Montenegro. The Republic of Serbia is a unitary constitutional parliamentary republic which adopted its present constitution in November 2006, following a successful referendum. The Constitution of 2006 defines Serbia as a unitary state and, for the first time since 1918, as an independent state (Article 4, paragraph 1).

13. In accordance with Article 182 of the Constitution of Serbia, "in the Republic of Serbia, there are the Autonomous Province of Vojvodina and the Autonomous Province of Kosovo and Metohija". The preamble of the Constitution defines the "Province of Kosovo and Metohija [as] an integral part of the territory of Serbia" while enjoying "the status of a substantial autonomy within the sovereign state of Serbia". United Nations Security Council Resolution 1244, adopted on 10 June 1999, established the United Nations Interim Administration Mission in Kosovo⁴ (UNMIK). Kosovo unilaterally declared its independence from Serbia on 17 February 2008. This act was rejected by Serbia. The Council of Europe is pursuing a policy of status neutrality towards Kosovo, respecting the UN Security Council Resolution 1244.

14. As specified in the Constitution of Serbia (Article 182) and the Statute of the Autonomous Province of Vojvodina,⁵ the Autonomous Province of Vojvodina is an autonomous territorial community of the Republic of Serbia in which citizens exercise the right to the provincial autonomy. The former Statute of the Autonomous Province of Vojvodina (enacted in December 2009) was revised by the Autonomous Province and subsequently approved by the Serbian parliament in 2014 following the decision of Serbia's Constitutional Court on unconstitutionality of 47 out of its 70 provisions.

15. Vojvodina makes up about one quarter of Serbian territory and has a rich ethnic diversity with more than 26 ethnic groups and six official languages. As a whole the population of Serbia is a mix of several ethnic groups. 83 % are Serbs, but there are also Hungarians, Romani, Bosniaks and others. Serbian is the official language but many other regional or minority languages are in use in Serbia, e.g. Albanian, Bosnian, Bulgarian, Croatian, Hungarian, Romani, Romanian, Ruthenian, Slovak, Ukrainian.

16. This fact is acknowledged by the Constitution in both Articles 1 ("the Republic of Serbia is a state of Serbian people and all citizens who live in it") and 14 ("the Republic of Serbia shall protect the rights of national minorities"), as well as in several provisions on the protection of fundamental rights with a special focus on the protection of minorities (Articles 20 - 22, 47 - 49, 75 - 81).

2.2. *Political background and reforms*

17. The Serbian national parliament has 250 deputies, elected via a system of proportional representation with the whole country forming a single constituency. The most recent elections were held in April 2016, following the dissolution of the parliament by the President – on the initiative of the Prime Minister – two out of four years into the mandate. Provincial and local elections were also called to be held on the same day (but not in the city of Belgrade or 13 other cities). In the parliamentary elections, the "Serbia Wins" coalition, including Prime Minister Aleksandar Vucic's Serbian Progressive

⁴ "All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo."

⁵ Article 1, The Statute of the Autonomous Province of Vojvodina, enacted on 22 May 2014.

Party (SNS), retained its majority in the Parliament, with 48.2% of the vote, although its number of seats was reduced from 158 to 131. The second biggest force was a coalition led by Foreign Minister Ivica Dacic's Social Party of Serbia (SPS). They gained 10.95% of the vote, but also lost seats, declining from 44 to 29. The Serbian Radical Party (SRS) of Mr Vojislav Seselj came third with 8.10% of votes, gaining 22 seats. The new parliament is more fragmented as the number of parties has increased from seven (including three minority parties) in the 2014 elections to twelve (of which five represent minorities) in 2016. The government is a majority coalition under the leadership of the Serbian Progressive Party. Presidential elections were held after the monitoring visit, on 2 April 2017, and were won by Prime Minister Aleksandar Vucic.

18. In 2009, Serbia formally applied for membership of the European Union. Accession negotiations opened in January 2014. An important step towards membership was taken in August 2015, when an agreement was signed between Serbia and Kosovo⁶ establishing general principles and the main elements of an Association/Community of Serb-majority municipalities in northern Kosovo as well as provisions for the normalisation of relations between Kosovo and Serbia. Regarding negotiations with the EU, the first two Chapters were opened in December 2015. By the end of February 2017, 8 out of 35 Chapters had been opened and two had been closed. During the visit, the delegation gained the strong impression that the EU accession process is having a significant impact on the functioning of local self-government in Serbia, for example through reforms of the system of public administration, enhanced consultations with local self-government in line with EU recommendations and developments in the capacity of local authorities, notably on effective use of EU funds.

19. The Serbian economy has gradually been recovering after the Balkan Wars but was severely hit by the financial crisis of 2008. After another recession in 2012, with negative growth both in 2012 and in 2014, the country now seems to be on the road to recovery. However, it is still running a high deficit, with high levels of debt and considerable future repayments. Unemployment is also high, in particular among young people. The government strategy includes rationalisation and austerity measures to improve macroeconomic stability and a continuation of structural reforms of the public sector. This is linked to the aim of meeting the criteria for becoming a member of the EU, which include "creation of a stable economic and monetary environment, development of the market economy and strengthening of its capability to respond to challenges of competition within the EU, with a simultaneous strengthening of administrative capacities and institutions safeguarding democracy, the rule of law, respect for human rights and the protection of minorities."⁷ From early 2015, Serbia was also subject to precautionary arrangements with the International Monetary Fund aiming at stabilising the economy, although these have now been concluded.

20. The refugee crisis in 2015 also had a significant impact on Serbia. As one of the major transit countries, over 600 000 refugees and migrants travelled through Serbia in 2015. The flow has now come to an end for the most part since the closure of the humanitarian corridor and the erection of fences along parts of the Macedonian, Hungarian and Austrian borders. In October 2016, the Serbian authorities declared the sealing of the country's borders with "the former Yugoslav Republic of Macedonia" and Bulgaria. At the end of 2016, there were 35 300 refugees and 203 100 internally displaced persons (IDPs) in Serbia, according to UNHCR.

21. The recent government's Public Administration Reform (PAR) Strategy was adopted in 2014 and builds on previous public sector reform strategies implemented from 2004 and aimed at improving the state of public administration in Serbia. The 2014 strategy applies to the period 2015-17. An important reform objective is to enhance decentralisation and clarify the division of responsibilities between different levels of government. The government's reform document notes that the reforms carried out so far with regard to local self-government have been among the most successful. Nevertheless, it also identifies a number of weaknesses that need to be addressed. For example, the division of powers is not always clear, the system of financing needs to be made more stable, and consultations with provincial and local authorities when passing new laws are often only formal and sporadic.⁸ It should also be noted that the Decentralization Strategy within the PAR is also yet to be adopted. During the visit, the rapporteurs noted that the government has clearly identified problems in the system of local self-government and is determined to solve them.

⁶ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo."

⁷ The government of the Republic of Serbia: Fiscal Strategy Paper for 2016 with projections for 2017 and 2018.

⁸ The government of the Republic of Serbia: Public Administration Reform Strategy in the Republic of Serbia, 2014.

22. Another reform of great significance is the adoption of the Law on Employees in the Autonomous Provinces and Local Self-Government Units that entered into force in 2016. It introduces a civil service system in provincial and local government and regulates the rights and duties of local civil servants. The aim is to ensure the professionalisation and depoliticisation of the administration.

2.3. Previous reports and recommendations

23. After the previous monitoring visit to Serbia, on 18 October 2011 the Congress adopted a set of recommendations on local democracy in Serbia (Recommendation 316, 2011).

24. The Serbian government has responded very positively to the suggestions made by the Congress. Some of the recommendations have already led to changes in legislation. Notably, the Law on Employees in Autonomous Provinces and Local Self-Government Units was adopted in 2016. Serbia has signed the Additional Protocol to the European Charter of Local Self-Government. It signed and ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities for the Republic of Serbia that entered into force on 16 June 2016.

25. According to the information provided by the Ministry of Public Administration and Local Self-Government, the recommendations of the Congress will be considered in the process of revising the Constitution and laws relating to local self-government, for instance as regards the constitutional provision allowing central government to dismiss municipal assemblies and simultaneously appoint a temporary body to perform their duties; when drafting a new law on the city of Belgrade; and in drawing up a new law on local self-government (notably to provide for a broader definition of inter-municipal cooperation, with new detailed regulations on its introduction).

26. The rapporteurs were also informed that Serbia would consider the legal possibilities for ratifying the provisions of the European Charter of Local Self-Government dealing with the principle of subsidiarity (Article 4, paragraph 3) and the principle of proportionality in administrative supervision (Article 8, paragraph 3). The rapporteurs welcome this move and encourage the national authorities to improve the situation in respect of the implementation of these provisions.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS

3.1. The Constitution and the basic legislative framework

27. The territorial structure of Serbia is governed by the Constitution, which was adopted in 2006. According to Article 12, "(s)tate power is restricted by the right of citizens to provincial autonomy and local self-government". A whole part of the Constitution (Part VII) concerns the county's territorial organisation (Articles 176-193). Article 176 emphasizes that "citizens have the right to provincial autonomy and local self-government, which they shall exercise directly or through their freely elected representatives". This part of the Constitution further specifies the position and functions of the autonomous provinces (Article 183) and units of local self-government (Article 190). Provinces and local authorities have the status of legal entities. The Constitution also includes provisions for the monitoring of the provinces and local self-government units and guarantees their right to appeal to the Constitutional Court.

28. Other major pieces of legislation of relevance to local self-government include:

- The Statute of the Autonomous Province of Vojvodina (2014)
- The Law on determination of competences of the Autonomous Province of Vojvodina (2009).
- The Law on Local Self-Government (2007)
- The Law on Territorial Organisation (2007)
- The Law on Local Government Finance (2007; amended in 2016)
- The Law on Local Elections (2007)
- The Law on the Capital City (2007), and
- The Statute of the City of Belgrade (2007)
- The Law on Public Property (2011)
- The Law on Employees in the Autonomous Provinces and Local Self-Government Units (2016)

29. These acts were adopted after the 2006 Constitution, with the purpose of specifying the rules for provincial autonomy and local self-government. There is an understanding that many of these acts need to be updated and some of them have already been changed. Both the Constitution and several laws relating to provincial autonomy and local self-government are likely to be subject to reform. A revision of the Constitution is already under way within the context of EU membership negotiations, i.e. as for now changes have been announced relating to organisation of judiciary, within EU negotiations Chapter 23. Among other legislation, the Law on Local Self-Government is also likely to be revised. According to a draft version, the fairly detailed list of competences of local authorities will be replaced by a set of 14 basic groups, to be further developed in other sectoral laws. A Law on Financing of the Autonomous Province of Vojvodina is under preparation.

3.2. The local government system

30. The territorial organisation of Serbia is asymmetrical. It is regulated by the Constitution and the Law on Territorial Organisation, according to which Serbia comprises two autonomous provinces plus local self-government units, each having the status of legal entities. Local authorities comprise 174 municipalities and cities, including the city of Belgrade, which has a special status (see below).

31. The Autonomous Province of Vojvodina has its own assembly (composed of 120 proportionally elected members) and an executive government (consisting of a President and the Cabinet of Ministers (Secretaries). The competences of the autonomous province are regulated by the Constitution (Article 183) and laws. The central government may also delegate competences to the province. The relationship between the province and local authorities within the area of Vojvodina is not hierarchical. The province can delegate a part of its competences to the local government units within its territory.

32. Local self-government is a one-tier system consisting of municipalities (*opštine*) and cities (*gradovi*). Local entities include a directly elected assembly, two executive bodies (an indirectly elected mayor and a local council with 11 members) and an administration. The assembly is elected through proportional voting. Prior to 2008, mayors were directly elected. The two executive bodies have different functions as stipulated in the legislation. It is common for each council member to be in charge of a particular area of local governance. Functions of municipalities include culture, education, health, social and child welfare, protection of the environment and agriculture, land and local roads, and urban planning. Cities are larger entities, usually with at least 100 000 inhabitants. Cities are responsible for all the same tasks as the municipalities with the additional right to establish a municipal police. They may also set up city municipalities (*gradska opština*) with their own decision-making bodies for certain parts of the city, but these city municipalities are not considered to be units of self-government. The exact competences of the municipalities are listed in the Constitution (Article 190) and in acts, such as the Law on Local Self-Government and other sectoral laws. Municipalities and towns are relatively large compared with the European average (including the city of Belgrade) of 41 700 inhabitants.

3.3. Status of the capital city

33. Belgrade has special status. The status of the capital city of Belgrade is regulated by the Law on the Capital City and the Statute of the City of Belgrade. The main decision-making body is a directly elected City Assembly, composed of 110 councillors. The Assembly appoints the mayor and, on his/her proposal, the deputy mayor and members of the city council. In addition to the normal competences delegated to municipalities, the capital city is also in charge of water management, state roads, fire prevention and inspection controls in relation to planning. The city is divided into 17 city municipalities.

34. After the monitoring visit to Serbia in 2011, the Congress expressed concern that the legal framework did not fully take into consideration the special status of Belgrade as a capital city. It recommended increasing the competences and resources of the capital city and undertaking appropriate legislative changes.

35. During the meeting with the representatives of the City of Belgrade, the rapporteurs were informed that changes are under way. Although Belgrade is facing reductions in the financial support it receives from the government, and has a heavy debt burden, it has been able to avoid taking out new loans in the last few years. A major investment project that is being co-financed by the government is the development of the Belgrade Waterfront. The First Deputy Mayor highlighted the good level of cooperation and consultation with the central government in the process of preparing a revised Law on

the Capital City. The Ministry of Public Administration and Local Self-Government has indicated that the relevant Congress recommendation will be taken into account during the revision of the legislation on the capital city.

4. ANALYSIS (ARTICLE BY ARTICLE) OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER

4.1. Article 2: Foundation 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.

36. Provincial autonomy and local self-government are guaranteed by the Serbian Constitution. Article 12 of the Constitution stipulates that “state power is restricted by the right of citizens to provincial autonomy and local self-government”. The right to self-government can only be subject to supervision of constitutionality and legality. Article 97, which lists the competences of central government, stipulates that “Serbia organises and provides for ... territorial organisation of the Republic of Serbia and the system of local self-government”. Part seven of the Constitution is entirely devoted to the territorial organisation of the country. Article 176 provides that autonomous provinces and local self-government units shall have the status of legal entities. This part also lists the competences (original powers) of the autonomous provinces and local self-government units and clarifies that additional functions may be delegated. However, as is evident from Article 177, the principle of subsidiarity is not applied, as the article states “matters deemed to be of republican, provincial or local interest shall be specified by the law”. If self-government is infringed, the autonomous province or local self-government unit has the right to lodge an appeal with the Constitutional Court (Articles 187 and 193).

37. The rapporteurs have been informed that a revision of the Constitution is presently under way, which should make it possible for Serbia to ratify most of the currently non-ratified articles of the Charter.

38. After the adoption of the Constitution in 2006, the Serbian parliament passed a number of laws regulating the status and activities of provincial and local self-government, including laws on territorial organisation, local self-government, local government finance, the capital city and local elections. Many of these pieces of legislation are currently subject to revision both in order to clarify matters that have turned out to be insufficiently regulated, and as a part of the EU accession process.

39. The rapporteurs are of the opinion that Serbia complies with the requirements of Article 2 of the Charter, as the principle of local self-government is well enshrined both in the Constitution and in legislation.

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.

40. According to the requirements set out in the first paragraph of Article 3, local government should be in charge of a substantial part of public affairs. The functions of the autonomous provinces and local self-government units are listed in the Constitution as well as in other relevant laws. In economic terms, local government expenditures have been estimated to correspond to approximately 15% of

total public sector expenditure.⁹ This figure does not include the province of Vojvodina or municipal enterprises financed by other sources of revenue.

41. The second paragraph underlines that local self-government must be carried out through elected councils or through means of direct democracy. As stated in the Constitution (Article 176), the Autonomous Province of Vojvodina and the municipalities and cities all have decision-making assemblies consisting of elected members. The only exceptions are those assemblies which, in accordance with law, have been temporarily dissolved by the government. This issue will be further expanded upon in the section on Article 8.

42. Serbia also has means for provincial and local government units to consult their citizens. The Law on Local Government provides for three forms of direct participation by citizens – citizens' initiatives, citizens' gatherings and referendums. According to the Ministry of Public Administration and Local Self-Government, these means will be reinforced in the amended Law on Local Self-Government.

43. Given the significant number of functions carried out by provincial and local government, together with the economic relevance of these activities for the country as a whole, the rapporteurs consider that local authorities do carry out a substantial share of public affairs under their own responsibility. Although an established definition of "substantial" is lacking in both the Charter and its Explanatory Report, provincial and local government units have a share that corresponds to what is common in other countries in South-East Europe. Therefore, the rapporteurs conclude that Serbia meets the requirements of Article 3 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.* (Not ratified by Serbia)
- 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.* (Not ratified by Serbia)
- 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.

44. Article 4, on the scope of local self-government, establishes the general principles for allocating responsibilities to local authorities.

45. The delegation recalls that Serbia has not ratified paragraphs 3 and 5 of Article 4 (see *supra*, paragraph 3 of the present report), in particular paragraph 3 on the principle of subsidiarity, as it is deemed to be incompatible with Article 177 of the Constitution.

46. The first paragraph of Article 4 underlines the need for the functions and tasks of local government to be rooted in relevant legislation. The main legislative texts are the Constitution and a number of special laws on local government, as mentioned above. Certain functions are also established through sectoral legislation. Local government in Serbia has no general competence, i.e. scope for taking own initiatives, additional to those competences listed in the laws, a situation which is common in many other European countries.

⁹ The World Bank, 2013: Serbia: Municipal Finance and Expenditure Review, April 17, 2013, Report No. 76855-YF.

47. The second paragraph states that local authorities should, within the limits of the law, have full discretion to carry out their functions. Provinces and local self-government units in Serbia have two types of tasks: original tasks listed in the Constitution, in the Law on Local Government, and in the Statute of the Autonomous Province of Vojvodina; and delegated tasks that local government carries out on behalf of a ministry or – within the Autonomous Province – upon delegation by the National Assembly. The original tasks offer wider discretion as they are only scrutinised with regard to constitutionality and legality. Local authorities also have room for manoeuvre regarding the implementation of delegated tasks, although expediency is additionally subject to scrutiny.

48. During the visit, the issue of the temporary ban on recruitment which has been imposed across the whole public sector was brought to the attention of the rapporteurs. The delegation was informed that recruiting new employees or replacing those who have left, even due to retirement, requires approval from a commission established by the government. This measure is one of several which aim to reduce the size of the public sector and which have been imposed as part of an agreement with the International Monetary Fund. During the meetings held between the rapporteurs and the representatives of local authorities, this measure was flagged as an impediment for local authorities wishing to exercise initiatives relating to any matters not excluded from their competence. As such, it further contributes to the staff shortages already experienced by local authorities. Concerns were expressed over the transparency of decisions to approve or reject requests and their political motivation. The rapporteurs are of the opinion that the criteria for approving the recruitment of staff during the temporary ban are not transparent enough to permit local authorities properly to manage their affairs.

49. The fourth paragraph of Article 4 addresses the problem of overlapping responsibilities and the need to prevent responsibilities from being undermined. On the whole, the delegation's impression is that functions and responsibilities are clear and coherent. Moreover, the on-going process of revision of the legislation that pertains to the autonomous provinces and local self-government units is partly aimed at removing inconsistencies that had not been anticipated when the new legislation was adopted in 2006-2007. During the visit, however, several municipalities explained that their responsibilities in the field of healthcare and education were about to be centralised and thus undermined. The rapporteurs are particularly concerned about a proposal to transfer decision-making powers to the ministries for the appointment of boards and directors, with local government retaining the responsibility for financing these functions but without any control over who is appointed. The delegation is of the opinion that such a transfer, if implemented, will constitute an infringement of Article 4 of the Charter.

50. Paragraph 6 emphasizes that local authorities should be consulted on all matters which concern them. In the previous report, it was noted that although means of consultation were well developed, in particular via the Standing Conference of Towns and Municipalities (SCTM), they nevertheless needed to be consolidated through formal legal standards. It was recommended that Serbia develop relevant legislation to this end. In several meetings, both with ministries and the representatives of provincial and local government, the rapporteurs were informed that the system of consultations had developed in a positive way. The SCTM and relevant government bodies have signed a Memorandum and a Protocol on Cooperation which establish concrete mechanisms for cooperation with the government and the national parliament. Formal cooperation has also been established through the Council for Professional Development of Employees in Local Self-Government. Consultations on economic matters regularly take place through the Intergovernmental Finance Commission, as provided for in the Law on Local Government Finance.

51. The rapporteurs are of the opinion that, while there is still room for improving legislation governing consultations with local government, the existing consultation mechanisms seem to ensure that the views of local government are heard before decisions affecting them are taken.

52. As regards Serbia's compliance with Article 4 of the Charter, the delegation concludes that Serbia complies with the first and sixth paragraphs. However, with regard to discretion and full and exclusive powers enjoyed by local government, the delegation is concerned about the lack of transparency in connection with the temporary ban on recruitment and about the dilution of responsibilities for healthcare and education. In the delegation's opinion, Serbia only partly complies with paragraphs 2 and 4 of Article 4.

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.

53. The article stipulates that any changes to the territory of local authorities require consultation with the community, via a referendum if possible. The Serbian constitution is clear on such matters, with Articles 188 and 189 providing sufficient guarantees for the legal protection of the boundaries of local authorities. The territory of a local self-government unit is determined by law, and any establishment, revocation or alteration of territory can only be undertaken after a referendum. There have been no cases of territorial changes in recent years. The rapporteurs conclude that Serbia complies with Article 5 of the Charter.

4.5. Article 6: Appropriate administrative structures and resources

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. (Not ratified by Serbia).
- 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. (Not ratified by Serbia).

54. The delegation recalls that Serbia has not ratified Article 6 of the Charter (see *supra* para. 3 of the report). However, during meetings with the representatives of municipalities, the rapporteurs were informed about difficulties in recruiting high-quality specialised staff, notably due to low remuneration and the current ban on recruitment. In this context, the rapporteurs would like to remind the Serbian authorities that inadequate local human resources risk undermining the local authorities' ability to properly manage their affairs and implement large-scale reforms, notably in respect of the EU accession process. Municipal representatives also raised the issue of the persistent need to train staff in the municipalities, so as to ensure proper management of their functions and provide a high-quality service to citizens.

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. (Not ratified by Serbia)
- 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.

55. The delegation recalls that paragraph 2 of Article 7 on appropriate financial compensation has not been ratified by Serbia (see *supra*, para. 3 of the present report)

56. The first paragraph of Article 7 emphasizes the importance of the independence of locally elected representatives. As underlined in the Explanatory Report to the Charter, representatives must not be subject to any interference from third parties when carrying out their functions. The status of the local assembly is protected by the Constitution. Further regulations on the status of elected representatives are to be found in the Law on Local Self-Government. The Constitution also proclaims the right of national minorities to be represented in the autonomous provinces and local self-government units with mixed nationalities.

57. The third paragraph states that any condition deemed incompatible with holding local elective office must be determined by law. Serbian law stipulates that employees of the municipal administration cannot simultaneously be members of the municipal assembly. Further, if a member of the assembly is appointed as mayor, deputy mayor or a member of the municipal council, they must relinquish their elected office.

58. The rapporteurs are of the opinion that Serbia generally complies with the ratified paragraphs of Article 7 of the Charter.

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. (Not ratified by Serbia).

59. The delegation recalls that paragraph 3 of Article 8 on the proportionality of supervision has not been ratified by Serbia (see *supra*, para. 3 of the present report). This article is concerned with the administrative supervision of local government that is carried out by other levels of government. The Explanatory Report to the Charter explicitly emphasizes that the article does not deal with supervision by ombudsmen or other official bodies of investigation. In the Serbian case, this means that this article is not relevant for the office of Ombudsman, nor the State Audit Institution, despite the important scrutinizing functions that both have in relation to local government. The Ombudsman, following complaints by citizens, oversees how local government units carry out delegated powers, while the State Audit Institution performs financial audits and the auditing of any irregularities within local government.

60. Paragraphs 1 and 2 both state that administrative supervision must comply with the law. The second paragraph also makes a distinction between ensuring compliance and expediency, with the latter only being possible in relation to delegated tasks. In Serbia, this corresponds to the distinction between original and delegated tasks.

61. Administrative supervision of local government is conducted by the Ministry of Public Administration and Local Self-Government, more specifically by the Administrative Inspectorate. This includes regular monitoring of the implementation of laws, regulations and administrative procedures. In special cases, the Law on Local Self-Government makes it possible for the government to suspend the execution of a general decision taken by any unit of local self-government if the government considers such an act to be incompatible with the Constitution or the law (Articles 81-84).

62. According to the same Law on Local Self-Government, the government can also dissolve a local government assembly (Articles 85-87). This is possible in three circumstances: 1) if the assembly holds no sessions for a period longer than three months; 2) if the assembly does not enact a statute or budget within the deadline stipulated by law; and 3) if the assembly fails to elect a president of the municipality and municipal council within one month from the day of its establishment or from the day of their dismissal/dissolution or resignation. If any of these criteria are met, and the assembly is dissolved, the government should appoint a temporary body in its place. However, the temporary body can only take decisions regarding "current and urgent affairs." Between 2008 and 2014, 13 local government assemblies were dissolved; most of them at the beginning of the period.

63. Administrative supervision of local government in Serbia takes place according to law, as stipulated by Article 8 of the Charter. It is also an encouraging sign that the strict measure of dissolving local assemblies is now being used more sparingly. Although Serbia has not ratified paragraph 3, Article 8, regarding the proportionality of administrative supervision, the act of dissolving

an elected assembly would most likely be interpreted as a disproportionate response to a failure to act by the local authority. During the consultation process the Ministry of Public Administration and Local Self-government argued that this measure is foreseen by the Constitution, and conditions for its implementation set up in Law are very restricted, namely, it can only be introduced when citizen's right to local self-government is compromised. Nevertheless, the rapporteurs are concerned about the unclear powers of the temporary bodies that replace such dissolved assemblies. There seem to have been cases where the temporary body has remained in power longer than permitted and has taken decisions that are neither current nor urgent. The Constitutional Court concluded that it was for the temporary body itself to define what was "urgent" and thus to determine the limits of its powers. These ambiguous conditions reflect a lack of regulation which, in the opinion of the rapporteurs, paves the way for an abuse of power. As this concerns local assemblies, it affects the very heart of local, democratic self-government. Therefore, the rapporteurs consider this to be an infringement and a sign of non-compliance with paragraph 1 of Article 8 of the Charter.

4.8. Article 9: Financial resources

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.
- 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.

64. Article 9 of the Charter consists of eight paragraphs which deal with various aspects of local government finances. It is essential for local democracy and self-government that local government has financial resources so that it can carry out its functions. The paragraphs of the article will be handled thematically, beginning with autonomy and access to independent and adequate resources, including taxes (paragraphs 1, 2, 3 and 4); continuing with grants and equalisation (paragraphs 5, 6 and 7); and borrowings (paragraph 8); following which the rapporteurs' conclusions will be summarised.

65. Provincial and local government in Serbia is financed mainly by local taxes, shared taxes, transfers and grants. In 2015, 39% of local government income came from shared personal income taxes, 16% from local property taxes and 5% from other taxes. Transfers and grants represented 17% of this income, with 22% coming from other sources. The Autonomous Province of Vojvodina has a constitutional right to receive "at least 7% in relation to the budget of the Republic of Serbia" (Constitution, Article 184). Hence, transfers and grants are the main sources of revenue, representing 64% of income (2015). In addition, the autonomous province receives 9% of its income from shared personal income taxes, 10% from local property taxes and 17% from other sources.

66. The first four paragraphs of the article provide that local authorities should have adequate resources of their own and that these should be sufficient for the functions that local authorities are obliged to carry out. They should be able to set the rates of local taxes and charges. Resources should also be neutral with regard to economic fluctuations, such as changes in the rate of inflation.

67. Income tax is the largest source of revenue for local government in Serbia and is shared between local government and the State. The Law on Local Government Finance specifies the shares received by each level of government. The agreement between Serbia and the International Monetary Fund, aimed at stabilising public finances – partly by reducing local government spending – has led to changes in the law and has reduced the shares allocated to local government. Hence, as of 2016, towns receive 77% (previously 80%), municipalities 74% (also previously 80%) and the city of Belgrade 66 % (previously 70%) of the revenue. These reductions represent a yearly loss of income of 4.8 billion RSD, corresponding to 40 million EUR.

68. Another major source of income for local government is local property tax. This is entirely local so each local assembly can decide on the amount of the tax, but only up to a certain level, as set by the law. Hence, in practice, the room for manoeuvre is very limited.

69. The Autonomous Province of Vojvodina receives almost two-thirds of its revenue on the basis of the constitutional provision stating that the province should receive at least 7% of the state budget. However, the exact method of calculating this percentage is interpreted differently by the province and by the government and is also subject to interpretation by the Constitutional Court. According to the representatives of the province that the delegation met during the monitoring visit, the method that the government uses does not provide sufficient resources for the province. However, a settlement between the Province and the Government seems to be under way, and is to be codified in a Law on Financing the Autonomous Province of Vojvodina.

70. In addition to being unable to adequately finance provincial and local government tasks, many of the interlocutors stressed that reductions in funding had made it more difficult for them to pay competitive wages and to keep or recruit specialised administrative personnel (when permitted to do so). Low wages may also pave the way for corrupt behaviour.

71. Central government funding for local government is the subject of paragraphs 5, 6 and 7 of Article 9 of the Charter. They require transparency of the financial equalisation process and in the way central government funding is calculated, stipulating that local government needs to be consulted on these matters and emphasizing that not all grants should be ear-marked. The grants are regulated in the Law on Local Government Finance. Grants consist of non-categorical transfers (the equalisation transfer, compensation transfer, general transfer and solidarity transfer) and category grants, which are ear-marked for funding certain tasks or expenses.

72. Financial equalisation is achieved through several types of grants. The equalisation transfer is allocated to local government units in which the population's average income per capita is below a certain level. In addition, the least developed local authorities receive a comparatively larger share of the general transfer. In its written reply to the rapporteurs, the Standing Conference of Towns and Municipalities stated that it regards this system as insufficiently transparent. It was claimed that no municipality in Serbia would be able to calculate by itself the amount of transfer funds that it should rightly receive.

73. Most of the grants for local government are general, although the Law on Local Government Finance (Article 45) recognises category grants for special purposes or projects. Several of the interlocutors highlighted transparency problems with the category grants provided by the government. In the very tense economic situation currently experienced by local government, a last resort would be to turn to the Ministry of Finance to apply for support from its reserve fund. However, the criteria for allocating money from this fund seem to be less than clear-cut. This practice has thus been criticised as being arbitrary and non-transparent, and some sources raised concerns that it has been misused for political purposes.

74. On the other hand, consultation mechanisms in connection with central government funding of local government seem to be quite well developed. The Intergovernmental Finance Commission plays an important role in this consultation process.

75. Serbian local government has the right to borrow money on the market within the limits of the law, as stipulated in paragraph 8 of the Charter. However, this is not unrestricted and the government has

set ceilings for local debt, meaning that local government units need approval from the Ministry of Finance before increasing their debt.

76. It may be understandable that local government should shoulder its share of responsibility in Serbia's attempt to achieve economic stability. However, austerity measures and significant budgetary cuts throughout the whole public sector, whilst the functions of local government remain the same, cause difficulties in ensuring commensurate financial resources for local authorities as required in paragraph 2 of Article 9 of the Charter. In addition, until the new law on financing the Autonomous Province of Vojvodina is adopted, the province remains underfinanced in relation to its responsibilities. Local government units collect their own taxes but have limited powers to determine the rates. The rapporteurs also identified several problems relating to the transparency of how state grants are distributed, notably a lack of clear criteria for allocating resources from the reserve fund and a lack of transparency in the system of equalisation.

77. To summarise, the rapporteurs are of the opinion that Serbia generally complies with paragraphs 3, 4, 6 and 8 of Article 9. However, it only partly complies with paragraphs 5 and 7 and demonstrates non-compliance with paragraphs 1 and 2.

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 cooperate 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 cooperate with their counterparts in other States.

78. This article is about legal means for municipalities to form associations. Paragraph 1 concerns inter-municipal cooperation within the country while paragraph 3 refers to associations with local government units in other countries. The need to develop forms of inter-municipal cooperation was emphasized by the Congress after the monitoring visit of 2011, which recommended institutionalising and developing, together with the Standing Conference of Towns and Municipalities, the practice of inter-municipal cooperation and joint delivery of services. It was also suggested that Serbia sign the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No 207).

79. The delegation came across several examples of inter-municipal cooperation both within Serbia and with municipalities outside the country. The rapporteurs believe that Serbia has generally shown good progress in this respect, although various forms of inter-municipal cooperation still need to be developed in order to facilitate more efficient use of resources. In a draft law amending the Law on Local Self-Government, new forms of inter-municipal cooperation have been introduced, with the SCTM involved in its preparation. This will provide a wider range of possibilities for inter-municipal cooperation.

80. The third paragraph of the article sets out the right of local governments to form associations in order to protect and promote common interests. In Serbia, this right is safeguarded in Article 13 of the Law on Local Self-Government. All local authorities are members of the Standing Conference of Towns and Municipalities – National Association of Local Authorities in Serbia, which plays an important role in representing the joint interests of local government in policy-making towards national and EU level (Congress, Joint Consultative Committee with the Committee of the Regions and CEMR), being recognised as a representative of all local authorities. The SCTM also provides training and advice to local authorities, cooperates with donor community and implements EU funded projects (especially manages grant schemes) for local authorities. The Standing Conference is financed by membership fees and donations without funds from the state budget. Another organisation of great significance is NALED – the National Alliance for Local Economic Development – which is a public-private association between local government and businesses. It has a total of 280 members, of which the majority are businesses, but two thirds of all local government units are members of the

organisation. NALED is financed by membership fees and donations and coordinates actions aiming at promoting economic development.

81. In the rapporteurs' view, local authorities' right to associate, as regulated in Article 10, has clearly improved. The findings from the recent visit and the initiatives undertaken in the country since the previous monitoring visit support the delegation's conclusion that Serbia complies with all paragraphs of Article 10 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.

82. Article 11 of the Charter provides that local authorities should have the right to seek a judicial remedy in order to safeguard local self-government. Article 193 of the Constitution stipulates that local authorities "have the right to lodge an appeal with the Constitutional Court if an individual legal act or action by a state body or body of local self-government obstructs performing the competences of the municipality". In addition, the Constitution gives local government units the right to call for an a posteriori review by the Constitutional Court of any legal act or action that would infringe self-government. This protection is further developed in the Law on Local Self-Government (Articles 95-97). The Constitution includes relevant provisions for the protection of provincial autonomy (Article 187).

83. The rapporteurs conclude that the Constitution and the Law on Local Self-Government are appropriate judicial tools for the legal protection of local and provincial autonomy and that Serbia is therefore in conformity with Article 11 of the Charter.

4.11. Other matters with relevance for the protection of local democracy and self-government

84. During the monitoring visit, the rapporteurs encountered a number of additional matters of relevance to provincial autonomy and local self-government that do not directly relate to articles in the Charter or to the Reference Framework, but which, in the opinion of the rapporteurs, should nevertheless be brought to the attention of the Congress.

85. Serbia is a multi-cultural state with considerable levels of cultural diversity. This is the result of several hundreds of years of historical development but also the legacy of more recent events. Serbia accommodated a large number of internally displaced persons after the Balkan wars, and the current refugee crisis, which reached its peak in 2015, has had significant consequences for the country. It was thus only natural that Serbia should develop a system of legal protection for national minorities and provide types of representation that give national minorities a say in national, provincial and local decision-making. Such measures include the right for minorities to be represented in local and provincial assemblies and a system of national minority councils. Diversity is particularly strong in the Autonomous Province of Vojvodina and many of its local authorities, but also in other towns and municipalities in the border areas of the country. The rapporteurs consider that there is good justification to encourage all positive undertakings aimed at accommodating diversity and that the way these are being carried out, in particular at the provincial and local level, can serve as an example of good practice for preserving and protecting cultural diversity in other European countries.

86. The rapporteurs would underline that there is still a need to continue fighting corruption in Serbia, including at local level. This point was confirmed by many interlocutors at both national and local level. Although the delegation received many reports on successful attempts to curb corrupt behaviour, a number of problems remain and need to be addressed further. According to the Anti-corruption Agency,¹⁰ there are a number of areas where the risk of corruption is particularly high. These are: the adoption of regulations and other general acts (the lack of transparency in the preparation, adoption and publication of regulations; the adoption of "regulations with a defined aim"); conflicts of interest (the subordination of public interests to private interests; trading of influence/power bargaining; failure

¹⁰ "Analysis of the Legal Framework for the Risks of Corruption -Local Self-Government", www.acas.rs/wp-content/uploads/2016/12/Analiza-pravnog-okvira-na-rizike-od-korupcije-lokalna-samouprava-FINAL-cir.pdf

to report potential conflicts of interest); a lack of regulation in the field of ethics and integrity; management of public enterprises and other public institutions at the local level; management of public property; rights and responsibilities of users of services; submission of complaints and management of complaints against officers and employees; inspection, supervision planning and construction; and public procurement.

87. During the visit, the delegation observed that noticeable progress has been made in several respects. As anti-corruption policy increasingly focuses on prevention, the most efficient way of doing this is to simplify and automate procedures, thus restricting opportunities for corruption. Such measures are contained in the Action Plan for Accession Negotiations Chapter 23 (Judiciary and Fundamental Rights) between Serbia and the EU. A recent and promising measure is the obligation for all local government units to develop and adopt local anti-corruption plans with concrete anti-corruption measures, which will be monitored by the national agency for the fight against corruption. In cooperation with the SCTM, the agency is developing a detailed template for such a plan, with accompanying guidance notes. Although the rapporteurs consider these measures to be positive, future developments in this area should be closely followed.

5. CONCLUSIONS

88. The Constitution of 2006 defines Serbia as an independent unitary state. The population of Serbia is a mix of many ethnic groups speaking many languages. Since the end of the Balkan wars, Serbia has been on the road to economic recovery. However, the country was severely hit by the financial crisis of 2008 and by another recession in 2012. The government's strategy is to implement measures to improve macroeconomic stability and to continue with structural reform of the public sector, in particular on the basis of the Public Administration Reform Strategy. The refugee crisis which has been ongoing since 2015 has also had a significant impact on Serbia, as Serbia is one of the major transit countries.

89. The Autonomous Province of Vojvodina (see supra para.14) is an autonomous territorial community of the Republic of Serbia in which citizens exercise the right to provincial autonomy, in conformity with the Constitution and law. It makes up about one quarter of Serbian territory and has a rich ethnic diversity with more than 26 ethnic groups and six official languages. The province has its own elected assembly, government and administration.

90. In 2009, Serbia formally applied for membership of the European Union. Accession negotiations began in January 2014. By February 2017, eight out of 35 chapters had been opened and two had been closed. The rapporteurs believe that the EU accession process is having a great impact on modernisation and reform, as well as on provincial and local self-government in the country.

91. Following the previous monitoring visit in 2011, Serbia responded in a positive way to most of the recommendations made by the Congress. The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) has been ratified and the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority has been signed. According to the rapporteurs, the legislation dealing with the status of local government staff has been improved. However, they would like to underline the importance of further implementation in practice of this recently adopted legislation. In addition, Serbia is considering ratifying previously non-ratified articles of the Charter. Other changes in line with the Congress recommendations are also planned, including revising the regulation allowing the government to dismiss municipal assemblies, clarifying the competences and resources of the city of Belgrade, strengthening legal instruments for direct democracy and developing regulations on inter-municipal cooperation.

92. The rapporteurs would also like to emphasise that positive lessons can be learned from Serbia as a multi-cultural state. The delegation observed many good examples of how diversity can be accommodated, managed and regarded as a positive resource, including at the provincial and local government levels, which may serve as good practices for a culturally diverse Europe.

93. Finally, the delegation noted that a clear effort has been made to develop policies aimed at curbing corruption, for example the requirement for each local government unit to establish local anti-corruption plans.

94. The delegation has also identified a number of issues of non-compliance with the Charter. For example, the rapporteurs consider that the regulations in respect of the temporary ban on recruitment need to be clarified with regard to the criteria for approving or rejecting applications.

95. The rapporteurs are concerned about the proposal to transfer responsibility for appointing boards and directors of healthcare and education bodies from local to central government. They consider this to be a sign of centralisation which undermines local government responsibility for these functions and is incompatible with Article 4, paragraph 4 of the Charter.

96. As Serbian law still gives the government the right to dismiss locally elected assemblies under certain conditions, the rapporteurs consider it indispensable that the powers of the temporary body that replaces the assembly should be clarified in the legislation.

97. Local government revenue has been drastically reduced in recent years in order to contribute to the stabilisation of the Serbian economy. However, as the functions of local self-government have remained the same, local authorities lack adequate resources for carrying them out. The rapporteurs hope that the financial restrictions on local government will be lifted as soon as possible.

98. The constitutional provision stating that the Autonomous Province of Vojvodina should receive at least 7% of the state budget has long been a contentious matter and needs to be settled. A Law on Financing the Autonomous Province of Vojvodina should be adopted to ensure that the province receives adequate financial resources.

99. The lack of transparency in the equalisation system and in the distribution of state grants is a matter of concern. It is a positive factor that local authorities may receive additional resources from a reserve fund at the Ministry of Finance. However, the criteria for distributing resources from this fund should be legally codified and made more transparent.

100. The delegation welcomes the recent signature by Serbia of the Additional Protocol to the Charter and encourages the Serbian authorities to ratify it.

APPENDIX – Programme of the Congress monitoring visit to Serbia

**CONGRESS MONITORING VISIT TO THE REPUBLIC OF SERBIA
Belgrade, Novi Sad, Kovačica (28 February – 2 March 2017)**

PROGRAMME

Congress delegation:

Rapporteurs:

Ms Lucia KROON

Rapporteur on local democracy
Chamber of local authorities, EPP/CCE¹¹
Mayor of Waterland,
The Netherlands

Mr Sören SCHUMACHER

Rapporteur on regional democracy
Chamber of regions, SOC¹²
Member of the Hamburgische Bürgerschaft,
Germany

Congress secretariat:

Ms Svitlana PEREVERTEN

Co-secretary to the Monitoring Committee of
the Congress of Local and Regional
Authorities of the Council of Europe

Expert:

Mr Anders LIDSTRÖM

Member of the Group of Independent Experts
on the European Charter of Local Self-
Government, Sweden

Interpreters:

Ms Biljana OBRADOVIĆ
Ms Dušica LISJAK
Ms Slavica UROŠEVIĆ

The working languages, for which interpretation is provided during the meeting, will be Serbian and English

¹¹ EPP/CCE: European People's Party Group in the Congress
¹² SOC : Socialist Political Party Group in the Congress

**Monday 27 February 2017
Belgrade**

Arrival of the Congress delegation

**Tuesday 28 February 2017
Belgrade**

- **Joint meeting with the National Delegation to the Congress, Association of Standing Conference of Towns and Municipalities, Independent Experts**
 - **Mr Robert FEJSTAMER**, President of the Municipality of Kanjiza
 - **Mrs Minja OBRADOVIĆ**, Member of the City Council of Kragujevac
 - **Mr Sasa PAUNOVIĆ**, Deputy Head of Delegation, President of the Municipality of Paracin
 - **Mrs Jelena TRIFUNOVIĆ**, President of the Municipality of Svrljig
 - **Mrs Aleksandra POPOVIĆ**, President of the Municipality of Surdulica
 - **Mr Vladan VASIĆ**, Mayor of the City of Piroć
 - **Mr Zoran PERIŠIĆ**, Head of the Serbian delegation, Member of the City Assembly of Nis
 - **Mr Zoran ALIMPIĆ**, Member of the City Assembly of the City of Belgrade
 - **Mrs Dušica DAVIDOVIĆ**, Member of the City Assembly of the City of Nis
 - **Mrs Maja SEDLAREVIĆ**, Member of the Assembly of the Autonomous province of Vojvodina
- **Association of Standing Conference of Towns and Municipalities:**
 - **Mr Djordje STANIČIĆ**, Secretary General
 - **Mr Ivan BOŽOVIĆ**, Adviser for EU Integration
 - **Ms Aleksandra VUKMIROVIĆ**, Head of Unit for EU Integration and International Cooperation and Secretary to the National Delegation in the Congress
 - **Ms Jana PAVLOVIĆ**, Advisor for International Cooperation
- **Independent Experts (GIE):**
 - **Dr Jelena JERINIĆ**, Member

Ministry of Public Administration and Local Self-Government

- **Mr Željko OŽGOVIĆ**, State Secretary
- **Ms Irena POSIN**, Senior Advisor
- **Mr Saša MOGIĆ**, Assistant Minister for Local Self-Government

Joint meeting Belgrade City Hall and Belgrade City Assembly

- **Mr Andreja MLADENOVIĆ**, First Deputy Mayor of Belgrade City
- **Mr Slobodan MILOSAVLJEVIĆ**, Deputy Mayor in charge of finance
- **Ms Vesna IVIĆ**, member of the City Council
- **Ms Jelena TANASKOVIĆ**, Secretary to the Secretariat for Finance
- **Ms Nataša STANISAVLJEVIĆ**, Secretary to the Secretariat for Social Welfare
- **Mr Zoran RELJIN**, Head of Analytics and Norms Department in the Secretariat for Administration
- **Ms Snežana LAZAREVIĆ**, International relations, Cabinet of Mayor

Joint meeting with Novi Pazar and Leskovac

- **Mr Nihat BIŠEVAC**, Mayor of Novi Pazar
- **Mr Mirsad DJERLEK**, President of the Novi Pazar City Assembly
- **Mr Zoran VUKAJINOVIĆ**, Secretary to the Leskovac City Assembly

**Wednesday 1 March 2017
Belgrade**

Ministry of Finance

- **Ms Jelena STOJOVIĆ**, State Secretary in the Ministry of Finance, in charge of the European Union affairs
- **Ms Tatjana MILIVOJEVIĆ**, Budget Department
- **Mr Ivan ĐOLEVIĆ**, Department for property and legal issues
- **Ms Jelena DAVIDOVIĆ**, Department for property and legal affairs
- **Ms Sanja MEŠANOVIĆ**, Department for International Cooperation and European Integration
- **Ms Sanja AMANOVIĆ**, Department for International Cooperation and European Integration
- **Ms Dina MOMČILOVIĆ BALABAN**, Department for International Cooperation and European Integration

National Assembly

- **Dr Aleksandra TOMIĆ**, President, Committee on Finance, State Budget and Control of Public Spending
- **Ms Jelena SUDIMAC**, Advisor, Foreign Affairs Department

State Audit Institution

- **Mr Radoslav SRETENOVIĆ**, President Auditor General
- **Dr Duško PEJOVIĆ**, Supreme State Auditor
- **Ms Iva VASILIĆ**, Head of the Office of the President

Constitutional Court

- **Ms Vesna ILIĆ-PRELIĆ**, President
- **Mr Bratislav ĐOKIĆ**, Judge
- **Ms Vesna BABIĆ**, Head of Office

Ombudsman (Protector of Citizens)

- **Ms Vladana JOVIĆ**, Deputy Ombudsman
- **Ms Tanja DLESK**, Assistant Secretary General
- **Ms Jelena UNIJAT**, National Preventive Mechanism Secretary
- **Ms Katarina JOKIĆ**, Senior Advisor

NALED – National Alliance for Local Economic Development

- **Mr Goran KOVAČEVIĆ**, President of NALED Managing Board
- **Prof. Dr. Vladimir MARINKOVIĆ**, Deputy Speaker of the National Assembly
- **Mr Nebojša ZELENOVIĆ**, Mayor of the city of Šabac
- **Mr David LITHGOE**, President of NALED Ethics Committee
- **Ms Violeta JOVANOVIĆ**, Executive Director
- **Ms Jelena BOJOVIĆ**, Policy Director
- **Ms Tatjana VOLAREV**, Programme Coordinator

**Thursday 2 March 2017
Novi Sad**

Autonomous Province of Vojvodina

- **Mr Igor MIROVIĆ**, President of the Provincial Government
- **Mr Ištvan PASZTOR**, President of the Assembly
- **Mr Sandor EGERESI**, Acting Assistant Provincial Secretary for Regional Development, Interregional Cooperation and Local Self-Government
- **Ms Senka BENGIN**, Adviser to the President of the Provincial Government
- **Ms Snežana KRESOJA**, Advisor to the President of the Assembly
- **Ms Jelena SAVKOVIĆ**, Chief of PR Office of the Assembly

City of Novi Sad

- **Mr Milos VUČEVIĆ**, Mayor
- **Mr Zdravko JELUŠIĆ**, President of the City Assembly
- **Mr Aleksandra RADAČ**, Member of the City Council, in charge for Budget and Finances
- **Mr Milan ĐURIĆ**, Member of the City Council in charge of Administration and Regulations

Kovačica Municipality

- **Mr Milan GARAŠEVIĆ**, Mayor
- **Mr Zlatko ŠIMAK**, President of the Municipal Assembly
- **Mr Jan HUSARIK**, Deputy Mayor

**Friday 3 March 2017
Belgrade**

Departure of the Congress delegation