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Report
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Local democracy in Lithuania

Monitoring Committee

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Summary

This report is prepared following the third monitoring visit organised by the Congress since Lithuania ratified the European Charter of Local Self-Government in 1992.

The rapporteurs highlight an overall positive situation of local self-government in Lithuania. They note with satisfaction that Lithuania has applied significant efforts in the field of decentralisation, has anchored core principles of local self-government in the legislation, and has made progress in extending the municipalities' rights in managing State-owned land. In addition, local authorities and their Association (ALAL) are now regularly consulted, and citizens' participation in public decision making has been strengthened.

However, the report points out that in practice, many legal regulations tend to restrict municipal autonomy and local authorities' ability to act independently. In spite of a quick economic recovery from the financial crisis and increasing local budgets, local authorities' financial resources are still not commensurate with their responsibilities. The rapporteurs note that Vilnius still does not enjoy a special legal status as a capital city and the administrative capacities and functions of the Regional Development Councils remain limited.

Consequently, the rapporteurs recommend to the Lithuanian national authorities, *inter alia*, that they ensure a better implementation of the subsidiarity principle in practice, allocating sufficient resources to municipalities and providing them with access to capital markets for investment expenditure. They also suggest recognising the right of the Association to initiate legal proceedings before administrative courts and further developing citizens' participation at sub-municipal level.

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 420(2018)²

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

a. Article 2, paragraph 1.b, of the Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that one of the aims of the Congress is to “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the 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. Chapter XVII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the appended explanatory memorandum on local democracy in Lithuania.

2. The Congress points out that:

a. Lithuania joined the Council of Europe on 14 May 1993. It signed and ratified the European Charter of Local Self-Government (ETS 122, hereafter “the Charter”), in all its provisions, without declaration, on 22 June 1992. The Charter came into force in Lithuania on 14 September 1997;

b. The Committee on the Honouring of Obligations and Commitments by member states of the European Charter of Local Self-Government (hereinafter referred to Monitoring Committee) decided to examine the situation of local democracy in Lithuania in the light of the Charter. It instructed Mr Artur Torres Pereira, Portugal (L, EPP/CCE) and Mr Sigurdur Bjorn Blondal, Iceland (R, ILDG), with the task of preparing and submitting to the Congress a report on local democracy on Lithuania. The delegation was assisted by Prof. Tania Groppi, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

c. The monitoring visit took place the 23 and 24 January 2018. During the visit, the Congress delegation met the representatives of various institutions. The detailed programme of the visit is set out in the appendix to this document;

d. The co-rapporteurs wish to thank the Permanent Representation of Lithuania to the Council of Europe and all those whom it met during the visit for their readiness to assist the delegation and for the information, they so willingly supplied.

3. The Congress notes with satisfaction that:

a. The present situation of local self-government in Lithuania deserves an overall positive assessment;

b. Lithuania signed and ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of local authority;

c. the case-law of the Constitutional Court includes frequent references to the Charter, thus ensuring its applicability;

d. the subsidiarity principle has been laid down in legislation;

e. local authorities and their Association (ALAL) are regularly consulted by the government;

f. progress has been made in extending the municipalities' rights in managing State-owned land;

² Discussed and approved by the Chamber of Local Authorities on 6 November 2018, and adopted by the Congress on 7 November 2018, 2nd sitting (see Document CPL35 (2018)02, explanatory memorandum), rapporteurs: Artur TORRES PEREIRA, Portugal (L, EPP/CCE) and Sigurdur Bjorn BLONDAL, Iceland (R, ILDG).

g. the budgets of the municipalities are recovering after the crisis and experienced a significant growth in 2018;

h. citizens' participation has been strengthened by new rules on local surveys and on the elders;

i. there is an ongoing discussion, both at national and local level, on the strengthening of the Regional Development Councils and the possibility of establishing a second tier of local government.

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

a. although the subsidiarity principle has been included in legislation, it is not fully implemented in practice, as some interferences by State authorities within the municipal independent functions undermine the attribution to local authorities of full and exclusive powers;

b. although progress has been made in extending the municipalities' rights in managing State-owned land, they still do not have the full possibility to manage those lands, which would enable them to promote territorial development;

c. notwithstanding the quick recovery from the financial crisis and the improvement of the resources allocated to municipalities since 2013, those resources are not concomitant to the responsibilities which are vested in local government and the access to capital markets for municipalities is extremely limited;

d. even if the system of consultation is good in general terms, in too many cases the deadline for receiving the local authorities' comments and suggestions on proposed measures is too short, thus limiting the capacity of local authorities to make meaningful and reasoned comment;

e. the ALAL does not have the power to lodge applications to administrative courts for review of the legality of a regulatory administrative act infringing local self-government rights;

f. citizens' participation remains weak and the municipalities are not considered close to their needs by the residents;

g. Vilnius still does not enjoy a special legal status as a capital city;

h. the Regional Development Councils still do not have an administrative apparatus and their functions remain limited.

5. In light of the above, the Congress requests that the Committee of Ministers invite the authorities of Lithuania to:

a. ensure that the subsidiarity principle is applied in practice, by recognising to the municipalities full and exclusive powers and by reducing interferences by State authorities within the municipal independent functions;

b. ensure that the functions of the planning of land use and of the disposal of the State-owned land will be transferred to the municipalities as quickly as possible, once the existing transitional status comes to an end;

c. ensure the allocation of sufficient resources to the municipalities, respecting the principle that the resources should match the functions and giving municipalities access to capital markets for investment expenditures;

d. recognise the right of ALAL to lodge an application for review of the legality of a regulatory administrative act infringing the local self-government rights;

e. further encourage and develop citizens' participation at sub-municipal level;

f. relaunch the debate in the *Seimas* to give Vilnius a particular status in the law, in accordance with its position as capital city;

g. take measures to further develop the regional tier, increasing the competences and the capacities of their administrative apparatus.

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

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2015) 9 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter referred to as “the Congress”) regularly prepares reports on the state of local and regional democracy in all Council of Europe member states.

2. Lithuania is one of the parties to the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”). Concretely, Lithuania joined the Council of Europe on 14 May 1993 and ratified the Charter, without declaration, on 22 June 1999, with entry into force on 1 October 1999.

3. In the field of local and regional democracy, Lithuania has also signed and ratified the following Council of Europe Treaties and Protocols:

- the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS 106) on 13 June 1997, with entry into force on 14 September 1997.
- the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS 159) on 30 March 2001 and ratified it on 26 November 2002. It came into force on 27 February 2003.
- 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 16 November 2009 and ratified it on 26 July 2012.

4. The Chair of the Committee on the Honouring of Obligations and Commitments by member states of the European Charter of Local Self-Government of the Congress appointed Mr Artur Torres Pereira, Portugal (L, EPP/CCE) and Mr Sigurdur Bjorn Blondal, Iceland (R, ILDG), as rapporteurs, and instructed them to prepare and submit to the Congress such a report. An official monitoring visit in Lithuania was carried out by the aforementioned rapporteurs. The delegation was accompanied by a representative of the Congress secretariat and was assisted by Prof. Tania Groppi (expert). The rapporteurs wish to express their thanks to the expert for her assistance in the preparation of this report. This group of persons will be hereinafter referred to as “the Delegation”.

5. The monitoring visit took place on 23 and 24 January 2018. During the visit, the Congress delegation met representatives of authorities at all territorial levels, experts, mayors and municipal councillors, representatives of the government, ministries and other institutions. The detailed programme of the visit is appended to the present report.

6. The delegation would like to thank all interlocutors whom they met during the visit, for their warm welcome and the valuable information provided to the delegation during the meetings.

2. HISTORICAL BACKGROUND, POLITICAL SITUATION AND REFORMS

2.1 *Historical background*

7. The State of Lithuania dates back to the XIII century, when Lithuanian lands were united under the King Mindaugas in 1236. Over the next century, through alliances and conquest, Lithuania extended its territory to include most of present-day Belarus and Ukraine. By the end of the 14th century, Lithuania was the largest state in Europe. An alliance with Poland in 1386 led the two countries into a union through the person of a common ruler. In 1569, Lithuania and Poland formally united into a single dual state, the Polish-Lithuanian Commonwealth. This entity survived until 1795 when its remnants were partitioned by surrounding countries: the greater part of Lithuania went to the Russian Empire. Lithuanian lands remained under Russian rule until the First World War, when they were occupied by German troops³.

8. Lithuania proclaimed its independence in 1918, which was recognised by the Russian Federation when signing the Peace Treaty in 1920. In the period 1940-1944, the country suffered subsequently the invasions of the Soviet Army (1940), the German Army (1941) and the Soviet Army again (1944).

³ https://www.cia.gov/library/publications/the-world-factbook/geos/print_lh.html

After World War II, and for more than five decades, the country was occupied and became a part of the former USSR.

9. On 11 March 1990, Lithuania became the first of the Soviet republics to declare its independence, which was recognised by the Soviet Union in 1991. The country was admitted to the United Nations in September 1991, joined the Council of Europe in 1993 and the European Union and NATO in 2004. In 2015, Lithuania joined the euro zone.

10. As to relations with its neighbours, Lithuania is an active member in the cooperation between Northern Europe countries. Its relations with Russia were normalised with the signing of the Agreement on the Foundations of Inter-State Relations in July 1991 and Russian troops left Lithuanian territory in 1993. The problem of civilian and military transit to and from the Russian region of Kaliningrad (now an 'exclave') was resolved in early 1995. A border agreement was signed in 1997.

11. Lithuania has an area of 65,286 km² and a total population of roughly 2,805,418 inhabitants,⁴ of whom 84.1% are ethnic Lithuanians, 6.6% are Poles, 5.8% Russians, 1.2% Belarusians (2011 est.). All of them are citizens of Lithuania and no complaints have been raised during the monitoring visit on the rights of those minorities.

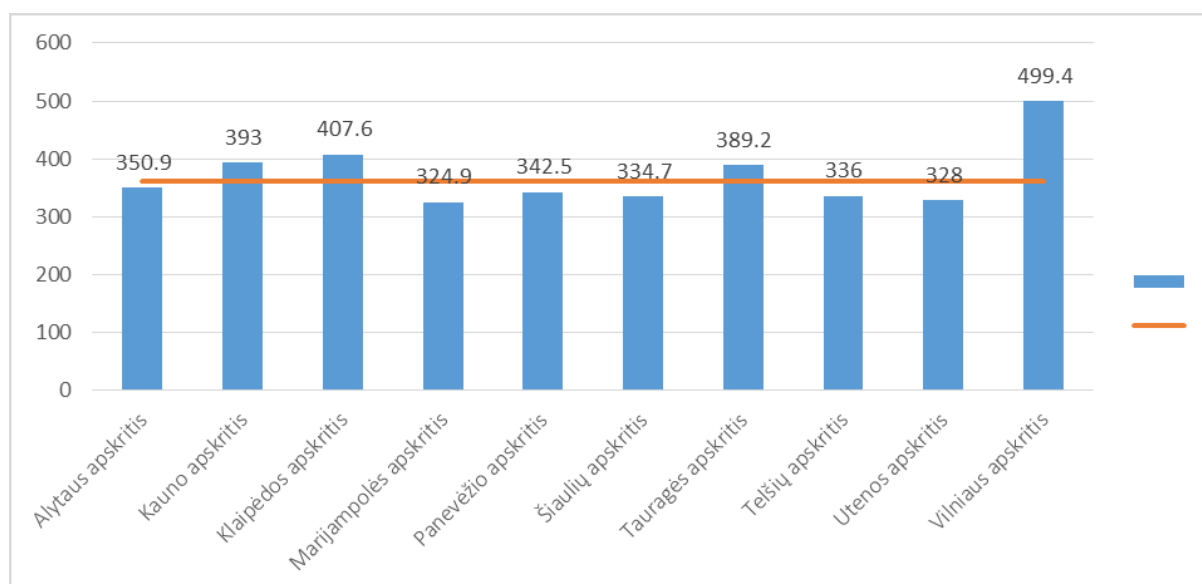
12. Lithuania experienced an important economic growth after the independence, especially after accession to the European Union, coupled with the rapid modernisation of the economy. Domestic consumption and foreign investment were the main drivers of the country's economic growth. The global financial crisis that began in 2008 harshly affected Lithuania, with its GDP falling by 16.8% in 2009. Still, since 2011 Lithuania has experienced the fastest recovery in Europe, thanks to the economy's high flexibility, a well-performing banking system and a diversified industrial sector.⁵ Nevertheless, the poverty rate remains high, especially among the disabled, pensioners, in particular older women, and the unemployed, primarily due to weak protection provided by the social welfare system.⁶ Inequality of incomes in Lithuania is one of the highest in the EU, and has been increasing since 2012. In addition, there is an important regional disparity and the income level in many counties (6 out of 10) is below the (average) amount specified by the residents themselves that they require to meet their normal needs.⁷

4 <https://osp.stat.gov.lt/pradinis>

5 <https://www.oecd.org/eco/surveys/Lithuania-2016-overview.pdf>

6 European Commission, Commission Staff Working Document Country Report Lithuania 2017, SWD(2017) 80 final.

7 See Lithuanian Regional Policy for harmonious and sustainable development, 2017-2030, White Paper Approved at the 15 December 2017 meeting of the National Regional Development Council, p. 11: [https://vrm.lrv.lt/uploads/vrm/documents/files/ENG_versija/Lithuanian%20Regional%20Policy%20\(White%20Paper\).pdf](https://vrm.lrv.lt/uploads/vrm/documents/files/ENG_versija/Lithuanian%20Regional%20Policy%20(White%20Paper).pdf).

Table 1. Household income by region

Source: White Paper (2017)

13. Since the 1990s, Lithuania lost almost one-quarter of its population, which makes it one of the countries with the greatest population decline in the world.⁸ A low fertility rate, high mortality and significant emigration have all been contributing factors.

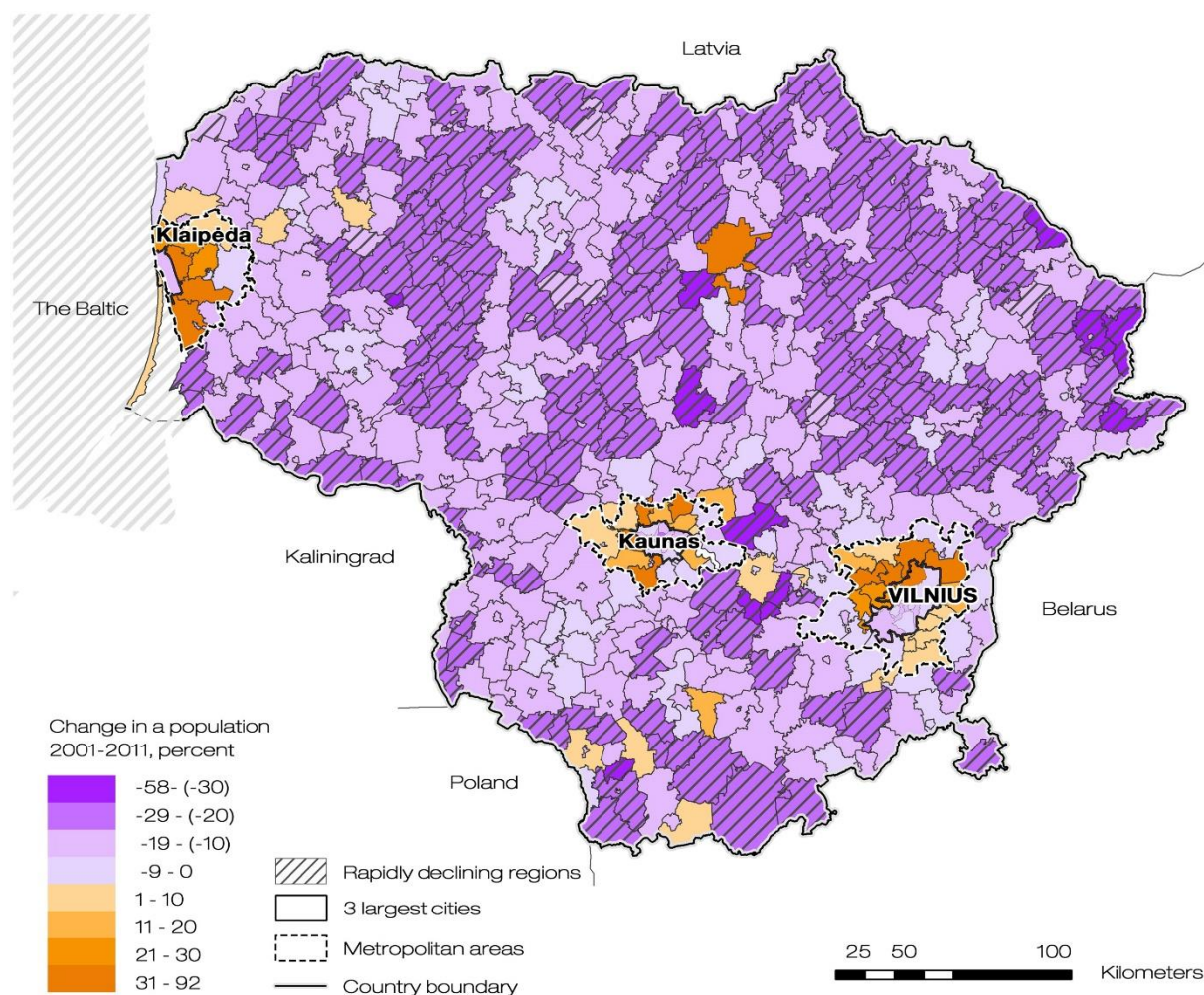
14. Especially, since Lithuania's admission into the European Union, large numbers of Lithuanians (up to 20% of the population) have moved abroad in search of better economic opportunities. The massive emigration of young and educated people creates a significant demographic problem: skills shortages are emerging due to declining working-age population and high emigration.⁹

15. Mainly, as a result of the emigration, some regions within the country lost more than 50% of their residents. The pattern of population change in Lithuania shows a concentration of population in the metropolitan areas of Vilnius (635,480), Kaunas (392,313) and Klaipėda (210,635) (based on the 2011 Lithuanian census) and a sharp decline in peripheral rural regions.¹⁰ Such a sharp population decline, resulting in increasing regional differences, poses major challenges to politicians, policy-makers and planners and it is one of the main issues in the political discourse in Lithuania.

⁸ United Nations. (2015). *World Population Prospects: The 2015 Revision*. United Nations, Department of Economic and Social Affairs, Population Division.

⁹ <https://ec.europa.eu/info/sites/info/files/2017-european-semester-country-report-lithuania-en.pdf>

¹⁰ Rūta Ubarevičienė & Maarten van Ham (2017) Population decline in Lithuania: who lives in declining regions and who leaves, *Regional Studies*, Regional Science.

Table 2. Population change in Lithuania 2001-11

Source: Rūta Ubarevičienė (2017)

2.2 Political situation and reforms

16. According to the 1992 Constitution, Lithuania is “an independent democratic Republic” (Article 1). The form of government of Lithuania is semi-presidential¹¹: the head of State is the President of the Republic, who is directly elected by the people for a five-year term and serving a maximum of two terms. The current President, Dalia Grybauskaitė was elected on 17 May 2009, becoming the first female president in the country's history, and the second female head of state in the Baltic States after Latvia in 1999. Dalia Grybauskaitė was re-elected for a second term in 2014. Next presidential election is scheduled to be held in May 2019.

17. The President oversees foreign policy and national security, and is the commander-in-chief of the military. The President also appoints and dismiss, upon the assent of the parliament (*Seimas*) the prime minister and, on the latter's submission, the rest of the cabinet, as well as a number of other top civil servants.

18. The government consists of the Prime Minister, who is the head of government, and of the ministers. The Prime Minister, within 15 days of his appointment, shall present to the *Seimas* the Government which he has formed and which has been approved by the President of the Republic, and shall present its programme to the *Seimas* for consideration. The Government shall return its powers to the President of the Republic after the *Seimas* elections or upon election of the President of the Republic. A new Government shall receive the powers to act after the *Seimas* gives assent to its programme by majority vote of the Members of the *Seimas* participating in the sitting.

¹¹ Raunio, Tapio & Sedelius, Thomas. (2017). Shifting Power-Centers of Semi-Presidentialism: Exploring Executive Coordination in Lithuania. Government and Opposition.

19. The current Prime Minister is Saulius Skvernelis, which assumed the office on 13 December 2016. The current Government is the 17th Government since the independence in 1990. Following the elections in 2016, the Lithuanian Farmers and Greens Union is the largest party in the *Seimas*, forming a ruling coalition with the Social Democratic Labour Party of Lithuania.

20. The *Seimas* of the Republic of Lithuania is the unicameral parliament of Lithuania. The *Seimas* constitutes the legislative branch in Lithuania, enacting laws and amendments to the Constitution, passing the budget, confirming the Prime Minister and the Government and controlling their activities. Its 141 members are elected for a four-year term, with 71 elected in individual constituencies, and 70 elected in a nationwide vote based on proportional representation. A party must receive at least 5%, and a multi-party union at least 7%, of the national vote to qualify for the proportional representation seats. Elections last held on 9 and 23 October 2016 (next to be held in October 2020).

21. The judiciary is made up of courts of general jurisdiction and courts of special jurisdiction. The Supreme Court of Lithuania, the Court of Appeal of Lithuania, regional courts and district courts are courts of general jurisdiction dealing with civil and criminal cases. The Supreme Administrative Court of Lithuania and regional administrative courts are courts of special jurisdiction hearing disputes arising from administrative legal relations.

22. The Supreme Court of Lithuania is the only court of cassation instance for reviewing effective judgements, decisions, rulings and orders of the courts of general jurisdiction. It develops a uniform court practice in the interpretation and application of laws and other legal acts. The Supreme Administrative Court develops a uniform practice of administrative courts in the interpretation and application of laws and other legal acts.

23. The 1992 Constitution, for the first time in the history of Lithuania, introduced a Constitutional Court, following the European model of constitutional justice, according to which constitutional review is carried out by a specialized institution.

24. The Constitutional Court consists of nine justices. The *Seimas* appoints an equal number of justices to the Constitutional Court from the candidates nominated by the President of the Republic of Lithuania, the Speaker of the *Seimas*, and the President of the Supreme Court. The *Seimas* appoints the President of the Constitutional Court from among the justices thereof upon the nomination by the President of the Republic. They serve 9-year, non-renewable terms. One-third of membership is reconstituted every 3 years.

25. The Constitutional Court ensures the supremacy of the Constitution within the legal system as well as constitutional justice by deciding, *a posteriori*, whether the laws and other legal acts adopted by the *Seimas* are in conformity with the Constitution, and whether the acts adopted by the President of the Republic or the Government are in compliance with the Constitution and laws.

26. The right to file a petition with the Constitutional Court concerning the constitutionality of a legal act is vested in: (1) the Government, groups consisting of at least 1/5 of all members of the *Seimas*, and the courts for cases concerning a law or other act adopted by the *Seimas*; (2) groups consisting of at least 1/5 of all members of the *Seimas* and the courts for cases concerning an act of the President of the Republic; and (3) groups consisting of at least 1/5 of all members of the *Seimas*, the courts, and the President of the Republic for cases concerning governmental acts.

27. An important constitutional law was adopted, according to Article 69.2 of the Constitution, on 6 November 2014¹², following the ratification of the "Fiscal Treaty" (Treaty on Stability, Coordination and Governance in the Economic and Monetary Union), on 28 June 2012. The Treaty was ratified by an ordinary law adopted by the *Seimas*, through an expedited procedure, with 80 votes in favour, 11 against and 21 abstention.

28. The Constitutional Law on the Implementation of the Fiscal Treaty includes the balanced budget principle, that entered into force in 2016 and, as we will see later, is having a strong impact on municipalities finances. Its Article 4 states:

12 Constitutional Law on the Implementation of the Fiscal treaty, 6 November 2014, N° XII-1289.

“2. Each budget attributable to general government sector, with the exception of the budget of the State Social Insurance Fund of the Republic of Lithuania, the state budget and the budgets the planned appropriations of which do not exceed 0.3 % of GDP in the preceding year at current prices, must be planned, approved, amended and implemented to be in surplus or balanced when judged by its structural balance indicator calculated on accrual basis [...].

4. Each budget attributable to general government sector the planned appropriations of which do not exceed 0.3 % of GDP in the preceding year at current prices shall be planned, approved, amended and implemented in such a way that the appropriations of the budget would not exceed its revenue, with the exception of the year when a negative output gap is projected according to the economic development scenario which is made public by the Government or its authorised institution and in regard to which the monitoring authority published its conclusion. In the latter case, the appropriations may not exceed revenue by more than 1.5 %.”

29. Both the ordinary law and the constitutional law were adopted without a real political debate. The Treaty was presented in Lithuania as one which does not encroach on national sovereignty, and is merely a logical conclusion to the earlier agreements on stricter financial discipline¹³. President Grybauskaitė's position was that this Treaty does not introduce anything new to Lithuania, because the country already follows a strict austerity policy. The same position was held by prime minister Kubilius, who also expressed his hope that after ratification of the treaty the society will understand that the times of excessive spending are in the past and that it will not be possible to derogate from this provision even if the ruling coalition changes¹⁴.

2.3 Previous reports and recommendations

30. The situation of local and regional democracy in Lithuania was firstly addressed in Recommendation 87 (2001).

31. The last monitoring visit took place from 6 to 8 June 2011 in Lithuania. The corresponding draft Recommendation and the report on the situation of local democracy in Lithuania were adopted on the 22nd Session of the Congress in March 2012 (Recommendation 321 (2012)).

32. Positive findings of the previous report include the guarantees of the Lithuanian Constitution to the right to self-government and the progress made in consultation procedures as well as of the quality of the debate on the direct election of mayors.

33. At the same time, the Congress noted the insufficient financial resources available to local authorities, the reduced powers of municipalities in certain areas such as territorial planning and land ownership, the termination of county administrations without a suitable replacement to palliate its adverse effects, and low citizen participation in local affairs.

34. It was recommended to Lithuanian authorities that they ensure the allocation of sufficient resources to local authorities, enshrine the principle of subsidiarity in the law on local self-government and to encourage citizen participation at local level. The Government was also encouraged to resume the discussions on the status of the capital city and to give the Association of Local Authorities of Lithuania the right to represent all municipalities before courts.

35. Finally, the report called on Lithuania to ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government. As mentioned above, the ratification took place in July 2012, shortly after the adoption of the report.

¹³ Constitutional Change Through Euro Crisis Law: "Lithuania" Loreta Šaltinytė
<http://eurocrisislaw.eui.eu/country/lithuania/topic/fiscal-compact/>

¹⁴ Ibidem.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS

3.1 *Level at which the Charter is incorporated*

36. In Lithuania, as it was stated in the previous report, “there is an awareness of the Charter, at any rate in official circles”. The Charter is mentioned in the Law on Local Self-Government, according to which (Article 2) “This Law shall lay down the procedure of formation and activities of municipal institutions when implementing the provisions of the Constitution of the Republic of Lithuania (hereinafter referred to as the “Constitution”) and the European Charter of Local Self-government”.

37. As for the level at which the Charter is incorporated, once ratified and compliant with the Constitution, international treaties have the precedence, in case of contradiction with domestic legislation.¹⁵

38. This principle comes out from Article 138, paragraph 3, of the Constitution: “International treaties ratified by the *Seimas* of the Republic of Lithuania shall be a constituent part of the legal system of the Republic of Lithuania”; Article 7, paragraph 1: “Any law or other act, which is contrary to the Constitution, shall be invalid”; Article 135, paragraph 1: In implementing its foreign policy, the Republic of Lithuania shall follow the universally recognised principles and norms of international law”.

39. Therefore, the Charter, as a ratified international treaty, acquires the force of a law.¹⁶ As well as other laws, the Charter is directly applicable,¹⁷ which makes it possible to invoke it before ordinary courts. In addition, the Charter has the priority in cases of collision with the other domestic legal acts (with the exception of the Constitution itself), including laws adopted by the *Seimas* and constitutional laws.¹⁸ In the domestic legal system of Lithuania, the Charter should comply only with the Constitution.¹⁹

40. During the meeting with the President of the Constitutional Court, the delegation was informed that the Charter is a source for the interpretation of the Constitution by the Constitutional Court. This can be seen from the constitutional decisions in which the Charter was explicitly invoked by the Court. In addition to the decisions already quoted in the previous report,²⁰ the President of the Court mentioned the recent ruling of 11 June 2015 on the transfer of a share of the Personal Income Tax to municipal budgets, in which the Constitutional Court noted that the grounds for regulating the funding of municipalities and the equalisation of their financial capacity are consolidated in the respective provisions of the documents of the Council of Europe. The Court explicitly supported its position by the provisions of Article 9 of the Charter that regulates financial resources of local authorities, quoting the provisions of Paragraphs 2, 4, and 5 of this Article of the Charter.

3.2 *The Constitution and the basic legislative framework*

41. Although the Constitution of Lithuania, adopted by referendum on 22 October 1992, does not define the type of republic (unitary-regional-federal), Lithuania is clearly a unitary country, with a substantial degree of decentralisation.

15 See in particular D. Saparinene, A. Lazauskiene, *Local Government in Lithuania*, in A. Moreno Molina (ed.) *Local government in the Member States of the European Union: a comparative legal perspective*, Madrid, INAP 2012. p. 393.

16 See the Constitutional Court's conclusion of 24 January 1995 and its rulings of 17 October 1995, 14 March 2006, and 18 March 2014. These and other acts of the Court are available in English on the internet site of the Court <http://www.lrkt.lt/en/court-acts/rulings-conclusions-decisions/171/y2017>.

17 This can be stated by analogy with the case law of the Constitutional Court regarding the Convention for the Protection of Human Rights and Fundamental Freedom, see the Constitutional Court's conclusion of 24 January 1995.

18 See the Constitutional Court's rulings of 14 March 2006, 21 December 2006, 5 September 2012, and 18 March 2014.

19 The Constitutional Court's ruling of 5 September 2012.

20 In the ruling of 18 February 1998 on the subjects of administrative supervision of municipal activities, the Court explicitly invoked Articles 2 (“Constitutional and legal foundation for local self-government”) and 3 (“Concept of local self-government”) of the Charter while explaining the definition of self-government and the principle of local self-government. In the ruling of 13 June 2000 on certain provisions of the Law on Education, while explaining freedom of activities of municipalities, as well as their independence from state authority institutions, the Court invoked the Charter without quoting any specific provisions and concluded that the constitutional provision that municipalities shall act freely and independently within the limits of their competence that is established by the Constitution and laws is in line with the Charter. In the ruling of 28 June 2001 on the establishment and abolishment of municipalities, the determination and changing of their territorial boundaries and centres, concerning the right of citizens to participate in the conduct of public affairs (which, according to the Court, should be regarded also as a duty of the legislature to find out the opinion of local residents when decisions are adopted concerning changes of the boundaries of administrative-territorial units), the Court explicitly referred to the Charter, by quoting the provisions of its Preamble.

42. According to paragraph 1 of Article 10, “The territory of the State of Lithuania shall be integral and shall not be divided into any State-like formations”. Article 11 establishes that “The administrative units of the territory of the State of Lithuania and their boundaries shall be established by law”.

43. The Constitution devotes an entire chapter – Chapter X “Local Self-government and Governance” – including six Articles, to local government.

44. According to Article 119, “The right to self-government shall be guaranteed to administrative units of the territory of the State, which are provided for by law. It shall be implemented through corresponding municipal councils. The members of municipal councils shall be elected for a four-year term, as provided for by law, from among citizens of the Republic of Lithuania and other permanent residents of the administrative unit by the citizens of the Republic of Lithuania and other permanent residents of the administrative unit, on the basis of universal, equal and direct suffrage by secret ballot. The procedure for the organization and activities of self-government institutions shall be established by law. For the direct implementation of the laws of the Republic of Lithuania, the decisions of the Government and the municipal council, the municipal council shall form executive bodies accountable to it”.

45. Most of the provision of Chapter X of the Constitution are dedicated to municipalities.

46. According to Article 120, “The State shall support municipalities. Municipalities shall act freely and independently within their competence defined by the Constitution and laws”.

47. Article 121 is dedicated to the municipal budget and financial autonomy: “Municipalities shall draft and approve their budget. Municipal councils shall have the right, within the limits and according to the procedure provided for by law, to establish local levies; municipal councils may provide for tax and levy concessions at the expense of their own budget”.

48. Article 122 establishes the right to legal appeal: “Municipal councils shall have the right to apply to court regarding the violation of their rights”.

49. Article 123 is dedicated (paragraph 2-4) to the supervision of the government over municipalities: “The observance of the Constitution and the laws as well as the execution of decisions of the Government by municipalities shall be supervised by the representatives appointed by the Government. The powers of the Government representative and the procedure of their execution shall be established by law. In cases and according to the procedure provided for by law, the *Seimas* may temporarily introduce direct rule in the territory of a municipality”.

50. According to Article 124: “Acts or actions of municipal councils as well as of their executive bodies and officials, which violate the rights of citizens and organization, may be appealed in court”.

51. The first paragraph of Article 123 contains the only reference to the possibility of a second tier of government: “At higher level administrative units, the governance shall be organised by the Government according to the procedure established by law.”

52. As for the legal framework, the chief laws defining the legal arrangements governing local authorities, in pursuance of the principles of the Constitution, are:

- Law On Local Self-Government 7 July 1994 no I-533, (last amended on 28 June 2016 XII-2494);
- Law On Elections To Municipal Councils 7 July 1994 no I-532 (as last amended on 20 October 2015 no XII-1976);
- Law On Regional Development 20 July 2000 – no VIII-1889 (as last amended on 17 December 2013 – no XII-690);
- Law On National Audit Office 30 May 1995 no I-907 (as last amended on 26 March 2015 – no. XII-1588);
- Law On The Territorial Administrative Units And Their Boundaries 19 July 1994 – no I-558 (as last amended on 30 March 2010 – no XI-709);

- Law On Territorial Planning 12 December 1995 no I-1120 (as last amended on 27 September 2016 no XII-2643);
- Law On Civil Service 8 July 1999 no VIII-1316 (as amended on 23 April 2002 – no IX-855);
- Law On Public Administration 17 June 1999 no VIII-123 (as last amended on 12 June 2014 – no. XII-935);
- Law On The Methodology Of Determination Of Municipal Budgetary Revenues July 2, 1997. no. VIII – 385;
- Law On The Management, Use And Disposal Of State And Municipal Assets 12 May 1998 no. VIII-729 (as last amended on 17 November 2015 no XII-2023);
- Law On The Budget Structure 30 July 1990 no I-430 (as last amended on 6 November 2012 – no XI-2318);
- Law On The *Seimas* Ombudsmen (3 December 1998, no VIII-950);
- Law On the Association of Municipalities of Lithuania (28 March 1998);
- Law On the Administrative Supervision of Municipalities 14 May 1998 no VIII-730 (as last amended by 30 March 2010 – no XI-710);
- Law On Temporary Direct Rule of the Municipal Territory (adopted on 28 March 1995).

3.3 *The local government system*

Regional level

53. The process of territorial decentralization in Lithuania started in 1995, when the new territorial-administrative reform was introduced. Lithuania was divided into two main sub-national territorial-administrative tiers: counties (Lithuanian: singular *apskritis*, plural *apskritys*) – higher administrative units, whose management was organized by the Government and municipalities (Lithuanian: singular *savivaldybė*, plural *savivaldybės*) – lower administrative units, where self-government was introduced.

54. The counties were deconcentrated State administrations, run by centrally appointed governors and not elected representatives. The administrations of the county governor were abolished in 2010, their functions being re-distributed to either central government or municipalities. This abolishment was part of a reform aimed at introducing the regions as full-fledged functioning territorial units by 2014, but the reform was “frozen” after the abolishment²¹ and since then the issue of the reorganisation of the regional level remained opened in Lithuania.

55. From 2010, Regional Development Councils were established in each county. Each council was composed from: municipalities’ mayors (from all the municipalities belonging to that particular county), delegates from local councils, and an authorized person appointed from the Government or Governmental institution.

56. The Regional Development Councils have limited competences (especially on decisions relating to the regional development plan, its implementation, the identification of a problem area, the development programme for that problem area, the most relevant regional socio-economic development projects as well as other decisions which may have a profound effect on the socio-economic development of that region),²² including distribution of some part of EU structural funds. They must work under the directions of the Ministry of Interior (namely, Department of Regional Development).²³

57. Recommendation 321 (2012) invited the Lithuanian authorities to “take measures to develop stronger regional tier by increasing the number of competences of the Regional Development Councils, strengthening their administrative apparatus and looking forward for the establishment of regional budgets”.

21 L. Kraujutaityte, R. Riekasius, G. Burbulyte-Tsiskarishvili, *Territorial decentralization in Lithuania: a Missing Continuum*, Social Research 2014, n. 1 (34) 53-62.

22 See Article 13 of the Law on Regional Development.

23 See G. Burbulyte, A. Kutkaitis, I. Normante, (2013). *Local governments as the main actors of regional development in Lithuania*,

http://www.nispa.org/files/conferences/2013/papers/201304101921210.Nispa_Burbulyte_et%20al.do

58. Since then, the Law on Regional Development has been amended several times. The functions of the Regional Development Councils have been increased by widening the definition of projects of regional importance, the selection of targeted territories in rural areas, the partial transfer of project management functions from implementing agencies. According to the data of the Ministry of interior, the amount of financial allocations, which are planned at regional level was increased from 720 million (10,5 %) in 2007–2013 to 1.111 billion (16,5 %).

59. In order to improve their representation, from 2017, representatives of social and economic partners are also included in the Regional development Councils. They are selected by the Government and they must represent 1/3 of the member of each Council.

60. The Association of Local Authorities in Lithuania (ALAL) pointed out that these measures are not sufficient to strengthen the regional level. They still do not have an administrative apparatus. A provision passed by the *Seimas*, addressed at attributing the legal personality to the Regional Development Councils, was not implemented by the Government.

61. On December 2017 the National Regional Development Council endorsed a White Paper for the Lithuanian regional policy, setting the goal of creating an effective regional policy system. Among the actions listed in the White Paper, the expansion of the powers of the Regional Development Councils in order to enable the regions is provided. According to the White Paper, "The aim is for the regional development councils to embody regions operating on the basis of municipal cooperation and to become regional managers possessing legal status and real powers along with the regional competency offices (development agencies) or regional service centres subordinate to them".²⁴

62. During the monitoring visit, the delegation listened different opinions on the possibility to consider the counties as a proper regional level of government. According to the rapporteurs, actually Lithuanian counties cannot be considered as regions in the sense of the Council of Europe's Framework Reference for Regional Democracy (2009). The Regional Development Councils are authorities placed between central government and local authorities: however, they do not enjoy prerogatives of self-organisation, nor they have a genuine competence to manage, on their own responsibility and in the interest of their populations, a substantial share of public affairs.

63. Rapporteurs consider with interest the ongoing discussion, both at national and local level, on the strengthening of the Regional Development Councils and the possibility of establishing a second tier of local government. The White Paper provides a review of its results for 2021, considering that "Territorial administrative reform (regional and municipal) scenarios will accordingly depend on the achievements of the revised regional policy". Rapporteurs would be very interested in the follow-up to be given on the implementation of the White Paper and of further territorial reforms by the government.

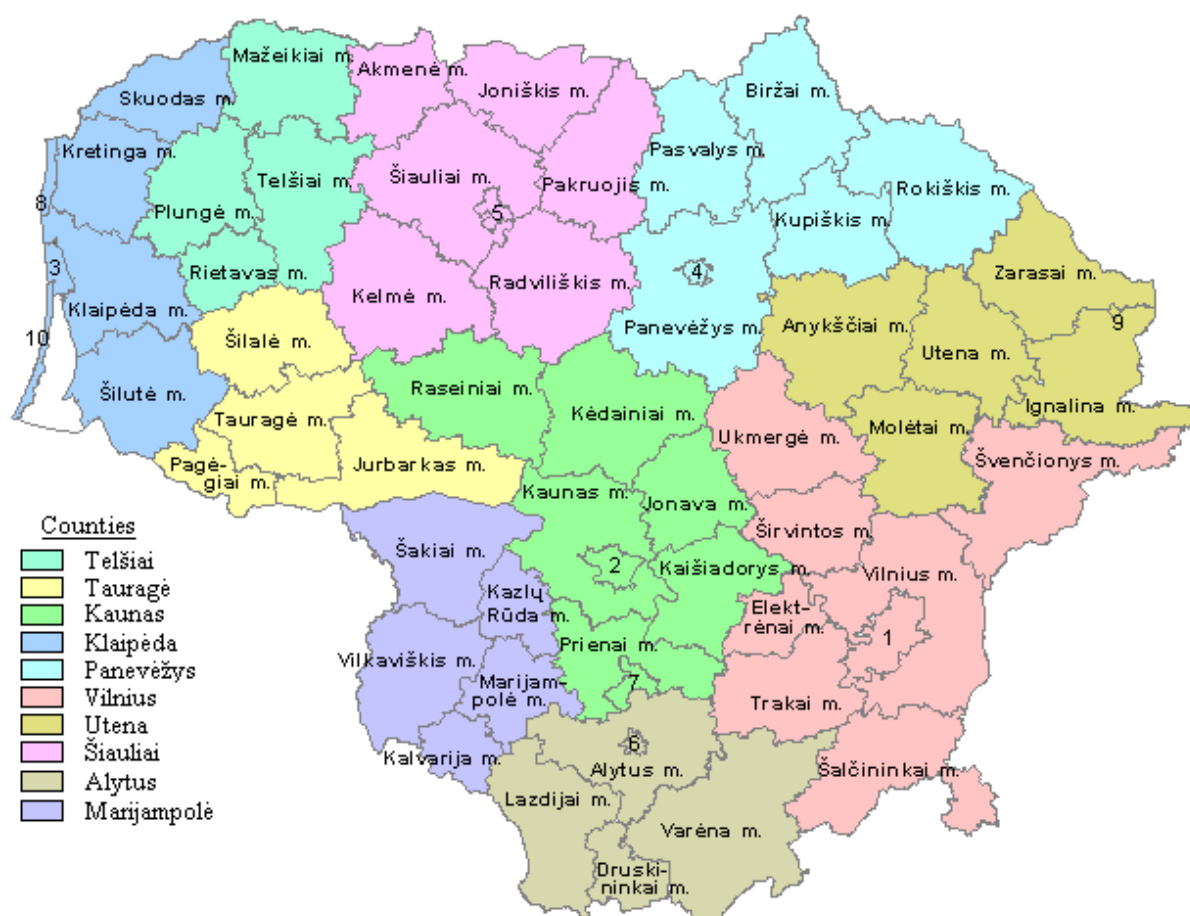
Municipalities

64. In Lithuania, local self-government comprises single-tier level bodies, municipalities, which are governed by municipal institutions, elected by the local community. According to Article 2 of the Law on Territorial Administrative Units and Their Boundaries, "The main criteria for forming a municipality shall be its preparedness to manage and maintain its environment, municipal economy, provide services to residents and perform other functions provided for in the Law of the Republic of Lithuania on Local Self-government".

65. There are 60 municipalities in Lithuania, among which: 43 district municipalities (Lithuanian: *rajono savivaldybė*). They roughly correspond to districts that existed under the Soviet rule. Before 1994 they were known just as districts and still are commonly referred to as districts. The word "municipality" was added in effort to diminish the Soviet heritage (districts were created as *raions* throughout the Soviet Union); 7 city municipalities (Lithuanian: *miesto savivaldybė*). They are situated around major or important cities. In common language they are referred to as "cities" or as "municipalities" (because the word "municipality" in Lithuanian language is associated more with cities and city rights than with districts); 10 municipalities. They were all established after 1994 and they do not have the word "district" associated with them.

²⁴ See Lithuanian Regional Policy for harmonious and sustainable development, 2017-2030, White Paper Approved at the 15 December 2017 meeting of the National Regional Development Council, p. 17:
[https://vrm.lrv.lt/uploads/vrm/documents/files/ENG_versija/Lithuanian%20Regional%20Policy%20\(White%20Paper\).pdf](https://vrm.lrv.lt/uploads/vrm/documents/files/ENG_versija/Lithuanian%20Regional%20Policy%20(White%20Paper).pdf).

Table 3. Municipalities and counties



- 1 – Vilnius City Municipality 4 – Panevėžys City Municipality 7 – Birštonas Municipality
 2 – Kaunas City Municipality 5 – Šiauliai City Municipality 8 – Palanga City Municipality
 3 – Klaipėda City Municipality 6 – Alytus City Municipality 9 – Visaginas Municipality
 10 – Neringa Municipality

66. The scope of competences is the same, regardless of the size of the municipality.

67. Lithuanian municipalities are relatively greater in size and population than those of other European countries. The largest consists of over 550,000 residents, the smallest 2,400. The average municipality has a population of 56,722, with the majority having from 20,000 to 40,000.

Table 4. Size (by population) of lower-level administrative–territorial units in Lithuania (2013)

POPULATION	MUNICIPALITIES (SAVIVALDYBĖS)	PERCENTAGE
UP TO 5 000	2	3,3
5 001 – 10 000	2	3,3
10 001 – 15 000	2	3,3
15 001 – 30 000	23	38,5
30 001 – 50 000	19	31,7
50 001 – 100 000	8	13,3
100 001 – 300 000	2	3,3
OVER 300 000	2	3,3
TOTAL	60	100
BIGGEST	VILNIUS CITY MUNICIPALITY 580 000	
SMALLEST	NERINGA MUNICIPALITY 4400	

Source: <https://aer.eu/aer-observatory-regionalisation/report-regionalisation/>

68. The competences of the municipalities are listed in the Law on Local Self-Government. Article 5 divides municipal functions into two major categories: independent and delegated. Various differences distinguish the two types of functions. In contrast to the independent functions of the municipality, the delegated functions are discharged on the instructions of the relevant central Ministry or other authority. Delegated functions are carried out by the Director of Administration of the local authority, executing instructions issued by the Ministry and for which s/he bears no responsibility to the local council. The delegated functions are directly and exclusively financed by the responsible Ministry; whereas, in the case of independent functions, more latitude is allowed to municipalities.

Municipalities exercise their activities independently in the following main spheres:

- Municipal budget;
- Local fees and charges;
- Management of municipal property;
- Organisation of education (partly);
- Social services;
- Culture;
- Primary healthcare;
- Territory planning;
- Environment;
- Transport, local roads;
- Supply of heat and drinking water, waste management;
- Development of business and tourism.

Municipalities are also responsible for the following delegated State functions:

- Civil, fire protection
- Organisation of education (partly)
- Organisation of the secondary health care
- Implementing labour market policy measures
- Calculation and payment of social benefits and compensations

69. The 2012 report noticed that “The division between the functions of municipalities, original and delegated, and those retained by the central government is by no means clear. The lack of a principled and reasonable basis on which the functions (formerly carried out by the counties) were divided between local and central government, in 2009-2010, (as recounted below) made this situation worse. In general, the allocation of functions, as between central and local government, as well as the delegation of which functions should be independent and which delegated, has often been based on short-term or partisan considerations, frequently involving funding”.²⁵

70. The most important legal development since the last monitoring visit is the direct election of the mayor, introduced in 2015.

²⁵ CPL(22)3REV, 21 March 2012, paragraph 47.

71. Each municipality in Lithuania is governed by a municipal council and a mayor, who is a member of the municipal council. The number of members, elected on a four-year term, in each municipal council depends on the size of the municipality and varies from 15 (in municipalities with fewer than 5,000 residents) to 51 (in municipalities with more than 500,000 residents). 1,524 municipal council members were elected in 2015. Members of the council, with the exception of the mayor, are elected using proportional representation. Starting with 2015, the mayor is elected directly by the majority of residents of the municipality. Before 2015, the mayors were elected by the municipal councils. Ordinary elections take place on a date proclaimed by the parliament no earlier than two months and no later than a month before the end of the current term.

72. The mayor is elected in a majority vote if the voter turnout in the constituency is at least 40%. If the voter turnout is less than 40%, the candidate with the most votes (and at least 20% of the votes) is declared a winner. If there are more than two candidates and no candidate wins in the first round, a second round of voting is held within 15 days. The two leading candidates from the first round are eligible for the second round of voting. The candidate that gets more votes in the second round is declared a winner, regardless of voter turnout.

73. Council seats (other than the seat of the mayor) are allocated to the participating political parties proportionally to the share of vote received. Parties receiving less than 4% of the vote and joint multi-party electoral lists receiving less than 6% of the vote are not eligible to receive any seats, unless the remaining eligible parties received less than 60% of the vote. Candidates take the seats allocated to their parties based on the preference lists submitted before the election. The preference lists are adjusted by preference votes given by the voters.

74. The mayor heads the municipality. He represents the municipality in courts, in co-operation with other municipalities, state institutions, institutions of foreign states and in the Regional development council. He plans the activities of the municipal council, set and draw up agendas of sittings of the municipal council and present drafts of decisions of the municipal council, convene municipal council sittings and preside over them.

75. The organisation of the municipal executive is headed by the director of the municipal administration. He is a civil servant, appointed by the council upon the recommendation of the mayor, for a period of the powers of the municipal council on the basis of political (personal) confidence.

76. As for the financial autonomy, Article 121 of the Constitution provides that "municipalities shall draft and approve their budget. Municipal councils shall have the right, within the limits and according to the procedure provided for by law, to establish local levies; municipal councils may provide for tax and levy concessions at the expense of their own budget". At legislative level, the Law on Local Self-Government and the Law on the budget structure establish the budgetary competences of the municipalities.

77. Municipalities are required to approve their budgets within two months after the approval of the Law on the approval of the financial indicators of the State budget and the municipal budget by the *Seimas*: this means that the municipal budget is approved in February. During the meeting with the National Audit Office, the issue was raised whether this delay could affect the financial autonomy of municipalities, and of the opportunity to reconsider the timing in the revision of the legislation envisaged by the Government.

78. The Law on the Methodology of Determination of Municipal Budgetary Revenues establishes the sources of revenue of municipal budgets and the procedure for calculation, confirmation and transfer of the subsidies allocated from State budget to municipal budget.

79. The municipal budget revenues consist of:

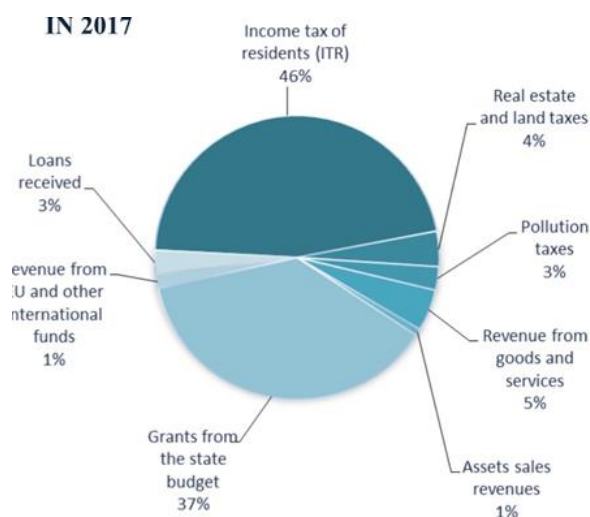
- Tax revenue comprised of taxes assigned to local authorities and a part of common taxes set by law (Personal Income Tax, land, property taxes);
- Non-tax revenue received from the property of a local authority, local charges, fines, and other non-tax sources;
- Subsidies and grants of the state budget (for the implementation of the State functions).

80. The main budget revenue for municipalities is the Personal Income Tax. This is a State imposed tax; its incomes are distributed between State and municipalities' budgets in proportions set by the law. In the year 2017, for example, it constituted 49% of total municipal budget revenue. In the same year, grants from the State budget constituted 39% of total municipal revenue (in 2016, 37%). Own-source municipal revenues were 12% of total municipal budget revenue. This amount includes various taxes, set by municipalities or assigned to municipal budgets by law (e. g. land, property taxes, taxes for various services, local fees, etc.) and other non-tax municipal revenue (e. g. fines, rents, revenue of municipal budgetary establishments). The amount of this revenue depends mostly on the decisions of municipalities, which are allowed to set the rate, in most cases within a fork established by the State.

Table 5. Municipal budget revenue in 2015-2017

Revenue (EUR million)	2015	2016	2017 (plan)
Tax revenue	1240,2	1364,3	1392,2
<i>Income tax of residents (ITR)</i>	<i>1051,7</i>	<i>1 171,8</i>	<i>1 216,0</i>
<i>Real estate and land taxes</i>	<i>125,4</i>	<i>126,3</i>	<i>105,8</i>
<i>Pollution taxes</i>	<i>63,1</i>	<i>66,2</i>	<i>70,4</i>
Non-tax revenue	139,0	160,5	144,8
<i>Revenue from goods and services</i>	<i>125,8</i>	<i>135,3</i>	<i>124,2</i>
<i>Assets sales revenues</i>	<i>13,2</i>	<i>25,2</i>	<i>20,6</i>
Grants from the state budget	969,3	1 019,1	982,6
Revenue from EU and other international funds	18,1	94,5	41,0
Loans received	90,9	108,6	72,1
Total:	2457,5	2 747,0	2 632,7

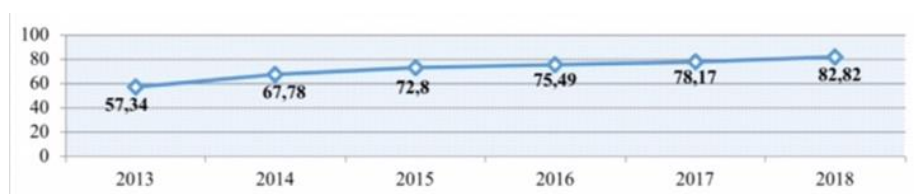
Source: National Audit Office of Lithuania (2017)

Table 6. Municipal budget revenue structure in 2017

Source: National Audit Office of Lithuania (2017)

81. The law provides for municipalities the right to freely use over 60 percent of the financial resources accumulated in municipal budgets for the exercise of independent functions assigned to them by law. Up to 40% of the financial resources are made up of special targeted subsidies, which are allocated either for state-delegated functions or for municipal investment projects financed according to the State Investment.

82. The total amount of financial resources of municipal budgets and the amount of Personal Income Tax deducted for municipal budgets have experienced a growth tendency since 2013, as a consequence of the recovery of the country from the economic and financial crisis. Nevertheless, some relevant problems in the field of the financial autonomy remain, as we will see later *sub* Article 9.

Table 7. Amount of personal income tax deducted for municipal budgets (percentage)

Source: Seimas (2018)

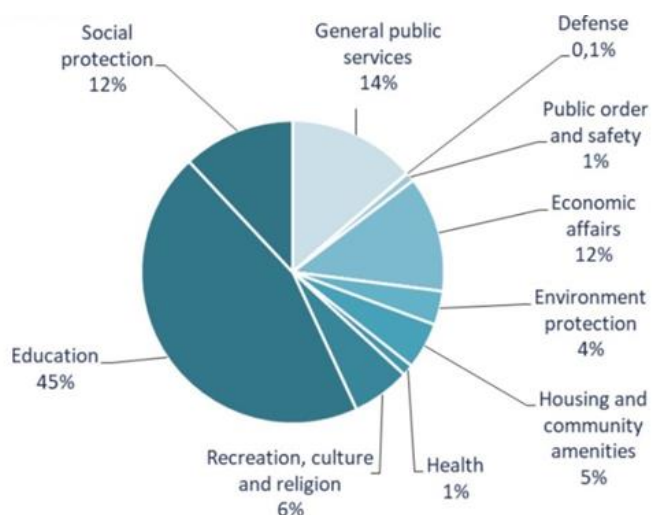
83. Municipalities have four major categories of expenditure:

- most costly are services (primary, secondary education and vocational training), which account for up to 44% of total expenditure;
- municipalities are also in charge of a number of welfare benefits (mostly support to families), accounting for 12 %;
- the public utilities and other infrastructure services (district heating, water supply and sewage), accounting for 13%;
- economics affairs, accounting for 12%.

Table 8. Municipal budget expenditure in 2015-2016

Function	2015	2016	Change	
	EUR	EUR million	EUR million	%
General public services	316,6	368,4	51,8	16,4
Defense	1,9	1,9	0,0	0,3
Public order and safety	22,9	25,5	2,6	11,3
Economic affairs	251,8	334,1	82,3	32,7
Environment protection	88,8	97,9	9,1	10,3
Housing and community amenities	93,4	134,8	41,4	44,3
Health	33,3	32,3	-1,0	-3,1
Recreation, culture and religion	153,3	168,5	15,2	9,9
Education	1109,2	1213,9	104,6	9,4
Social protection	332,9	323,3	-9,6	-2,9
Total:	2404,1	2704,3	300,2	12,5

Source: National Audit Office of Lithuania (2017)

Table 9. Municipal budget expenditure structure in 2016

Source: National Audit Office of Lithuania (2017)

Sub municipal level and citizens' participation

84. In Lithuania, the one tier local government system is based on municipalities, which are quite big in size, in comparison with other European countries. For this reason, sub municipal level is of major importance and an ongoing debate exists on how to further develop it in order to improve efficiency of local services and citizens participation.

85. According to the law, municipal councils have the right to divide municipal territories into wards (*seniunija*). There are more than 500 of them (546 in 2014). They are administrative subdivisions within municipalities, thus they do not have any form of local autonomy. The number of wards, the name of each ward, the boundaries of the territory serviced by a ward and the functions transferred to a ward are defined by the municipal council. The head of the ward is the warden, a career civil servant appointed to the office and dismissed from it by the director of the municipal administration.

86. The delegation was informed that, on 28 June 2016, the *Seimas* adopted laws on the amendment of certain provisions of the Law on Local Self-Government, which improved the regulation of the establishment of wards. From 1 January 2017, municipal councils have the right to grant the status of a budgetary institution to wards that meet the criteria set by law. The activity and financial autonomy of such wards is larger in comparison with the wards that remain as territorial administrative units of municipal administrations. The law sets three criteria: 1) the ward provides public services to the inhabitants of the serviced area; 2) the number of inhabitants of the serviced area is not less than 1500 persons; 3) it is necessary to approve not less than seven positions of civil servants or

employees working under the employment contract in order to perform the functions laid down in the ward. However, since the entry into force of the law, any ward of this kind has been established.

87. In order to facilitate the participation of citizens, elderships (*Seniūnaitija*) may be formed from the localities or parts thereof. The project of formation of elderships is approved by the municipal council on the recommendation of the director of the municipal administration. Residents of elderships elect representatives of the local community, the elders, which can address recommendations to the warden and in general represent the interest for the communities.

88. Recommendation 321 (2012) invited the Lithuanian authorities to encourage and develop citizen participation. During the monitoring visit, the delegation was informed that since then, the Law on Local Self-Government has been amended to strengthen the participatory tools. On 1 January 2013, amendments to the Law on Local Self-Government came into force, which simplified the procedure for organizing and conducting local surveys, shortened the deadlines for organizing the survey, expanded the list of subjects entitled to initiate surveys by including wardens into it.

89. Rights and duties of the elders were also expanded, as well as the opportunities of participation in decision-making of the meeting of community representatives and elders. Nevertheless, the delegation was also told that residents still do not feel sufficiently involved in local affairs, due to the very large municipal constituencies and the fact that the wardens are not elected directly. Several proposals for the direct election of the wardens have been presented and are written in the programme of the Government, but they seem very difficult to implement: the direct election of the warden would imply the institution of 500 new municipalities. Rapporteurs consider with interest the ongoing debate on the improvement of citizen participation through the strengthening of the elders and encourage Lithuanian authorities to further develop these mechanisms.

3.4 Status of the capital city

90. According to Article 17 of the Constitution, “The capital of the State of Lithuania shall be the city of Vilnius, the long-standing historical capital of Lithuania”.

91. Vilnius, mentioned in written sources since 1323 as the capital city of the Grand Duchy of Lithuania, has always been the capital of the country since its independence, as well as the most important Lithuanian city from the political, economic and social perspective. It has an area of 402 km² and a population of 574,221(2017)²⁶, which represents the 20% of the entire population of Lithuania. Like the 7 larger municipalities in Lithuania, Vilnius has the status of “city municipality”. The territory of the city of Vilnius is the seat for most State administration offices and departments, for foreign embassies and for delegations of international and regional organisations and international firms. Vilnius entertains a strong international cooperation with other cities, especially with the other Baltic capital cities.

92. Despite this administrative, political and economic importance of the capital, Vilnius does not enjoy a specific or particular “capital status”, and it is governed by the general laws and regulations on local government. Likewise, the Mayor and the Council of Vilnius have the same status and competences as in any other city.

93. The sources of funding of Vilnius are, in principle, the same as other Lithuanian cities, and so are its competences. Thus, there is no specific benefit enjoyed by the city for the reason of being the capital of the country. The city of Vilnius does not collect any special tax. On the contrary, only 53.78% (2018) of the Personal Income Tax collected in Vilnius is allocated to the Vilnius city municipality, as result of the equalization mechanism²⁷.

²⁶ <http://www.vilnius.lt/index.php?3844737039>

²⁷ The part of the Personal Income Tax allocated to Vilnius on the basis of the Law on the Methodology of Determination of Municipal Budget Revenues was even smaller (40%) until the judgment of the Constitutional Court of 11 of June 2015, which declared unconstitutional the equalization formula, as it lacked of any law-established criteria on the grounds of which such a share should be calculated.

94. During the monitoring visit, the delegation was informed that a particular status for Vilnius as a capital city is not being considered at the moment. A draft bill was introduced in the past, but it was not approved by the Parliament. The main complaint heard by the delegation about the current situation had to do with the financing. As in the case of other capitals, Vilnius does not receive enough funding for the functions it has to carry out. The delegation was also told that the establishment of a “metropolitan area” or similar structure encompassing Vilnius and the neighbouring municipalities could be suitable.

95. On this ground, rapporteurs consider that the invitation to “relaunch the debate in *Seimas* to give Vilnius a particular status in the law, in accordance with its special position as capital city”, contained in Recommendation 321 (2012), should be replicate.

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.

96. The 1992 Constitution devotes an entire chapter, Chapter X, to “Local Self-government and Governance”. The opening provision of this chapter, Article 119, proclaims that “The right to self-government shall be guaranteed to administrative units of the territory of the state, which are provided for by law. It shall be implemented through corresponding municipal councils”.

97. The constitutional principles on local self-government are implemented by legislation, especially by the Law on Local Self-Government, which Article 2 establishes that: “This Law shall lay down the procedure of formation and activities of municipal institutions when implementing the provisions of the Constitution of the Republic of Lithuania and the European Charter of Local Self-government, define the principles of local self-government, municipal institutions and their competence, functions, the status of a municipal councillor, the grounds of economic and financial activities of municipalities”.

98. The Charter as a ratified international treaty, has the priority of the application in cases of collision with the other domestic legal acts (with the exception of the Constitution itself), including laws adopted by the *Seimas* and constitutional laws.

99. As it was already noticed during the 2011 monitoring visit, the principle of local self-government has been further developed by the Constitutional Court in many judgments, in which the Court also referred to the Charter, as a source of constitutional interpretation.

100. The rapporteurs consider that the requirements of Article 2 of the Charter are fully satisfied in Lithuania.

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.

Article 3.1 Concept of local self-government

101. The main question that must be addressed under this heading is whether, in the present situation, Lithuanian municipalities regulate and manage a “substantial share of public affairs under their own responsibility and in the interests of the local population”. This provision requires an assessment which takes into account the rather “subjective” and relative nature of the concept of “a substantial share of public affairs”, since no official or universal method of measuring such substantial character has yet been developed. The question must be addressed considering the historical evolution, the culture and the constitutional traditions of the country under analysis.

102. In order to assess compliance with this provision, both legislative and factual aspects should be taken into consideration.

103. In Lithuania, Article 120 of the Constitution states that “Municipalities shall act freely and independently within their competence defined by the Constitution and laws” and this principle is echoed by the Article 4, n.2 of the Law on Local Self-Government, which refers to “the freedom of independence and activity of municipalities in accordance with the competence denoted in the Constitution and laws”. The functions of the municipalities are divided into independent and State functions (delegated by the State to the municipalities) in accordance with the freedom of the decision-making.

104. Another indicator of the “importance” or the political and social role of local government in a country is the local government expenditure in the national general, government consolidated budget, especially in comparison with other EU countries: in Lithuania, the budget of the municipalities (for independent functions) represent the 17,6% of the consolidate budget, according to 2017 data²⁸.

105. Also taking into account the distinction between independent and delegated functions, in Lithuania, laws and regulations entrust municipalities with a series of competences and powers that can be depicted as “fair” or “reasonable” in the light of the “unitary” constitutional characterization of the country and of its size and population. The Congress delegation did not hear any substantial or recurrent claim from local representatives that the present local competences were insufficient.

Article 3.2 Municipal government

106. As for Article 3, paragraph 2, the right to self-government is exercised in Lithuania by elected bodies. According to Article 119 of the Constitution, “The members of municipal councils shall be elected for a four-year term, as provided for by law, from among citizens of the Republic of Lithuania and other permanent residents of the administrative unit by the citizens of the Republic of Lithuania and other permanent residents of the administrative unit, on the basis of universal, equal and direct suffrage by secret ballot. The procedure for the organization and activities of self-government institutions shall be established by law. For the direct implementation of the laws of the Republic of Lithuania, the decisions of the Government and the municipal council, the municipal council shall form executive bodies accountable to it”.

107. Article 4 of the Law on Local Self-Government lists, among the fundamental principles, the representative democracy; the supremacy of the municipal council over accountable executive institutions of a municipality; the accountability of executive institutions of a municipality to the municipal council.

108. According to the Law on Elections to Municipal Councils, the members of municipal councils are elected for a four-year term by universal and equal suffrage, in a secret ballot at direct elections. After more than 10 years of discussion, in 2014 then Law was amended to introduce the direct election of the mayors: therefore, all members of a municipal council, except the mayor, are elected according to a proportional electoral system, while the mayor is elected using an absolute majority electoral system. The first direct elections of municipal mayors took place in Lithuania on 1 March 2015. Previously, mayors were elected by the municipal council among the councilors.

109. The municipal council discharge the most important duties within the municipality: it approves the budget, adopts the decisions to levy taxes, adopts decisions concerning municipal property and to institute municipal corporations, public institutions and stock companies etc. The powers of the mayors have not been improved and remain limited to the representation of the municipality and the activities

28 https://finmin.lrv.lt/uploads/finmin/documents/files/EN_ver/Activities/Actual_Financial_Data/2017_metai_EN.pdf

he discharges as president of the municipal council. The executive power is vested in the director of the municipal administration, a civil servant, appointed by the council upon the recommendation of the mayor, for a period of the powers of the municipal council on the basis of political (personal) confidence. He/she is subordinated to the municipal council, accountable to the municipal council and the mayor.

110. During the monitoring visit, the rapporteurs were told that the failure to increase the power of the mayors could undermine the strengthening of mayors induced by the direct election. The introduction of the direct election of mayors by a legislative act raised also the problem of its compatibility with the Constitution, which does not consolidate the institution of mayors and their direct elections and consider the status of all municipal council members as equal.²⁹

111. In conclusion, the rapporteurs consider that the requirements of Article 3 are satisfied in Lithuania.

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.
- 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.

Article 4, paragraph 1-5: Local competences and powers

112. Article 4, paragraph 1 of the Charter requires that the basic powers and responsibilities of local authorities are prescribed by the constitution or by statute.

113. In Lithuania, Article 120, paragraph 2, of the Constitution establishes that “Municipalities shall act freely and independently within their competence defined by the Constitution and laws”. Several other Articles refer to the competences of municipalities, as pointed out by the Constitutional Court in its 24 December 2002 decision. The Court mentioned Article 40, paragraph 1, which indicates municipal establishments of teaching and education; Article 41, paragraph 2, which, *inter alia*, indicates municipal schools of general education, vocational schools, and schools of further education; Article 119, paragraph 4, which provides that for the direct implementation of the laws of the Republic of Lithuania, as well as the decisions of the Government and the municipal council, the municipal council forms executive bodies accountable to it; Article 121, paragraph 1, which provides that municipalities draft and approve their own budgets; Article 121, paragraph 2, which provides that municipal councils have the right, within the limits and according to the procedure provided for by law, to establish local levies, and that municipal councils may provide for tax and levy concessions at the expense of their own budgets; Article 122, which provides that municipal councils have the right to apply to a court regarding the violation of their right.

²⁹ The Constitutional Court has indicated such a requirement as one of the peculiarities of the constitutional status of members of a municipal council when interpreting, *inter alia*, the provisions of Paragraphs 1 and 2 of Article 119 of the Constitution (see the Constitutional Court’s rulings of 17 February 2016 and 24 December 2002).

114. The Law on Local Self-government (Article 5) distinguishes the municipal into two major categories: independent and delegated and describes in details those function, by listing 44 independent functions and 38 delegated functions. Additional functions have been assigned or delegated by other laws.

115. As for Article 4, paragraph 2 of the Charter, according to which “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”, (Article 6, n. 44) of the Law on Local Self-Government contains a “general residual clause”, referring to “other functions that are not assigned to state institutions” as independent functions.

116. Article 4, paragraph 3 of the Charter articulates the general principle of subsidiarity. It establishes that “Public responsibilities shall generally be exercised, in preference, by those authorities which 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”.

117. Recommendation 321 (2012) invited the Lithuanian authorities “to amend Article 4 of the existing Law on Local Self-Government so that the principle of subsidiarity is specifically recognised in the field of local government, by being mentioned as one of its guiding principles”.

118. Even though the principle of subsidiarity has been laid down in the Law in 2016 (being included in Article 4, n. 14 of the Law on Local Self-Government), the local authorities still complain that it is not implemented in practice. For example, the protection of the rights of the child was quoted. This function (previously delegated to the municipalities), will be centralised after June 2018: all the departments for the protection of the rights of the child currently operating in the municipalities will be removed from the municipal structure and will be under the authority of the Ministry of Social Security and Labour. In the opinion of the municipalities, the centralisation of the function of the protection of the rights of the child violates the principle of subsidiarity and raises concerns whether the centralisation of this function will improve the well-being of children and their families.

119. Recommendation 321 (2012) pointed out also that “municipalities” competences have been reduced in certain areas (territorial planning, construction, ownership of land) by relegating them to the position of procedure-executing bodies rather than policy-makers in the field of competences and no compromise could be reached which would extend the municipalities’ rights to manage state-owned land in urban and rural settlements and allow elected representatives some authority in the planning policy for their area”. It invited the Lithuanian authorities to “consider extending the municipalities’ rights to manage state-owned land in urban and rural settlements and allow elected representatives some authority in the planning policy for their area”.

120. According to the ALAL, the recommendation was not fully implemented. An amendment to the Law on Local Self-Government allowing the mayor to change the main designation and way of land use has been introduced (Article 20, paragraph 2, n.20). However, the Law on Land and the government regulations maintain this function within the competence of the director of administration.

121. The delegation was informed that no important progress has been made in giving more rights to the municipalities to dispose of State-owned land, although provisions are part of the current Government's programme and a draft amendment to the Law on Land was registered in the *Seimas*, according to which the function of the organisation of formation and rearrangement of land parcels in rural areas, till now performed by the National Land Service, is intended to be transferred to the municipalities. The Law on Forests was amended in 2017, transferring to the municipalities the State function of supervision, protection and management of the state forest land for the purpose of public recreation, thus eliminating legal barriers preventing the municipalities from the initiation of taking over the city forests.

122. The ALAL and municipal representatives expressed their opinion to the delegation, according to which it is crucial to ensure that the functions of the planning of land use and disposal of the State-owned land of the National Land Service would be transferred to the municipalities as quickly as, since only this will allow to create a favourable investment environment and promote territorial development. The State authorities pointed out that the existing situation should be considered as a transitional status, because the process of returning the public land to the previous owners or to their heirs has not been completed. The main problem the municipalities are facing, according to the Ministry of Interiors, is the length of the procedure in case they intend to rent lands to private investors, as it takes

up to 8 months. At the moment, the Government is dealing with speeding up of the procedure, in order to not exceed six weeks.

123. On other issues, competences of the municipalities have been improved. The Law on Cash Social Assistance changed the function of cash social assistance to the independent functions of the municipalities. Sufficient financial resources were allocated. According to the ALAL, the reform has been highly successful.

124. Article 4, paragraph 4, raises the problem of overlapping responsibilities. In the interest of clarity, it provides that "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". Article 4, paragraph 5, refers to delegated responsibilities, establishing that local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

125. During the meetings with the delegation, the representatives of the municipalities and the ALAL pointed out that the regulation often limits the right of the municipalities to act independently and that in several matters no discretion is allowed in the exercise of delegated functions. Too detailed description of the independent functions implies that the municipalities do not have the right to implement them at their discretion, taking into account the local conditions as much as possible. As a result, the municipalities lack the financial and human resources for the implementation of the excessively cumbersome bureaucratic requirements established by the central authorities.

126. Among the examples presented, the fact that the municipalities are responsible for the organisation of the supply of heat and hot water. However, the role of the municipalities in the management of the heat sector has become merely formal, as the final decision on the pricing of heat and hot water is taken by the National Commission for Energy Control and Prices. Another example concerns the municipal competence on the collection and management of municipal waste and packaging waste. According to the ALAL, the current legal framework is so detailed that its implementation requires additional funds. After the Government resolution on the management of municipal waste No 711 came into force on 20 of April of 2017, the management of municipal waste is paid under a dual payment system. The calculation of such dual payment in the municipalities raises additional problems, as it requires additional human and financial resources.

127. The delegation was also informed of a new regulation of public services, requiring the municipalities to obtain a permission from the Competition Council before entrusting legal entities under their control to start an economic activity. This provision is problematic as for the right of municipalities to choose the most appropriate way of organizing a public service, due to a very wide definition of an economic activity used in the Law on Competition. In order to avoid this risk, a draft amendment has been introduced in the *Seimas*, aimed at clarifying which activities of municipalities would be regarded as economic activities and at introducing the possibility, but not the obligation, for the municipality to apply for an opinion of the Competition Council, asking in advance to assess whether the foreseen decision will not restrict competition.

128. During the consultation procedure, the *Seimas* underlined that the existing legal regulation with effect from 1 July 2017, under which the provision of a public service is treated as an economic activity, means that the municipality, before entrusting the implementation of a new economic activity to a legal person controlled by the municipality (either a new legal entity or an existing one), must obtain a authorization from the Competition Council. The *Seimas* also concluded that this limits the right of municipalities to choose the most appropriate method of organisation of the provision of public services."

129. Taking into account the claims raised by the municipalities, the rapporteurs consider that the numerous interference by State authorities within the municipal independent functions undermines the attribution to local authorities of full and exclusive powers.

Article 4.6: Consultation and participation of local government in decision-making

130. Finally, Article 4 paragraph 6 of the Charter provides that "local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly".

131. In Lithuania, municipalities have the right themselves and through the ALAL to take part in drafting laws and other legal acts regulating local self-governance or determining functions of municipalities, and to submit their proposals and comments on the draft projects. According to the ALAL, 60 or 70% of their comments are incorporated in legislative acts and government regulations. Nevertheless, the ALAL complained that the deadlines established in the Government regulation for the coordination between institutions often do not give a chance to the associations to properly formulate a position of the municipalities.

132. The agreement between the Government of the Republic of Lithuania and ALAL on the activities of the bilateral commission bringing together the Government and ALAL, with the aim to balance the competing interests of the State and the municipalities, was renewed, resulting in the increase of the number of members of the commission from 3 to 4 from each side.

133. At the *Seimas*, the rapporteurs were informed that the Committee on State Administration and Local Authorities actively co-operates with the ALAL also by setting up inter-institutional working groups or advisory groups (for example, on the reform of the system of protection of children rights).

134. Although the system of consultation could always be improved and smoothed, the rapporteurs consider that Article 4, paragraph 6 is respected in Lithuania.

135. In conclusion, the rapporteurs consider that the requirements of Article 4, paragraph 1, 2 and 6 are satisfied in Lithuania, whereas the requirements of Article 4, paragraph 3, 4 and 5 are not fully satisfied by the present legal and factual situation in Lithuania.

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.

136. This provision aims at requiring that the local communities be consulted in case of changes in local authorities' boundaries.

137. In Lithuania, the Law on the territorial administrative units and their boundaries provides a rigorous procedure for the establishment of new municipalities and for the change of municipal boundaries, including a consultation of the residents and of the local councils involved. It is worth mentioning that, according to Article 7 of the Law, more than half of the residents of the municipality to be established eligible to take part in the poll shall participate and more than half of those who participated shall vote in favour of establishment of a new municipality.

138. This provision was applied by the Constitutional Court in the judgment of 28 June 2001, mentioned in the previous report, according to which the Government failed to implement those legislative provisions, as the Ministry of Public Administration Reforms and Municipal Affairs, neither requested nor received proposals from municipal councils as regards changing the boundaries of municipalities, nor did it organise any opinion polls of local residents under the procedure established by the Government.

139. During this visit, the rapporteurs did not hear any complaint from municipal representatives and the ALAL on the protection of local authorities' boundaries. No changes in municipal boundaries happened after the last monitoring visit.

140. The rapporteurs consider that the requirements of Article 5 of the Charter are fully satisfied in Lithuania.

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.
- 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.

141. Article 6, paragraph 1 of the Charter provides that local authorities shall be able to determine their own internal administrative structure.

142. Lithuanian local authorities are endowed with pretty large self-organisation powers. In this sense, Article 16 of the Law on Local Self-Government provides that the municipal council has the competence on “6) setting-up of municipal council’s committees, commissions, other units necessary for organization of the work of a municipality, other commissions provided for in laws, as well as approval of their regulations; 10) approval of the structure of the municipal administration taking of decisions concerning establishment of positions of civil servants of political (personal) confidence of the mayor, determining of their number and forming of the secretariat of the municipal council on the recommendation of the mayor; 13) taking of decisions on the establishment, abolishment of wards and determination of their number, conferment of names to the wards and change thereof, assignment of territories to the wards, defining of the boundaries of the territories serviced by the wards as well as the change of the said boundaries, after having evaluated the opinion of the residents; 14) approval of division (grouping) of localities or their parts into elderships on the recommendation of the director of the municipal administration”

143. Furthermore, under Article 30, “the structure of the municipal administration, its regulations of activities and wage fund, the biggest allowed number of positions of civil servants and employees working under the employment contract and receiving payment from the municipal budget shall, on the proposal of the director of the municipal administration and the recommendation of the mayor, be approved and changed by the municipal council, and the staff positions shall be approved by the director of the municipal administration”.

144. As regards Article 6 paragraph 2 of the Charter, the conditions of service of local government employees are the same as other civil servants and employees working under the employment contract. They are regulated by the Law on Civil Service and the Labour Code. According to the Law on Local Self-Government, approval of the structure of the municipal administration, regulations and salary fund, setting of the maximum possible of positions of civil servants and employees working under the employment contract in the municipal administration on the proposal from the director of the municipal administration on the recommendation of the mayor, is the exclusive competence of the municipal council. The remuneration of employees somewhat depends on the population of the municipality.

145. During this visit, the delegation did not hear any complaint from municipal representatives on the possibility to recruit high-quality staff, although they were told that, within the Civil Service, salaries at local level are 20% lower than at national level.

146. The rapporteurs consider that current Lithuanian system meets the requirements enshrined in Article 6 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.

147. Article 7, paragraph 1, aims at ensuring the free exercise of their functions for elected representatives. This Article does not raise any special concern in Lithuania, where the democratic process at local level is fully guaranteed.

148. Article 7, paragraph 2, refers to an appropriate financial compensation for elected representatives. For municipal councillors, Article 26 of the Law on Local Self-Government establishes that “such remuneration shall be calculated in accordance with the amount of the average monthly wage, taking into consideration the actual length of work, the duration of which is confirmed pursuant to the procedure laid down in the rules of conduct. The amount of the remuneration for the performance of the duties of the municipal councilor shall be fixed by the municipal council”. As for the mayor and deputy mayor, their salaries shall be approved by the municipal council in accordance with the ratios established by the law (Article 19, paragraph 8).

149. During the meetings with elected representatives in the municipalities, the delegation was informed that the conditions of office are satisfactory, but the salaries are low. Normally, the councillors are only compensated for the expenses related to their activities as the councillors and only the mayor and deputy receive a salary.

150. As for Article 7, paragraph 3, according to which “Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles”, the incompatibilities are determined by Article 91 of the Law on elections of municipal councils.

151. According to this Article, “The office of municipal councillor shall be incompatible with the office of President of the Republic, *Seimas* member, European Parliament member, Government member, head of a government agency or an agency under a ministry, whose work is related to the supervision and control of activities of municipalities, Government representative in the county, Auditor General and his deputies”. Moreover, the office of councillor of a municipality shall be incompatible with several positions of the municipality (like the office of the office of director of the administration of that municipality etc.).

152. The rapporteurs consider that the requirements of Article 7 of the Charter are satisfied in Lithuania.

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.

153. Article 8 of the Charter deals with supervision of local authorities. Any administrative supervision of the activities of local authorities can only aim at ensuring compliance with the law and constitutional principles. Administrative supervision may, however, be exercised by higher-level authorities with regard to expediency in respect of the tasks delegated to local authorities. Another important requirement which can be inferred from the Charter provisions is that the law should precisely define the administrative authorities empowered to exercise legal supervision over municipalities.

154. In line with the requirements of the Charter, the rules governing central control over local authorities in Lithuania, and the powers of the central authorities concerned, are determined by the Constitution and by the law.

155. According to Article 123 of the Constitution, "The observance of the Constitution and the laws as well as the execution of decisions of the Government by municipalities shall be supervised by the representatives appointed by the Government. The powers of the Government representative and the procedure of their execution shall be established by law. In cases and according to the procedure provided for by law, the *Seimas* may temporarily introduce direct rule in the territory of a municipality".

156. The Law on administrative supervision of municipalities provides that the supervision is performed by the government representatives in the counties. Government representatives check whether the legal acts of municipal collegial and non-collegial administration entities are in conformity with laws, resolutions of the Government and other legal acts related to the implementation of laws and adopted by the central entities of state administration.

157. According to Article 5 of the Law on administrative supervision of municipalities, upon having established that a legal act adopted by a municipal administration entity does not comply with laws or decisions of the Government, a Government representative shall by presenting a reasoned motion, propose to the appropriate municipal administration entity to consider amending or repealing the said legal act. The Government representative must be informed about the adopted decision within ten days after the adoption of such decision. Within ten days after the receipt of a notification about the refusal to satisfy the motion (if upon the consideration of the motion of the Government representative, a municipal administration entity refuses to amend or repeal the legal act under dispute), appeal against such a legal act to the court.

158. Upon having established that a municipal administration entity fails to implement laws, to execute decisions of the Government, a Government representative shall submit to the appropriate municipal administration entity a written request to immediately implement the law, to execute the decision of the Government. The Government representative must be informed about the adopted decision within ten days of the adoption of such decision. Within ten days after the receipt of a notification about the refusal to satisfy the request (if upon the consideration of the Government representative's request a municipal administration entity refuses to execute the said request), appeal to the court regarding the omission of this municipal administration entity.

159. When carrying out the advanced control of draft legal acts of municipal collegial administration entities, a Government representative may examine draft legal acts submitted to municipal collegial administration entities for adoption. Government representative also may attend meetings of municipal collegial administration entities and, where appropriate, inform the municipal councillors that the drafts under consideration do not comply with laws or decisions of the Government.

160. According to the Law on Local Self-Government, municipal controller (municipal control and audit service) carry out the external audit in the municipality. In his activities the municipal controller (municipal control and audit service) shall observe this and other laws, State audit requirements, methodologies prepared by the National Audit Office, and other legal acts.

161. The National Audit Office shall carry out audit of the use of State budget funds allocated to municipal budgets. The National Audit Office shall perform audit of the implementation of municipal budgets and the management, use and disposal of municipal property in accordance with the scope of public audit.

162. During this visit, the delegation did not hear any complaints from municipal representatives and the ALAL on the State supervision and on the National Audit Office system.

163. In its written remarks, the ALAL pointed out that the Ministry of the Interior has drafted a new version of the Law on administrative supervision of municipalities, aimed at changing the legal status of the government representative and at allocating 5 government representatives (one for two counties). The Association expressed its concerns, especially on the possibility that, by reducing the number of government representatives, the supervision of draft legislation would also be reduced. The Association considers that prior surveillance of draft legislation reduces the risk of decisions infringing the Constitution, the laws or government resolutions.

164. In conclusion, the rapporteurs consider that Lithuania complies with Article 8 of the Charter.

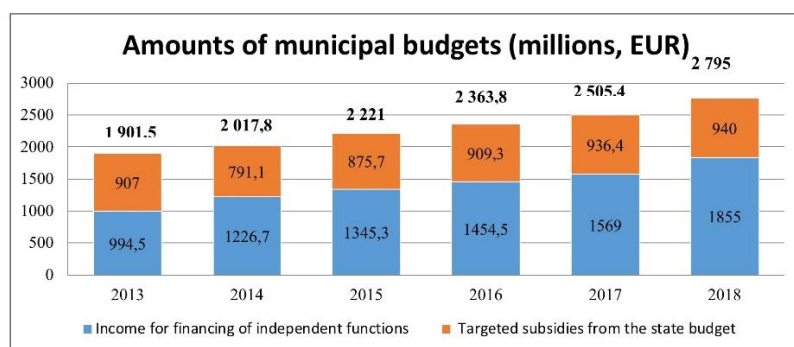
4.8 Article 9: Financial resources

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.

165. According to Article 9 paragraph 1 of the Charter, local authorities should have adequate financial resources of their own, of which they may dispose freely within the framework of their powers. Financial autonomy is an essential component of the principle of local self-government and an important condition for the exercise of a wide range of responsibilities in the field of local public affairs. These elements are cumulative and not alternative, which means that all the conditions laid down in Article 9 paragraph 1 of the Charter are mandatory. Another basic principle, established in Article 9, paragraph 2, requires that local authorities should have sufficient financial resources in proportion to the responsibilities assigned to them by law.

166. In Lithuania, municipalities dispose of a relevant part of the financial resources. The law provides for municipalities the right to freely use over 60 percent of the financial resources accumulated in municipal budgets for the exercise of independent functions assigned to them by law. Up to 40% of the financial resources are made up of special targeted subsidies, which are allocated either for state-delegated functions (e.g. in 2018, 780 million euros allocated) or for municipal investment projects financed according to the State Investment Program (e.g. in 2018, 160 million euros allocated). In addition, both the total amount of financial resources of municipal budgets and the financial resources, which municipalities of Lithuania have the right to freely use at their discretion, have experienced a growth tendency as of 2013.

Table 10.³⁰ Amounts of municipal budgets (millions, EUR)

Source: *Seimas* (2018)

167. The ALAL pointed out some achievements in the last few years.

168. From 2015 at the request of the ALAL the central government restored the procedure for the calculation of the percentage of Personal Income Tax allocated to the municipalities in force till 2011, so that the estimated increase of revenue from Personal Income Tax due to natural economic growth is once again divided to the state and the municipal budgets. From 2016 the estimated growth of independent revenue of municipal budgets above 21 per cent is not deducted to the state budget revenue or limited.

169. For the first time after the economic crisis, the budgets of 38 municipalities experienced a real growth in 2018 under comparable conditions due to the implementation of a decision requested by the ALAL multiple times: an innovation was introduced in the amendment to the Law on the Methodology of Determination of Municipal Budgetary Revenues of 5 December of 2017 adopted by the *Seimas* by abandoning the general subsidy from the state budget and allocating the same amount of funds as the general subsidy which was planned for the 38 municipalities in 2017 to Personal Income Tax of these municipalities as a regular source of revenue. Until this point, the general subsidy of the municipalities receiving the general subsidy was reduced by the expected amount of tax revenue growth, i.e. the budgets of the majority of the municipalities were actually “frozen” in the 2009 level and they did not have a possibility to increase revenues. During the consultation procedure, the Minister of Finance argued that the municipal budget income projected for independent functions in 2018 is higher by 18.3 per cent or by EUR 256.6 million than in 2017.

The demand for appropriations to perform government functions which, following the laws, the government transfers to municipalities, is calculated according to the methodologies for calculation of funds approved by public authorities and bodies. The appropriations to perform government (transferred by the government to municipalities) functions are allocated from approved general appropriations of relative public authorities and bodies (i.e. the amount to be allocated for the performance of functions is decided by public authorities and bodies themselves). The appropriations allocated to finance the government (transferred by the government to municipalities) functions should comply with the methodologies for calculation of funds approved by public authorities and bodies. It should be noted that in 2018 the amount approved for delegated functions is higher by 6.7 per cent or by EUR 9.3 million than in 2017. If the *Seimas* or the Government during the budget year adopts or plans to adopt the decisions in the upcoming year, due to which occur changes in municipal budget revenue and expenditure, both revenue and expenditure changes are compensated. This is provided for by both the Law on Local Self-Government and the Law on the Methodology for Determination of Municipal Budget Revenue.

170. Nevertheless, the ALAL expressed many concerns that the financing from the State to the major part of the functions allocated by the state to the municipalities (special targeted grants) is lower than required according to the funding needed for the implementation of these functions. During the monitoring visit, this concern was expressed by all the elected local representatives the delegation met. The limited resources, coupled with the limitations in loans due to the constitutional law on the

³⁰ During the consultation procedure, the Minister of Finance state that the figures for 2018 should be as follows:

- income for financing of independent functions is EUR 1,840.2 million;
- targeted subsidies from the State budget amount is EUR 942.6 million.
- Total EUR 2,782.8 million

fiscal treaty, imply that municipalities do not have the possibility to act as independent and to develop investment projects.

171. Recommendation 321 (2012) drew attention on the fact that “municipalities do not have sufficient resources to deliver the services under their responsibility (a situation exacerbated by the economic crisis but also by the fact that the termination of the county administration put the burden of additional tasks on local authorities) and their borrowing limits are restrictive”, inviting Lithuanian authorities to “ensure the allocation of sufficient resources to local authorities, respecting the principle that resources should match functions and duties which are vested in local government”;

172. The rapporteurs consider that, notwithstanding the improvement of municipal revenues in the recent years, the financial resources can be considered neither adequate (Article 9, paragraph 1) nor sufficient in proportion to the responsibilities assigned to municipalities (Article 9, paragraph 2).

173. Article 9, paragraph 3, establishes the requirement that part at least of the financial resources of local authorities shall derive from local taxes.

Table 11. Financial indicators of the Municipal Budgets for the Year 2018, EUR thousand

	2018	%
1. Revenue for independent functions:	1,840,230	100.0
1.1. personal income tax	1,504,820	81.8
1.2. tax on immovable property	92,247	5.0
1.3. tax on land	25,258	1.4
1.4. lease tax on State-owned land and water bodies of the State Inland Water Fund	19,609	1.1
1.5. inheritance tax, estate	1,295	0.1
1.6. dividends	4,139	0.2
1.7. state fees	2,998	0.2
1.8. interest for deposits	20	0.0
1.9. revenue from sales of long-term tangible and intangible assets	17,676	1.0
1.10. revenue from fines and forfeiture	2,852	0.2
1.11. other revenue not elsewhere classified	2,451	0.1
1.12. revenue from goods and services	87,113	4.7
1.13. pollution taxes	6,731	0.4
1.14. tax on State-owned natural resources	3,719	0.2
1.15. local fees	69,302	3.8
2. Special targeted grants from the state budget:	942,631	100.0
2.1. state delegated functions	148,412	15.7
2.2. student's basket	610,698	64.8
2.3. for investment projects	110,043	11.7
2.4. other grants	73,478	7.8
3. Total revenue and grants	2,782,861	

Source: Ministry of Finances (2018)

174. The ALAL maintains that the size of tax revenue which the municipalities have the right to regulate is below 10 per cent in the revenue structure of the municipalities and ask for the allocation to municipalities of several taxes, which are currently only allocated to the state budget:

- a. the property tax on luxury property which is paid by natural persons for the share of residential (non-commercial) property owned by them above 220 thousand euro;
- b. a share of corporate income tax.

175. Although an improvement of the financial resources deriving from local taxes would be welcomed, rapporteurs consider that the existing level of local taxes, together with the lease tax on State-owned

land and water bodies of the State Inland Water Fund and revenues for goods and services, allow to maintain Article 9, paragraph 3, respected.

176. Article 9, paragraph 4, refers to the necessity that the resources available to local authorities are 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.

177. In Lithuania, the main revenue for municipalities is the Personal Income Tax. Nevertheless, grants from the State budget constitute an important sources as well, especially for delegated functions. Municipalities have their own-source municipal revenues, which include various taxes, set by municipalities or assigned to municipal budgets by law (e. g. land, property taxes, taxes for various services, local fees, etc.) and other non-tax municipal revenue (e. g. fines, rents, revenue of municipal budgetary establishments). These resources are of a sufficiently diversified and expanding nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks, in compliance with Article 9, paragraph 4 of the Charter.

178. Article 9, paragraph 5, refers to the protection of financially weaker local authorities by the way of equalisation procedures.

179. In Lithuania, according to the Law on the Methodology of Determination of Municipal Budgetary Revenues, an equalization of the Personal Income Tax is provided³¹. According to the procedure established by the Law, part of the revenues from Personal Income Tax of the municipalities whose planned income in the coming financial year exceeds the national average is accrued in the "redistribution fund". In 2018 there were 5 municipalities-donors: Vilnius City, Kaunas City, Klaipėda City, Neringa and Visaginas municipalities.

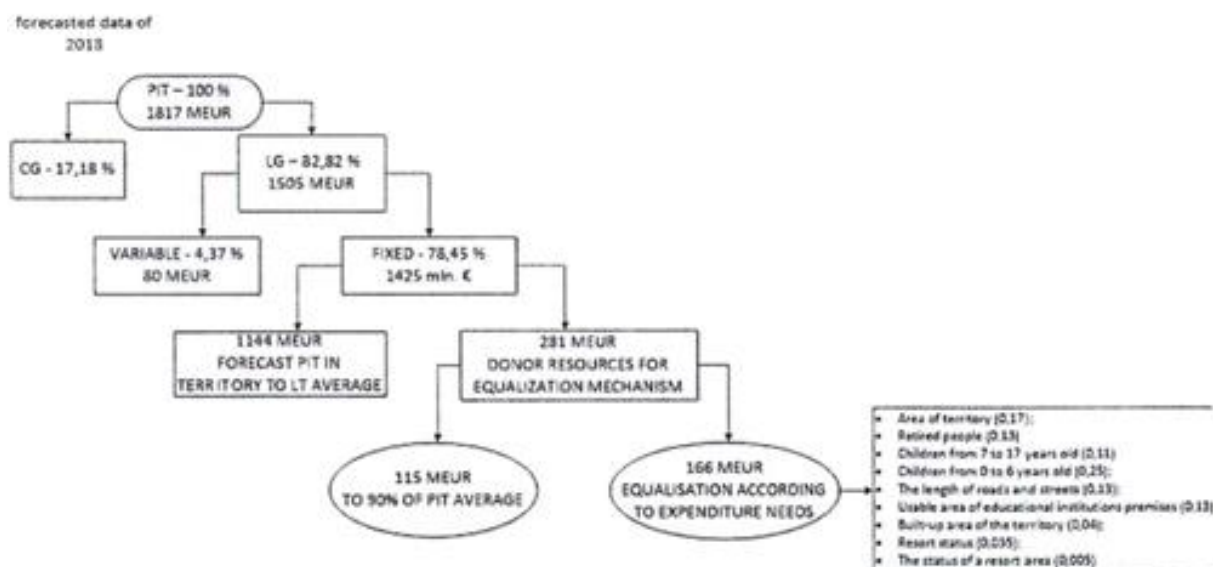
180. These funds are allocated to:

1. equalise the Personal Income Tax for those municipalities whose income from this tax is below the national average (additional funds are allocated to such municipalities, so that the total revenues from Personal Income Tax would amount to 90% of the national average).

2. equalise the differences of the composition of the expenditure for municipalities by considering the value of its demographic, social and other indicators (a number of children, schoolchildren, people of retirement age, area of the territory and etc.) and the importance of these indicators. This part is allocated to all municipalities, as well as to the donors. According to the data provided by the Ministry of Finances, in 2018 Vilnius City municipality is allocated EUR 20, 8 million.

31 The Constitutional Court ruling of 11 June of 2015 declared several provisions of the Law on the Methodology of Determination of Municipal Budgetary Revenues in conflict with the Constitution of Lithuania. Implementing the Constitutional Court's ruling the *Seimas* adopted the amendment to the Law on the Methodology of Determination of Municipal Budgetary Revenues at the end of 2015 which allocates funds to the donor municipalities as well as other municipalities from 2016 to offset the differences in municipal expenditure structures.

Personal income tax distribution in 2018:



Source: Ministry of Finances (2018)

181. As for Article 9, paragraph 6, of the Charter, on consultation of local authorities on the way in which redistributed resources are allocated, it should be considered respected.

182. Article 11 of the Law on the Methodology of Determination of Municipal Budgetary Revenues establishes that the Government and the ALAL consider draft financial indicators of state and municipal budgets approved by the *Seimas* and primary statistics of other indicators in accordance with the procedure approved by the Government.

183. The rapporteurs did not hear any complaint on this respect. They were informed that, in practice, every year in September-October, when the law for the coming budget year is drafted, consultations take place between the Ministry of Finance (the state institution responsible for drafting the Law on the Financial Indicators of State and Municipal Budgets) and the ALAL. In the case of disagreement or new circumstances, the Association of Local Authorities in Lithuania may submit its proposals when the Government is considering the draft at its meeting. Another option is to submit proposals and defend them when the said draft is considered by the *Seimas* committees and the *Seimas*.

184. As for Article 9, paragraph 7 of the Charter, grants for specific projects do exist: among them, appropriations for municipal investment projects, planned in the State Investment Programme and allocated from the state budget in the form of special targeted subsidies. Part of municipal investment projects are also financed from the EU structural funds and other financial instruments, based on the legal instruments, but they do not represent an important part of the financial resources of local autonomies and do not seem to constitute a problem for their autonomy.

185. Article 9, paragraph 8, on the access to the national capital market for the purpose of borrowing for capital investment, is highly problematic in Lithuania.

186. The main concern of the municipalities in Lithuania is related to the Constitutional Law on the Implementation of the Fiscal Treaty, whose Article 4 provisions entered into force from 2016 and severely restricted the annual net borrowing opportunities to 57 out of 60 local authorities. The ALAL requested the central government to address the underlying problem for the municipal budgets and to highly increase the borrowing opportunities for 57 local authorities in 2016, which were reduced several times to 1.5 per cent of the budget revenue.

187. From 2017 the amount of the annual net borrowing for 57 municipalities could not amount to a positive rate, i.e. the municipal loan could not increase throughout a year and the municipalities had the right to borrow the amount not exceeding the amount repaid for the loans taken out previously.

188. From 2018 the mentioned provisions (and threats) on limited borrowing opportunities are applicable to 3 biggest municipalities of the cities of Vilnius, Kaunas and Klaipėda, in accordance with Article 13(1)(2) of Law on the Approval of Financial Indicators of the State Budget and Municipal Budgets for 2018 and Article 4(2) of the Constitutional Law on the Implementation of the Fiscal Treaty.

189. According to the ALAL, this provision undermines the possibility for municipalities to properly implement a part of investment projects planned in the Operational Programme for the European Union Funds' Investments in 2014–2020, as well as other international programmes and the state investment programme, as for the major part of these projects the central government has set the requirements for the municipalities to contribute with own resources, which are essentially borrowed funds.

190. In conclusion, the rapporteurs consider that the requirements of Article 9, paragraph 3, 4, 5, 6 and 7 are satisfied in Lithuania, whereas the requirements of Article 9, paragraph 1, 2 and 8 are not met by the present legal and factual situation in Lithuania.

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.

191. Article 10 of the Charter covers the co-operation between local authorities and their right to associate, at national and international level.

192. In Lithuania, there is neither inter-municipal co-operation tradition nor any specific organisational arrangements or strategies for the development of such kind of cooperation.³² Article 5 of the Law on Local Self-Government refers to the possibility for a municipality to conclude joint activity contracts with other municipalities or to transfer the implementation of functions of administrative and public services to another municipality by mutual consent of the municipal councils, on the basis of contracts. Article 16, on the competences of the municipal council, refers to “taking decisions on joining municipality unions, co-operation with municipalities of foreign states or joining international self-government organisations”.

193. Since the first years of restored State independence, Lithuanian government chose the way of municipal consolidation: the big size of the municipalities contribute to explain the limited practice. Later, the focus has been on the Regional Development Councils as tools for cooperation. The inter-municipal cooperation is possible, but it is very limited and lack material resources. Basically the cooperation is informal and voluntary, based on solely economic efficiency. It is implemented in the forms of ad hoc project agreements, which are mostly financed by EU funds.

194. During the monitoring visit, the delegation was informed on several co-operation projects, especially as for infrastructures and investment projects. A good cooperation on transportation does exist between Klaipeda City municipality and its neighbours, as well as between Kaunas City municipality and Kaunas District municipality, whereas in Vilnius area such co-operation is proved to be more complicated and a pilot project is about to be launched.

195. The second paragraph of Article 10 of the Charter is also fully respected in Lithuania, as local authorities are entitled to set up associations for the protection and promotion of their common interest. The Law on the Basic Regulation of the Association of Municipalities of Lithuania established the ALAL as a national association representing “the common interest of its members, municipalities, in all institutions of State power and government”. Registered as a non-profit organisation, the ALAL seems to be an active entity whose right to represent all the 60 Lithuanian municipalities is respected by the Government and *Seimas*.

196. Lithuania has signed and ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and the addition protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities. This, in connection with Article 10.3 of the Charter, which fully applies in Lithuania, provides for a robust legal and political basis for Lithuania local governments in engaging in transfrontier co-operation.

197. As a matter of fact, many municipalities have established numerous partnerships, agreements and twining with towns and cities in other countries. Frequently, these involve cross-border co-operation with neighbouring districts in Poland, Russia, Latvia and Belarus. The ALAL represents the interests of its members, in relationship with foreign local authorities and international organisations. One of its tasks is to monitor the implementation of the provisions of the Charter.

³² See Klimovský, Daniel & Mejere, Oksana & Mikolaitytė, Jurgita & Pinteric, Uros & Saparniene, Diana. (2014). *Inter-Municipal Cooperation in Lithuania and Slovakia: Does Size Structure Matter?*. Lex Localis “Journal of Local Self-Government” Vol. 12, No. 3, pp. 643-658, July 2014.

198. Therefore, rapporteurs consider that, Article 10 is respected in Lithuania.

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.

199. Article 11 of the Charter refers to an effective judicial remedy to secure the respect of the local self-government.

200. In Lithuania, according to Article 122 of the Constitution, municipal councils have the right to apply to a court regarding the violation of their rights. Consequently, municipalities can apply to ordinary courts (courts of general jurisdiction) or administrative courts (specialised courts) in case of all violations of their rights.

201. The Law on Local Self-Government, Article 41, establishes that “Municipalities may appeal to the court for the violation of their rights, taking into consideration the character of violation”.

202. The Constitution does not give municipalities, as well as any natural or legal person, the right to submit their petitions on the violation of their rights to the Constitutional Court directly. The municipalities can make use of the possibility of indirect access to this Court through ordinary or administrative courts. Paragraph 2 of Article 110 of the Constitution provides that, in cases when there are grounds to believe that a law or another legal act that should be applied in a concrete case is in conflict with the Constitution, the judge shall suspend the consideration of the case and shall apply to the Constitutional Court, requesting that it decide whether the law or another legal act in question is in compliance with the Constitution. However, the delegation was informed that new initiatives have been undertaken recently to introduce this new legal remedy.

203. Recommendation 321 (2012) invited Lithuania authorities to “ensure that the Association of Local Authorities of Lithuania is given the appropriate standing to represent all municipalities before domestic courts”.

204. During the monitoring visit, the ALAL reiterated this request, with specific reference to the proceeding of abstract application on the review of the legality of administrative regulations.

205. According to the Law on administrative proceedings (Article 112, paragraph 1), the right to apply to the administrative court with a petition for review of conformity of a regulatory administrative act with a law or a regulation issued by the Government shall be vested in the *Seimas* members, the *Seimas* Ombudsmen, the Children's Rights Ombudsmen, the Equal Opportunities Ombudsmen, state control officers of the Republic of Lithuania, courts and tribunals, the prosecutors and the professional self-government associations, founded by law to implement public functions.

206. The ALAL claimed the lack of the standing to represent the municipalities in administrative courts, taking into account that, according to Article 2 of the Law on the Basic Regulations of the Association of Municipalities of Lithuania as well as Article 53 of the Law on Local Self-Government, the ALAL represents the common interests of its members (the municipalities) in the Government, other State institutions and international organisations.

207. The rapporteurs consider that the requirements of Article 11 of the Charter are partially satisfied in Lithuania.

5. CONCLUSIONS

208. The present situation of local self-government in Lithuania deserves an overall positive assessment.

209. Local self-government comprises single-tier level bodies, municipalities, which are governed by municipal institutions, elected by the local community.

210. Municipalities manage a substantial share of public affairs; their councils and mayors are elected on the basis of universal, equal and direct suffrage by secret ballot; the free exercise of their functions for elected representatives is guaranteed. Municipalities are able to determine their own internal administrative structure and they do not seem to experience major problems in recruiting high-quality staff. The State supervision only aim at ensuring compliance with the law and the constitution and it is exercised in the respect of the proportionality principle. The municipalities are free to associate: their national association, the ALAL, is an active entity whose right to represent all the 60 Lithuanian municipalities is respected by the Government and the *Seimas*.

211. The 1992 Constitution devotes an entire chapter, Chapter X, to "Local Self-government and Governance". The constitutional principles on local self-government are implemented by legislation, especially by the Law on Local Self-Government. The Charter, as a ratified international treaty, has the priority of the application in cases of collision with the other domestic legal acts (with the exception of the Constitution itself), including laws adopted by the *Seimas* and constitutional laws. The principle of local self-government has been further developed by the Constitutional Court in many judgments, in which the Court also referred to the Charter, as a source of constitutional interpretation.

212. The country is facing important challenges. The global financial crisis that begun in 2008 harshly affected Lithuania, with its GDP falling by 14.8% in 2009. The crisis had an important impact on municipal budgets. However, since 2011 Lithuania has experienced the fastest recovery in Europe, thanks to the economy's high flexibility, a well-performing banking system and a diversified industrial sector. Nevertheless, the poverty rate remains high, especially among the disabled, pensioners, in particular older women, and the unemployed, primarily due to weak protection provided by the social welfare system.

213. In addition, especially, since Lithuania's admission into the European Union, large numbers of Lithuanians (up to 20% of the population) have moved abroad in search of better economic opportunities. The massive emigration of young and educated people creates a significant demographic problem, especially as for skills shortages and depopulation of rural areas.

214. Since the last monitoring visit, in 2011, Lithuania made an important effort in the field of decentralisation: the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local government was ratified; the subsidiarity principle has been laid down in legislation; progresses have been made in extending the municipalities rights in managing State-owned land; local authorities and their Association (ALAL) are regularly consulted by the government; the budgets of the municipalities are recovering after the crisis and experienced a relevant growth in 2018; citizens participation has been strengthened by new rules on local surveys and on the elders.

215. Lithuania has not a proper regional level of self-government. Since the abolition of the deconcentrated State administrations in the counties, in 2010, the issue of the reorganization of the regional level remained opened, as mentioned in the 2012 report. Since then, the functions of the Regional Development Councils created in the counties have been increased by widening the definition of projects of regional importance, the selection of targeted territories in rural areas, the partial transfer of project management functions from implementing agencies. In order to improve their representation, from 2017, representatives of social and economic partners are also included in the Regional Development Councils, together with the municipalities' mayors, delegates from municipal councils and an authorized person appointed from the Government.

216. Nevertheless, some weaknesses and unsatisfactory points remain.

217. Although the subsidiarity principle had been included in legislation, it is not fully implemented in practice, as some interferences by State authorities within the municipal independent functions undermine the attribution to local authorities of full and exclusive powers. The regulations often limit

the right of the municipalities to act independently and that in several matters no discretion is allowed in the exercise of delegated functions. Too detailed description of the independent functions implies that the municipalities do not have the right to implement them at their discretion, taking into account the local conditions as much as possible. As a result, the municipalities lack the financial and human resources for the implementation of the excessively cumbersome bureaucratic requirements established by the central authorities.

218. Although progresses have been made in extending the municipalities rights in managing State-owned land, they still have not the full possibility to manage those lands that would enable them to promote territorial development.

219. The financial autonomy deserves special attention. Notwithstanding the quick recover from the financial crisis, and the improvement of the resources allocated to municipalities since 2013, those resources are not concomitant to the responsibilities which are vested in local government. One important matter of concern is the access of the municipalities to the national capital market, which has been severely limited by the Constitutional Law on the Implementation of the Fiscal Treaty, whose Article 4 provisions entered into force in 2016 for 57 municipalities. Although the international engagements have to be respected, nevertheless some mechanisms should be introduced to allow the municipalities to have access to the capital market for investment expenditures, in the interest of the development of their local communities.

220. As for the legal protection of the local self-government, the situation is satisfactory in Lithuania, with the only exception of the abstract review of the legality of regulatory administrative acts: the ALAL – unlike other association - has not the power of lodging an application in Administrative Courts with a petition for review of conformity of a regulatory administrative act with a law or a regulation issued by the Government.

221. Although citizen participation has been strengthened by new rules on local surveys and on the elders, the issue remains open, also considering that Lithuanian municipalities are relatively greater in size and population than those of other European countries. Several proposals for the direct election of the wardens have been presented, but they seem very difficult to implement: the direct election of the warden would imply the institution of 500 new municipalities. The rapporteurs consider with interest the ongoing debate on the improvement of citizen participation through the strengthening of the elders and encourage Lithuanian authorities to further develop citizen participation at sub-municipal level.

222. Despite its administrative, political and economic importance of the capital, Vilnius still does not enjoy a specific or particular “capital status”, and it is governed by the general laws and regulations on local government. During the monitoring visit, the delegation was informed that a particular status for Vilnius as a capital city is not being considered at the moment. A draft bill was introduced in the past, but it was not approved by the Parliament. The rapporteurs consider that Lithuanian authorities should relaunch the debate in the *Seimas* to give Vilnius a particular status in the law, in accordance with its position as a capital city.

223. As for the regional level, the delegation listened different opinions on the possibility to consider the counties as a proper regional level of government. According to the rapporteurs, actually Lithuanian counties cannot be considered as regions in the sense of the Council of Europe’s Framework Reference for Regional Democracy (2009). The Regional Development Councils are authorities placed between central government and local authorities: however, they do not enjoy prerogatives of self-organisation, nor they have a genuine competence to manage, on their own responsibility and in the interest of their populations, a substantial share of public affairs.

224. The rapporteurs consider with interest the ongoing discussion, both at national and local level, on the strengthening of the Regional Development Councils and the possibility of establishing a second tier of local government. The White Paper provides a review of its results for 2021, considering that “Territorial administrative reform (regional and municipal) scenarios will accordingly depend on the achievements of the revised regional policy”. The rapporteurs will continue to follow closely the implementation of the White Paper and of further territorial reforms, and are eager to pursue their political dialogue with the Lithuanian government in this respect.

Appendix – Programme of the Congress monitoring delegation visit to Lithuania

CONGRESS MONITORING VISIT TO LITHUANIA Vilnius, Kaunas, Elektrėnai (23 – 24 January 2018)

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Artur TORRES PEREIRA	Rapporteur on local democracy Chamber of Local Authorities- EPP/CCE ³³ Member of the Monitoring Committee of the Congress President of the Municipal Assembly of Sousel (Portugal)
Mr Sigurdur Bjorn BLONDAL	Rapporteur on regional democracy Member of Chamber of Regions, ILDG ³⁴ Alternate member of the Monitoring Committee of the Congress Councillor, Reykjavik (Iceland)

Congress Secretariat:

Ms Stéphanie POIREL	Secretary to the Monitoring Committee of the Congress of Local and Regional Authorities of the Council of Europe
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Consultant:

Ms Tania GROPPi	Member of the Group of Independent Experts of the Congress on the European Charter of Local Self-Government (Italy)
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Interpreters:

Ms Ruta KAUNE
Ms Alina DAILIDENAITE

The working languages, for which interpretation is provided during the visit, will be Lithuanian and English.

³³ EPP/CCE: Social Democratic Party

³⁴ ILDG: Independent Liberal and Democratic Group

**Tuesday, 23 January 2018
Vilnius**

- **Joint Meeting with the Lithuanian Delegation to the Congress, the Association of Local Authorities in Lithuania, Chairman of the Lithuanian Rural Communities Union and experts**

Lithuanian Delegation to the Congress:

Mr Gintautas GEGUZINSKAS, Head of Delegation, Mayor of Pasvalys District
Mrs Nijolė DIRGINCIENE, Deputy Head of Delegation, Mayor of Birštonas
Mr Vitalijus MITROFANOVAS, Full Member, Mayor of Naujoji Akmene
Mrs Edita RUDELIENE, Full Member, Mayor of Trakai district municipality
Mr Jonas GUDAUSKAS, Alternate Member, Mayor of Silale
Mrs Zivile PINSKUVIENE, Alternate Member, Mayor of Sirvintos district municipality
Mrs Henrikas SIAUDINIS, Alternate Member, Mayor of Ignalina district municipality
Mrs Danute SKRUIBIENE, Alternate Member, Vice-Mayor of Kretinga

Association of Local Authorities of Lithuania

Mr Ričardas MALINAUSKAS, President, Mayor of Druskininkai Municipality

Union of Lithuanian Rural Communities

Ms Jolanta Marija MALINAUSKAITĖ, Chairman

Experts (GIE)

Mrs Aiste LAZAUSKIENE, member

- **City of Vilnius**

Ms Rita BALČIŪNIENĖ, Vilnius City Councillor
Mr Kasparas ADOMAITIS, Vilnius City Councillors

- **Seimas (Parliament)**

Mr Povilas URBŠYS, Chair of the Committee on State Administration and Local Authorities

**Wednesday, 24 January 2018
Vilnius, Kaunas and Elektrėnai**

- **Ministry of the Interior:**

Mr Giedrius SURPLYS, Vice-Minister

- **Ministry of Finance:**

Mr Vilius ŠAPOKA, Minister

- **National Audit Office**

Ms Daiva BAKUTIENĖ, Deputy Auditor General

Ms Živilė SIMONAITYTĖ, Director of Governance Audit Department

Ms Jūra IVONAITYTĖ, Director of Governance Audit Department

Ms Toma BARTAŠĖ, Principal Auditor, Governance Audit Department

Mr Mindaugas MACIJAUSKAS, Director of Audit Development Department

Ms Asta KUNIYOSHI, Director of Budget Policy Monitoring Department

Mr Arūnas KERAMINAS, Deputy Auditor General

- **Constitutional Court**

Mr Dainius ŽALIMAS, President

- **Joint Meeting with the Kaunas City and the Kaunas District Municipality**

Kaunas City

Mr Visvaldas MATIJOŠAITIS, Kaunas City Mayor

Kaunas District Municipality

Mr Valerijus MAKŪNAS, Mayor of Kaunas District Municipality

- **Elektrėnai municipality**

Mr Kęstutis VAITUKAITIS, Mayor