

The Congress of Local and Regional Authorities



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Local and regional democracy in Bosnia and Herzegovina

Monitoring Committee

Rapporteurs¹ : Beat HIRS, Switzerland (L, ILDG); Jean-Marie BELLARD, France (R, EPP/CD)

Draft recommendation (for vote)	2
Explanatory memorandum	6

Summary

This report on the situation of local and regional democracy in Bosnia and Herzegovina follows on from two visits made in April and December 2011. It concludes that the legislative framework as such in Bosnia and Herzegovina and the entities has improved and now includes explicit references to the European Charter of Local Self-Government. The report underlines that the judicial protection of local self-government has been strengthened in both entities and welcomes the establishment in January 2010 of the Ministry of Administration and Local Self-Government of the Republika Srpska. However, the monitoring delegation remains concerned about a number of issues, for instance the fact that the constitutional guarantees governing the relations between the various levels of local self-government have not yet been put in place; the great fragmentation of the territory of Bosnia and Herzegovina, which means that some municipalities are unable to exercise their powers; the lack of clarity in the apportionment of powers between the entities, cantons and municipalities; and the low level of financial autonomy of local authorities in Bosnia and Herzegovina.

The Congress recommends that the authorities of Bosnia and Herzegovina urge the entities of Bosnia and Herzegovina to draw up reform plans on decentralisation and implement the principles set out in the Charter in practice. It also calls on the authorities to amend the Constitution of the Federation of Bosnia and Herzegovina and that of the Canton of Sarajevo in order to extend the area of powers specific to the capital city of Sarajevo and to establish a special status for the city of Banja Luka in the Republika Srpska, while allocating the two cities powers and resources commensurate with their particular situation. The Congress strongly encourages the authorities of Bosnia and Herzegovina to conduct a population census without delay once the Law on the census of population, households and housing units has been definitely passed. Lastly, the Congress urges the authorities of Bosnia and Herzegovina to consider, in the near future, signing and ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

¹ L: Chamber of Local Authorities / R: Chamber of Regions
ILDG: Independent and Liberal Democrat Group of the Congress
EPP/CD: European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress
NR: Members not belonging to a Political Group of the Congress



DRAFT RECOMMENDATION²

[\(See Recommendation 324 \(2012\) adopted on 22 March 2012\)](#)

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

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

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

c. Resolution 307 (2010) REV laying down the rules of procedure for monitoring application of the European Charter of Local Self-Government;

d. Congress Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong(2011)Rec282final] encouraging the governments of member states to take account of the aforementioned Reference Framework in their policies and reforms;

e. the explanatory memorandum of this recommendation on local and regional democracy in Bosnia and Herzegovina.

2. The Congress notes that:

a. Bosnia and Herzegovina ratified the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 12 July 2002 without reservations or declarations, and the instrument came into force in respect of the country on 1 November 2002;

b. Bosnia and Herzegovina has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

² Preliminary draft recommendation approved by the Monitoring Committee on 24 February 2012.

Members of the Committee:

L. O. Molin (President), *M. Abuladze*, *U. Aldegren*, K. Andersen, L. Avetyan (alternate: *E. Yeritsyan*), A. Babayev (alternate: *I. Khalilov*), *T. Badan*, M. Barcina Angulo, *V. Belikov*, G. Bende (alternate: *E. Penzes*), G. Bergemann, *M. Bespalova*, *V. Broccoli*, *Z. Broz*, *A. Buchmann*, *X. Cadoret*, *E. Calota*, S. Carugo, S. Chernov, *D. Chichinadze*, B. Collin-Langen, *M. Cools*, *J. Costa*, *D. Çukur*, L. Dellai, M. De Lamotte, *N. Dogan*, *G. Doğanoglu*, M. Gaju, V. Gebel, *G. Geguzinskas*, S. Glavak, *S. Guckian*, *M. Guegan*, M. Gulevskiy, H. Halldorsson, *M. Heatley*, J. Hepburn, B. Hirs, *J. Hlinka*, *C. Hughes*, A. Ibrahimov (alternate: *R. Aliyev*), *G. Illes*, *J. Jalinska* (alternate: *M. Juzupa*), *S. James*, *A. Jaunsleinis*, *M. Jegeni Yildiz*, *M. Juhkami*, *J.-P. Klein* (alternate: *E. Eicher*), *A. Kriza*, *I. Kulichenko* (alternate: *N. Rybak*), *F. Lec*, *J.-P. Liouville*, *I. Loizidou*, M. Magomedov, P. Mangin (alternate: *J.-M. Belliard*), *T. Margaryan*, G. Marsan, H. Marva, *V. Mc Hugh*, M. Merrild, *I. Micallef*, T. Mikus, K. Miskiniene, *M. Monesi*, *G. Mosler-Törnström*, A. Muzio, *M. Njilas*, *Z. Ozegovic* (alternate: *V. Vasic*), *R. Paita* (alternate: *A. Miele*), *U. Paslawska*, *H. Pihlajasaari*, *G. Pinto*, *G. Policinski*, *A. Pruszkowski*, *C. Radulescu* (alternate: *L. Sfîrloaga*), *R. Rautava* (alternate: *S. Ruponen*), *H. Richtermocova*, A. Rokofillou, *N. Romanova*, *D. Ruseva*, *J. Sauwens*, P. Schowtka, W. Schuster, *D. Shakespeare*, M. Simonovic (alternate: *S. Lazić*), G. Spartanski, *M. Tamiros*, A. Torres Pereira, V. Udovychenko (alternate: *O. Radziievskiy*), *A. Ugues*, G. Ugulava (alternate: *P. Zambakidze*), A. Uss, P. Uszok, V. Varnavskiy (alternate: *A. Borisov*), *O. Van Veldhuizen*, *L. Vennesland*, *L. Verbeek*, *H. Weninger*, K. Whitmore (alternate: *P. Grove*), *J. Wienen*, *D. Wrobel*, *U. Wüthrich-Pelloli*, *D. Zmegac*.

N.B.: The names of members who took part in the vote are in italics.

Secretariat of the Committee: S. Poirel and S. Cankocak.

c. the situation of local and regional democracy in Bosnia and Herzegovina was the subject of a monitoring report and Congress Recommendation 202 (2006);

d. on 23 March 2011, Mr Jean-Marie Belliard (France, R, EPP/CD) and Mr Beat Hirs (Switzerland, L, ILDG) were appointed as rapporteurs tasked with presenting a new report to the Congress on local and regional democracy in Bosnia and Herzegovina;

e. the Congress delegation made two visits, from 11 to 14 April 2011 and on 12 and 13 December 2011 respectively. Meetings were held in Sarajevo, Banja Luka, Brčko and Mostar with representatives of state institutions, the component entities – the Federation of Bosnia and Herzegovina, the Republika Srpska – and the Brčko District, as well as the local authorities and their associations, and the international community;

f. The rapporteurs wish to thank the Permanent Representation of Bosnia and Herzegovina to the Council of Europe and all the people they met during the visit.

3. The Congress notes with satisfaction:

a. the general compatibility of Bosnia and Herzegovina's legislation on local self-government with the principles of the Charter. The legislative framework in Bosnia and Herzegovina and the entities has improved and now includes explicit references to the Charter;

b. the increased judicial protection of local self-government in both entities;

c. the consensus about the need to ensure consistency in the legislation on local self-government at all levels;

d. the expansion of inter-municipal co-operation between Sarajevo and East Sarajevo;

e. legislative progress at local level in some areas such as education, local transport and the road network;

f. the establishment in January 2010 of the Ministry of Administration and Local Self-Government of the Republika Srpska and the practice of biannual consultations between members of the Republika Srpska Government, mayors and associations of communes and towns;

g. the adoption on 3 February 2012 of the Law on the census of population, households and housing units by the House of Peoples;

h. the development of regional initiatives conducive to reconciliation in the region.

4. Observing the lack of action on Congress Recommendation (202) 2006 on local and regional democracy, the Congress notes with concern that:

a. the functioning of local self-government has been seriously affected by the political and institutional deadlock at state level, which is preventing any decentralising reform in the country;

b. the constitutional guarantees governing the relations between the various levels of local self-government have not yet been put in place;

c. the lack of population census since the one held in 1991 is particularly problematic in a country where the entire political system is based on the ethnic principle;

d. the lack of clarity in the apportionment of powers between the entities, cantons and municipalities persists;

e. the level of financial autonomy of local authorities in Bosnia and Herzegovina is relatively low. Local authority finance depends on the redistribution of VAT, the existing mechanisms for which are ineffective;

f. there is still no legal framework guaranteeing municipal property, which affects the calculation of the local revenue base;

g. the great fragmentation of the territory of Bosnia and Herzegovina means that some municipalities are unable to exercise their powers;

h. inter-municipal co-operation exists in very limited form even if some initiatives seem to be developed in this direction;

i. the existing legal framework does not take account of the special status of Sarajevo and its specific powers and responsibilities as the capital of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina;

j. The city of Banja Luka, which operates as the *de facto* capital of the Republika Srpska, does not have a special status;

k. with regard to the Statute of the City of Mostar, the inequality in electoral rights in the municipal council is a breach of Article 3 of the Charter, a point which was also noted by the Venice Commission in Opinion No. 594/2010 of 16 October 2010. Moreover, the Constitutional Court of the Federation of Bosnia and Herzegovina has declared the Statute of the City of Mostar unconstitutional.

5. In the light of the above, *the Congress recommends that the Committee of Ministers* invite the authorities of Bosnia and Herzegovina to:

a. urge the entities of Bosnia and Herzegovina to draw up reform plans on decentralisation and practical implementation of the principles set out in the Charter;

b. revise the State Constitution in accordance with Opinion No. 308/2004 of the Venice Commission adopted on 12 March 2005 and insert a reference to the principle of local self-government in the Constitution;

c. adopt and implement the Law on the census of population, households and housing units in Bosnia and Herzegovina and give political, administrative and financial support to the preparation and organisation of the census, in order to draw up and implement effective public policies at local authority level;

d. review the legislation on local self-government within the entities, cantons and municipalities with a view to ensuring clear apportionment of the powers of local authorities;

e. allocate to local authorities sufficient financial resources commensurate with their powers and responsibilities, in particular by revising the existing legal provisions on financial equalisation;

f. adopt a legal framework recognising municipal property;

g. promote inter-municipal co-operation and the joint delivery of certain public services;

h. amend the Constitution of the Federation of Bosnia and Herzegovina and that of the Canton of Sarajevo in order to extend the area of powers specific to the capital city of Sarajevo and increase resources to a level commensurate with the powers assigned in the light of Congress Recommendation 219 (2007) on the status of capital cities;

i. continue the ongoing discussion to revise the Constitution of the Republika Srpska in order to grant a special status to the city of Banja Luka in Republika Srpska and assign it appropriate powers and resources;

j. revise without delay the Statute of the city of Mostar and the Electoral Law of the Federation of Bosnia and Herzegovina so as to bring them into line with Article 3 of the European Charter of Local Self-Government;

k. consider signing and then ratifying in the near future the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

l. call on the expertise and assistance of the Congress in drawing up, in co-operation with all the relevant stakeholders, any reform programmes aimed at increasing decentralisation in line with the Charter.

EXPLANATORY MEMORANDUM

Table of contents

1. Introduction	6
2. Political situation and evaluation since the previous Recommendation 202 (2006) on local and regional democracy in Bosnia and Herzegovina	7
3. Honouring of obligations and commitments.....	11
3.1. The Constitution and recent developments	11
3.2. Local self-government: the European Charter of Local Self-Government	12
3.3. Analysis of the situation of local democracy in light of the European Charter on Local Self-Government on an article by article basis.	17
3.3.1. Articles 2 and 3.....	17
3.3.2. Article 4	19
3.3.3. Article 5	21
3.3.4. Article 6	21
3.3.5. Article 7	22
3.3.6. Article 8	22
3.3.7. Article 9	23
3.3.8. Article 10	24
3.3.9. Article 11	24
3.4. Regional democracy: the Reference Framework for Regional Democracy	25
4. Conclusions.....	26
Appendix 1 – Programme of the Congress monitoring visit in Bosnia and Herzegovina (11-14 April 2011 and 12-13 December 2011).....	28
Appendix 2 – Overview of the state of implementation of human rights at local and regional levels	32

1. Introduction

1. In accordance with Article 2 (3) of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers of the Council of Europe, the Congress of Local and Regional Authorities (hereafter “the Congress”) prepares regular country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied for Council of Europe membership, and monitors the effective implementation of the principles of the European Charter of Local Self-Government.

2. Bosnia and Herzegovina ratified the European Charter of Local Self-Government on 12 July 2002 without reservations or declarations, and the instrument came into force in respect of that country on 1 November 2002. Bosnia and Herzegovina had not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority at the time of publication of this report.

3. The situation of local and regional democracy in Bosnia and Herzegovina has already been the subject of two Congress reports, in 2000³ and 2001,⁴ before the country’s accession to the Council of Europe and the European Charter of Local Self-Government, and a monitoring report in 2006⁵. The Congress adopted its Recommendation 202 (2006)⁶ on 14 November 2006.

³ Report on local and regional democracy in Bosnia and Herzegovina (candidate country for accession to the Council of Europe) (Doc. CG/CP(6)29 rev, 2 March 2000). Rapporteurs: Claude Haegi (Switzerland) and Gianfranco Martini (Italy).

⁴ Report on local and regional democracy in Bosnia and Herzegovina (Doc. CG(8)23 Part II, 8 November 2001). Rapporteurs: Christopher Newbury (United Kingdom) and Peter Kittelmann (Germany).

⁵ Local and regional democracy in Bosnia and Herzegovina (Doc. CG(13)30 Part II, 23 October 2006). Rapporteurs: Christopher Newbury (United Kingdom) and Karsten Behr (Germany).

⁶ Recommendation 202(2006) on local and regional democracy in Bosnia and Herzegovina.

4. Given the complexity of the federal political structure of Bosnia and Herzegovina, the Monitoring Committee decided to conduct two consecutive visits, from 11 to 14 April 2011 and on 12 and 13 December 2011 respectively.

5. The Monitoring Committee appointed Mr Jean-Marie Belliard (France, R, EPP/CD) and Mr Beat Hirs (Switzerland, L, ILDG) Rapporteurs, for local democracy and regional democracy in Bosnia and Herzegovina respectively. The Rapporteurs were assisted by Ms Elena Simina Tanasescu, consultant, member of the Independent Group of Experts on the European Charter of Local Self-Government, and by the Congress Secretariat.

6. The Congress monitoring delegation met with representatives of the State institutions, the international community, the component Entities – the Federation of Bosnia and Herzegovina, the Republika Srpska – and the Brčko District, and the local authorities and their associations (the detailed programmes of both visits are reproduced in Appendix 1).

7. This report was prepared on the basis of information gathered during the two visits to Bosnia and Herzegovina, as well as data sent in by the authorities encountered and various international organisations and experts.

8. The delegation would like to thank the Permanent Representation of Bosnia and Herzegovina with the Council of Europe, the authorities of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and the Brčko district, the cantons, towns and municipalities, and the representatives of the Associations of local authorities of the Federation of Bosnia and Herzegovina and the Republika Srpska, for their co-operation and helpfulness, and the useful information provided by all those interviewed. It also extends its thanks to the Council of Europe Office in Sarajevo, which helped ensure the smooth running of this visit.

2. Political situation and evaluation since the previous Recommendation 202 (2006) on local and regional democracy in Bosnia and Herzegovina

9. The Rapporteurs consider it necessary to outline the evolution of the political situation in Bosnia and Herzegovina in order to clarify the specific situation regarding local and regional democracy in this country.

10. Following the dismantling of the Socialist Federal Republic of Yugoslavia on 25 December 1991 and the referendum of 29 February 1992 on the independence of Bosnia and Herzegovina, which was organised at the request of the European Community and boycotted by the Serbian population, the former Federated State of Bosnia and Herzegovina declared independence and joined the UN on 22 May 1992, becoming its 177th member. The ensuing war only ended with the signature of the General Framework Agreement for Peace in Bosnia and Herzegovina and its 11 appendices (the “Dayton Agreement”), initialled in the United States of America on 21 November 1995 and signed in Paris on 14 December 1995. The Dayton Agreement established that the “Republic of Bosnia-Herzegovina, the official name of which shall henceforth be “Bosnia and Herzegovina” shall continue its legal existence under international law”⁷ comprising two entities: the Federation of Bosnia and Herzegovina (Federation of Bosnia and Herzegovina) and the Republika Srpska (Republika Srpska).⁸ In the wake of this agreement, the whole international community began their efforts to stabilise the situation in Bosnia and Herzegovina; The High Representative (HR) was designated by the international community to supervise the implementation of the civilian aspects of the Dayton Agreement on behalf of the international community; many international and supranational institutions and organisations are still actively involved in the country to this day.

11. The main constitutional texts currently in force in these countries were adopted during or at the end of the war. The Republika Srpska Constitution was initially adopted in 1992 as the Constitution of an Entity proclaiming its status as an independent State within Bosnia and Herzegovina; the Federation of Bosnia and Herzegovina Constitution adopted in June 1994 was an integral part of

⁷ Constitution of Bosnia and Herzegovina, Article 1, para 1.

⁸ Ibid., Article 1, para 3.

another international agreement, the Washington Agreement, and represents a compromise made possible by the United States between the Bosniacs and the Croats. The Bosnia and Herzegovina Constitution was integrated into the Dayton Agreement as Appendix IV, and was translated into English Bosnian, Croatian and Serbian (see Article XI of the Dayton Agreement), without consultation with the citizens of Bosnia and Herzegovina, which led to questions about the lack of democratic legitimacy in the Constitutions of Bosnia and Herzegovina.

12. Right from the outset Bosnia and Herzegovina was a Federal State with two constituent Entities, viz the Federation of Bosnia and Herzegovina and the Republika Srpska, joined on 5 March 1999 by a special-status district - the Brčko District - which exists "under the sovereignty of Bosnia and Herzegovina and is subject to the responsibilities of the institutions of Bosnia and Herzegovina as those responsibilities derive from this Constitution, whose territory is jointly owned by (a condominium of) the Entities ». ⁹ Arbitral awards made in pursuance of a clause in the Dayton Agreement by the Arbitration Court reconstituted the municipality and the surrounding district, which were enshrined in the Constitution of Bosnia and Herzegovina in 2009, were hailed as the first successful constitutional reform. The Brčko District, which despite its size is of indisputable strategic importance, comes under the responsibility of the international supervisor (the Head of the District Office) mandated by the UN and dependent on the HR. Brčko District has its own institutional system with legislative, executive and judicial powers.

13. According to official statistical sources, ¹⁰ Bosnia and Herzegovina has a total area of 51 209 km² and a population estimated, under the latest census (1991) at approximately 4 million, of whom 43,5% are Bosniacs (Muslims), 31,2% Serbs (Orthodox Christians) and 17,4% Croats (Roman Catholics). Given the age of the last census, these figures are obviously unreliable.

14. The country withdrew from the census cycle scheduled in Europe in 2011 because of the deadlock over the Law on the census of population, households and housing units in the Bosnia and Herzegovina Parliament. The outstanding points include disagreements on the questions on the census questionnaire concerning ethnic belonging, language and religion, as well as the calculation of the number of Bosnia and Herzegovina nationals living abroad (the diaspora). The Republika Srpska, which managed to adopt a law on the census which applies solely to this Entity, decided not to implement it because of the domestic and international political pressure surrounding this issue.

15. The delegation has been informed that, since their visit to Bosnia and Herzegovina, the Law on the census of population, households and housing units was adopted on 3 February 2012 by the House of Peoples, which has scheduled the organisation of the future census for April 2013. The definitive adoption of this law will probably take place during the current year – at least that is the hope of the Rapporteurs. The census is vital for a country whose whole political and institutional life is based on political compromise with a view to putting an end to the armed struggle between populations of different ethnic and religious origins. The Bosnia and Herzegovina Constitution defines three constituent peoples, namely Bosniacs, Croats and Serbs, as well as others¹¹, the protection of whose interests is ensured not only in their respective territories but also by the setting up of State bodies and the adoption of rules on their functioning. The rules contained in the Constitution concern namely the quorum required in the two chambers of the Parliamentary Assembly (Article IV, paras. 1b, 2b), the vote by entity (double majority qualified for all decisions taken by the Parliament (Article IV, paras 3c, 3d), the possibility of a proposed decision of the Parliamentary Assembly being declared to be destructive of a vital national interest (Article IV, para. 3e), and the mechanisms for dissolution (Article IV, para. 3g). It would be unrealistic to expect the dismantling of such constitutional mechanisms, qualified as "ambiguous" ¹² by the Council of Europe Parliamentary Assembly as regards the right of veto to protect vital interests, which "instead of preventing outvoting by any of the ethnic groups through dialogue and search for compromise – have been systematically abused and now hamper all decision-making processes ». ¹³

⁹ Amendment I to the Constitution of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina No. 25/09), para 1.

¹⁰ Demography 2010. Thematic Bulletin. ISSN 1840-104X.

¹¹ They include the 17 recognised national minorities, as well as those who do not wish to identify themselves as Bosniacs, Croats or Serbs.

¹² Functioning of democratic institutions in Bosnia and Herzegovina, Resolution 1855(2012).

¹³ Ibid.

16. A large scope initiative called the “Butmir process”, was launched in October 2009 by the Swedish Presidency of the European Union and the United States to help Bosnian leaders to agree on an overall agreement offering elements for a constitutional review necessary on the conditions aiming essentially at reinforcing the central echelon of the State by increasing the powers of the Council of Ministers and excluding the use of vote by entity in the Parliament for questions related to the integration of Bosnia-Herzegovina into the EU and the NATO. To this day, the process has not been resolved by an agreement.

17. It is obvious that the transition from a political system based on ethnic representation to one based on citizen representation requires time and must be appropriated by all the population of Bosnia and Herzegovina. This may go some way towards explaining why many of the problems facing the Bosnia and Herzegovina, including the serious political crisis, which is still continuing, are caused (and should also be able to be solved) by the ethnic and religious make-up of the population.

18. One example illustrating a political system founded on ethnic representation showing serious operational gaps would be the referendum authorised on 13 April 2011 by the National Assembly of the Republika Srpska on the legitimacy of the State Court and the Office of the Prosecutor General of Bosnia and Herzegovina. This new national court common to both entities, which was set up in 2002 to prosecute war criminals locally rather than in the special court for former Yugoslavia in The Hague, has not been universally welcomed. It was set up on the basis of an extensive interpretation of the provisions of Appendix IV to the Bosnia and Herzegovina Constitution, as such a Court had not been explicitly foreseen by the Dayton Agreement. Consequently, the Republika Srpska authorities have always disputed its legitimacy. This referendum was scheduled for June 2011. One of its possible outcomes, in the event of a vote of no confidence, was the non-recognition of its decisions in the Republika Srpska territory. It took a flying visit on 13 May 2011 by the EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, to dissuade the Republika Srpska authorities from organising this referendum in exchange for launching a structured dialogue on justice issues between Bosnia and Herzegovina and the EU. The aim of this dialogue is to ensure, on the basis of a close cooperation between EU institutions, the authorities of Bosnia and Herzegovina and various international actors, including in particular, the Council of Europe, the implementation of the strategy to reform the justice sector as well as the strategy for war crimes. However, following the decision of the international prosecutor Jude Romano, on 20 January 2012, to put an end to the investigations in the Dobrovoljacka case, the authorities of Republika Srpska submitted a draft law to the Parliament proposing to abolish the State Court and the Office of the Prosecutor General.

19. Furthermore, on 19 April 2011 some 500 Croats from all levels of the Bosnia and Herzegovina met in Mostar to set up the Croatian National Assembly, which adopted a resolution calling for recognition of equal status for the Croatian people with the other two constituent peoples and reiterating its calls for the creation of a third Entity, while also advocating thorough constitutional reform, also covering the territorial and administrative organisation of the Bosnia and Herzegovina.

20. Despite many appeals to the Bosnia and Herzegovina authorities from the Parliamentary Assembly of the Council of Europe¹⁴ and the apparent determination of all Bosnia and Herzegovina political forces to press on with the requisite constitutional reform, the 3 October 2010 general elections in Bosnia and Herzegovina were held in accordance with constitutional and electoral provisions which the European Court of Human Rights had deemed discriminatory in its judgment *Sejdic and Finci v. Bosnia and Herzegovina* of 22 December 2009.¹⁵ Moreover, these elections have led to several successive abortive attempts to form governments. It was not until 28 December 2011 (15 months after the parliamentary elections) that the heads of the six main political parties in the country reached a consensus on the distribution of the ten posts in the central government, with one Prime Minister, Vjekoslav Bevanda, and nine ministers.

21. Even though the day-to-day lives of Bosnian citizens are a matter for the Entities level rather than the Bosnia and Herzegovina, this protracted deadlock has not gone unnoticed. It has had serious consequences at the domestic level: the Bosnia and Herzegovina Central State has been without a

¹⁴ Functioning of democratic institutions in Bosnia and Herzegovina (Recommendation 1984 (2010); Urgent need for constitutional reform in Bosnia and Herzegovina (Recommendation 1914 (2010); Observation of the general elections in Bosnia and Herzegovina (3 October 2010 (Doc. 12432 of 11 November 2010), Rapporteur: Mr Tiny Kox (Netherlands).

¹⁵ Judgment *Sejdic and Finci v. Bosnia and Herzegovina*, 22 December 2009, GC, No. 27996/06, paras. 56 and 77.

budget since 2010 and operates on temporary financing. The unemployment rate stands at over 43% of the working population, and the decrease in direct investments has remained at the critical rate of 75% since 2009. At the international level, these circumstances make it difficult for Bosnia and Herzegovina to secure any credibility with the international credit rating agencies. It is also currently impossible to implement the Stabilisation and Association Agreement with the EU because the preconditions, with the adoption of a law on the census, State aid and constitutional reform (with the minimum aim of eliminating the discrimination noted by the European Court of Human Rights in the judgment *Sejdic and Finci*), have still not been fulfilled. More would be needed than declarations of intention from the political leaders, particularly from the recently installed government, for the country to be able to take advantage of opportunities on offer that could help them face dysfunctioning parts of the system. Before 28 December 2011 the plan had been to partly reassign the € 96 million in the EU pre-accession instrument to regional programmes and to refrain from paying the second tranche - € 1 200 million – in the confirmation agreement concluded with the International Monetary Fund in the absence of an accord on the apportionment of the money between the State, the Entities and the Federation of Bosnia and Herzegovina Cantons. The constitutional structure of Bosnia and Herzegovina represents a major obstacle to the operability and effectiveness of Bosnia and Herzegovina institutions at all levels, hampering the honouring of the country's international obligations and its political and socio-economic development.

22. In its Recommendation 202 (2006) on local and regional democracy in Bosnia and Herzegovina, the Congress stressed that the legislation on local self-government in the Republika Srpska was compatible with the principles of the European Charter of Local Self-Government, but also noted the persistence of such concerns as: (i) the lack of a constitutional guarantee of local self-government at State level clearly regulating relations between all tiers of public authorities, even though it is incumbent on the central State of Bosnia and Herzegovina to deal with the field of local self-government and thus to honour its obligation deriving from the ratification of the European Charter of Local Self-Government; (ii) the "very vague" nature of some provisions of the Entity laws on local self-government, requiring clarification by means of implementing laws; (iii) heavy dependence on the part of municipalities on financial transfers and the lack of a legal framework on municipal property; (iv) serious fragmentation of the country, leading to complexity and inefficiency in administrative structures; and (v) lack of inter-municipal co-operation.

23. The Congress recommended that the State of Bosnia and Herzegovina legislate, given its international responsibility for the implementation of the European Charter of Local Self-Government, to introduce a clear constitutional guarantee on relations among the different tiers of local self-government;

- that the Entities:

(i) implement their legislation in matters of local and regional democracy and establish appropriate and simplified legal and administrative procedures to this end;

(ii) reform their territorial and administrative structures to make them more effective;

(iii) adopt appropriate legislation on distribution of the income deriving from the newly introduced value-added tax (VAT), giving local authorities adequate financial resources of their own;

(iv) given the current power vacuum on the part of the State of Bosnia and Herzegovina in the field of local self-government and therefore its present inability to fully implement its obligations deriving from the ratification of the European Charter of Local Self-Government, to individually incorporate, in the framework of their internal procedures, the European Charter of Local Self-Government in their legislation and thus define their responsibilities vis-à-vis the State;

(v) implement their legislation on municipal local property; (vi) encourage inter-municipal co-operation;

- that the Federation of Bosnia and Herzegovina;

(i) amend its Constitution in order to clarify its competence to legislate in the field of local self-government;

(ii) consider the possibility of transferring the powers of the Cantons in the field of local self-government, particularly concerning supervision and finances, to the Entity, thus facilitating the concentration and impartial exercise of power at the Entity level; that the municipalities: initiate and maintain close co-operation, both between individual municipalities and among associations of municipalities.

24. The delegation notes with satisfaction the progress that has been made at the local level throughout the Bosnia and Herzegovina, particularly in the fields of education, local transport and road repairs, as well as in the area of inter-municipal co-operation (especially in the city of Sarajevo), although the legal framework has not been clearly defined.

25. The prescriptive framework of the Bosnia and Herzegovina and the Entities has improved, and now comprises explicit references to the European Charter of Local Self-Government. Judicial protection of local self-government in both Entities is apparently being increasingly reinforced.

26. Pan-Balkan initiatives conducive to reconciliation in the region, such as the series of tripartite meetings between Serbian and Croatian Presidents and the members of the Presidency of Bosnia and Herzegovina, the latest of which took place on 3 February 2012 in Jahorina near Sarajevo, as well as the tripartite summit of Bosnian, Serbian and Turkish leaders on 26 April 2011, should also be welcomed and encouraged.

27. Nevertheless, the Rapporteurs cannot but regret noting during their visits the lack of action on Recommendation (202) 2006 on local and regional democracy, despite the good intentions voiced by the authorities of the Bosnia and Herzegovina and the two Entities. Unfortunately, the overall institutional framework of the Bosnia and Herzegovina effectively prevents any decentralising reform in the country.

3. Honouring of obligations and commitments

3.1. *The Constitution and recent developments*

28. The current constitutional texts in Bosnia and Herzegovina must be analysed in the light of the fact that right from the outset the Bosnia and Herzegovina and Federation of Bosnia and Herzegovina Constitutions were political compromise texts geared to ending the armed struggle. The Republika Srpska Constitution was drawn up in a war situation. This meant that the local self-government issue was not a priority or a central question in the constitutional process leading to the creation of the State of Bosnia and Herzegovina.

29. Furthermore, the Bosnia and Herzegovina Constitution (particularly Article 111) grants the State very few attributions, assigning general competence to the Entities, which renders the functioning of the Central State particularly difficult. By dint of an extensive interpretation and application of specific provisions of the Bosnia and Herzegovina Constitution, it has proved possible, to some extent, to extend powers to the State level. Nevertheless, this extension has not yet reached local self-government. The Venice Commission's opinions have promoted this process (eg the creation of a Court at Bosnia and Herzegovina level and the transfer of responsibilities to the Bosnia and Herzegovina in the fields of defence and indirect taxation). The major role played by the High Representative here should also be acknowledged.

30. The creation of the Brčko District was an interesting example on two counts: firstly, it has proved that local self-government can be promoted in the Bosnia and Herzegovina at Central State level, and secondly, it constituted the country's first successful constitutional reform. There is an explicit reference to local self-government in Amendment I to the Constitution of Bosnia and Herzegovina which defines the district of Brčko as "a self-governing unit with its own institutions, laws and statutes, and with competences and a status definitively prescribed by international arbitration",¹⁶ and includes in the competences of the Bosnia and Herzegovina Constitutional Court the power to "resolve conflicts concerning the status and powers of the Brčko District".¹⁷

31. During talks with the representatives of the Bosnia and Herzegovina Constitutional Court, one of the judges told the Rapporteurs that the Constitution of the Central State now contains a direct reference to local self-government, but that this could be considered as being confined solely to the special status of the Brčko District. He also pointed out that the principle of local self-government was not included in any other constitutional or legal provisions at Bosnia and Herzegovina level, and that the Entities were responsible for implementing this principle. Local self-government is not conceived as a fundamental freedom in the Bosnia and Herzegovina, which means that it does not come under the jurisdiction of the Constitutional Court of the Central State. On the other hand, the respective

¹⁶ Amendment I to the Constitution of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina no. 25/09), para 1.

¹⁷ *Ibid.*, para 2

Constitutions and legislations of the two component Entities of the Central State did proclaim the local self-government principle.

32. For instance, Articles VI.2 and VI. A 1) of the Federation of Bosnia and Herzegovina Constitution assigns local self-governing status to municipalities that “should exercise local self-government” and to towns made up of “two or more municipalities which are territorially linked by the everyday needs of citizens”, and Article VI.B.1) of the same text explicitly assigns local self-government status to the City of Sarajevo in Sarajevo Canton. Article VI.B.1 of the same text assigns Capital status to the City of Sarajevo without attributing any specific competences. In 2006 the Federation of Bosnia and Herzegovina adopted a Law on the principle of local self-government (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 49/06 and 51/09) but did not submit amendments to the Constitution which would allow the implementation of local self-government reforms and which would ensure its conformity with the European Charter of Local Self-Government.

33. In 2009 the Republika Srpska adopted in 2009 a series of constitutional amendments which had been the subject of a review by the Venice Commission¹⁸ in order to bring the Constitution more into line with the principles of the Charter. However these revisions are not yet in force. Article 5 of the Constitution of Republika Srpska declares that the Entity is based on the principle of local self-government, and Article 66 identifies this principle as one of the limits on the exercise of power in the Republic. According to Article 102, local government must be regulated by law.

34. The Venice Commission has concluded¹⁹ that the constitutions of the Entities are compatible with the provisions of the European Charter of Local Self-Government, although further progress is still needed, particularly in connection with the effective transfer of sectoral competences and financial resources to the municipalities of the two Entities making up the Central State.

35. Where the Brčko District is concerned, following international arbitration and the reform of the Bosnia and Herzegovina Constitution, a Statute was adopted for the Brčko District of Bosnia and Herzegovina in the form of a local Fundamental Law. This text grants the Brčko District all the competences and institutions which one might expect of a State. Article 1 of the text lists the fundamental principles on which the District is based, stipulating that Brčko “is a single administrative unit of self-government existing under the sovereignty of Bosnia and Herzegovina”, and that its powers of local self-government derive from the delegation by each Entity in favour of the pre-war *Opština*. Moreover, this first Article of the Brčko Statute is not subject to amendment.

36. Obviously, the efficient functioning of local and regional self-government in Bosnia and Herzegovina would require extensive constitutional reform at State level in order to define the fundamental principles of local self-government, which could be subsequently implemented by the Entities.

3.2. Local self-government: the European Charter of Local Self-Government

37. The Federal State of Bosnia and Herzegovina is therefore made up of (i) the Federation of Bosnia and Herzegovina, (ii) the Republika Srpska and (iii) the Brčko District which, according to Article VI(4) of the Constitution of Bosnia and Herzegovina, exists “under the sovereignty of Bosnia and Herzegovina and is subject to the responsibilities of the institutions of Bosnia and Herzegovina as those responsibilities derive from this Constitution, whose territory is jointly owned by (a condominium of) the Entities ».²⁰ Local self-government operates differently in the two component Entities of the Central State, while it actually provides the basis for the government of the district, which is exercised directly by the Central State.

¹⁸ Opinion on the draft amendments to the Constitution of the Republika Srpska (Doc. CDL-AD(2008)016)

¹⁹ Opinion on the draft amendments to the Constitution of the Republika Srpska (Doc. CDL-AD(2008)016)

Opinion on the draft amendments to the Constitution of the Federation of Bosnia and Herzegovina (Doc. CDL-AD(2004)014)

Opinion on the new amendments to the Constitution of the Federation of Bosnia and Herzegovina in matters of local authorities (Doc. CDL-AD(2004)032).

²⁰ Amendment I to the Constitution of Bosnia and Herzegovina (Official Gazette of BiH No. 25/09), para 1.



38. The historical changes which Bosnia and Herzegovina has undergone created a highly fragmented Federation. Its complex architecture is the reason Bosnia and Herzegovina figures as an “institutional layer cake” among European countries, with an institutional density of 14 governments and some 180 ministries for less than 4 million inhabitants. There is no agreement concerning the type of administrative bodies that could be introduced between the State and municipal levels. A Decentralisation Commission was set up in 2008 to facilitate and supervise the standardisation of the decentralisation process in the Central State, but no progress has been made in this field.

39. The Federation of Bosnia and Herzegovina has a local level (municipalities [*općina*] and towns [*grad*]) and a cantonal level (*kanton*) of government; some municipalities may comprise communes (*mjesna zajednica*). Local self-government decision-making powers go to both the Entity and the cantons. The Law on the principles of local self-government (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 49/06 and 51/09) defines local self-government as “the right and capacity of local self-government units to regulate and administer, within the limits of the law, certain public activities in accordance with their inherent responsibilities and in the interest of the local population”.²¹

40. A Council of Europe internal expert opinion on this Law²² highlighted three aspects which might prove critical for its implementation: the lack of clear delimitation between the powers of the Federation of Bosnia and Herzegovina and the cantons, the fact that the local authorities need to have their self-governing powers effectively guaranteed in order to exercise their specific attributions, and the weakness of the mechanisms laid down for co-operation among local authorities. The Rapporteurs were informed during their visit that in fact the real level at which local self-government is exercised is the municipality, while the towns merely have “notional self-governing powers”, against a general background of multiple levels of local administration that are liable to cause huge problems in terms of efficiency.

²¹ Law on the principles of local self-government of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 49/06 and 51/09), Article 2.

²² Evaluation report on Law on the principles of local self-government 2006, Federation of Bosnia and Herzegovina (Doc. PCRED/DGI/EXP(2007)).

41. The Law on the principles of local self-government in the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 49/06 and 51/09) lists competences of the units of local self-government. It includes competences which are in accordance with the Constitution, defined as competences peculiar to cantons or as competences shared by cantons and the Federation of Bosnia and Herzegovina. It remains then to guess what their respective responsibilities are and to interpret the legislation. Moreover, the absence of harmonisation of the relevant federal legislation with the Law on the principles of local self-government, causes inconsistencies in canton laws.

42. The Vice-President of the Federation of Bosnia and Herzegovina Constitutional Court pointed out that the mayors and associations of mayors were very actively defending their rights, with frequent references to the European Charter of Local Self-Government, which is directly applicable in the Federation of Bosnia and Herzegovina. The Constitutional Court had dealt with cases concerning the legislature's obligation to consult local authorities before taking decisions and the need to match up the new powers assigned to local authorities with the resources available to the latter. Although the Charter is still a major reference instrument in the Federation of Bosnia and Herzegovina, one problem remains: not all of the Cantons have enacted laws on local autonomy, which makes it extremely difficult to provide effective legal protection to them in the absence of a legal framework specifying the apportionment of powers among the different local administrative levels.

43. The Republika Srpska has no intermediate level between the Entity and the local level; the latter does, however, comprise municipalities (*општина – opština*) and towns (*град – grad*). Some towns are made up of communes (*мјесна заједница - mjesna zajednica*). The simple territorial organisation of this Entity is an advantage, but there is a noticeable bias in favour of the unitary organisation of the State and against any further decentralisation. Nevertheless, the Republika Srpska is a unitary Entity in whose Constitution local self-government forms the cornerstone of the territorial organisation of local government (Article 5). The legislature is responsible for regulating the Republic's legal system (Article 102). The municipalities hold local self-government status, while the larger urban areas, which may combine several municipalities, can be declared towns. The implementation of local administrative tasks can be left to the towns by law (Article 102). This could raise some difficulties in terms of apportioning powers between the town and its component municipalities, even though there were no explicit complaints from the people we interviewed in the Republika Srpska on these matters.

44. Even though the first Law on territorial organisation and local self-government in the Republika Srpska was adopted in 1994 (Official Gazette of Republika Srpska, no. 11/94) and the Law on local self-government in 2004 (Official Gazette of Republika Srpska, no. 101/04), all the public authority representatives we met agreed that decentralisation really began much later, with the review in 2007 of the new Law on local self-government and the adoption in 2009 of the Law on territorial organisation (Official Gazette of Republika Srpska no. 69/09). The Republika Srpska adopted in June 2009 the Strategy for development of local self-government for 2009 – 2015 with the objective of reducing territorial, demographic and economic disparities between municipalities and granting local authorities the financial resources commensurate with their competences. The Ministry of Administration and local self-government was established in January 2010.

45. The Law on local self-government adopted in 2004 and revised in 2007 by the Republika Srpska (Official Gazette of Republika Srpska, no. 101/04) has also been the subject of a Council of Europe expert opinion, which concluded that some of the provisions might be incompatible with the Charter, especially those on the dissolution of local councils, debarring the latter from lodging judicial challenges to dissolution decisions taken by the Republika Srpska authorities. Moreover, as in all the former Yugoslav States, the issue of municipal property has not yet been resolved, posing problems with local authority resources, although it was one of the objectives set out in the Strategy for development of local self-government.

46. The Republika Srpska Constitutional Court has pointed out that local self-government has always been a regular subject of complaints by appellants, because it is defined as a fundamental right which litigants can adduce against the Entity and because Article 120 of the Republika Srpska Constitution provides for the possibility of an *actio popularis* on this basis. Most lawsuits concerning local self-government in the Republika Srpska have related to the delimitation of the specific competences of municipalities and the manner in which they are assigned resources by the Entity. With the decentralisation process gaining speed, the Constitutional Court is expecting the volume of this type of litigation to increase in parallel.

47. The Brčko District is a local self-governing unit in itself. Its *de jure* and *de facto* status would not appear to be under threat: in both legal and practical terms, the local self-governing status which this District obtained under international arbitration is firmly guaranteed and properly applied by the local authorities with the support of the OHR, such local authorities being specific to an actual State. Some wonder whether the Brčko District might come to serve as a kind of test for a different future territorial organisation based on local self-government rather than on apportionment between three peoples making up the Bosnia and Herzegovina. Furthermore, the Brčko District is strategically placed to split the Republika Srpska territory in two, facilitating Federation of Bosnia and Herzegovina access to its tiny pockets of territory in between the Republika Srpska and Croatia and Serbia. In its communiqué of 12 December 2011²³ the Peace Implementation Council announced that the possibility of discontinuing the supervision of Brčko would be on the agenda of its next meeting in six months' time. At all events, the functioning of the Arbitration Court and the formal independence of the District should not be challenged.

48. Despite all the pressing recommendations from all the Council of Europe bodies, no explicit reference to the European Charter of Local Self-Government appears in the Bosnia and Herzegovina Constitution, or the Federation of Bosnia and Herzegovina and Republika Srpska Constitutions. All the Constitutional Court judges (at the levels of both the Central State and the two Entities) whom we interviewed pointed out that the Charter was a reference instrument for their daily work, albeit in terms of an international obligation shouldered by the Bosnia and Herzegovina rather than as a legal instrument transposed into domestic law.

49. The territorial organisation of the Bosnia and Herzegovina is also an urgent problem. The Venice Commission²⁴ considers that any solution involving abolishing the two Entities would be unrealistic in the medium term, but a realistic solution – in line with general European trends – would be to concentrate legislative powers at Federation of Bosnia and Herzegovina level to the detriment of the Cantons, and simultaneously to reinforce local self-government in the Republika Srpska. The pure and simple abolition of the Cantons would be an even better solution, but this is a political no-go area for the moment.

50. Another major long-standing problem is the country's Capital. In accordance with the Constitution of Bosnia and Herzegovina (Article I, para. 5), the city of Sarajevo is the capital of Bosnia and Herzegovina. The Constitution of the Federation (Article I, para. 4) also defines the city of Sarajevo as the capital of the Federation of Bosnia and Herzegovina, the territory and competences of which are governed by the Constitution of the Canton of Sarajevo (Amendment XXVI, article VI, para. B). In this context and in the light of the recommendation of the Congress on the status of capital cities²⁵, the rapporteurs consider it necessary to give a legal status to the capital city of Sarajevo, to its territorial borders, its basic competences as a unit of local self-government, and to its specific competences as the capital of Bosnia and Herzegovina and of the Federation of Bosnia and Herzegovina. This would also require the elaboration of appropriate amendments to the Constitution of the Federation and to the Constitution of the Canton of Sarajevo.

51. During the war the city of Sarajevo had been split into two separate cities: Sarajevo, which operated as Capital for the Central State and the Federation of Bosnia and Herzegovina, and East Sarajevo ("*Источно Сарајево*"), which is *de jure* the Capital of the Republika Srpska. However, Banja Luka operates as the *de facto* capital of the Republika Srpska. At present, constitutional amendments concerning the status and the specific competences of Banja Luka as capital city are in progress.

52. The people we interviewed had different stances on the status of the Capital City. At Bosnia and Herzegovina level the status of the capital would not appear to be seen as a problem, and it is relegated to the level of the Federation of Bosnia and Herzegovina Entity. Those we spoke to at State level seem in practice to consider Sarajevo as the Federation of Bosnia and Herzegovina capital and Banja Luka as the Republika Srpska capital, even though the latter lacks capital status.

²³ http://www.ohr.int/pic/default.asp?content_id=46664

²⁴ Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, adopted at its 62nd plenary session (Venice, 11 and 12 March 2005) (Doc. CDL-AD(2005)004), paras. 48-62.

²⁵ Recommendation 219 (2007) on the Status of Capital Cities

53. The delegation notes with satisfaction the apparently sound bases for increasing co-operation between both Sarajevos (mayors and city councils). The meeting with representatives of Sarajevo City Council took place in the presence of a delegation from the East Sarajevo City Hall, and both delegations stated that beyond any ethnic or political divides, the citizens' needs, including local public service provision, could bring both sides together. Even though they reject the idea of reunification for the moment, *inter alia* because they belong to two different Entities, the respective Mayors stressed their desire to co-operate and co-ordinate action. Joint projects being developed by both Sarajevo cities include preparations for the 2014 Youth Olympics, a new shared cableway, restarting the old tram network which used to serve the whole of the Greater City, building a new Central State Prison in East Sarajevo for the whole Greater City, police co-operation, etc. Another joint element concerned the mayoral election system: the mayors of both Sarajevos are elected by the city councils, although not from among their members.

54. In connection with powers, despite the subsidiarity principle the Prime Minister and President of the Assembly of Sarajevo Canton (comprising the four municipalities of Sarajevo City and five further ones) have issued a joint statement to the effect that all the City's powers, apart from urban planning, were in fact exercised by the Canton, because the City's municipalities were too small and lacked the necessary weight.

55. The Mayor of East Sarajevo has declared that the City's six municipalities have transferred to him the competences concerning municipal affairs, transport, tourism, inspection, fire-fighting and intermunicipal co-operation, and that the Republika Srpska respects subsidiarity, despite the occasional lack of resources to carry out all the assignments.

56. At the Federation of Bosnia and Herzegovina level, the authorities of the cantons and municipalities considered that Sarajevo-Capital had lost its real local autonomy since the creation of the Bosnia and Herzegovina. Prior to 1992 it had been a Capital City with a special legal regime, but after the peace agreements Sarajevo Canton had taken over the City's functions and resources. For instance, street cleaning is a matter for the Canton, but the City can also use its own resources to interfere in this competence. The population is often reduced to providing such services themselves because the constant bickering between the Canton and the City leaves the streets unclean. Similarly, local transport and tourism are matters for the Canton rather than the City.

57. Sarajevo City has two sources of revenue from its component municipalities: tax on property transfers and municipal taxes. Together these taxes provide 5 million Bosnian convertible marks. The level of local budgets is enlightening: whereas the Canton has some 715 million Bosnian convertible marks, the City of Sarajevo has 21 million Bosnian convertible marks (including 5 million by way of Cantonal equalisation), and the component municipalities have an average of 21 million Bosnian convertible marks each (ranging from 19 million for the smallest and 34 million for the largest). The Canton conducts equalisation for the City, unchallengeable by the Mayor of Sarajevo.

58. The Federation of Bosnia and Herzegovina Constitutional Court says that it has a special regime for the City of Sarajevo because it is the only town or city explicitly mentioned in the Constitution, enjoying local self-government (Article VI.B.1). The Constitutional Court decided²⁶ that Articles 2, 3, 4 and 5 of the Law on property of the Canton of Sarajevo violated the right of the City of Sarajevo to exercise its right of local self-government deriving from the Constitution of the Federation of Bosnia and Herzegovina, the Constitution of the Canton of Sarajevo and the Charter (Official Gazette of the Canton of Sarajevo, no. 6/97). The cantonal law in force authorises the Canton of Sarajevo, acting as the legal successor to the former city of Sarajevo, to take over the rights of the City of Sarajevo to the movable property and real estate located within the Canton of Sarajevo. However, according to the Law on the principles of local self-government of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, no. 49/06) which defines the City of Sarajevo as a local self-government unit (Article 60), the property used by the City of Sarajevo must be allocated to and administered by the City (Article 6, Article 33)

59. Another decision was expected at the time of the first visits concerning the specific competences of the Capital (the Law on the principles of local self-government of the Federation of Bosnia and Herzegovina (Official Gazette of the Federation of Bosnia and Herzegovina, no. 49/06) assigns the

²⁶ Decision U-18/09 of 26.01.2010 (Official Gazette of the Federation of Bosnia and Herzegovina, nos. 12/10 and 16/11)

City responsibility for primary and secondary education (Article 8), but the Canton had adopted laws contradicting this). During the second visit in November 2011, the Sarajevo Cantonal authorities pointed out that educational competences were shared among the Canton, the City and the municipalities, and that the Federation of Bosnia and Herzegovina Constitutional Court had also previously backed this viewpoint.²⁷ It should be noted that the Law on primary education of the Canton of Sarajevo (Official Gazette of the Canton of Sarajevo, no. 10/04) was amended in November 2011²⁸ to ensure the presence of representatives of the canton, of the city and of parents in school administration committees.

60. The Mayor of Sarajevo considers that the conclusions of the 2006 monitoring visit still hold today:

- (i) Sarajevo is the capital of Bosnia and Herzegovina and Federation of Bosnia and Herzegovina only;
- (ii) the City comprises four urban municipalities, to which others have been added, although they do not really belong to the City;
- (iii) the distribution of powers among the Canton, the City and the municipalities is unclear. The Mayor added that Sarajevo Canton was one of the last to adopt laws on local self-government and local finance, despite being required to do so under the Federation of Bosnia and Herzegovina Constitution. He added that in practice, the Canton failed to respect the statutory competences adopted by Sarajevo Municipal Council.

61. In the Republika Srpska, the issue of the Capital City is regarded as a major problem. The public authorities and civil society consider Banja Luka as the real capital of the Republika Srpska. Members of the Republika Srpska Parliament and Government, as well as the Mayor of Banja Luka and representatives of local authority association stressed, each from their own perspective, that prior to 1992 Banja Luka experienced an unusual level of development for a small provincial town, and that it is now in a position to operate as a capital. The Republika Srpska says that it is prepared at any time to initiate constitutional reform in order to enshrine this fact in legislation. At present, a draft law aiming to amend the Constitution of Republika Srpska and to attribute to Banja Luka the status of capital of Republika Srpska is being debated. This draft has been blocked due to strong objections from Bosniak representatives at the Parliament of Republika Srpska who demand seats for Bosniak representatives in municipal/city assemblies.

62. In conclusion, although local self-government in Bosnia and Herzegovina is formally enshrined in a fairly bizarre legal mechanism which now even includes the Constitution of the Central State, in practice it is in its infancy in the country, albeit in a different manner in each component Entity and the Brčko District. Such diversity, which stems from the specific situation of the country, might be interpreted as an ongoing attempt on the part of a new State which has recently acceded to the Council of Europe to bring its institutional practices into line with European standards on local self-government and regional democracy. All those interviewed by the delegation stress their powerlessness in the face of the long persisting general deadlock at all decision-making levels, which is preventing not only coherent, foreseeable legislative work but also the provision of the most basic public services to citizens.

3.3. Analysis of the situation of local democracy in light of the European Charter on Local Self-Government on an article by article basis.

This analysis is based on the last recommendation.

3.3.1. Articles 2 and 3

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.

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.

²⁷ Decision U-21/09 of 27.09.2010 (Official Gazette of the Federation of Bosnia and Herzegovina, no. 85/10)

²⁸ Law on the Amendment of the Law on Primary Education (Official Gazette of the Canton of Sarajevo, no. 31/11)

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.

63. The Constitution of the Bosnia and Herzegovina does not appear to cater for the principle of local self-government (Articles 2 and 3 of the Charter), although this principle is formally mentioned in connection with the Brčko District. On the other hand, the Entities' Constitutions do affirm the principle of local self-government with reference to the laws on local self-government. While the situation is simpler in the Republika Srpska because of its unitary State structure, in the Federation of Bosnia and Herzegovina the multitude of decision-making levels makes assessment difficult, apart from the general finding that the legislation on local self-government is far from being harmonised and/or implemented.

64. The actual concept of local self-government is set out in the first paragraph of Article 3 of the Charter, which could be summed up in the fact that local authorities should have the legally guaranteed right to decide ("to regulate and manage") a substantial share of the public affairs affecting them. Apart from the Brčko District, which holds this right thanks to a specific political context and international pressure, we must note that the situation is different for local authorities in the two Entities. The Republika Srpska only began really to establish local self-government with the Law adopted in 2007, and since then the situation seems to have been constantly improving, despite the difficulties arising from the economic situation in the Entity and the Central State. In the Federation of Bosnia and Herzegovina, the situation is more complex because of the plethora of decision-making levels and the lack of clarity in the apportionment of competences between the local and cantonal levels. All assessments and reports agree on the negative effects which the Cantons sometimes have in the Federation of Bosnia and Herzegovina, particularly for local self-government. Apparently, no serious attempts have been made to resolve this problem to date.

65. Article 3 (2) requires self-government to be exercised by representative authorities elected under democratic procedures, or via instruments of direct democracy. The local elections which have been held in Bosnia and Herzegovina since the last recommendation have been deemed in conformity with these criteria by all observers. However, the problem of discrimination against "the others" rooted in the Bosnia and Herzegovina Constitution and highlighted by both the Bosnian Constitutional Court and the European Court of Human Rights, places a heavy burden on democracy in general and on local and regional democracy in particular.

66. In this connection, the Venice Commission conducted a special analysis of the situation of the city of Mostar in 2010.²⁹ According to the Statute of the City of Mostar approved by the High Representative in 2004, the Mostar City Council comprises 35 members, 17 of whom are elected in a city-wide electoral constituency which encompasses the entire territory of the City, and 18 are elected at the level of 6 city area electoral constituencies corresponding to the six City Municipalities. These municipalities correspond to the constituencies for municipal elections. Article 39 of the Statute of the City of Mostar provides that each municipality must have a Municipal Council committee comprising the three municipal councillors elected in the relevant constituency, even where the municipalities have a different number of inhabitants. However, the central area of Mostar has not been turned into a municipality and has no Municipal Council committee. This has several consequences. The electoral rights of residents of the central area are confined to electing the aforementioned 17 councillors. The Municipal Council, which has substantial direct powers over the central area, is not elected in the same way by all inhabitants. Moreover, the Mayor of Mostar is elected indirectly by and from among the municipal councillors. In November 2010, the Constitutional Court of Bosnia and Herzegovina declared the Statute of the City of Mostar unconstitutional and demanded a revision of the text and of the electoral law within six months. This decision has not yet been enforced owing to the absence of a compromise between the Bosniac and Croat members of Mostar Municipal Council.

²⁹ Amicus curiae brief for the Constitutional Court of Bosnia and Herzegovina on certain provisions of the election law of Bosnia and Herzegovina, of the Constitution of the Federation of Bosnia and Herzegovina and of the Statute of the City of Mostar - adopted by the Venice Commission at its 84th plenary session (Venice, 15-16 October 2010) (Doc. CDL-AD(2010)032)

3.3.2. Article 4

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 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.
- 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.

67. In connection with Article 4 on the scope of local self-government, there have been contrasting developments since the last recommendation. While, on the one hand, the wording of the statutory framework on subsidiarity and consultation seems to have been improved in the Entities and certain Federation of Bosnia and Herzegovina cantons (although there has been little progress at Central State level), the Rapporteurs do nonetheless note that in practice the distribution of powers remains very unclear.

68. Many of those interviewed in the Federation of Bosnia and Herzegovina mentioned a tendency in the Cantons to adopt regulations on local self-government, which required them at least to specify the legal framework within which such self-government was to be exercised by the authorities of the towns and municipalities. In practice, this statutory framework is not really implemented. The principle of a clearer distribution of competences between the Federation of Bosnia and Herzegovina and the Cantons would now seem to be accepted, which can only help develop local self-government.

69. The Parliamentary Assembly has considered the latest amendments to the Law on local self-government in the Republika Srpska (Official Gazette of the Republika Srpska, No. 101/04) as generally positive³⁰, despite some remaining concerns, particularly about the fact that the right to self-government could have been replaced with a provision on “relations between the Republika Srpska and the local self-governing authorities”, which would mean a reduction in the legal protection of local self-government.

70. The authorities would do well to address the prescriptive framework for local self-government and to clarify several aspects of it, particularly in the Federation of Bosnia and Herzegovina, where the law on the principles local self-government (Official Gazette of the Federation of Bosnia and Herzegovina, No. 49/06) would appear not to guarantee a sufficiently clear distinction between the attributions of the basic local self-governing units and the Cantons, and where the actual capacity of local authorities for exercising all their powers is under constant threat from the multitude of higher administrative levels. Despite the fact that Article 8 of the aforementioned Law is worded in keeping with the principle of subsidiarity³¹, the second sentence of the said Article allows for exceptions.³² In addition to the (over-) long list³³ of attributions which the relevant Law in the Federation of Bosnia and Herzegovina lays

³⁰ Evaluation report on the law on amendments to the Law on local self-government of the Republika Srpska (Doc. PCRED/DGI/EXP(2007) 25

³¹ The first sentence of the first paragraph of Article 8 provides: "A local unit of self-government shall have its own competences as established by the Constitution and law, and it shall have the right to deal with all matters of local import that are not exempted from its competences or added to the competences of another authority pursuant to the Constitution and law."

³² The second sentence of the first paragraph of Article 8 provides: "It shall decide independently on issues from within its competences that may not be limited or denied by the federal or cantonal authorities, except in situations and within limits set forth by the Constitution and law."

³³ In its unofficial translation into English, Article 8 of the Law on principles of local self-government lists: "The competences of a local unit of self-government shall include specifically:

down for local self-governing units, we cannot overlook the fact that very few of them are actually exercised by the communes, municipalities and towns (e.g. Mostar and Sarajevo).

71. In fact, it would appear that the situation in Bosnia and Herzegovina is such that the local authorities do not “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 4 para. 2). Therefore, even where the prescriptive framework is explicit, decisions cannot be taken by the “authorities which are closest to the citizen” (as provided for in Article 4 para. 3) because of the other intermediate decision-making levels (including the Cantons). The situation is particularly uncertain because of the lack of any proper legal framework. For instance, Sarajevo Canton has still not adopted a law on local self-government, even though this is required by the Federation of Bosnia and Herzegovina Constitution, which obligation has been confirmed by a decision from the Constitutional Court of this Entity.

72. Under these conditions, the delegation’s meetings with local authorities in Sarajevo, Banja Luka and Mostar highlighted the fact that in Bosnia and Herzegovina the competences assigned to local authorities are – often – far from being full and exclusive (as required by Article 4 para. 4). This is a serious breach of the Charter. In reality, the competences of local authorities in Bosnia and

- ensuring and protecting human rights and basic freedoms in accordance with the Constitution ;
- adoption of the budget of the local unit of self-government ;
- adoption of programs and plans for the development of the local unit of self-government and providing conditions for its economic growth and job creation;
- establishing and implementation of spatial planning and environmental protection policies;
- adoption of regional, urban and implementation plans, including zoning;
- establishing and implementation of a housing policy and adoption of programs for housing development and other types of property development;
- establishing a policy and setting the level of reimbursement for the use of public goods;
- establishing and implementation of a policy for control, management and use of construction land;
- establishing a policy for control and management of property of the local unit of self-government;
- establishing a policy for managing natural resources of the local unit of self-government and distribution of revenue collected as compensation for the use of those resources;
- management, financing and improvement of the operations and facilities of the local public infrastructure:
 - Water supply, wastewater disposal and treatment,
 - Solid waste collection and disposal
 - Public sanitation
 - City cemeteries
 - Local roads and bridges
 - Street lights
 - Public car parks
 - Parks;
- organization and improvement of local public transport;
- establishing a preschool education policy, improvement of the preschool institutional network, and management and funding of public institutions for preschool education;
- establishment, management, funding and improvement of institutions for primary education;
- establishment, management, funding and improvement of institutions and building facilities to satisfy the needs of citizens in the areas of culture and sport;
- assessing the work of institutions and quality of services in the areas of health care, social welfare, education, culture and sport, and ensuring funds required for the improvement of their work and quality of services in accordance with the needs of citizens and capabilities of the local unit of self-government;
- analyses of public order and peace and level of safety of people and property, and making recommendations to relevant authorities;
- organizing, implementation and responsibilities for measures of protection and rescue of people and material goods from elements and natural disasters;
- establishment and conduct of compliance inspections with regard to the regulations from within the competencies of the local unit of self-governance;
- rendering regulations on taxes, reimbursements, contributions and fees within the competencies of the local unit of self-governance;
- holding referendums in the territory of a local unit of self-governance;
- floatation of bonds and decisions on debt incurrence by local units of self-governance;
- Conduct of activities for ensuring proper sanitation and health conditions;
- ensuring proper work conditions for local radio and TV stations in accordance with the law;
- ensuring and maintaining records of personal status of citizens and electoral rolls;
- activities from the domain of land survey and land cadastre, and property records;
- organization of efficient local government in accordance with local needs;
- establishment of the organization of local self-government;
- animal protection."

Herzegovina are often called into question or limited by either the two Entities or, in the Federation of Bosnia and Herzegovina, by the cantons. In fact, the Rapporteurs received confirmation of this information from representatives of the Constitutional Courts of both Entities, pointing out that while the local authorities could exercise the mechanisms for legal protection of their self-governing powers, the implementation of certain decisions, especially in the Federation of Bosnia and Herzegovina and very particularly in Sarajevo Canton, was much less reliable.

73. During the meeting with the Sarajevo Canton authorities, the Congress delegation ascertained that, despite the detailed provisions of the Law, the specific competences of Sarajevo City concerned municipal affairs (such as urban planning, education, health, local finance and business development). In practice, however, apart from urban planning, the actual transfer of the other competences is still problematical, despite the decisions of the Federation of Bosnia and Herzegovina Constitutional Court. The extent of the outstanding problems, particularly in financial terms, far exceeds the capacities of the small municipalities making up the Canton. Examples are the fact that water supplies in Sarajevo come from sources which are in the territory of East Sarajevo but which must serve both Sarajevos, and the problem of gas supplies.

74. During the meetings of the delegation with the cantonal authorities of the Federation of Bosnia and Herzegovina, it was mentioned that the opinion of relevant cantonal ministries were not always taken into account and that laws pertaining to shared responsibilities were often adopted in a manner which excluded the cantonal institutions from the process of decision-making. It seems necessary to define mechanisms which foresee mandatory and regular consultations when federal laws or other regulations which are of interest to the cantons and local authorities are adopted.

75. One positive development was noted in the Republika Srpska, where several persons we met mentioned the satisfactory quality of consultation between the Entity authorities and the local authorities. For instance, the new Ministry of Administration and Local Self-Government introduced by the government in January 2010 and the practice of biannual consultations between members of the Republika Srpska Government and all the Republic's Mayors are apparently seen as practical progress by the associations of communes and towns, as well as by the Mayors interviewed by our delegation.

3.3.3. Article 5

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.

76. Where compliance with Article 5 is concerned, this requirement was disregarded in Bosnia and Herzegovina when the City of Sarajevo was split after the war, and also when the Brčko District was set up. The Rapporteurs note that any changes to territorial boundaries in Bosnia and Herzegovina seem to pose problems for both local authorities and the Central State bodies, and while there is a consensus on the fact that the country's current territorial organisation is unsuited to the needs of its citizens.

3.3.4. Article 6

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.

77. Where Article 6 is concerned, the Rapporteurs note that in the current domestic political climate, the question of adapting administrative structures and resources to local authority remits is remote from real concerns in Bosnia and Herzegovina. Many people we spoke to emphasised the major needs in terms of local authority staff training. The associations of local councillors in both Entities rang the alarm bells concerning the politicisation and ethnicisation of local government. The overall

negative evolution in the country since the last recommendation (as also highlighted by the Report on the political situation in the Balkans adopted on 5 October 2011 by the Parliamentary Assembly of the Council of Europe)³⁴ has also damaged local authority administrative structures. The economic crisis in Europe has also seriously affected their capacities and recruitment prospects.

3.3.5. Article 7

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.

78. In connection with the exercise of responsibilities and the conditions of office of local elected representatives (Article 7), the Rapporteurs can only note that the situation has deteriorated with the political and institutional deadlock affecting the county up until the end of 2011 and the general context of economic recession. The Republika Srpska authorities' power to dissolve local councils under conditions laid down by law (see para. 45 above) is incompatible with the Charter.

3.3.6. Article 8

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.

79. In Bosnia and Herzegovina, the administrative supervision of local authorities' activities laid down in Article 8 of the Charter must be analysed differently in the case of the two Entities, on the one hand, and in Brčko District on the other. In the Federation of Bosnia and Herzegovina, owing to the plethora of local structures, such supervision is more difficult to determine. The Rapporteurs note that for local authorities in the Federation of Bosnia and Herzegovina there are few activities or attributions over which such supervision can be exercised. In the Republika Srpska, the Ministry of Administration and Local Self-Government has an inspection department which conducts *a posteriori* supervision of legality regarding all local authority activities, whereas specialist inspections may be conducted in specific fields (public contracts, health, etc) by the departments of the relevant ministries. The Secretary General of the Republika Srpska Association of towns and municipalities did not mention any incident between the municipalities and the Entities central bodies, whereas the President of the same Association pointed out that supervision of legality was in fact conducted by the courts. The Rapporteurs were told that in comparison with the previous Republika Srpska Government, under which the Association had brought a number of legal actions, the situation had slightly improved with the new Government which had signed an agreement with the Association and was organising regular meetings.

80. As regards the Brčko District, the Mayor in office at the time of the Rapporteurs' visit stressed that the administrative supervision conducted by the Office of the High Representative was more thorough than that carried out by the Bosnia and Herzegovina authorities.

³⁴ The political situation in the Balkans (Doc. 12747, 5 October 2007). Rapporteur, Mr Björn von Sydow (Sweden).

3.3.7. Article 9

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.

81. Compliance with Article 9 is one of the most important issues for local authorities in Bosnia and Herzegovina. Local authority finance depends on the redistribution of VAT, which accounts for almost 60% of their revenue. A general finding emerged early on in the visit: local authorities in Bosnia and Herzegovina are far from having “adequate financial resources of their own”, never mind being able to “dispose freely” of them. They can only introduce and levy a restricted number of local taxes (land tax is the main one), and these taxes are not very substantial (the proportions of these resources available to local authorities clearly work in favour of the Entities and the Central State). For instance, 60% of franchise tax is placed at the disposal of the Cantons. Only 20% of local budgets in the Republika Srpska come from specific local authority taxes. The Federation of Bosnia and Herzegovina audit considered budget planning “dysfunctional” to the extent that it did not take account of real resources or of the difficulties encountered in collecting taxes, particularly at the local level. In the Federation of Bosnia and Herzegovina, local authorities can borrow on the international money markets up to a maximum 10% of the local budget, whereas in Republika Srpska this option is prohibited by law. Throughout Bosnia and Herzegovina the funds earmarked for equalisation by the Entities or Cantons (in the Federation of Bosnia and Herzegovina) often exceed the specific resources of local authorities.

82. Financial equalisation operates at all levels in Bosnia and Herzegovina. At Central State level VAT is paid into an account which is inaccessible to the Entities, and from which the funds required for Brčko District are first of all debited, followed by the resources for financing Central State expenditure, with a small proportion being used for equalisation between the Entities. At Republika Srpska level, equalisation accounts for a small amount of the resources provided to territorial authorities. In the Federation of Bosnia and Herzegovina the method of equalisation among the Cantons themselves is more effective than that operated by the Cantons among the local authorities. It is often the main source of funding for the local level. It was particularly difficult to obtain statistics in order to clarify the situation. In 2011, following the political deadlock at State level, the Bosnia and Herzegovina public authorities operated on the basis of the budgets adopted in 2010, and these figures were not communicated to the delegation.

83. Lastly, one recurrent problem in all former Yugoslav countries concerns municipal property, which is not always in conformity with the requirements of the Charter. Shortly before the wars in the early 1990s the Yugoslav Federal State had nationalised most of the real estate belonging to natural and legal persons, including local authority property. After Yugoslavia broke up, the secessionist States retained the regulations on municipal property in their territories, primarily in order to fill their coffers. The Constitution of Bosnia and Herzegovina does not include explicit provisions on the division of

State property between different levels of government and the two Entities are in disagreement over their respective rights to use, administer and dispose of public property. This situation persists in Bosnia and Herzegovina, partly because of the diversity of power structures and the fragmentation of local authorities. It poses a serious threat to the resources available for local authorities and also raises the question of access to the natural resources located in the territories of the different local and regional authorities, as well as the corresponding concessions.

84. The political and economic situation specific to Bosnia and Herzegovina suffers from the added negative effects of the economic crisis in Europe, and the fact that the allocation of functions between the entities (and cantons in the Federation of Bosnia and Herzegovina) and the local authorities is anything but clear. All this may explain - without justifying - the non-observance of the principle of proportionality of resources with the competences of the local authorities (Article 9 para. 2). Compliance with Article 9 para. 2 is an unattainable requirement in the current state in Bosnia and Herzegovina. The principle of proportionality, the cornerstone of local autonomy in financial matters, may remain a distant goal even in Bosnia and Herzegovina. The rapporteurs consider that the Congress could provide practical assistance to authorities in order to contribute usefully to a step towards this goal of compliance with Article 9.

3.3.8. Article 10

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.

85. For the time being, intermunicipal co-operation within the meaning of Article 10 is only a distant prospect for local authorities. Nevertheless, the delegation notes with satisfaction the aforementioned advances concerning the city of Sarajevo and the city of East Sarajevo, which points to a brighter future once the most pressing issues have been resolved.

3.3.9. Article 11

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.

86. In connection with Article 11, the legal and judicial protection of self-government is clearly one of the fields effectively covered by the two Entities' Law on local self-government. These texts provide remedies and facilities for effective protection of the freedom of local authorities, and confer *locus standi* on various interlocutors, including local authority representatives and associations, or representatives of the judiciary in both Entities. This means that access to justice is both possible and real, and is being both implemented and promoted. The Federation of Bosnia and Herzegovina and Republika Srpska Constitutional Courts informed the delegation that a great deal of their work related to proceedings concerning self-government.

87. This cuts both ways, however, because while it is all well and good for local authorities to defend their interests, it is also worrying to note that judicial remedies are necessary in order to achieve this goal, so necessary, indeed, that the courts in question note that such proceedings constitute a fairly large proportion of their activities. Moreover, the Rapporteurs also qualify their conclusions with the fact that legal remedies do not always seem to bear fruit, since some of the parties we spoke to pointed out that it was not uncommon for judicial decisions to be implemented extremely late, or even not at all.

3.4. *Regional democracy: the Reference Framework for Regional Democracy*

88. Bosnia and Herzegovina was founded at the beginning of the 1990s as a highly fragmented State. The specific situation of Bosnia and Herzegovina is such that no one, not even the best-informed observer, could pinpoint with any certainty the level at which regional democracy might be exercised. If we consider Bosnia and Herzegovina as being the Central State, the two Entities and, possibly, Brčko District, might be taken as the regional level, but the situation on the ground does not at all confirm this assumption. Furthermore, taking both Entities as the central level within which the regional level should operate has the conceptual drawback of disregarding the Central State of Bosnia and Herzegovina and the unitary structure of the Republika Srpska.

89. There seems to be a general consensus on the fact that regional democracy in the Federation of Bosnia and Herzegovina is exercised at cantonal level. However, the assessments of the role played by the cantons in terms of regional democracy are rather ambivalent. One aspect which is often stressed in all the reports, recommendations and evaluations regarding the Federation of Bosnia and Herzegovina is the threat posed by the cantonal level to local self-government, at the levels both of the Federation of Bosnia and Herzegovina Entity and of Bosnia and Herzegovina. The evaluations by the Congress's previous monitoring missions, the Venice Commission and various local players (central or local public authorities and civil society) have all reached the same conclusion. Cantons do not form a uniform territorial structure, but are highly diversified in accordance with variable criteria. Of the 10 existing Cantons, three fall short of the criteria established by law for canton status. The way in which they are defined in the Federation of Bosnia and Herzegovina Constitution makes it possible in practice to reduce local self-government. The distribution of decision-making powers in the field of local self-government between the Entity and the Cantons is so vague as to give the Cantons considerable discretionary power, thus depriving the municipalities and the towns of any scope for real action.

90. These aspects remain unchanged today. The persons and authorities we met during the two visits mentioned difficulties linked to the apportionment of competences and the exercise of what they see as coming under their authority, particularly in a context where the Cantons are advantaged vis-à-vis the attributions assigned to administrative and financial resources, and more generally regarding political affairs. In the view of the authorities in question, the Cantons seem to be regarded more as a problem for local self-government and regional democracy than as a regional level as generally understood by regions in Europe.

91. In its Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, adopted at its 62nd plenary session in March 2005, the Venice Commission suggested a "radical" solution to this problem, viz the pure and simple abolition of the Cantons, "thereby creating a situation similar to that in the Republika Srpska".³⁵ Similarly, according to the same source, given that in Bosnia and Herzegovina legislative and executive responsibilities are usually exercised concurrently by the same organ, generally at the highest level, "a step in the right direction" would be to concentrate the legislative function at Federation of Bosnia and Herzegovina level, "making the Cantons structures of a mainly executive nature".³⁶ Nevertheless, should the abolition of the Cantons prove impossible in political terms, the Venice Commission also recommended concentrating legislative activities at Federation of Bosnia and Herzegovina level, which should help rationalise administration at both Federation of Bosnia and Herzegovina and cantonal levels. This presupposes an overhaul of the Federation of Bosnia and Herzegovina Constitution, which currently only confers limited powers on the Entity while assigning the others to the Cantons. Furthermore, it would be useful to define the respective attributions of the Entity and the Cantons in much greater detail, as this would reinforce regional democracy.

92. No change was noted here since the previous monitoring mission. Since, as explained above, the Federation of Bosnia and Herzegovina Constitution is a kind of political compromise, it would be very difficult to reform because of the major consequences this would have on the other aspects of the compromise reached. Reinforcement of what was initially regarded as the regional/local level constituted a basic precondition for putting an end to the ethnic strife.

³⁵ Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative, adopted at its 62nd plenary session (Venice, 11 and 12 March 2005) (Doc. CDL-AD(2005)004), para. 51.

³⁶ Ibid.

93. Given the apparent confusion about the concept of a regional level in Bosnia and Herzegovina and the difficulties in apprehending the role of the Cantons as vehicles for regional democracy in the Federation of Bosnia and Herzegovina, the Rapporteurs consider that the Council of Europe's Reference Framework for Regional Democracy should be used to steer developments in this State.

4. Conclusions

94. The political and institutional deadlock in Bosnia and Herzegovina which has considerably hardened since the last national elections has had undeniable repercussions on local self-government and regional democracy. The lack of compromise between the representatives of the three ethnic groups paralysed all governmental levels up until the end of 2011. At the present time the State is unable to effectively guarantee the honouring of the country's commitments as regards local self-government and regional democracy. The ethnic criterion anchored in the Bosnia and Herzegovina Constitution increases the complexity and inefficiency of local authority administrative structures.

95. In this context, various Council of Europe bodies have impressed on the Bosnian people the need for constitutional reform,³⁷ a move which is now vital. The reform should comprise, alongside other major aspects, safeguards against discrimination among Bosnian citizens in the electoral field and a guarantee on local self-government under the terms set out in the European Charter of Local Self-Government. While a direct reference to the European Charter of Local Self-Government is not obligatory in the Constitution, compliance with this text and its use as a standard-setting instrument are *sine qua nons* for honouring the commitments entered into by States signing and ratifying the Charter.

96. Bosnian legislation on local self-government is generally compatible with the principles set out in the Council of Europe's Charter of Local Self-Government, but many problems persist. The existing provisions are often too vague or else allow for too many derogations to standards and values generally recognised in Europe, and so do nothing to consolidate the democratic process which is under way. Clear apportionment of the decision-making powers of the Central State and the local authorities is consequently needed both for democracy in Bosnia and Herzegovina and for the proper functioning of the State and its public services.

97. In practical terms, the increased fragmentation of the territory and the municipalities on ethnic grounds is intensifying the local authorities' lack of confidence and of responsibility. Before the armed conflicts in the early 1990s there were 109 municipalities throughout Bosnia and Herzegovina, but nowadays there are 143 (79 in the Federation of Bosnia and Herzegovina and 63 in the Republika Srpska, and also the Brčko District). Some of these municipalities are cut off from the rest of their corresponding Entities or else are located very far from the Capital. Others are near the boundaries between Entities or Cantons. They all have difficulty discharging their duties vis-à-vis their local communities, which makes them even more vulnerable in the face of the (often arbitrary) decision-making powers of the Cantons and Entities. Moreover, this fragmentation very often leads to the deterioration or even abolition of pre-existing public services, which exacerbates financial problems which are already severe in a country in political, economic and social transition which is also having to cope with the financial crisis common to all European countries.

98. This combination of negative aspects, together with all the superimposed decision-making levels, causes difficulties which seem insuperable from the political and institutional angles, at all national levels, and is generating expenditure which a relatively small population cannot afford, in addition to the authorities' problems with creating specific sources of income of their own. Local government dependence on the Central level is intensified by all these factors, especially as regards financial resources, which prevents the emergence of medium- or long-term projects. Lastly, the overly vague legislative framework, particularly in terms of apportioning competences between the central level (Bosnia and Herzegovina or Entities) and the local level completes the picture vis-à-vis the extremely

³⁷ In its Opinion on the constitutional situation in Bosnia and Herzegovina and the powers of the High Representative adopted in March 2005, the Venice Commission pointed out that "constitutional reform is indispensable since present arrangements are neither efficient nor rational and lack sufficient democratic content".

complex and difficult situation facing Bosnia and Herzegovina in the field of local and regional democracy.

99. It is therefore vital to initiate structural reforms in the Federation of Bosnia and Herzegovina. In view of its area, its population and its state of economic development, this country cannot afford to keep such complex institutions.

100. Furthermore, given that the Republika Srpska is a unitary State, the lack of a regional structure there makes it even more important to reinforce local self-government, which is underdeveloped at the moment.

101. In this connection it would be sensible to conduct an effective transfer of powers and financial resources to the local level, at least as currently provided for in Bosnia and Herzegovina legislation, and to downscale the intermediate cantonal level in the Federation of Bosnia and Herzegovina. Reinforcing local self-government in the Republika Srpska could boost the efforts to consolidate, harmonise and standardise the Central State.

102. If all these changes were accompanied by an expansion of regional democracy, preferably at Entity level (which seems best placed for the task in conceptual and practical terms), it is possible that we will see a general consolidation of democracy in Bosnia and Herzegovina.

103. In the light of the current situation and the serious consequences of the political deadlock, particularly at the local level, the delegation thinks the Congress should be asked to contribute, or at least to offer its help to any authorities so requesting, to the establishment of strong, effective local self-government in Bosnia and Herzegovina, and if necessary to an expert opinion on a draft standard-setting text. The Rapporteurs feel that the Congress should be able to co-operate in introducing mechanisms for the development of an appropriate institutional framework in the field of self-government, particularly with the help of both Entities' associations of local authorities.

104. Lastly, the Rapporteurs welcome the setting up, since their visit, of a Bosnia and Herzegovina delegation to the Congress. They see this move as a positive factor and hope that the members of this new delegation will co-operate in ensuring greater local and regional democracy in Bosnia and Herzegovina.

Appendix 1 – Programme of the Congress monitoring visit in Bosnia and Herzegovina (11-14 April 2011 and 12-13 December 2011)

**1ST PART OF THE VISIT:
11 - 14 APRIL 2011 IN SARAJEVO, BANJA LUKA ET BRCKO**

Rapporteurs:

Mr Jean-Marie BELLIARD, Co-Rapporteur on regional democracy, Member of the Monitoring Committee of the Congress, Regional Councillor of Alsace (France)

Mr Beat HIRS, Co-Rapporteur on local democracy, Member of the Monitoring Committee of the Congress, Mayor of Rorschacherberg (Switzerland)

Expert:

Ms Elena Simina TANASESCU, Consultant, Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress

Congress Secretariat:

Jean-Philippe BOZOULS, Executive Secretary, Head of Department Chamber of Local Authorities, Table Office and Statutory Committees

Ms Lilit NIKOGHOSYAN, Co-Secretary of the Monitoring Committee

SUNDAY, 10 APRIL 2011, SARAJEVO

Meeting with Ms Mary Ann HENNESSEY, Head of Council of Europe Office in Bosnia and Herzegovina

Working dinner with the representatives of the international community:

Mr Yuri AFANASIEV, UN Resident Coordinator/UNDP Resident Representative

Mr Boris IAROCHEVITCH, Head of Operations at the EU Delegation to Bosnia and Herzegovina

Mr Andrea CELLINO, Director of Policy and Planning at the OSCE

Ms Julia MAGER, representative of OSCE Human Dimension Department

MONDAY, 11 APRIL 2011, SARAJEVO

Meeting with Ms Kata SENJAK, President of the Constitutional Court of the Federation of Bosnia and Herzegovina

Meeting with the representatives of the Constitutional Court of Bosnia and Herzegovina

Mr Mirsad ĆEMAN, Judge

Mr Zdravko ĐURIČIĆ, Secretary General

Mr Nedim ADEMOVIĆ, Chief of the President's Cabinet

Mr Zvonko MIJAN, Registrar

Meeting with representatives of the Mayor's Office of Sarajevo

Mr Igor KAMOČAJI, Deputy Mayor

Mr Miroslav ŽIVANOVIĆ, Deputy Mayor

Mr Salko NIKŠIĆ, Deputy Chairman of the City Council

Mrs Dragana SOLAKOVIĆ, Assistant to the Mayor, representative of the Departments for Local Business

Ms Nermina SULJEVIĆ, representative of the Departments for Local Business

Mr Denis ZAIMOVIĆ, representative of the Department for Public Relations

Ms Zinaida POTUR, representative of the Department for International Relations

Meeting with HE Ambassador Roderick W. MOORE, Principal Deputy High Representative and Brčko District Supervisor at the Office of the High Representative**TUESDAY, 12 APRIL 2011, SARAJEVO****Meeting with the Bosnia and Herzegovina Ombudsman**

Ms Jasminka DŽUMHUR

Ms Nives JUKIĆ

Meeting with Mr Feliks MIKULIĆ, Minister of Justice, Federation of Bosnia and Herzegovina Government**Working Lunch with Mr Emir SILAJDŽIĆ, Assistant Minister for Budget and Public Expenditure, Ministry of Finance, Federation of Bosnia and Herzegovina Government****Meeting with Mr Denis ZVIZDIĆ, Chairman, and members of the Parliament of Federation of Bosnia and Herzegovina****Meeting with members of the Association of Cities and Municipalities of the Federation of Bosnia and Herzegovina:**

Mr. Jasmin IMAMOVIĆ, Mayor of Tuzla

Mr Emir BUBALO, Mayor of Konjic

Mr Vlado ALILOVIĆ, Mayor of Vitez

Mr Husejin SMAJLOVIĆ, Mayor of Zenica

Ms Vesna TRAVLJANIN, Secretary General

Mr Predrag ŠUPLJEGLAV, representing Mr Ljubo BEŠLIĆ, Mayor of Mostar

Mr Ivo JERKIĆ INO, Mayor of Čitluk Municipality

Mr Ibrahim HADZIBAJRIĆ, Mayor of Municipality Stari Grad in Sarajevo

Mr Miroslav ŽIVANOVIĆ, Deputy Mayor of Sarajevo

Meeting with Prof. Mirko PEJANOVIĆ, Dean of the Faculty of Political Science and former member of the Bosnia and Herzegovina Presidency**WEDNESDAY, 13 APRIL 2011, BRČKO****Meeting with Mr Brano JOVIČIĆ, Secretary General of the Association of Cities and Municipalities of Republika Srpska****Meeting with Mr Dragan PAJIĆ, Mayor of Brčko****Meeting with representatives of the OHR and Brčko Final Award Office**

Mr Peter APPLEBY, Deputy Head of Office

Ms Nataša MALINIĆ, Political Officer

THURSDAY, 14 APRIL 2011, BANJA LUKA

Meeting with Mr Mirko ZOVKO, President of the Constitutional Court of Republika Srpska

Meeting with Mr Dragoljub DAVIDOVIĆ, Mayor of Banja Luka and Mr Slobodan GAVRANOVIĆ, President of the City Assembly

Meeting with the representatives of the Republika Srpska Government

Ms Lejla REŠIĆ, Minister for Administration and Local Government

Ms Milanka ŠOPIN, Assistant Minister of Local Self-Government

Meeting with representatives of the National Assembly of Republika Srpska

Mr Igor RADOJIČIĆ, President of the National Assembly

Mr Mladen BRANKOVIĆ, Chief of the Cabinet of the President

Mr Milan GRUBOR, Senior Consultant in the Cabinet of the President

Meeting with the representatives of the Republika Srpska Government

Ms Željka CVIJANOVIĆ, Minister for Regional Development of Republika Srpska

Mr Zoran TEGELTIJA, Minister of Finance of Republika Srpska

Ms Jovana ČARKIĆ, Assistant to the Minister of Regional Development

2ND PART OF THE VISIT:

12 - 13 DECEMBER 2011 IN SARAJEVO, EAST SARAJEVO AND MOSTAR

Rapporteurs:

Mr Jean-Marie BELLIARD, Co-Rapporteur on regional democracy, Member of the Monitoring Committee of the Congress, Regional Councillor of Alsace (France)

Mr Beat HIRS, Co-Rapporteur on local democracy, Member of the Monitoring Committee of the Congress, Mayor of Rorschacherberg (Switzerland)

Expert:

Ms Elena Simina TANASESCU, Consultant, Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress

Congress Secretariat:

Jean-Philippe BOZOULS, Executive Secretary, Head of Department Chamber of Local Authorities, Table Office and Statutory Committees

Ms Dana KOROBKA, Co-Secretary of the Monitoring Committee

MONDAY 12 DECEMBER 2011

Supreme Audit Office of the Federation of Bosnia and Herzegovina

Mr Ibrahim OKANOVIĆ, Auditor general

Mr Branko KOLOBARIĆ, Deputy Auditor General

Mrs Anica PUDAR,, Head of Financial Audit of Institutions, Funds, Municipalities and Agencies

Mrs Zineta REDŽEPAGIĆ, Head of Human Resources, Communication and International Relations

Authorities of the Sarajevo Canton

Mr Fikret MUSIĆ, Prime Minister of the Sarajevo Canton
 Mrs Mirjana MALIĆ, President of the Cantonal Assembly, Head of Committee for Interparliamentary Cooperation
 Mr Ivan BRIGIĆ, Vice-President of the Cantonal Assembly, Head of the Committee for Constitutional Affairs
 M. Abid KOLASINAC, Secretary of Cantonal Assembly
 Mr Esad HRVAČIĆ, Head of the Committee for Legal Affairs
 Mr Amir ZUKIĆ, Head of the Committee for Budget and Finance
 Mr Ali BUDANJ, Head of the Committee for Economy and Financial Policy
 Mr Ferid DAUTOVIĆ, Head of Committee for Justice, Human Rights and Civil Liberties

Ministry of Justice of the Federation of Bosnia and Herzegovina

Mr Zoran MIKULIĆ, Minister of Justice
 Mr Ivan MATEŠIĆ, Assistant Minister for Administration

Supreme Audit Office of the Republika Srpska

Mr Dušan ILIČIĆ, Deputy Auditor General

Authorities of the East Sarajevo City:

Mr Vinko RADOVANOVIĆ, Mayor of the East Sarajevo
 Mr Miroslav LUČIĆ, President of the City Council
 Mr Pregrad VUČIĆEVIĆ, Vice-President of the City Council
 Mr Igor GOLIJANIN, Head of the Cabinet

TUESDAY 13 DECEMBER 2011

Mostar City Administration:

Mrs Radmila KOMADINA, Head Advisor to the Mayor
 Mr Miroslav LANDEKA, Head of Communication Department
 Mr Pregrad SUPLJEGLAV, Head of Department for Legal Affairs, Administration and Civil Protection

Mostar City Council:

Mrs Slađana GOTOVAC, Vice- President of the City Council
 Mr Danijel VIDOVIĆ, Vice- President of the City Council
 Mme Marija SOLDI, Secretary of the City Council
 Mr Ibro HUSNIĆ, City Councillor
 Mr Oliver SOLDI, City Councillor
 Mr Adil ŠUTA, City Councillor
 Mr Adis ZILIĆ, City Councillor
 Mr Elvir ZLOMUŠICA, City Councillor
 Mr Marko GILJA, City Councillor

Cantonal Assembly of the Herzegovina-Neretva Canton:

Mr Ramiz JELOVAC, President of the Cantonal Assembly
 Mr Tomislav MARTINOVIĆ, Member of the Cantonal Assembly
 Mr Nerin DIZRAD, Member of the Cantonal Assembly
 Mr Muzair PENAVA, Head of the Cabinet
 Mrs Želka ČUČE, Secretary of the Cantonal Assembly

Government of the Herzegovina-Neretva Canton:

Mr Radenko MIRIĆ, Minister for Justice, Government and Local Self-Government of the Canton
 Mr Radoslav NOVAK, Deputy Minister for Administration
 Mr Jure JERKIĆ, Head of the Office of Legislation
 Mrs Kristina CRNJAC, Head of Communication Department

Appendix 2 – Overview of the state of implementation of human rights at local and regional levels

HUMAN RIGHTS AT LOCAL AND REGIONAL LEVEL

1. The Rapporteurs note with satisfaction certain efforts by the Bosnia and Herzegovina authorities to strengthen human-rights protection at all levels and enforce human rights in legislation, particularly at cantonal and municipal levels. The law prohibiting all forms of discrimination came into force on 6 August 2009 and applies to actions by all public bodies at State, entity, canton and Brčko District level, municipal bodies, legal persons exercising public authority and all natural and legal persons.³⁸ Legislation necessary for application of the law on protection of the rights of persons belonging to national minorities and on councils of national minorities in the parliaments of the two entities and of certain cantons has been introduced. The town of Tuzia has established a Council of National Minorities at municipal level.
2. Nevertheless, given the complex institutional structure of Bosnia and Herzegovina, much remains to be done to harmonise and align legislation on human-rights principles at cantonal and municipal level.
3. The delegation therefore welcomes with satisfaction the decision of the Government of the Canton of Sarajevo requiring all cantonal authorities to take account of the opinion of the Ministry of Justice and of the Department responsible for harmonising legislation with the provisions of the European Convention on Human Rights in preparing the relevant legislation.
4. Despite certain progress noted particularly in the latest reports by the Council of Europe Commissioner for Human Rights,³⁹ the European Commission against Racism and Intolerance,⁴⁰ the Advisory Committee of the Framework Convention for the Protection of National Minorities and other Council of Europe bodies⁴¹, a formidable number of problems remains at State level and at cantonal and municipal levels. The origin of these problems lies in the Dayton Agreement aimed at introducing multi-ethnicity and ensuring legal protection of the two entities based on ethnic foundations. The judgment by the Constitutional Court of Bosnia and Herzegovina of 1 July 2000 in the case known as the “constituent peoples” case and the judgment of the European Human Rights Court of 22 December 2009 in the case of *Sejdic and Finci v. Bosnia and Herzegovina*⁴², as well as the recent Parliamentary Assembly Resolution 1855 (2012)⁴³, stress constitutional discrimination against those known as the “others”. The absence of constitutional reform of this provision strongly affects not only the formal respect of internationally recognised minimum standards in the area of human-rights protection but also raises difficulties in operation of the State at all levels.
5. Amendments to Section 13.14 of the Bosnia and Herzegovina electoral law were made in 2008 in order to strengthen direct participation by minority groups in public life at municipal level. Since then, two electoral systems have been used in elections to the municipal assemblies and town councils: a proportional system has been introduced for candidates from the “constituent peoples” and a single-candidate majority system for seats reserved for the candidates of minorities has been applied. Furthermore, under the new regulations a national minority is entitled to not less than one seat on the municipal assembly/town council when it accounts for over 3% of the local electorate on the basis of data in the last (1991) census.

³⁸ The first judgment based on this law was delivered by the Mostar Municipal Court on behalf of a moderately mentally handicapped child who was being discriminated against in regard to his right of access to education.

³⁹ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bosnia and Herzegovina (en anglais uniquement). Doc. CommDH(2011)11 / 29 March 2011

⁴⁰ ECRI Report on Bosnia and Herzegovina (fourth monitoring cycle). Doc. CRI (2011) 2, 8 February 2011

⁴¹ Consultative Committee of the Framework Convention for the Protection of National Minorities and other Council of Europe bodies; Second Opinion on Bosnia and Herzegovina. (ACFC/OP II (2008)005); Resolution CM/ResCMN (2009) 6 on Implementation of the Framework Convention for the Protection of National Minorities by Bosnia and Herzegovina.

⁴² Judgement in the *Sejdic and Finci v. Bosnia and Herzegovina* case of 22 December 2009, GC, No 27996/06, para 56, 77

⁴³ Functioning of democratic institutions in Bosnia and Herzegovina (Resolution 1855 (2012)).

This threshold of 3% laid down by the law is attained in only a few municipalities: according to the 1991 census only 4 municipalities fall within this category.⁴⁴ In addition, during local elections in 2008 there were other obstacles confronting the representatives of national minorities: the absence of clear information about the procedures for candidate registration, indication of the representatives of national minorities in the voting lists as independent candidates, which caused some confusion. The delegation considers it necessary to take all steps needed to ensure that national minorities have a real and effective right of representation on bodies elected at local level.

6. It is also evident that the 1991 census figures used as a reference for implementing policy on human-rights protection are no longer valid. This shortcoming represents an important barrier to the implementation of legislation on national minorities. The law on the census of population, households and housing adopted by the House of Peoples of Bosnia and Herzegovina provides for organisation of the next census in April 2013. This could help with a better design of targeted measures for improving the position of national minorities, particularly at cantonal and municipal levels.
7. Meetings with the Ombudsman institution and with representatives of cantonal and municipal authorities have revealed serious difficulties to the delegation as regards the financing of local programmes for the protection of human rights. The funds allotted at local level are often insufficient to guarantee the social rights of all vulnerable population groups. Most of the targeted programmes are currently funded by international stakeholders.
8. Despite the adoption of several laws implementing framework laws in the educational field adopted at the level of the entities, the Brčko District and cantons, various formidable problems relating particularly to secondary education persist. In some municipalities, including Sarajevo and Banja Luka, children attend mono-ethnic schools with a school curriculum that differs particularly on culturally sensitive subjects. The practice of segregating pupils according to their ethnic or national belonging is also perpetuated through the system of “two schools under the same roof” to be found in over 50 schools in the Federation of Bosnia and Herzegovina. The school education system in this entity is highly decentralised, with the cantons possessing extensive responsibilities in this field. The cantonal authorities of the Federation of Bosnia and Herzegovina must strengthen their efforts to introduce a “neutral” school system. Experience in the Brčko District proves that ethnically diverse classes can be organised provided teachers are properly trained.
9. Discrimination frequently takes place against people who do not belong to the locally predominant ethnic group, including displaced persons who have come home after the war and are now in the position of minorities. Returned persons often live in areas where there is no infrastructure. Although the available funds are fairly large for returns by displaced persons, they are often not aimed at the specific needs of the individuals concerned and their families. The NGOs say that local administrative procedures for allotting these funds are often marked by a lack of transparency and by corruption.⁴⁵ Over 7500 displaced persons live in collective centres in unhealthy conditions. Mention should be made of the Lucavica collective centre near Sarajevo. Since the centre became municipality property in 2006, inhabitants of the centre have been required to pay to the municipality a rent of one convertible Bosnian Mark per square metre in addition to charges (for water, heating, electricity).⁴⁶ Discrimination also occurs in the fields of employment, particularly in public-service employment, access to health care, social coverage and retirement benefits. Statistics show that local administrations often employ a large majority of the constituent people in their geographical areas.

⁴⁴ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bosnia and Herzegovina (English only). Doc. CommDH (2011) 11/29 March 2011. Para 14

⁴⁵ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bosnia and Herzegovina (en anglais uniquement). Doc. CommDH(2011)11 / 29 March 2011, para. 89

⁴⁶ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bosnia and Herzegovina (English only). Doc. CommDH (2011) 11/29 March 2011, para 72

10. The various people spoken to were rather reluctant to comment on a question about the situation of the Roma community in their areas or in Bosnia and Herzegovina as a whole. The Roma are particularly affected by considerable difficulties in gaining access to social benefits, aggravated in their case by the frequent absence of identity documents. Few "informal" Roma neighbourhoods have been legalised, and the living conditions of many Roma are often unhealthy. Forced expulsions are still taking place, sometimes "justified" with the argument of implementing local Roma housing improvement programmes but also sometimes with no proposal to rehouse them. Several international programmes in the fields of housing, employment and State, cantonal and local schooling are being carried out in an attempt to improve the situation. For example, under the action plan for Roma education the authorities of Brčko District have earmarked funds for the creation of a post of mediator responsible for Roma education.
11. Support by the authorities for organisations of national minorities to preserve and develop their cultural heritage and their languages is still limited. The languages of national minorities are more or less absent from public affairs and local cultural life. They are not widely used in relations with administrative authorities and topographical signs in minority languages are non-existent despite legislation on this subject. There are very few radio and TV programmes in the minority languages, including local public-service media. Opportunities for learning minority languages at school are limited. Bosnia and Herzegovina's ratification of the European Charter of Regional and Minority languages on 21 September 2010 is to be welcomed, even though it seems that progress has still to be made in putting the Charter's provisions into practice.
12. In the latest report by the Commissioner for Human Rights of the Council of Europe,⁴⁷ it is noted that the movement of persons with disabilities and their physical access to public institutions and transport are very limited, if not impossible, owing to the absence of special facilities for the disabled. In the Federation of Bosnia and Herzegovina the 2004 land-use order provides that all public buildings must be equipped with facilities for persons with disabilities. The order should have come into force at municipal level at the end of February 2009 but this has not happened in most municipalities. A similar situation is found in Republika Srpska.

⁴⁷ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Bosnia and Herzegovina (English only). Doc.CommDH (2011) 11/29 March 2011, paras. 53, 54.