

# The Congress of Local and Regional Authorities



**22<sup>nd</sup> SESSION**  
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## Local and regional democracy in Lithuania

Monitoring Committee

Rapporteurs<sup>1</sup>: Irene LOIZIDOU (Cyprus, L, EPP/CD);  
Gudrun MOSLER-TÖRNSTRÖM (Austria, R, SOC)

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### *Summary*

This is the second monitoring report on the situation of local and regional democracy in Lithuania since the visit carried out in 2001. The report praises the guarantees given in the constitution to the right to self-government for local authorities and takes note of the progress made in consultation procedures as well as of the quality of the debate on the direct election of mayors. On a less felicitous note, it cites the insufficient financial resources available to local authorities, the reduced powers of municipalities in certain areas such as territorial planning and land ownership, the termination of county administrations without a suitable replacement to palliate its adverse effects, and low citizen participation in local affairs.

It is recommended to Lithuanian authorities that they ensure the allocation of sufficient resources to local authorities, enshrine the principle of subsidiarity in the law on local self-government and to encourage citizen participation at local level. The Government is also encouraged to resume the discussions on the status of the capital city and to give the Association of Local Authorities of Lithuania the right to represent all municipalities before courts. Finally the report calls on Lithuania to ratify, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) which was signed in 2009.

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<sup>1</sup> 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 RECOMMENDATION<sup>2</sup>**

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, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Resolution 307 (2010) REV on the “Procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122)”;

d. Congress Recommendation 87 (2001) on local and regional democracy in Lithuania and Recommendation 219 (2007) on the status of capital cities;

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

2. The Congress notes that Lithuania signed the European Charter for Local Self-Government (ETS No. 122) on 27 November 1996 and ratified it without reservation on 22 June 1999, with entry into force on 1 October 1999.

3. The Congress wishes to thank the Permanent Representation of Lithuania to the Council of Europe, the Lithuanian authorities at central, regional and local level, the Association of Local Authorities of Lithuania and all the other parties whom the delegation met for the information supplied.

4. *The Congress notes with satisfaction that:*

a. Lithuania was one of the first countries to sign the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), on 16 November 2009, the date it was opened to signature ;

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<sup>2</sup> 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. Geguzinskis*, 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 Yıldız*, *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. Sfirloaga*), *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. Lazic*), G. Spartanski, *M. Tamiolos*, 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. Wiene*, *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. Cankoçak.

b. the right to self-government for administrative units of the territory of the state is guaranteed by the Constitution of Lithuania and that the principle of subsidiarity is respected;

c. there are procedures in place for consultations with the association of municipalities on issues regarding local government;

d. the direct election of mayors has been the subject of a lively debate in the *Seimas*;

e. the good participation of national minorities in local councils.

5. *The Congress draws attention to the following with some concern:*

a. since 2010, administrative functions have been removed from the counties and re-distributed to either central or local government, moving away from (rather than moving towards) a system incorporating regional government, without putting in place a structure that could compensate for its loss;

b. municipalities do not have sufficient resources to deliver the services under their responsibility (a situation exacerbated by the economic crisis but also by the fact that the termination of the county administration put the burden of additional tasks on local authorities) and their borrowing limits are restrictive;

c. the association does not enjoy the appropriate standing to represent all municipalities before a Court;

d. municipalities' competences have been reduced in certain areas (territorial planning, construction, ownership of land) by relegating them to the position of procedure-executing bodies rather than policy-makers in the field of competences and no compromise could be reached which would extend the municipalities' rights to manage state-owned land in urban and rural settlements and allow elected representatives some authority in the planning policy for their area;

e. Vilnius still does not enjoy the special legal status of capital city in spite of the rather unique position it holds providing services to nearly one-fifth of the country's population and bearing the duty of preserving the country's heritage, while not enjoying any specific benefits arising from its special position;

f. citizen participation and interest in local affairs seems rather low, particularly at the neighbourhood level.

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

a. ensure the allocation of sufficient resources to local authorities, respecting the principle that resources should match functions and duties which are vested in local government;

b. amend Article 4 of the existing Law on Local Self-Government so that the principle of subsidiarity is specifically recognised in the field of local government, by being mentioned as one of its guiding principles;

c. ensure that the Association of Local Authorities of Lithuania is given the appropriate standing to represent all municipalities before domestic courts;

d. consider extending the municipalities' rights to manage state-owned land in urban and rural settlements and allow elected representatives some authority in the planning policy for their area;

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

*f.* search for a consensus that would be acceptable to all parties, as regards the proposed draft laws on the centralisation of the external audit of local authorities in government hands to which some municipalities are opposed on the ground that such centralisation is unconstitutional;

*g.* take measures to develop stronger regional tier by increasing the number of competences of the Regional Development Councils, strengthening their administrative apparatus and looking forward for the establishment of regional budgets;

*h.* encourage and develop citizen participation through additional procedures such as local referendums, by strengthening the role of neighbourhoods, and also by improving access to the ombudsman for possible complaints by citizens against municipalities;

*i.* revise the legislation in order to ensure the participation of national minorities at local level in light of the Opinion 237 adopted by the Venice Commission in 2003 [CDL(2003)13];

*j.* ratify 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) in the near future.

## EXPLANATORY MEMORANDUM

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## **1. Introduction: Objective of visit, terms of reference, scope**

1. In accordance with Article 2 of Statutory Resolution CM/Res(2011)2 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (hereafter "the Congress") regularly prepares reports on the state of local and regional democracy in the member states and candidate countries.

2. Lithuania joined the Council of Europe on 14 May 1993 and ratified the European Charter for Local Self-Government (ETS 122, hereafter "the Charter") without reservation on 22 June 1999, with entry into force on 1 October 1999.

3. Lithuania ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS 106) on 13 June 1997, with entry into force on 14 September 1997.

4. Lithuania also signed the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS 159) on 30 March 2001 and ratified it on 26 November 2002. It came into force on 27 February 2003.

5. It signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) on 16 November 2009 and, during our visit, the Minister of the Interior promised the ratification of the Additional Protocol in the near future. The Congress was informed that the Draft Law No. XIP-3873 on Ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority has been registered with the Lithuanian Parliament on 18 November 2011.

6. The Monitoring Committee has appointed Mrs Irene LOIZIDOU (Cyprus, L, EPP/CD) and Mrs Gudrun MOSLER-TÖRNSTRÖM (Austria, R, SOC), Vice-Chair of the Monitoring Committee, co-rapporteurs, for, respectively, local and regional democracy in Lithuania. They were instructed to submit to the Congress a report and a recommendation on local and regional democracy in the country. On this visit, the two co-rapporteurs were assisted by Professor David Morgan, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government and by the Congress secretariat.

7. The Congress delegation visited Lithuania from 6 to 8 June 2011 and met various individuals and bodies in Vilnius, Ignalina and Utena.

8. The delegation met the Minister of the Interior, the Minister Finance, the Deputy Mayor of Vilnius, the chairs of the parliamentary committees on State Administration and Local Authorities, on Human Rights and on Budget and Finance, the Ombudsman of the Parliament, Ombudsman for Children's Rights, and the Office of the Equal Opportunities Ombudsman, representatives of the Constitutional Court, Supreme Administrative Court, the National Audit Office, other representatives of different tiers of government, members of the Association of Local Authorities of Lithuania (ALAL), and experts (see the appended detailed programme).

9. This report is the second monitoring report on the state of local and regional democracy since Lithuania ratified the Charter. Following upon the first visit in 2001, it takes into consideration the progress made by Lithuania in this area in the light of the Council of Europe's principles and standards, in particular the Charter. The report draws on information gathered during the visit, an examination of relevant legislation and other documentation supplied by the hosts and specific replies to the questionnaire sent by the delegation before its visit. Recommendation 87 (2001) of the Congress on local and regional democracy in Lithuania and other relevant documents were taken into consideration in the preparation of the report.

10. The co-rapporteurs wish to thank the Permanent Representation of Lithuania to the Council of Europe and all those whom it met on the visit for their kind assistance to the delegation and for the information they supplied. It also thanks the Lithuanian delegation to the Congress and its secretariat for contributing to the smooth running of the visit.

## 2. Political context and developments since Recommendation No. 87 (2001)

11. Lithuania is the southernmost of the three 'Baltic States'. It is located at the western end of the east European plane, bordering: to the north Latvia (with Estonia beyond it); in the east and south Belarus; and to the southwest Poland and the Kaliningrad district of the Russian Federation.

12. Lithuania's territory covers 65,300 km<sup>2</sup> and its population is around 3.2 million, of whom 84% are ethnic Lithuanians speaking Lithuanian which belongs to the Baltic Group of Indo-European languages. But, as a result of its history, several sizeable minorities exist, including Poles (6.1%), Russians (4.9%) and Belarusians (1.1%).

### 2.1. International context and relations with neighbours

13. Lithuania joined NATO in 2004 and became a full member of the European Union on 1 May 2004. It has been a member of the OSCE since 1991.

14. As to Lithuania's relations with its neighbours, relations with Russia were normalised with the signing of the Agreement on the Foundations of Inter-State Relations in July 1991 and Russian troops left Lithuanian territory in 1993. The problem of civilian and military transit to and from the Russian region of Kaliningrad (now an 'exclave') was resolved in early 1995, while the issues of the Russian civilian transport via Lithuania arising from relations with the latter's membership in the European Union were resolved in 2003 with the introduction of *Acquis Communautaire* – Facilitated Transit Documents. A border agreement was signed in 1997.

15. Lithuania and Latvia re-established their diplomatic relations in October 1991 after independence from the Soviet Union. The two states share 588 kilometres of common land border (an agreement on the demarcation of the maritime border was signed in 1999) and both countries are full members of the European Union. Lithuania's relations with Latvia and Estonia can be viewed within the context of trilateral cooperation among the Baltic states, although today most of the trilateral agreements regulating the relations of the Baltic states have been replaced by the corresponding European Union directives, regulations and codes. Nevertheless, the Baltic States enjoy a wide network of cooperation focusing on areas such as trade, economic relations and EU/NATO integration. Heads of State and Government meet at least once a year.

16. Lithuania's decision to dismiss the municipal councils of some districts on charges of refusing to implement the legislation of the Republic of Lithuania in 1991 had cooled relations with Poland, but bilateral cooperation markedly increased with the holding of elections in those districts and the signing of a bilateral Friendship Treaty back in 1994.

17. A similar bilateral friendship agreement was signed with Belarus in 1995. However, in the meantime, Lithuania has joined the United States and other European nations in urging the Government of Belarus to adopt democratic and economic reforms.

### 2.2. Internal political context

18. The powers of the state are exercised by the President of the Republic, the *Seimas*, the Government and the judiciary.

19. The President, a semi-executive head of state, is directly elected for a five-year term, serving a maximum of two consecutive terms. The President, with the approval of the *Seimas*, appoints the Prime Minister and, on his nomination, the remaining members of the Government (or cabinet). The President oversees foreign and security policy, performs other duties specified in the Constitution, such as signing treaties (subject to ratification by the *Seimas*) and submitting to the *Seimas* proposed candidates for high judicial office) and has a limited power to decline to sign laws. The current President, Dalia Grybauskaitė, elected 2009, is the first woman to be elected to this office in Lithuania.

20. The unicameral Parliament, the *Seimas*, has 141 members who are elected for four-year terms. Seventy-one of the members are elected for single constituencies, and the remaining seventy are elected in a nationwide vote by proportional representation. The current Prime Minister Andrius Kubilius, led the Homeland Union - Lithuanian Christian Democrats Party (HU-CD) into elections in 2008 and won over the Social Democrat-led coalition. He has been in office since November 2008. The next election to the *Seimas* is due in October 2012.

21. The Government is collectively responsible to the *Seimas*, for discharging the executive function. The Prime Minister is the Head of Government.

22. Since 2003, municipal elections are held every four years, most recently in February 2011. Compared with the results of the previous election, the HU-CD lost a significant number of seats. A law which was taken to court on the ground that it impeded the possibility for independent candidates to stand for election, was struck down by the Constitutional Court.<sup>3</sup> Relatively few Independents stood and, as of the time of the monitoring visit, four persons elected to councils as independents (alone or on lists of independent candidates) became mayors.

### **2.3. Matters of concern raised in the previous recommendation**

23. Recommendation 87 (2001) on local and regional democracy in Lithuania took note of the reforms on public administration in the pipeline at the time and emphasised the need to revise and adopt laws to complete the legal framework referring to local self-government. It underlined the importance of enshrining the principle of subsidiarity explicitly in domestic law as well as the limited revenues of local governments. The negative impact of economic problems on local authorities and the lack of concomitant financing in certain cases were also mentioned.

24. The recommendations concentrated on a revision of the public taxation system, the transfer of relevant land and real-estate to local authorities, the application of the concept of concomitant financing as a rule, regular consultation with the association of local authorities, a proportionate intervention of the central government as regards the audit and control of local authorities, a thorough discussion of the issue of direct election of mayors, and finally, a favourable outcome to the debate and work on the reform of regional administration.

25. Some of these issues have been dealt with in the intervening years. The rapporteurs have analysed the existing situation in the light of the previous recommendation and have come up with conclusions which highlight the progress that has been made but also some concerns that remain, as set out in Section 6 of this document.

## **3. Honouring of obligations and commitments**

### **3.1. Constitutional developments and institutional arrangements**

26. The Constitution devotes an entire chapter – Chapter X “Local Self-government and Governance” – including six articles, to local government. It guarantees the right to self-government to administrative units of the territory of the state, which are provided for by law and proclaims that this will be implemented through corresponding municipal councils (Article 119). The Constitutional Court takes very seriously the terms of Chapter X of the Constitution on local self-government, as attested by various cases referred to throughout this report (see footnote 5).

27. There is an awareness of the Charter, at any rate in official circles, in Lithuania. It is referred to in five Constitutional Court judgments, and there are six rulings related to the Charter. It is significant here that the Constitution establishes a monistic system of reception. However, although they become a constituent part of the legal system, not all signed international treaties automatically become part of national law, nor do they have the same status as the Constitution. Once ratified and in force, they acquire the same power as laws, that is, lower than the Constitution. However, when in competition with a national law, the international treaty is applied. This means that the Charter can be directly relied upon in any court case. Recently, there has been an electoral case where the applicant relied on the Charter without identifying any particular article.

28. In Lithuania there are courts with varying categories of jurisdiction. Thus, the Constitutional Court has the sole jurisdiction of determining whether laws or the actions of the President and the

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<sup>3</sup> Case no. 136/2010-17/2011-18/2011-19/2011, Ruling on the compliance of Article 34 and paragraphs 2, 3, 4 and 5 of Article 83 of the Republic of Lithuania law on elections to municipal councils (wording of 30 June 2010) and paragraph 2 of Article 3 of the Republic of Lithuania law on funding of, and control over funding of, political parties and political campaigns (wording of 18 May 2010) with the Constitution of the Republic of Lithuania, 11 May 2011.



Government are in conflict with the Constitution. Next, the Supreme Court is at the head of a hierarchy of existing courts, including the Court of Appeal and regional courts, administering private and criminal law (for example, the constitutionality of the acts of a Minister of the Government is decided by the Supreme Administrative Court). The only specialised courts in Lithuania are the administrative courts (Article 111.2 of the Constitution). The latter is of most immediate relevance here. At the head of the system of administrative courts is the Supreme Administrative Court of Lithuania. Below it are five first instances, regional administrative courts, located in the major cities (Vilnius, Kaunas, Klaipeda, Siauliai and Panevezys). It is this system of courts which deals with public administration and has jurisdiction in respect of the lawfulness of the decisions taken by municipalities.

### **3.2. Local self-government: European Charter on Local Self-Government**

#### **3.2.1. Territorial issues**

29. By the end of the Soviet period, Lithuania had, on paper, a fairly complicated system of regional and local government. At the intermediate level, it was divided into 44 districts (*rajonas*) and 11 towns of “republican subordination” (*respublikinio pavaldumo miestai*). At the lower level these units were further divided into 80 district towns (*rajoninis miestas*); 19 settlements (*gyvenvietė*) and 426 rural districts (*aplylinkė*). After Independence, the system was considered to need radical reform. The Constitution gave the power of establishing future administrative units to the *Seimas*. Accordingly, the *Seimas* passed a law in 1994 (Law on Local Self-Government) establishing the functions and internal structure of municipalities, and defining the principles of local self-government. It was amended on a number of occasions, most recently 2011. In addition, there are numerous, more particular, laws.

30. The result was to establish the following regional local government structure: Initially, there were 10 regional units (or counties), which, however, had no directly elected representatives and the functions of which were assigned and supervised by central government. In October 2000 the new wording of the law was adopted, increasing the number of municipalities from 56 to 60 (there are also 546 “Wards” (or neighbourhoods) with rather minor functions that can be set up by municipalities if they wish to do so).

31. County governors administrations were terminated as from 1 July 2010. From 1995 up until this date, the counties into which the country is divided had substantial administrative functions, although they were run by centrally-appointed governors and not elected representatives. As from July 2010, all the administrative functions have been removed from the counties and re-distributed to either central or local government. At present, therefore, we can speak only of a one-tier local self-government system. Regional Development Councils (composed of municipal councillors) were established in each county, claiming the right to make decisions on key issues for each region. This claim was also partially supported by the central government, which has granted the regional development councils the right to decide on certain issues, including distribution of some part of EU structural funds.

#### **i) Regional authorities**

32. As said above, a major development concerned the removal, of the counties’ administrative function. As regards the 216 functions formerly discharged by the counties, 106 were re-distributed to central ministries and agencies and 110 to municipalities. Broadly speaking, it was mainly the delivery of social services – health and education – which went to municipalities. Despite this transfer, the central government refused to grant the local authorities the right to manage the state-owned land. So, roughly, the functions were shared out half and half between local and central government, in part because the municipalities refused to take, for instance, specialised hospitals and certain other expensive institutions. In addition, the central ministries received multiple inspection and supervision functions.

33. The unfortunate coincidence of the termination of the counties’ administrative function, with the economic crisis, had a further consequence. This was that the municipalities and the ALAL, while accepting the transfer of a wide scale of functions to the municipalities, raised the issue of the provision of adequate financing. Since the Government refused to provide such guarantees, the local authorities refused the takeover, although some functions and the management of some services were taken over without such guarantees (e.g. supervision of the complex constructions, supervision of hunting areas, etc.). The result of this (and the disputes to which it led) was that the allocation of functions, as between central and local government, was by no means based on a rational appreciation of what functions were best dealt with at one level rather than the other.

34. One should emphasise that the counties remain in existence as units for selecting the projects on which EU structural funds in each region should be allocated. They are considered by the Ministry of the Interior to be a means for optimising governance and for an effective use of the State budget. Counties are territorial units which provide a basis for the operation of Regional Development Councils – composed of the delegated members from the region’s municipalities with, in each case, one representative from the central Government. They are managed by the State through ministries or government agencies and institutions directly dependent on and accountable to the government. The Regional Development Law was adopted in April 2010. As 11% of all allocated EU funds are intended for the counties, they are a significant social and economic development instrument.

35. Lithuania is, by the standards of most Council of Europe states, relatively sparsely populated – approximately 3.2 million (2011), with a surface area of 65,300 square kilometres: in other words, 540 inhabitants per square kilometre. The consequence, in terms of local authority units, is that, while the average municipality does not have a large population by international standards, it does have a relatively large territorial area which consequently gives rise to high infrastructure maintenance costs. There is also a rather high resident/councillor ratio.

36. Vilnius city has a population of 554,000 and 51 councillors. The overall average in Lithuanian cities and towns is a population of 51,000 with 21 - 27 councillors.

37. The danger of alienation to which this could lead was exacerbated by the fact that, from 1995 to 2011, members of the Council were elected from lists provided by the political parties with no association between a member and any particular geographical area. This militated in favour of councillors likely to be drawn from the more densely populated areas and fewer from thinly populated, peripheral, areas. As of 2001, the participation of individual candidates is allowed. In addition, because of the size of most municipality territories, residents often have to travel long distances to avail of services which have been more and more centralised, particularly in recent years, due to the lack of resources (the Ministry’s point of view is that the size of municipalities is optimal and that inhabitants may access services through the Wards).

38. The issue of regional governance has been the subject of continuing discussion since independence. The Ministry of the Interior has informed the rapporteurs that the best balance is achieved when the population is about 40,000. At the moment (excluding larger cities), most Lithuanian municipalities have a population of 30,000 - 40,000 inhabitants. The Ministry is also thinking about internal distribution of local government within municipality territories, including possibly strengthening the sub-municipal or Ward (*Seniūnija*) level. The Ministry is also concerned with how to improve communications and relations between each municipality and the residents in their area, which they think is more important than relations with central government.

ii) Wards (or neighbourhoods) (*Seniūnija*)

39. Legally, *seniūnija* is an administrative division of the municipal administration, operating in a defined part of a municipality’s territory, providing most of the basic services to local residents. Its premise is that the head of each ward, the *seniūnas* (elder), will have better knowledge of the particular issues in the wards (something which may not be the case with councillors in a municipality). Currently there are about 546 wards. A ward may range in size from a very small region consisting of a few villages, of 500-3,000 residents, up to (less often) part of a big city. Thus, Kaunas City hosts the most populous *seniūnijas*, with Šilainiai and Dainava each having population of over 70,000.

40. The administration of a *Seniūnija*, which usually has four to six members of staff, has several functions as authorised by municipal councils. These include overseeing minor functions, such as: street cleaning, mowing the lawns, maintaining cemeteries, sweeping the snow, or performing clerical tasks, like keeping family records on all families living in the ward. In addition, the *Seniūnija* is authorised to issue certificates to residents on their social status, organise the collection of local fees, publicise and oversee the implementation of decisions of the municipality and of the Mayor, issue permission for burials and carry out functions of a notary public, in rural areas, register births and deaths. It also often employs social workers, who provide social services and work with families at risk. The *Seniūnas* also acts as representative in interlocuting with the municipality on behalf of the people of the ward.

41. Until 2000, the *Seniūnas* was a political appointee by the Mayor for his/her term of office and this post was also compatible with the municipal council mandate. Now, the *seniūnas* is a career civil servant and is selected, on the basis of general civil service entry examinations with 3 to 4 *Seniūnaitis* included in the selection committee. 3 to 5 *Seniūnaitis*, elected by local vote (no nation-wide elections of *Seniūnaitis* are organized) in each *Seniūnija*, act as an advisory committee to the *Seniūnas*. If, as is usually the case, there are more than 500 residents, these representatives may be directly elected (but often as few as 20% of the electorate bother to vote).

42. Since in different municipalities the *Seniūnija* may have a different scope of competences, one might comment that, on the scale at which they operate at present, the wards in different municipalities appear to have inadequate functions and resources and, in many areas, there seems to be a lack of popular interest in, or support for, them.

43. In short, all the following features – termination of the county level of administration, the fact that many localities are not meaningfully represented at local level and the feebleness of wards – should be seen as inter-related aspects of the same broad issue. This is that Lithuanian citizens have rather limited participation in government at local level.

### 3.2.2. *Relations between State and local authorities: delegated and independent functions*

44. There is a particular feature of Lithuanian local government which exists, to the same extent, in few other states. It is that, the Law on Local self-Government (LLSG), Article 6, divides municipal functions into two major categories: independent (or autonomous); and delegated. In total expenditure terms, over/under half of local government functions are delegated, which proves the high level of centralisation. Various differences distinguish the two types of function. In contrast to the independent functions of the municipality, the delegated functions are discharged on the instructions of the relevant central Ministry or other authority. Delegated functions are carried out by the Director of Administration of the local authority, executing instructions issued by the Ministry and for which s/he bears no responsibility to the local council.<sup>4</sup> In most cases, one can say that the local authorities are just acting as executive units, or 'cash assistants'. Finally, the delegated functions are directly and exclusively financed by the responsible Ministry; whereas, as we shall see below, in the case of independent functions, a little bit more latitude is allowed to municipalities.

45. Beginning in 2005, municipalities were banned from using social allocations from central government to finance other needs and were required to return unused funds. There has been criticism, on the basis that this restriction will prevent local authorities from solving social problems independently.<sup>5</sup> However, as a generalisation, one can say that the delegated functions have been less inadequately financed than is, as a result of various layers of cutbacks, the case in respect of the independent functions (usually, central government provides financing only for the wages of the municipal civil servants providing delegated functions).

46. As a comment on this duality between independent and delegated functions, it could be said, first, that this arrangement necessarily lacks the transparency and clarity that is essential to permit both clear lines of responsibility and understanding by the lay public. Municipalities are in charge of the provision of services; however, put simply, not all citizens follow what is going on and understand who – Ministry, Direct Administration or councils – should be held to account for any particular act or mission when a certain service is unavailable because, for example, it is a delegated function for which no financing has been received from the central government.

47. The division between the functions of municipalities, original and delegated, and those retained by the central government is by no means clear. The lack of a principled and reasonable basis on which the functions (formerly carried out by the counties) were divided between local and central government, in 2009-2010, (as recounted below) made this situation worse. In general, the allocation of functions, as between central and local government, as well as the delegation of which functions

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<sup>4</sup> There seems to be an ambiguity on this issue as, according to the Ministry, the Director is accountable to the municipal council and the Mayor while the Association of Municipalities claims that the Director is accountable to the relevant central government body, but not to the council.

<sup>5</sup> Case No. 1/99 of 8 November 2000: "Holding that the Law on amendment of the 1997 state budget, Article 6, which provides that 'unused appropriations shall be returned from local government budgets to the state budget, to the extent that the factual revenues of these local government budgets are larger than the revenues established on approval of deduction rates to local government budgets is in compliance with the Constitution'.

should be independent and which delegated, has often been based on short-term or partisan considerations, frequently involving funding. While this is a major subject on which the Rapporteurs do not think it appropriate to make a definite suggestion, they would encourage all stakeholders – at central and local government level – to try to work out a better compromise than the present distribution.

48. Decentralisation is certainly, in some respects, on the Government agenda. The Ministry of Finance wanted to transfer all delegated functions to municipalities and to finance them from the same budget as the independent functions. The ALAL refused this suggestion, because it was perceived as a device to reduce the level of payment provided by central government below what was necessary to carry out the function.

49. The administering of the welfare state – health, education and welfare benefits – is left to municipalities in some countries more than in others – and Lithuania apparently belongs to the latter group. The important point here is that the bulk of the expenditure of a modern state goes on these welfare items. And, secondly, that the collection of the revenue for this massive expenditure is firmly in the hands of central government. Especially at a time of crisis, this mismatch is likely to lead to central government providing insufficient resources. Yet, where it is the responsibility of local government to deliver a substantial part of the welfare state, then central government may, to some extent, be able to avoid paying by sheltering behind the fact that the frontline executive units for delivery (or non-delivery) of these services are the municipalities. And the more it happens, the more municipalities are undermined in the eyes of the public. For instance, in public transportation, run by municipalities, there may be fare-concessions (for handicapped persons or young or old), the provision of which is financed by the centre, but this is not fully paid. The result is that municipalities are forced into an unenviable choice between either losing revenue; or withholding concessions to which disadvantaged citizens are entitled.

50. There is another disadvantage to vesting delegated functions in what appear to be independent municipalities, namely that Ministries may be subject to an element of conflict of interest. This may arise from the way in which Ministries are both responsible for determining how many resources are given to municipalities; and may also, in many cases, act as the quality control agencies in respect of the municipalities.

51. There is nothing new about this sort of problem. In the general context of Constitution-making, an attempt has been made to guard against it by the development of principles which seek to vest responsibility and authority in the same entity. These principles are laid down, most relevantly, in the present context, in the Charter and in the Lithuanian Constitution. The principles are broken here, in that municipalities are made to appear responsible for shortages and inadequacies, which are, in effect, the outcome of decisions taken by a central government Ministry.

52. Assuming that nothing can be done at the moment about the deep-rooted issue of municipalities being agents for the administration of large-scale delegated functions, the rapporteurs are of the opinion that at least it should be made clear that these are essentially central government functions and not something for which the local council bears responsibility.

### **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: Principle and concept of local self-government*

##### *Article 2: Constitutional and legal foundation for local self-government*

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

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

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

54. In Lithuania, the respect paid in the Constitution and Laws is among the landmarks which shape the operation of local government in practice. The essential theme which emerges from the several cases concerning local government, many of which are referred to (partly in footnotes) throughout this report, is that the Constitutional Court does take very seriously the terms of Chapter X of the Constitution, on local self-government. For instance, in Case No. 2/97 of 18 February 1998, (the facts of which concerned the government representative and a legislative attempt made to share his authority with the county governor), the Constitutional Court made the following general statement (at pages 15-16)<sup>6</sup>:

‘The constitution defines local self-government as a public administration system operating on the basis of self-action principles, and which is not directly subordinate to state authority institutions. The analysis of the constitutional norms identifies the following principles of local self-government: representative democracy, accountability of executive institutions to the representatives, free and independent actions of local governors within the limits prescribed by the law, coordination of interests of local governments and those of the state ... One should note that in its many elements [this] conception of self-government is in conformity with the definition of self-government set out in Article 3 of the European Charter on Local Self-Government... Thus self-government presupposes certain freedom and autonomy of activities ... from state authority institutions. Such freedom, however, is not limitless, while the autonomy does not mean that one may ignore state interests ... It is to be noted that in Lithuania the self-government model is based on the centuries-old European tradition of a culture of self-government which later was supplemented by the institution of the administrative supervision ... ‘

55. LLSG, Article 4, sets down as ‘the main principles [of] local self-government’ twelve values. These include: representative democracy; the independence of municipalities; accountability of executive institutions to the municipal council and of the municipal council to voters; and transparency of activities.

### 3.3.2 Article 3: Concept of local self-government

#### Article 3 – Concept of local self-government

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

56. Article 120 of the Constitution states that ‘Municipalities shall act freely and independently within their competence defined by the constitution and laws’, and this is echoed in the principles laid down in the LLSG, Article 4, para 2. The importance of local authorities’ independence is also recognised in Constitutional Case of 24 December 2004, ruling that the Constitution forbids the holding of a dual mandate – that is holding office at both local and central level – on the basis that, as state officials enjoy powers of controlling and supervising activities of municipalities, they may not also be members of municipal councils since their independence as members would be compromised.

57. There is no explicit mention in the Charter of an external audit of local authority finances. However, the topic covered here might seem to fall under the broad umbrella of Article 3, para. 1, of the Charter, quoted above, which refers to the right of local authorities to manage their own affairs on their own responsibility. Accordingly, this topic, which is the subject of possible change and of contention, and which was referred to by several of our interviewees, is covered here. The subject concerns the central government’s proposal to replace the existing arrangement, in which each municipality

<sup>6</sup> It has been stated by the Constitutional Court (Case No. 06/07 of 9 February 2007), page 6: ‘... state administration and local self-government are two systems of public power, which are consolidated in the constitution; local self-government is self-regulation and self-action of the communities of the administrative units of state territory ... It is a local public administration system ... which is not directly subordinate to state power institutions ... and which is formed and functions on other constitutional grounds than state power ... The right to self-government is implemented through democratic representation; municipal councils, through which the right to self-government is implemented, may not be formed in a way so that there might arise doubts as to their legitimacy and legality.’

appoints its own external auditor (or Municipal Controller), by a system in which this function is performed centrally by the National Audit Office.

58. The position, at present, is that there are two types of audit: internal and external. Sometimes, there are not sufficient funds to hire the necessary staff for the internal audit. Many municipal administrations were found to have flawed financial management and inadequate internal auditing procedures. There is, therefore, a *Seimas* proposal to re-organise the current internal audit system, in order to create a separate internal budgetary institution in the municipality. In any case, the proposal which is causing debate here is that, in November 2010, a working group of the *Seimas* prepared draft laws which are aimed at taking the function of external audit from the municipalities and transferring it to state control, probably involving the National Audit Office (NAO).<sup>7</sup> This draft law has not yet been discussed in the *Seimas*. As regards the way municipalities perform their duties, various laws allow individual municipalities to decide whether to introduce certain safeguards against misconduct by the municipality or to permit public participation and influence over the municipality. The ALAL has informed the delegation that municipal ethical committees have been set up in all municipalities which provide safeguards against misconduct by the municipality.

59. The Municipal Controller (or external auditor) is appointed by the council itself based on the results of the entrance exam for the civil service, and in some cases, there is only a single candidate. The municipal controller is not subordinate to any tier of local governance and is accountable only to the council.

60. Since 2005 the NAO has carried out external reviews of audits performed by municipal controllers evaluating the policy and quality of the procedures of audit and their efficiency. These financial (legality) audits concern the use of the state budget funds allocated to municipal budgets and on the management, use and disposal of state property managed by municipalities.

61. In 2006, the NAO conducted a sample external review of financial and performance audits in local government, which showed that only one-third of revised audits applied appropriate quality-control procedures. And, in early 2011, the NAO conducted another review of the work of the external auditor in 17 of the 60 municipalities. These audits identified errors amounting to Lt 2.5M and 16 municipalities were issued qualified opinions due to a discrepancy of Lt 8M in the management of funds.

62. The proposed change to the existing arrangement is opposed by many municipalities. They emphasise the possible unconstitutionality of the proposed centralised system. This depends on the fact that, the Constitution stipulates that responsibility for the different spheres of local self-government include municipal control over the municipal budget. If the controller functions were transferred, this would not be the case, because state control is not accountable to municipal councils and this would violate Article 119, para. 4, of the Constitution.

63. The justification offered by the central government for their proposals is that, at present, for the very reason that, since Municipal Controllers are appointed by, and responsible to, the local council, there would at least be a suspicion that they would not be independent. In addition, given local government's lack of resources, especially at present, it makes sense that, instead of a separate Municipal Controller for each municipality, there should be a single, relatively well-resourced, one.

64. It could be said in general that, whatever the Constitution says, there is, in all countries in the world, an inevitable tension between 'independence' and 'accountability'. Thus, there is inherently likely to be a tension between 'accountability' to, for instance, a municipal council and independence in checking that that council has performed its function correctly. In these circumstances, the central government's concerns, underlying the proposals for change, do not appear unreasonable. Whether there is any danger that they are unconstitutional, it is not for the delegation to adjudicate.

65. In line with Article 3 of the Charter concerning the local authorities' right to regulate and manage their share of affairs by freely elected councils, Article 120 of the Constitution establishes the elective character of local authorities' decision bodies, including the right to vote of citizens and other permanent residents.

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<sup>7</sup> Constitutional amendments to task the National Audit Office with auditing local government budgets and overseeing the management of municipal assets were debated in the *Seimas*, throughout 2006.

66. The 2001 Report states that this provision is amplified in the LLSG, which refers to municipal councils, executive boards and Mayors (who are currently indirectly elected by council members), but see paragraphs 162 - 164 of this report.

67. In addition, local councils have the right to create their own executive bodies, for the implementation of the laws, their decisions and those of the Government when carried out under their responsibility (delegated tasks).

### 3.3.3. Article 4: Scope of local self-government

#### Article 4 – Scope of local self-government

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities 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.

68. The Constitution does not directly refer to the local authorities' responsibilities, leaving these to be settled 'by law'. The Laws describe in detail which functions should be performed by each level of government. Article 6.43 of the LLSG states that local authorities can perform all other functions which are not committed to other governmental institutions. More significant, apart from this 'catch-all' provision, many particular Laws indicate specific tasks delegated or assigned to municipalities.

69. LLSG Article 7, para. 25, (State functions delegated by state to municipalities) specifically assigns to municipalities the administration of activities related to declaration of agricultural land units and crops. However, on 20 April 2011, the Government adopted Resolution No. 987, which gave power in respect of crop declaration administration to a public entity, namely the Agricultural Advisory Service (*Žemės ūkio konsultavimo tarnyba*). But the point is that this authority is granted not by law but by Government Resolution and thus is in conflict with both the Law on public administration (which does not foresee the possibility to transfer public administration functions to a body which is not part of the public administration system) and, possibly, the Charter.

70. Subsidiarity – of which this Article is a statement – is not mentioned expressly in the Constitution or in the LLSG, which, as noted, lays down, in Article 4, twelve other 'main principles' on which local self-government shall be based. However, what may be regarded as subsidiarity is mentioned, though without particular reference to local government, as a principle in the Law on Public Administration, which states that it means 'that the decisions of principles of public administration must be adopted and implemented at the most efficient level of the public administration system.' In addition, this central principle was acknowledged in the plans for administrative territorial reform of 2009 and also in the 15th Government's programme. However, in practice, at the time when administrative functions were taken from the counties and re-distributed, the principle was not followed: all that was delegated to municipalities were decisions on insignificant questions, spread out over a number of disparate areas. But, what is beyond controversy is that the principle of subsidiarity is known and respected in Lithuania. We would recommend that it should be specifically recognised in the field of local government, by being mentioned as one of the guiding principles identified in Article 4 of the LLSG.

71. Another point is that there are important specific areas in which the principle of subsidiarity has not been observed. Thus, at the time when administrative functions were taken from the counties and re-distributed, it was intended, initially, that state-owned land in urban and rural settlements should be transferred to the appropriate municipality and the *Seimas* voted for this proposal. However, the

President vetoed this in 2010 and most of these functions were assigned to State institutions, mainly the National Land Service. The result is that, with exceptions, state land remains state property. (The main exception is that the land which is necessary for municipalities to perform their own legal and official functions is being transferred to the municipalities). The Ministry of the Interior explains this situation by referring to Constitutional Court case-law according to which state property cannot be managed, used or disposed of in any way that satisfies the interests or needs of only one social group or individual person unless it is in line with public interests or needs. However it has been reported to the delegation by more than one interlocutor that a lot of the countryside remains the property of the state and the state often neglects the land which it own in rural areas, for example, failing to harvest hay or to attend and re-plant forests and that centralised management does not reflect the real situation and is more expensive. It is noteworthy that the previous Congress Recommendation 87 (2001) had also recommended extending the municipalities' rights to manage the land.

72. All urban territories that have a population of 3,000 or more are regarded as cities. Large cities such as Vilnius and Kaunas have a lack of land which they could manage on their own. Even in the case of forests and other communal land within cities, the land remains the property of the State. These are green areas which are mostly used for recreation purposes, demanding constant care, waste collection and cleaning and adaptation for public use. The Forestry Law, Article 2, para. 11, and the Land Law, Article 7, para. 3 foresee a possibility for municipalities to manage State-owned forest land, by way of trust right. However, this possibility is still being discussed or disputed, at State level, on the basis that such land may be handed over to hold by trust right only for the implementation of State functions.

73. The reduction of municipalities' powers is also evident in the wording of the new law on territorial planning and law on construction (awaiting deliberation at the *Seimas*), as well as in a draft Concept Paper on territorial planning. These developments would reduce the function of municipalities in this field to procedure-executing bodies, rather than policy-makers. In particular, the new draft law (if adopted) would establish that local level territorial planning documents are to be approved by the Director of Administration, rather than by a council.

74. There may be good reasons for this departure from the usual practice elsewhere. But, if so, it would be good for them to be stated clearly or perhaps for some compromise to be reached which would allow elected representatives some authority in the planning policy for their area.

75. Schools are financed by using the model of 'schooling package' or basket, by which a specified amount of funds is provided from central government to each municipality, while the municipalities finance other expenditures from their budgets (communal services, technical personnel, repairing, etc.). The important point is that the financing, provided by the central government is calculated with reference to the number of pupils at each age level and takes into account the location of the school (e.g. whether it is in a city, town, village).. However, if the number of pupils in a school has decreased after the start of the school year, the government can refuse (and since 2012 is obliged to refuse) to pay the funds in respect of the pupils who are not, in fact, in the schools. This occurs even though the infrastructure and maintenance costs for the school remain the same. Furthermore, the schools are now forbidden to use any saved funds from the schooling package for other purposes. As underlined by the local government association, the government can also take off the unused funds from the schooling package by 1 September of each year if the number of pupils in the schools has decreased (even if the infrastructure and its maintenance costs remained the same). Therefore, the municipalities can face a situation when at the end of a given year; they have no funds for schooling issues.

76. Article 13.1 of Recommendation 87 (2001) also stated that 'responsibilities transferred ... to local authorities shall be full and exclusive.' In this context, a long-running subject of contention concerns the regulation of the heating sector. According to Article 6.30 'autonomous [independent] municipal functions' of the law on local self-government, 'organisation of supply of heat and drinking water and waste water treatment' is an independent local government function. However, the pricing process also involves the National Control Commission for Prices and Energy (the Law on Electricity grants this Commission an exceptional right to set electricity, heating and gas prices. Similar provisions are included in the Draft Law on Drinking Water Supply and Waste Management). And if, for any reason, local government fails to set prices, then the Commission is empowered to fix the price. It can also set the price if it considers that the price fixed by the municipality is lower than reasonable in the Commission's consideration. This arrangement has been the subject of complaint by municipalities. However, it seems to the rapporteurs that it is not unreasonable to have a fail-safe mechanism, by



which, if a municipality fails to discharge an unpopular duty, such as setting a price for drinking water, some responsible agency is empowered to do so.

77. A somewhat similar situation is developing, by virtue of Article 26 of the Law on Drinking Water Supply and Waste Water Management, which specifies that, in the case of drinking water, the price-setting power is granted exclusively to the Commission. Although there may be practical reasons for this – namely, the reluctance of some municipalities to set any price and the delay and dislocation to which this may lead (even if the Commission were available to act as a fail-safe) this means that this Commission acts not as the regulatory, but as the main decision-making body in the field of municipal competences.

78. Under the payment system for certain social benefits (such as child allowance, child care benefit), revised in 2007, the power to make decisions regarding the purposefulness of social benefits was withdrawn from the municipalities and shifted to the Ministry of Social Security and Labour, so that now municipalities must pay automatically the amount specified by the Ministry. After the visit, it was brought to the delegation's attention by the Ministry of the Interior that the law regulating social assistance empowers municipalities to grant financial aid on an exclusive basis by using a share of funds from the state budget as prescribed by law or from their own budgets in cases not prescribed by law. Since 1 January 2012, five municipalities have been implementing, on a voluntary basis, a pilot project providing assistance to the disabled on this basis.

#### *Appropriate administrative functions*

79. LLSG Articles 38.3 and 40.6 are in line with this, but do not seem to be fully applied in practice. In response to a similar criticism in 2001, the Lithuanian Government expressed its readiness to improve the implementation of the Agreement on the consultation of ALAL by the Government and approved the composition of a bilateral commission bringing together the Government and ALAL, with the aim to balance the competing interests of the State and the municipalities. In 2009, the Government approved the Legislative Rules stipulating that comments on draft legal acts related to the competence of other institutions must be obtained from the ALAL, and comments related to general interests of municipalities must be obtained from the municipalities whose activity, territory or ownership relations are affected by the draft legal acts. If such an act requires comprehensive analysis, working groups are formed including representatives of ALAL.

#### *3.3.4. Article 5: Protection of boundaries*

##### **Article 5 – Protection of local authority boundaries**

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

80. The Charter stipulates that changes in local authority boundaries should not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

81. In line with this, the Law on the Territorial Administrative Units of the Republic of Lithuania and their Boundaries 1999, provides that, in determining the boundaries of a local authority, the Minister of Public Administration and Local Government Affairs must follow a rigorous procedure, including eliciting the views of the relevant local councils and conducting an opinion poll. This was made clear in the instructive Constitutional Court Case No. 9/2000, of 28 June 2001, in which the Constitutional Court ruled that the Government (Ministry of Governance Reforms and Local Government Affairs) had failed to follow this procedure. In summary: on this point, the laws of Lithuania are in accord with the Charter; but the responsible organ of the government had failed to follow the laws.

#### *3.3.5. Article 6: Administrative structures: Internal structure of Council*

##### **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.

82. This is implemented in the LLSG, Articles 11-21, which states that the structure of the municipality administration, regulation of its activities and its funding are to be approved by the municipal council.

83. According to the LLSG, a Municipality may form committees, commissions and other bodies, although the establishment of some committees such as the budget and finances committees are mandatory. A council exercises its powers by discussing and resolving issues during its meetings, or those of institutions formed by it. There is no uniform structure of council committees: each municipality decides its own. For instance, in Vilnius, the largest municipality with 51 councillors, there are seven committees, dealing with economy and finance, social affairs, urban development, health care, hygiene and environmental protection, service and city economy, culture, sport and education, municipal development and public safety. Other smaller municipalities would have only three or four committees.

84. The political head of the municipality is the Mayor. Under the LLSG, the council elects the Mayor and, on the recommendation of the Mayor, the Deputy Mayor, for the council's term of office. The Mayor and Deputy Mayor are responsible for exercising powers as stipulated by Article 20.2 of the LLSG.

85. The Council approves its Rules (*reglamentas*), which regulates the work of the council and of the Mayor. The Mayor represents the municipality before, or on, external bodies; proposes to the council to appoint and to dismiss the Director of Administration and approves the regulation of the chief executive's activities.

86. The local government administration is vested in the Director of Administration, a single person institution, responsible for the implementation of national and local legislation (the municipal council may also establish the position of the Deputy Director) and also the head of municipal administration. He or she also prepares meetings of the council and board. The administrator is appointed and dismissed by Council upon the Mayor's proposal.

87. In the present field, there has been an important ruling (Constitutional Court Case 30/07, of 31 March 2010). This is to the effect that, by virtue of Article 119, para. 4, ('for the direct implementation of the laws ... the municipal council shall form executive bodies accountable to it'), a Municipality does not have power to transfer its functions to executive bodies which are not accountable to it. At a broader level, this ruling shows the Constitutional Court as being prepared to protect the concept of local government established by the Constitution against modification which the legislature attempted to make.

88. The Code of Conduct for state politicians – which covers councillors – regulates the basics of principles in respect of the conduct of politicians in public life. This includes matters like transparency, avoidance of conflict of interest and attendance at meetings. An amendment to the Law on Local Self-Government of 2008 requires each council to have a Committee of Ethics, which should include, as a third of its members, non-councillor, representatives of local communities. The ALAL has informed the delegation after the visit that such committees have now been established in each municipality.

89. The Law on Public Administration and also the Law on Civil Service categorise service in local government institutions as 'integral'. The consequence of this is that there are nearly no possibilities for individual municipalities to regulate salaries and other conditions of employment for municipality staff, all of this being done at central level. And, out of the five available institutional categories by which the salaries of public servants are determined at central level, municipality staff are assigned to the lower categories – 3 and 4. This militates against the recruitment of high-quality staff especially when compared to central government bodies. In the same way, under the Law on the Remuneration of State Politicians and State Officials, mayors, deputy mayors and other councillors, are assigned to lower categories than State politicians.

90. Even where a function may be independent, the salaries of staff working on that function are fixed centrally, for instance, staff of a municipality's foster or old peoples' home.

*Direct election of mayors*

91. Recommendation 87 (2001), paragraph 13.6, noted the possible direct election of Mayors and also noted the need to take into account all the advantages and disadvantages of direct election of Mayors.<sup>8</sup>

92. Before each *Seimas* election, the majority of deputies usually indicate a favourable attitude on this subject which usually changes after the election. For instance, when the amendment of the Constitution allowing direct elections was stalled in the *Seimas* in 2006 on the ground that it would be unconstitutional for Mayors (whether elected or not) to have executive functions, a law was introduced to effect the necessary amendment of the Constitution. However, in order to amend the Constitution, Article 148, para. 3, requires two votes in the *Seimas*, separated by a period of at least three months, with each vote securing the support of no less than two-third of all the members of the *Seimas*. In 2008, the *Seimas*, in the first round of voting, approved the necessary amendment of the Constitution, providing for direct election. However, in 2010, at the second vote, those voting in favour of the amendment were three short of the necessary majority.

93. Apart from their general arguments for and against the election of Mayors by the residents of municipality areas, in Lithuania, there are particular political and constitutional obstacles. Controversy surrounds the question of what role should be played by an elected Mayor. Basically, should s/he be chairperson of a council or the head of the executive body? And, if the latter, what would be the consequences for the Director of Administration, whose term of office is coterminous with that of the Mayor or lasts until the next election. If elected, would a Mayor be responsible to, and removable by, the local people, or by the councillors? Does an elected Mayor have to maintain majority support among the councillors? Further difficulty flows from the dual situation in local authorities, which have both independent and delegated functions, noted already: what, if anything, would be the Mayor's position in relation to the delegated function of the municipality? The proposal for directly-elected Mayors is controversial also, because it is thought it could also undermine the power of political parties (which put some of them against the change) and perhaps lead to the rise of 'celebrity candidates'.

94. These are legitimate grounds of doubt and hesitation. However, this topic has now had a thorough airing at every level in Lithuania and, in the opinion of the Rapporteurs, it now seems to be time to move to a decision.

### 3.3.6. *Article 7: Exercising responsibilities*

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

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|---|---|
| 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.  |

95. Article 120 of the Constitution states that 'Municipalities shall act freely and independently within their competence defined by the constitution and laws.' The principle is also found in Article 3.1 and 40.3 and 22.3 of the LLSG.

96. Mayors' salaries are set centrally, at the equivalent of one-third of a *Seimas* Committee Chairman's salary. Councillors receive compensation for loss of salary, plus (to a limited extent) expenses. Although paragraph 2 of Article 7 states that "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", the Rapporteurs were

<sup>8</sup> The full passage is: 'Concerning the political issue related to the possible direct election of Mayors by the population [the Congress]:

*a.* considers that it should be further discussed by central and local authorities and by the political parties concerned; *b.* is convinced that this important issue must take into account all the advantages and disadvantages of direct election of Mayors and that the complexity of the procedure requested (the amendment of the Constitution is required) represents a guarantee to ensure an in-depth and shared understanding of the above advantages and disadvantages, taking into account the current social, political and economical situation of the country.'

informed that only five categories of expenses are recognised when setting compensation for councillors.

97. Article 26 of the LLSG represents a partial implementation of Article para.2 of the Charter in that no mention is made in the LLSG about social protection.

98. As regards the holding of functions deemed incompatible with elected office, the law prevents a person from being both a councillor and a member of the Seimas at the same time.

### 3.3.7. Article 8 – Administrative supervision of local authorities' activities:

#### Article 8 – Administrative supervision of local authorities' activities

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|---|---|
| 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.  |

99. Article 123 of the Constitution deals with the supervision of municipalities. It states that: 'In higher level administrative units, the administration shall be organised by the Government according to the procedure established by law. Representatives shall be appointed by the Government to supervise that the Constitution and the laws are observed, and that the decisions of the Government are implemented. The powers of Government representatives and the procedures of their implementation shall be established by law. In cases and according to procedures provided by law, the Seimas may introduce direct administration on local government territory.'

100. The Supreme Electoral Commission is responsible for the conduct and supervision of municipal elections.

101. By Article 41 of the LLSG, Government representatives (one for each county) supervise the 'legality', as opposed to the policy content, of local authorities' decisions. There is one Office for each county, so that the number of municipalities supervised ranges from 4 to 8. Each Office has a staff which includes four to five lawyers. Article 4 of the Law on Administrative Supervision of Local Government 1998 states that, if a decision of any municipal authority is in conflict with the Constitution and/or the Laws, the Government representative on his/her own consideration or upon a complaint from a legal or natural person, can take it to court in cases established by the law (which leads to an automatic suspension of the legal act for the term of judicial procedures).

102. Government representatives are accountable to the government and the Prime Minister, who also coordinate their activities. They report back every six months to the government, ALAL and the public (through their websites). This report is then discussed at a Government meeting.

103. After deciding that a certain decision of the local authority council or a decree of the mayor or an order of the Director of Administration contradicts the Constitution, laws or other legislative acts of the Republic of Lithuania, or when self-government institutions do not implement laws or carry out the decisions of the Government, a representative of the Government may exercise his/her powers to issue a recommendation to the head of the local authority. If this is not followed, the representative may appeal to a Court.

104. Finally, the Constitution, Article 123, contemplates that '... according to the procedure provided for by law, the *Seimas* may temporarily introduce direct rule in the territory of a municipality.' Implementing this, the Law on Temporary Direct Governing of Municipalities (No I-830, adopted on 28 March 1995) specifies six fairly narrowly defined situations in which Temporary Direct Governing may be introduced, to replace government by the council. These include where local government institutions threaten the integrity of constitutional order, where sittings of the local government council are not convened, or when the results of repeated elections to the council, or to councils, are invalidated.

### 3.3.8. Article 9: Financial resources

#### Article 9 – Financial resources of local authorities

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
- 3 Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
- 4 The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
- 5 The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
- 6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
- 7 As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
- 8 For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

105. Each municipality has a formally independent budget, which it drafts and approves. Laws governing budgeting and taxation regulate both the state budget and local government budget. In 2012 new regulations came into force, setting mandatory indicators for forecasted budgetary revenue, which has to be approved by the municipal council.

106. Since 2011 the councils are allowed to approve a deficit budget. However, municipal budget deficits may not exceed expenditure planned for investment projects. Compensation funds, as such, do not exist. The law provides for supplementary funds in the form of short-term loans from the State budget.

107. One context in which to view the following figures is that the Gross Domestic Product of Lithuania in 2010 was Lt 100 bn (EUR 29 bn approx.), and the main (central) state budget was Lt 23.8 bn (EUR 6.5 bn approx.). The overall municipal budget (including funding for both independent and delegated functions): Lt 6.078 bn (EUR 1.5 bn approx). Overall, there are about 25,000 employees in municipal establishments and other establishments financed from the municipal budgets.

108. Municipalities have three major categories of expenditure:

- i) most costly are services (primary, secondary education and vocational training), which account for up to 60% of total current expenditure;
- ii) municipalities are also in charge of a number of welfare benefits (mostly support to families), accounting for 14%;
- iii) the so-called housing and communal economy accounts for more than 6% of current expenditure. This capital-intensive category encompasses the provision of public utilities and other infrastructure services (district heating, water supply and sewage).

109. These figures, like the others given in this section, embrace both independent and delegated functions, unless the contrary is indicated.

110. The source of the municipal budget: (i) state subsidies 55%; (ii) distributed taxes (mostly income tax) 33%; (iii) municipalities' own income 12%.<sup>9</sup>

111. First, county tax inspectorates aggregate the tax (more than 80% of tax income is income tax, the other sources being, for instance, pollution tax or gambling tax) paid by residents of each municipality.

<sup>9</sup> Davulis, 'Analysis of a situation on local taxes in Lithuania', *Intellectual Economics* 2009, No. 1(5), pp. 21-29 (ISSN 1822-8038 (online)).

The inspectorates transfer to the municipal budgets the percentage of income tax of residents, indicated in the Law on the Municipal Budgetary Revenue Estimation Methodology. The municipalities of Vilnius City, Kaunas City, Klaipėda City and the Mažeikiai District are allocated respectively 40, 94, 86 and 95% of the collected income tax of residents. The other municipalities receive 100%.

112. Allocation of subsidies is regulated by the Law on the Methodology of Municipal Budget Income Estimation. Subsidies may be purposive or common. Purposive subsidies are allocated to perform state functions prescribed to municipalities, as well as to realise the programmes approved by the *Seimas* and Government. A common subsidy of the state budget is allocated to equalise differences between income and expenditure structure, determined by factors not dependant on local government. State subsidies, especially the purposive ones, are made conditional on detailed obligations being satisfied and, thus, are a means of control over municipalities. The volume of state subsidies – over half – means that there is a low rate of fiscal decentralisation in the country.

113. This is the element in respect of which each municipality has discretion as to what rate to fix for each of the types of tax committed to it, by law. In 2006 the tax base of municipalities was expanded to include immovable property owned by natural persons used for commercial purposes. In 2011 the Law on Amending the Law on Land Tax was adopted, according to which, as of 2013, the land tax will be calculated on the market value of the land and municipal councils will have the right to set the tax rate from 0.01 to 4 percent. Councils will also be fully responsible for the administration of land lease. In practice, more than 10% comes from property taxes.<sup>10</sup> The (rather small) remainder comes from the sources stipulated by the Law of Charges, by which a municipality has a right to set local charges in its territory, for giving permissions, for instance to excavate in its territory, to trade in the public places designated by the council or to use car parking sites. Income from local charges comprises a total of only about 1% of all the municipal budget revenue.

#### *Reaction to 2008 financial crisis*

114. The 2008 crisis was felt more strongly at State level, the government budget being reduced by 20%, while local government went down by 15%. This is what the delegation was told by central government. Part of the explanation for this discrepancy may be that salaries were reduced in both though only one local government function was abolished (registration of military conscripts), which had no effect on their financial needs. It is also noteworthy that the share of the wage costs in municipal administration budgets is higher (around 70%) as compared to the central government bodies (around 40%).

115. Ignalina District Municipality (population 18,000) in 2011 received Lt 19.3 M (compared with Lt 28 M in 2008) in respect of its independent functions, and Lt 22 M for delegated functions. In Ignalina in 2011, 50 staff members out of nearly 1,000 employed by the municipal administration itself and its establishments had to be made redundant.

116. In Utena District Municipality, the example of public transport was given. Earlier, it was a delegated function, for which central government provided EUR 200,000 per year; when it was made independent, no funds were provided. Ignalina budget in 2008 was Lt 28 M for independent use and Lt 25 M for delegated functions. In 2011, Lt 19.3 M independent and Lt 22 M delegated.

117. In response to crisis in 2009, municipalities' aggregate income was reduced by Lt 338M or 9.8%. They were driven to desperate remedies, such as allocating no money to repairing school buildings, because their operating costs consumed all the available resources. During the crisis, the liabilities of municipalities rose 1.5 times from Lt 906 M on 1 January 2008 up to Lt 1364 M on 1 January 2011 while the overdue liabilities nearly tripled from Lt 131.5 M to Lt 380 M during the same period. According to ALAL, the key reason for this is the central government's action, unilaterally reducing the amount of natural person income tax intended as the revenue for municipalities from Lt 538 M to Lt 128 M annually.

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<sup>10</sup> There is a technical, legal problem here. In contrast with this, Article 127 of the Constitution states that: 'The budgetary system ... shall consist of the independent State Budget ... as well as independent municipal budget. The State Budget revenue shall be raised from taxes, compulsory payments, levies, income from State property and other income. Taxes, other payments to the budgets and levies shall be established by the laws ...'. The terms of the Constitution complicate the right of municipalities to financial resources of their own, in that it seems to bar the establishment of local taxes as understood in the European context.

118. Inevitably, in view of the importance of the question, there has been contention over the issue of whether central or municipal government has suffered most, from the cutbacks necessary to meet the financial crisis. This is most difficult to assess, because any realistic appraisal would have to allow for the fact that, just because of the financial crisis, the need, in terms of (for instance) welfare benefits has almost quadrupled. Again, the revenues of municipalities have gone down, because the income tax aggregate has fallen, as fewer people are employed. Next, how is one to 'factor in' the fact that, in most municipalities, staff have not only been reduced in number; but existing staff have been required to take up to four weeks of unpaid leave, in each year. And, at the fundamental level, one notes, without comment, the macro economic fact that Lithuania has the sixth lowest national debt in the EU. One could express this as meaning that it was decided to reduce public expenditure, rather than simply borrow money, when borrowing might, in the long run, have been more in the interest of the community.

119. In the field of transportation the law provides for specified categories of passengers who are entitled to reduced tariffs on public transport. The loss in revenue for the reduced tickets was covered by the government until 2006, but now the municipality is supposed to bear the loss itself. For example this costs Vilnius City Lt 100 M (Eur 31 M) per year. Street lighting has had to be reduced, during certain hours, with the consequence that there have been increased accidents and crime. Also, some municipalities lost their reputation as trustworthy business partners, because they were so short of funds that they had to pay their debts one or two years late.

### *Equalisation*

120. Lithuania accepts the principle of 'equalisation' among municipalities and operates the following 'methodology' (or formula) to implement it, which is set down in the Law on Methodology for the Establishment of Local Government Budgetary Revenues (adopted 2 July 1997, replaced by a new version of the law adopted on 23 October 2001 with entry into force on 1 January 2002).

121. As mentioned, different municipalities are given different fractions of the tax aggregate from their residents. Next, the figure arrived at through this process is further adjusted by reference to nine 'Indicators' based on relevant factors. For instance: the aggregate length of roads in a municipality's territory; number of residents of pensionable age; children up to the age of six. Each of these factors has its own weighting.

122. There is need for a clear, transparent policy, which is faithful to agreed principles, for sharing with local government taxes set and collected by the state. This theme was the basis of criticism in Recommendation 87 (2001), paragraph 13.2, c.iii and d.iii and iv, which referred to the fact 'that, in some cases, new responsibilities are delegated to local authorities without the necessary resources to carry them out' and noted that 'Lithuanian authorities recognise in their legislation the principle of concomitant financing – as it is expressed by the CLRAE in its Recommendation 64 (1999) and 79 (2000).<sup>11</sup> In fact, this should not contradict the progress of the Charter.

123. Undoubtedly, and perhaps inevitably, in any state which is not a federation, central government usually, in the form of the Ministry for Finance, has the last word on this question (though, formally, the matter must go before the Parliament). The question becomes how much influence does central government allow to local representatives before the decision is ultimately taken? The Government representatives were in favour of solving this conflict by dialogue: in particular in 2003 a law was adopted on the recognition of the debt of the Government to local authorities.

124. One particular example of how resources do not match obligations concerns the management of State-owned land, not attributed to municipalities, which is situated beside privatised apartment houses. In connection with this land, it is necessary to prepare detailed plans to assign the State-owned land to the apartment houses. Yet the Government has rejected all proposals to compensate by way of general grants municipalities for management and handling of this land or the preparation of the plans mentioned.

125. A second example is that the Parliamentary Committee on State Administration and Local Authorities, on 28 April 2010, in hearing the State Audit Report on 'use of funds received for sold state-owned land plots' proposed that the assets received for the sale of State-owned land plots in the

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<sup>11</sup> This principle establishes that, in order to maintain the balance between responsibilities and the requisite resources for exercising them, each new transfer of responsibility should be clearly accompanied by a corresponding means of funding.

city should be transferred to the State budget; but used in the form of a State budget for specially targeted grants for municipal budgets. These would be allocated for autonomous municipal functions, according to the methodology for the calculation of the funding of these functions. The position at the moment is that up to 50% of the proceeds are transferred, without restriction, to municipalities. There is a possibility that, if the proposal made by the Parliamentary Committee were adopted, the net result would be that the funding allocated to municipalities would decrease.

126. A more acute problem is related to the limit set on the autonomous revenues of municipal budgets. In 2010 and 2011, the obligation was imposed on municipalities to return to the State Budget any surplus own revenue. Such restrictions reduce the capacity of municipalities to foster economic and business development and also to be in a position to satisfy the increasing need for co-financing of projects implemented with EU assistance.

127. That some part of the financial resources of local authorities should derive from local taxes was the subject of comment in Recommendation 87 (2001), paragraph 13.2. Yet, as indicated earlier, a very limited proportion of revenue – about 13% – is raised by genuine local taxation, for which local authorities set the rates, the predominant role being played by grants from central Government and shared taxes.

128. A group of members of the Parliament has recently submitted a court case challenging the decision of the resort municipality of Druskininkai to introduce a tourist tax. The plaintiff is claiming to defend the public interest and its arguments conform to principles of good governance; nevertheless, they have the effect of thwarting an attempt of the municipality to introduce its own taxation.

129. For the purpose of borrowing for capital investment, local authorities should have access to the national capital market within the limits of the law. In Lithuania they do not (the Ministry explains that such access is inexpedient as, *inter alia*, it would have a negative influence on the borrowing costs of the State). The limits on borrowing fixed for municipal budgets are rather low. These limits are set by the *Seimas* through the Law on the Approval of Financial Indicators of the State Budget and Municipal Budgets of a given year. In 2012 the debt ceiling was fixed at 70% of the municipal budget revenue. The limit set for the largest city, Vilnius, was increased only to a rather restrictive 85% (from 50% in 2010) and 125% in 2012. The smaller municipalities have this limit set at way lower levels – for the second largest municipality, Kaunas City, this limit is set at 55% (increased from 50% in 2010), while for all others it is only 40% (increased from 35% in 2010). Furthermore, municipalities have an additional borrowing limit set at 30 % of their own income which could be used for borrowing funds to co-finance EU-funded projects. And, in all cases, the borrowing of municipalities is closely monitored by Ministry of Finance, so that a municipality will not become too heavily indebted.

130. It is noteworthy that, in 2010, these limits were increased as a means to facilitate coping with the consequences of the economic crisis. Nevertheless, local authorities consider the present limits to be too restrictive.

### 3.3.9. Article 10: Rights to associate

#### Article 10 – Local authorities' right to associate

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|---|---|
| 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.  |

131. In line with para. 2, the Law on the Basic Regulation of the Association of Municipalities of Lithuania 1995 established the ALAL as a national association representing 'the common interest of its members – municipalities – in all institutions of State power and government'. Registered as a non-profit organisation, the ALAL seems to be an active entity whose right to represent all the 60 Lithuanian municipalities is respected by the Government and *Seimas*.

132. Its main functions include interlocuting with the Government and *Seimas*, on behalf of the 60 municipalities. As regards the budget, the most important example is its discussion with the Ministry of Finance, regarding the amounts given by central government to local government. The



LLSG stipulates that the association should be invited to give its opinion on drafts of Laws (whether primary or secondary) related to local government activities. The most important committee for local government is the *Seimas* Committee on State Administration and Local Authorities, which has 11 members, a number of whom are former Mayors. The Association's experience of this is that its value and effect vary, depending on the personalities who happen to be members of the committee at any particular time and their view of the limits of municipal autonomy.

133. The Bilateral Commission is based on an agreement between the Government and the ALAL, of 2 June 2000. Co-chaired by a Minister of the Interior and the President of the ALAL, the members of the Commission include Chancellor of the Prime Minister's Office, the Deputy Minister of Finance and the two Vice Presidents of the ALAL. Its principal reference is that it is to analyse problematic issues concerning the relationships between public institutions and municipalities, competences of the municipalities and financing and to provide the Government with considered conclusions on these issues.

134. The Law of the Association<sup>12</sup> does not provide for the right to belong to an international association of local authorities, as required by Article 10.2 of the Charter or to initiate trans-border co-operation with similar association. However, this possibility exists on the basis of the Madrid Convention on Transfrontier Co-operation, ratified by Lithuania in 1997, addressed by the Association's bye-laws, and is mentioned in the LLSG.

135. Nevertheless, municipalities attach importance to international collaboration and some have international relations departments. There are some joint budgets in particular fields, such as social care, water purification and tourism. Frequently, these involve cross-border co-operation with neighbouring districts in Poland, Russia, Latvia and Belarus. The ALAL represents the interests of its members, in relationship with foreign local authorities and international organisations. One of its tasks is to monitor the implementation of the provisions of the Charter.

### 3.3.10. Article 11: Legal protection of local governments

#### 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.

136. 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

137. In line with this, Article 122 of the Constitution states: 'Municipal councils shall have the right to apply to court regarding the violation of their rights.'

138. Recommendation 87 (2001), paragraph 13.5, recommended 'securing in a definitive manner in the relevant legislation the constitutional rights of local authorities to launch appeals against decisions and/or omissions of central authorities (including the government) which appear to violate local authorities' rights ...'.

139. Two points are relevant here. First, regarding the 2001 recommendation, in a recent case it was stated that no-one has any doubt that municipalities do have the right to appear before Courts.

140. However, it is a significant practical point that it is by no means certain that the ALAL has standing to represent all municipalities before a Court. The reason why it wishes to have such standing is because, if any particular municipality(ies) might fear, whether reasonably or not, victimisation if they were themselves to take a case and so might prefer to leave it to the Association. This seems to be a reasonable and practical requirement and the delegation would urge that the law be amended to make it clear, beyond any doubt, that the ALAL does have the appropriate standing. The Ministry of the Interior claims that any municipality wishing to be represented by the ALAL before a court can do so by a decision of its council.

<sup>12</sup> On the Association's Congress (the central body), each municipality is represented by one person for every 10 council members, plus one for the remaining number of members where this exceeds five. Additionally, municipalities with a population of over 100,000 inhabitants have an extra representative for every 100,000 residents, or fraction thereof.

#### 4. Status of the capital city

141. Vilnius population is 550,000, or 16% of the total Lithuanian population, that is even greater than the equivalent figure for capitals in most other states. And the size of the population is especially important because of the major welfare state functions which Lithuanian municipalities must perform. It therefore bears a unique duty and opportunity to preserve and protect Lithuania's heritage. Yet, in line with the usual position in all municipalities, public land in Vilnius is managed by the Ministry of Agriculture – 'as if Vilnius produced potatoes' (as one councillor put it to the delegation). The Ministry of Agriculture oversees land management and land use in Lithuania. A second way in which treating Vilnius according to the same law as other municipalities in fact operates unfairly, in that, even under the lower formal rate which is allocated to Vilnius, it should get 40% of its income tax aggregate but, in 2010, it received only 21%, because income tax allocation is based on a citizen's declared address. The reason for this is a lot of (often single, youngish) people live in Vilnius, consuming the services provided by the Municipality; yet, because they are only temporarily in Vilnius, their residence, for tax purposes, remains elsewhere. The implication of Vilnius' position has not gone unnoticed and there has been some debate around the question of whether Vilnius should have a special status as capital.

142. On these grounds, it seems to us that Vilnius should be given a particular status in the law (and possibly the Constitution) which is well designed to accommodate this special position. This conclusion is in line with Recommendation 219(2007) on the status of capital cities.

#### 5. Regional democracy: The reference framework for regional democracy

143. Normally, this section of the report would outline and appraise the arrangements at the level of regional government. But, in Lithuania, there is no general institution of public administration at regional level. Some elements of the history of regional administration have already been mentioned in paragraphs 32 to 34 of this report.

#### 6. Conclusions

144. Recommendation 87 (2001) had expressed the view that in order to put reforms into action successfully, the principle of subsidiarity defined in Article 4, paragraph 3, of the Charter could be explicitly reflected in the legislation regulating the share of responsibilities between the different tiers of government. Subsidiarity is not mentioned expressly in the Lithuanian Constitution or in the LLSG, which, as noted, lays down, in Article 4, twelve other 'main principles' on which local self-government shall be based. However, subsidiarity is mentioned without particular reference to local government, as a principle in the Law on Public Administration.

145. At the time when administrative functions were taken from the counties and re-distributed, the principle was not followed: all that was delegated to municipalities were decisions on insignificant questions, spread out over a number of disparate areas. However the principle of subsidiarity is known and respected in Lithuania. The Rapporteurs are of the opinion that it should nevertheless be specifically recognised in the field of local government, by being mentioned as one of the guiding principles identified in Article 4 of the LLSG.

146. There are specific areas in which the principle of subsidiarity has not been observed. When administrative functions were taken from the counties and re-distributed, it was intended, initially, that all state land should be transferred to the appropriate municipality. The *Seimas* voted for this but the President vetoed it in 2010 and most of these functions were assigned to State institutions with the result that, with exceptions, state land remains state property. Again, the impression the delegation got was that centralised management does not reflect the real situation and is more expensive. It should also be kept in mind that Congress had previously recommended in 2001 the transfer of land management rights to municipalities.

147. The new draft laws on territorial planning and on construction, as well as the draft Concept Paper on territorial planning (all pending before the *Seimas*) risk, if adopted, reducing the function of municipalities in this field to procedure-executing bodies, rather than policy-makers.

148. Municipalities had the administration of activities related to declaration of agricultural land units and crops. However, since 2011, this power is now shared (in respect of crop declaration administration) with the Agricultural Advisory Service. Given that this authority is granted not by law but by Government Resolution puts it in conflict with both the law on public administration and, possibly, the Charter.

#### *Transfer of responsibilities*

149. As regards the recommendation that responsibilities transferred by legislative decision to local authorities shall be full and exclusive and that they may not be undermined or limited by another central or regional authority except as provided for by the law, the divisions between the functions of municipalities, original and delegated, and those retained by the central government is by no means clear.

150. The dispute that arose between the Government and ALAL on what functions to transfer to local authorities at the time counties were terminated, led to a situation where the allocation of functions, as between central and local government, was by no means based on a rational appreciation of what functions were best dealt with at one level rather than the other. The Rapporteurs would urge all stakeholders to try to work out a better compromise than the present distribution and invite the Government to envisage decentralisation by a balanced approach to function transfer and provision of funds, giving special consideration to reducing the financial burden on municipalities

151. The allocation of sufficient resources to local authorities continues to be a serious issue. Even before the present financial crisis, local government was already under-resourced. The financial crisis which struck in 2008 and the termination in 2010 of administration at regional level meant that several additional functions were loaded onto the shoulders of local government. The Rapporteurs believe that more could be done to respect the principle that resources should match functions and duties which are vested in local government.

#### *Consultations with ALAL*

152. As regards the recommendation that a regular consultation of ALAL be undertaken when referring to local authorities' interests and responsibilities, there is some machinery for consultation, including the well-established institution of the Bi-lateral Commission. But, in Lithuania, as elsewhere, the central government, in particular the Ministry of Finance, has the final word. There are two factors here. The first is the machinery for consultation between central and local tiers of government, namely the Bilateral Commission and the ALAL. This appears to be satisfactory. But, there remains the second point that is the substantive question of whether municipalities have sufficient resources.

153. A significant practical point that should be underlined is that it is by no means certain that the ALAL has standing to represent all municipalities before a Court. The reason why it wishes to have such standing is because, if any particular municipality(ies) might fear, whether reasonably or not, victimisation if they were themselves to take a case and so might prefer to leave it to the Association. This seems to us to be a reasonable and practical requirement. The Rapporteurs encourage the Government to amend the law to make it clear, beyond any doubt, that the ALAL does have the appropriate standing since this is a reasonable and practical request and would help individual municipalities which might otherwise desist.

#### *Financial situation: concomitant financing, public taxation*

154. As regards the recommendation that the system of public taxation be revised to allow local authorities to have, not only in theory but also in practice, the possibility to levy their own taxes for which they can determine the rate, the delegation has learned that a very limited proportion of revenue – about 13% of autonomous revenue– is raised by genuine local taxation, for which local authorities set the rates, the predominant role being played by grants from central Government and shared taxes.

155. It had also been recommended that when new responsibilities be transferred and/or delegated to local authorities, adequate financial resources to carry them out must also be provided. The tendency seems to be in the opposite direction. It must be noted that even before the present financial crisis, local government was already under-resourced, as is emphasised in the 2001 report. Then two major factors coincided, which made the situation so much worse. The first was the financial crisis which struck in 2008. The allocation of what resources there were, meant that this had an even worse impact

on local than on central government. Secondly, this impact was exacerbated when, in 2010, when administration at county level was terminated, several additional functions were loaded onto the shoulders of local government without respective financing.

156. Concerning the limit set on the autonomous revenues of municipal budgets in 2010 and 2011, an obligation was imposed on municipalities to return to the State Budget. Although the limits set on borrowing fixed for municipal budgets were increased in order to cope with the economic crisis, they still remain rather restrictive. Such restrictions, even if they could be justified as a means to reduce indebtedness, reduce the capacity of municipalities to foster economic and business development and also to be in a position to satisfy the increasing need for co-financing of projects implemented with EU assistance.

#### *Regional government*

157. Recommendation 87 (2001), paragraph 14, recommended that Lithuania should move in the direction of 'creating a system of regional self-government'. In fact, as we have seen, the country has moved in the opposite direction. In a country the size of Lithuania – 3.2 million – there may not be a need for both regional and local government tiers. But, especially given the sparseness of the country, there is need for additional representation and popular participation. Given the fact that the present structure seems to be working satisfactorily, it may be that the best solution would be the simplest one, namely to increase the number of municipalities or the number of municipal councillors.

#### *Administrative supervision*

158. Recommendation 87 (2001) also drew attention to the municipal controllers and that they "should not, in practice, become for central authorities a way to perform an indirect financial *a priori* control on the expediency of municipalities' decisions".

159. In November 2010, a working group of the *Seimas* prepared draft laws which are aimed at taking the function of external audit from the municipalities and transferring it to state control, probably involving the National Audit Office. This change is opposed by many municipalities who believe that such a centralised system may well prove to be unconstitutional. The central government's justification is that the appointment of municipal councillors by municipal councils may raise independency and accountability issues. The ALAL has informed the delegation that all municipalities have now established ethical committees in this regard. The Rapporteurs note that there remains the issue of whether there is any danger that these proposals are unconstitutional, which is not for the delegation to adjudicate.

#### *Direct election of mayors*

160. As regards the direct election of mayors, the discussion has been ongoing since 1998. The delegation was told that 70% of citizens are in favour of direct election of mayors. The question is whether the mayor should have executive powers (this requires an amendment of legislation) or remain as head of municipal council (no need to change the Constitution).

161. Recommendation 87 (2001) had underlined the importance of further discussion on the direct election of mayors and the necessity to weigh its advantages and disadvantages. It would appear that since 2006 there has been ongoing and lively debate on the subject, the controversy focusing around the issues of whether mayors should be chairperson of a council or the head of the executive body and what position they should hold in relation to the delegated function of municipalities. In 2010, the issue remained unsettled as those voting in favour of the amendment were three short of the necessary majority. The fact that the latest decision on this issue in *Seimas* was taken by a difference of only a few votes indicates that further debate at *Seimas* would be beneficial in reaching a consensus in the near future.

162. The Rapporteurs are of the opinion that it now seems to be time to move to a decision and would encourage the Government to put the debate on its agenda.

#### *Citizen participation*

163. Lithuanian citizens have insufficient participation in government at local or regional level for various reasons (termination of county level, feeble participation in wards). It is not for the Congress to

point in one practical direction rather than another. It is true that the Lithuanian authorities have shown themselves to be seized of the problem and anxious to find solutions. The election rather than appointment of heads of wards and the facilitating the participation of independent candidates in local elections have been brought to the delegation's attention as possible alternatives to the existing situation. The Rapporteurs encourage all efforts in this direction.

*Status of the capital city*

164. As explained in paras. 141 and 142, Vilnius has a special position due to its population size and composition, historical and touristic importance, budgetary system and financial situation, all of which would justify that it should be given a particular status in the law (and possibly the Constitution) which is well designed to accommodate this special position.

**Appendix 1 – Programme of the Congress Monitoring visit in Lithuania (6-8 June 2011)**

**Programme of the Congress of the Council of Europe Monitoring visit  
in Lithuania (Vilnius & Ignalina and Utena)  
6-8 June 2011**

Rapporteurs:

Ms Gudrun MOSLER-TÖRNSTRÖM Co-rapporteur on regional democracy  
Vice-Chair of the Monitoring Committee of the Congress  
Chamber of Regions, SOC<sup>13</sup>  
Vice-President of the State Parliament of Salzburg (Austria)

Ms Irene LOIZIDOU Co-rapporteur on local democracy  
Member of the Monitoring Committee of the Congress  
Chamber of Local Authorities, EPP/CD  
Municipal Councillor of Engomi (Cyprus)

Expert:

Professor David MORGAN Consultant (Ireland)  
Member of the Group of Independent Experts of the Congress  
(GIE) on the European Charter of Local Self-Government

Congress Secretariat:

Ms Stéphanie POIREL Secretary of the Monitoring Committee of the Congress  
[stephanie.poirel@coe.int](mailto:stephanie.poirel@coe.int)

Ms Sedef CANKOÇAK Co-Secretary of the Monitoring Committee of the Congress  
[sedef.cankocak@coe.int](mailto:sedef.cankocak@coe.int)

**Monday, 6 June 2011**

**Joint meeting with members of the National Delegation to the Congress and  
The members of the Association of Local Authorities of Lithuania**

- Association of Local Authorities of Lithuania (ALAL)

Mr. Ričardas MALINAUSKAS, Mayor of Druskininkai Municipality, President of ALAL

Ms Roma ŽAKAITIENĖ, Director of ALAL

Mr Gintautas GEGUZINSKAS, Mayor of Pasvalys District Municipality, Head of the Lithuanian  
Delegation to the Congress

Mr Juozas VAIČIULIS, President of Lithuanian Municipal Controllers' Association  
Municipal Controller of Marijampolė Municipality

**Parliament, Committee on State Administration and Local Authorities**

Mr Vytautas KURPUVESAS, Chairman of the Committee

Mr Liudvikas SABUTIS, Member of the Committee

Mr Erikas TAMASAUSKAS, Member of the Committee

Mr Bronius KLEPONIS, Head of the Office of the Committee

Mr Algirdas ASTRAUSKAS, Adviser of the Committee

Ms Jurgita MARCINKUTE, Adviser of the Committee

**Meeting with members of Rural Communities**

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<sup>13</sup>EPP/CD: Group of the European People's Party/Christian Democrats of the Congress  
SOC: Socialist Group of the Congress

Mr. Arimantas RAČKAUSKAS, Chairman of the Communities' organizations  
 Mr. Liudvikas RAGAUSKIS  
 Mr. Artūras ŽELNYS, Chairman of Riešė Community  
 Mr. Arūnas GRAŽULIS, Association of Local Authorities of Lithuania (ALAL)

#### **Parliament, Committee on Human Rights**

Mr Arminas LYDEKA, Chairman  
 Members

#### **Parliament, Committee on Budget and Finance**

Mr Kęstutis GLAVECKAS, Chairman  
 Members

#### **Joint meeting with:**

Mr Romas VALENTUKEVIČIUS , Ombudsman of the Seimas  
 Dr Augustinas NORMANTAS, OMBUDSMAN OF THE SEIMAS  
 Mrs Edita ŽIOBIENĖ, Children's Rights Ombudsman Institution  
 Mrs Aušrinė BURNEIKIENĖ , Office of the Equal Opportunities Ombudsman

**Tuesday, 7 June 2011**

#### **Ministry of the Interior**

Mr Raimundas PALAITIS, Minister  
 Mr Sigitas ŠIUPSINŠKAS, Vice minister  
 Mr Paulius SKARDZIUS, Direktor of the Public Governance Policy Department  
 Ms Rasa LIUTKEVICIENE, Deputy Director of the Public Governance Policy Department  
 Ms Rasa MACIULYTE, Chief specialist of the Public Governance Policy Department

#### **Supreme Administrative Court**

Mr Ričardas PILIČIAUSKAS, President of the Court  
 Prof. Dr. Virgilijus VALANČIUS, Justice of the Court  
 Assoc. Prof. Dr. Irmantas JARUKAITIS, Justice of the Court  
 Dr. Aurimas BRAZDEIKIS, Director of the Legal Research and Information Department of the Court  
 Ms Ingrida DANĖLIENĖ, Assistant to the President of the Court

#### **Constitutional Court**

Mr Romualdas Kestutis URBAITIS, Acting President or one of the judges  
 Mrs Toma BIRMONTIENĖ, the Justice of the Constitutional Court  
 Mr Kestutis JANKAUSKAS, Director of the Law Department  
 Mr Rytis KRASAUSKAS, Assistant to the President of the Law Department  
 Mrs Lolita RAUDIENE, Head of the President's Secretariat

#### **National Audit Office**

Ms Giedrė ŠVEDIENĖ, Auditor General  
 Ms Nijolė MICKUVIENĖ, Deputy Auditor General  
 Ms Regina RUDOKIENĖ, Department Director  
 Ms Rita ŠVEDIENĖ, Deputy Department Director  
 Ms Danguolė KRIŠTOPAVIČIENĖ, Deputy Department Director  
 Mr Gediminas ŠVETKAUSKAS, Senior Officer, Lawyer  
 Ms Ieva KOSAITĖ, Senior Officer, International Relations

#### **Ministry of Finance**

Mr. Edmundas ŽILEVIČIUS, Vice-Minister of Finance  
 Mr. Darius SADECKAS, Deputy Director, Budget Department  
 Mr. Artūras KRIŪKA, Deputy Head, Municipalities Budgets Division, Budget Department  
 Ms. Laura KIRVELYTĖ, Chief Specialist, International Affairs Division, EU and International Affairs Department

**Specialist on issues on local government in Lithuania**

Prof. Dr Diana SAPARNIENE, member of the GIE

Ass. Prof. Aiste LAZAUSKIENE

**Wednesday, 8 June 2011**

**Visit to Vilnius City Municipality**

Mr Romas ADOMAVICIUS – Deputy Mayor of Vilnius City;

Mr Kestutis NENIUS – Vilnius City Councillor, Chairman of Economic and Financial Committee;

Mr Virginijus DASTIKAS – Secretary of Vilnius City Council;

Mr Egidijus VILKICKAS – Director of Legal Affairs Department;

Mr Edmundas KACKUS – Director of Financial Management and Accounting Department;

Mr Antanas GADECKIS – Head of Human Resources Division;

Mr Algirdas PETRAUSKAS – Head of Internal Audit Division;

Mr Gintas KIMTYS – Head of European Union Assistance Coordination Division

**Visit to Ignalina District Municipality**

Mr Bronis ROPĖ, Mayor of Ignalina district municipality

Mr Henrikas ŠIAUDINIS, Deputy Mayor

Mr Gintautas KINDURYS, Municipal Council Secretary

Mr Vidas KREIVĖNAS, Deputy Director of Administration

Ms Vanda MILAŠIENĖ, Control and Audit Services Manager

Ms Ona BESUSPARIENĖ, Head of Finance

Ms Irena AIDUKIENĖ, Head of Legal

**Visit to Utena District Municipality**

Mayor Alvydas KATINAS

Deputy Major Vidmantas VALINČIUS

City Council



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

### HUMAN RIGHTS AT LOCAL AND REGIONAL LEVEL

#### ***Participation: Citizen involvement in decision-making and Elections***

1. As to participation, in practice there are only the four-yearly elections. There are no Referenda and public polls remain the subject of an on-going debate. The Ministry of the Interior informed the delegation that Chapter IX of the Law on Local Self-Government regulates local population polls and it is in the municipalities' discretion whether to hold one or not.
2. The LLSG, Article 4.9, identifies as one of the principles of local self-government 'participation of the residents or their Municipality in the management of public affairs of the Municipality ...', going on to specify that there should be conditions enabling residents to directly participate in making initiatives and taking decisions.
3. Given the relatively recent Soviet history, one might expect that, especially among older citizens, there is a mind-set which may not favour or, at any rate, be aware of human rights. Yet, there is some evidence that, at local government (which is the only level which we have considered), there is significant consciousness, among politicians and officials, of the importance of human rights.
4. Since the country's independence in 1990, the *Seimas* has reviewed all of the former (soviet) laws still in force, in order to check that they are human rights-compliant. The *Seimas* also ensures that all the new laws which it passes respect human rights. The LLSG, Article 4.12, identifies as one of the principles of local self-government 'ensuring respect for human rights and freedoms. Decisions taken by Municipal institutions or civil servants must not infringe human dignity, and freedoms, as well as equal opportunities.'
5. To take some specific fields of interest, it has been held by the Constitutional Court (Case No. 06/07 of 9 February 2007) that a law which would have confined candidacy for local government elections to those nominated by a party was unconstitutional. This ruling was put on two alternative bases, the first being that it violated the principle of direct suffrage at local government level, established by Article 119, para. 2, of the Constitution. Secondly, Directive 94/80/EC of the European Council of 19 December 1994 provides that citizens of the Union residing in a Member State of which they are not nationals may exercise the right to vote or to stand as a candidate in municipal elections. Either way, there is a strong human rights flavour to this decision. And, in 2008, the law of municipal elections was amended to give foreigners with a certificate of permanent residence the right to vote (more foreigners have the right to vote at local, rather than central, level).

#### ***Non-discrimination:***

6. One of the particular ways in which the issue of human rights arises at local government level emanates from the fact that history has left quite a few substantial pockets of minorities, mainly Poles and Russians, living in Lithuania. Indeed, in Vilnius, there is a locality where 70% of the residents are non-Lithuanian. This has created some tension. But, minority rights, in the form of, for instance, requirements of schools' teaching in languages other than Lithuanian, have been respected. Indeed, there have been complaints to both the Equal Opportunities Ombudsman and the Ombudsman for Children's Rights regarding the infringement of children's rights, in that Lithuanian-speaking children have been forced to attend Polish-speaking kindergarten; or that municipalities have, on a number of occasions, attempted to close Lithuanian-speaking schools, thus limiting the access of the Lithuanian-speaking population in that area to education.
7. Minority languages can be used in public life. However the use of Lithuanian language is compulsory in all state institutions and local authorities as well as organisations and enterprises on the territory of Lithuania and in their communication with each other. The existing laws do not allow for a second language to be used in combination with the official state language. Article 18 of the Law on the State Language stipulates that the names of organisations of ethnic

communities and their informational signs may be rendered in other languages along with the State language. The law does not regulate which language should be used in unofficial events of national minorities. Vilnius has an 'integration of Roma' programme, administered conjointly with the Ministry of Culture. The Law on Minorities (see Venice Commission, 2003 draft law citation) was debated in the Seimas, but not enacted as a single law. Instead, its provisions were distributed among separate laws, dealing with education, information, culture.

8. In May 2010, Vilnius Municipality adopted a decree allowing a gay parade to be held in Vilnius. An appeal was brought against it by a councillor from Kaunas and the public prosecutor asking for interim measures (suspension of the decree). Vilnius Regional Court granted the interim measure suspending it three days before the demonstration. The Supreme Administrative Court of Lithuania, relying on the jurisprudence of the European Court of Human Rights, quashed this decision one day before the demonstration date and the parade went ahead on 8 May 2010.

### ***Dealing with complaints against municipalities***

9. If one is focusing on the performance of municipalities in delivering services and benefits to the residents, one must focus not only on the rights of municipalities towards central government, but also on how municipalities perform their duties. An important feature of this is what machinery is provided for those who wish to make a complaint against a municipality. There are a number of ways in which various laws allow individual municipalities decide whether to introduce certain safeguards against misconduct by the municipality or to permit public participation and influence over the municipality. In Lithuania the remedies available to the public are two-fold.

#### a) The Courts

10. The lowest point in the hierarchy of Courts which a citizen can access are the Administrative Disputes Commissions. Above them are the Regional Administrative Courts and then the SACL. The ADCs are quasi-judicial institutions, which are independent and deal with issues concerning any action of a public body, such as a Municipality. Their members, who are independent, are mostly lawyers, elected for a fixed period.
11. When the counties had administrative functions, there was a Senior Dispute Commissioner, both for the county and the municipalities within it. However, after the counties ceased to have administrative functions, this Office ceased to be compulsory for a municipality. Since 2011 each municipality is obliged to have a Municipal Administrative Dispute Commission. They can hear complaints only regarding decisions of the municipal public administration.
12. According to the LLSG, paras. 27 and 28, each council is empowered to appoint an internal, independent Municipal Controller. This is dealt with, in the significant context of finance, at para. 63.

#### b) Ombudsman

13. There are three independent autonomous Ombudsman institutions in Lithuania: Seimas Ombudsman Office (established in 1994), Office of Equal Opportunities Ombudsperson (established in 1999) and the Institution of the Ombudsman for Children Rights (established in 2000). In January 2010, the Seimas Ombudsman Office was re-organised reducing the number from five to two - one for central government and the other for local government (counties and municipalities).<sup>14</sup> They are appointed for a term of five years.
14. One of the strengths of the Ombudsman's Office is that, where a problem is general rather than just affecting a single individual, the Ombudsman is empowered to refer the matter to the *Seimas* (by issuing reports, giving recommendations, organising discussions) for their attention, as, for instance, in the restitution of land formerly occupied by the Soviets.

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<sup>14</sup> It might have been preferable to have a single Office, in order to create a high-profile institution which would be well-known to everyone. However, if this had been done: first, it would have been disrespectful of the autonomy of local government, in that one would not have had a separate Office; secondly, the Constitution, Article 73, speaks of 'the Seimas controllers'.

15. As regards investigated complaints (investigated by the Local Government Ombudsman working on issues related to municipalities) concerning activities of municipalities' officials in 2010 (the current year for which figures are available):
- Right to proper public administration – 36 %
  - Right to safe and ecological environment – 21,5 %
  - Right to accommodation – 15 %
  - Right to property – 10%
  - Right to social security – 5%
  - Consumers' rights – 6 %
  - Right to education – 3
  - Right to health – 2 %
  - Other rights – 4,5 %
16. In 2010, the Ombudsman for local government adopted decisions where it upheld the complaint in 355 cases, rejected the complaint in 182 and cancelled the investigation of the complaint in 239 cases.
17. Relevant to this is that municipalities should honour the recommendations of the Ombudsman. Here, it must be emphasised that the great majority (84% in 2010) of the Local Government Ombudsman's recommendations are obeyed by the Municipality. But it is worth drawing attention to the minority of recommendations which are not followed and asking municipalities (perhaps on a collective basis through the ALAL) whether this figure can be reduced.