

**25<sup>th</sup> SESSION**  
**Strasbourg, 29-31 October 2013**

**CG(25)7FINAL**  
31 October 2013

## **Local and regional democracy in Hungary**

Monitoring Committee

Rapporteurs: Artur TORRES PEREIRA (Portugal, L, EPP/CCE)<sup>1</sup>  
Devrim ÇUKUR (Turkey, R, SOC)

Recommendation 341 (2013).....	2
Explanatory memorandum .....	4

### *Summary*

This report on the situation of local and regional democracy in Hungary follows up on Recommendation 116 (2002) and the Congress visit carried out in May 2012. The report welcomes the ratification by Hungary of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority in June 2010. It expresses regret, however, that this positive step is overshadowed by the recent reforms, which led to a deterioration of the legislative framework on local and regional issues in Hungary. In particular the report underlines a deep concern about the overall trend towards recentralisation of competences and the weak level of protection afforded, at constitutional level, to the principle of local self-government. It underlines the fact that the local authorities in Hungary remain strongly dependent on government grants, and that the consultation procedure needs reinforcement, bringing it in line with Charter provisions on timely and appropriate consultation practices. Lastly, local authorities do not have an effective judicial protection as regards their right of recourse to courts to guarantee their rights under the Charter.

It is recommended notably that the Hungarian authorities take steps to guarantee the implementation of the principle of self-government and the financial autonomy of local and regional authorities as set out in the Charter. The recommendation also strongly encourages the Hungarian authorities to clearly define the competences of local and regional authorities and to seek solutions which will provide local and regional authorities with the requisite human and material resources. It calls on the Hungarian Government to put in place an effective consultation procedure for all matters which concern territorial authorities directly as stipulated by the Charter, and to implement effective remedies which provide a right for representatives of local authorities to lodge a complaint to courts in order to protect their rights laid down in the Charter.

---

<sup>1</sup> L: Chamber of Local Authorities / R: Chamber of Regions  
ILDG: Independent and Liberal Democrat Group of the Congress  
EPP/CCE: European People's Party Group in the Congress  
SOC: Socialist Group of the Congress  
ECR: European Conservatives and Reformists Group  
NR: Not registered

# Local and regional democracy in Hungary

## RECOMMENDATION 341 (2013)<sup>2</sup>

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

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

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

c. Resolution 307 (2010) REV2 on Procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122);

d. the previous Recommendation 116 (2002) on regional democracy in Hungary and the explanatory memorandum on the situation of local and regional democracy in Hungary.

2. The Congress recalls that:

a. Hungary became a member of the Council of Europe on 6 November 1990 and ratified the European Charter on Local Self-Government (ETS No. 122, hereafter the Charter) on 21 March 1994, which came into force in respect of Hungary on 1 July 1994. It signed the Additional Protocol to the European Charter on Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) on 16 November 2009 and ratified it on 7 June 2010;

b. The Congress Monitoring Committee instructed Mr Artur Torres Pereira and Mr Devrim Çukur to prepare and submit to the Congress a report on local and regional democracy in Hungary; they both visited Hungary from 23 to 25 May 2012.<sup>3</sup>

3. The rapporteurs:

a. thank the Permanent Delegation of Hungary to the Council of Europe and all those whom it met on the visit for their readiness to assist the delegation and for the information they so willingly supplied. They also thank the Hungarian national delegation to the Congress, the local and regional authority associations and the officials at the Ministry of the Interior who assisted with the organisation and smooth running of the visit;

b. welcome the ratification by Hungary on 7 June 2010 of the Additional Protocol to the European Charter on Local Self-Government on the right to participate in the affairs of a local authority; and

c. note with satisfaction that local authorities enjoy freedom of association for the purpose of furthering their interests.

4. Nevertheless, the rapporteurs regret the fact that:

a. the principle of local self-government is neither explicitly enshrined in the Cardinal (Implementing) Act on Local Government nor in the Fundamental Law (Constitution);

---

<sup>2</sup> Debated and adopted by the Congress on 29 October 2013, 1<sup>st</sup> Sitting (see Document [CG\(25\)7FINAL](#) explanatory memorandum), rapporteurs: Artur Torres Pereira, Portugal (L, EPP/CCE) and Devrim Çukur, Turkey (R, SOC).

<sup>3</sup> They were assisted in their work by Ms Anne Gaudin, consultant, lecturer in public law at Sciences Po University in Bordeaux, and Ms Stéphanie Poirel, Secretary to the Monitoring Committee of the Congress.

*b.* there is a very strong recentralisation of powers, which has led to the considerable reduction of competences previously assigned to local authorities;

*c.* the principle of the financial autonomy of local authorities is not respected;

*d.* the principle of local self-government is not complied with due to the pooling at the supra-communal level (district) competences of municipalities of less than 2000 inhabitants, which is implemented through an administrative structure, is composed of civil servants from the State;

*e.* there is no real consultation in practice, but only a formal one, between the government and local authorities, in particular because of unreasonable deadlines;

*f.* there is no effective legal remedy which fully guarantees the protection of local self-government, with a genuine and extended right of local authorities to lodge a complaint with the domestic courts in order to secure the free exercise of their powers and respect for such principles of local self-government;

*g.* the position of the counties is weak in both their institutional framework and as regards their functions;

5. The Congress therefore recommends that the Committee of Ministers invite the Hungarian authorities to:

*a.* revise the Cardinal Act so that the principle of local self-government is explicitly guaranteed in the legislation and in practice, in accordance with Article 2 of the Charter;

*b.* revise the legislation concerning local authorities' mandatory tasks and functions so as to extend the range of powers normally assigned to them on the basis of the principles of decentralisation and subsidiarity;

*c.* grant local authorities financial autonomy to enable them to exercise their powers properly, in particular by adjusting the level of grants allocated by the central government to local authorities so that their resources remain commensurate with their powers and by limiting central government supervision of the management of local finance so that it is "proportionate" within the meaning of Article 8 of the Charter;

*d.* ensure that local and regional authorities are equipped with the administrative structures and resources needed for performing their tasks, while at the same time ensuring that elected councils are retained, including in small municipalities;

*e.* consult local authorities and their national associations and define the consultation partners so that appropriate and effective consultation is arranged, in practice, within reasonable deadlines on all issues of interest to local authorities;

*f.* revise the legislation in order to provide local authorities with an effective judicial remedy to secure the free exercise of their powers and guarantee the judicial protection of the good implementation of the basic principles of local self-government provided in the Charter ratified by Hungary;

*g.* strengthen the position of counties, notably in the light of the Reference Framework for Regional Democracy of the Council of Europe;

*h.* keep the Congress informed on the follow-up given to this recommendation.

6. The Congress invites the Committee of Ministers of the Council of Europe to take this recommendation into consideration in its monitoring procedure and other activities related to this member State.

# Local and regional democracy in Hungary

## EXPLANATORY MEMORANDUM

### Table of contents

1.	INTRODUCTION, OBJECTIVE AND SCOPE OF THE VISIT, TERMS OF REFERENCE .....	5
2.	GENERAL INFORMATION, POLITICAL CONTEXT AND POLITICAL DEVELOPMENT OF HUNGARY SINCE RECOMMENDATION 116 (2002).....	6
2.1.	General information .....	6
2.2.	Previous reports and recommendations .....	7
2.3.	International context and relations with neighbouring countries.....	8
2.4.	Internal political context .....	9
2.5.	Constitutional and legislative foundations of local self-government in Hungary .....	9
2.6.	Administrative organisation of Hungary .....	10
3.	HONOURING OF OBLIGATIONS AND COMMITMENTS OF HUNGARY IN THE SPHERE OF LOCAL SELF-GOVERNMENT .....	12
3.1.	Constitution and recent developments .....	12
3.2.	Local self-government in Hungary .....	13
3.2.1.	Institutional arrangements and devolution of powers .....	14
3.2.2.	Status of the capital city: Budapest.....	16
3.3.	Analysis of the situation of local democracy in light of the European Charter on Local Self-Government on an article by article basis. ....	17
3.3.1.	Articles 2 and 3: Principle and concept of local self-government .....	17
3.3.2.	Article 4: Scope of local self-government .....	19
3.3.3.	Article 5: Protection of boundaries .....	21
3.3.4.	Article 6: Administrative structures .....	21
3.3.5.	Articles 7 and 8: Exercise of responsibilities and administrative supervision .....	22
3.3.6.	Article 9: Financial resources.....	25
3.3.7.	Article 10: Freedom of association .....	27
3.3.8.	Article 11: Legal protection of local self-government.....	27
3.3.9.	Article 12: Undertakings - possible “reservations” made by States .....	28
3.4.	Analysis of the situation of regional democracy in Hungary .....	29
3.4.1.	The regional level in Hungary .....	29
3.4.2.	Transfrontier co-operation in Hungary .....	30
4.	CONCLUSIONS .....	30
	Appendix 1 – Information provided to the delegation on the state of implementation of human rights at local and regional levels in Hungary .....	33
	Appendix 2 - Programme of the Congress monitoring visit to Hungary (23-25 May 2012) .....	36

## 1. INTRODUCTION, OBJECTIVE AND SCOPE OF THE VISIT, TERMS OF REFERENCE

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

2. According to the general principles set out in Congress Resolution 307 (2010), the monitoring missions of the Congress have the overall objective to ensure that the commitments entered into by all member states having ratified the European Charter of Local Self-Government (ETS no. 122, hereinafter "the Charter") are fully honoured. The missions also take into consideration to what extent member States comply with the Council of Europe Reference Framework for Regional Democracy, adopted by the Council of Europe Conference of Ministers responsible for Local and Regional Government in Utrecht in November 2009.

3. Hungary joined the Council of Europe on 6 November 1990, signed the Charter on 6 April 1992 and ratified it without reservation on 21 March 1994, with entry into force on 1 July 1994.

4. Hungary signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority on 16 November 2009 and ratified it on 7 June 2010. It ratified the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities on 21 March 1994, the European Charter for Regional or Minority Languages on 26 April 1995 and the Framework Convention for the Protection of National Minorities on 25 September 1995.

5. The Monitoring Committee appointed Mr Artur Torres Pereira (Portugal, L, EPP/CD) and Mr Devrim Çukur (Turkey, R, SOC) as rapporteurs to assess the state of local and regional democracy in Hungary to submit a report and a recommendation thereon to the Congress. During their visit, the two co-rapporteurs were assisted by Mrs Anne Gaudin, lecturer in public law at the Institute of Political Science of the University of Bordeaux, and a member of the Congress secretariat.

6. The Congress delegation visited Hungary from 23 to 25 May 2012, where it held meetings with numerous senior figures and elected representatives from various tiers of government in Budapest, Gödöllő, Szentes and Szeged.

7. The delegation met representatives of national associations of local authorities, members of the Parliamentary Committee on Human Rights, Minorities and Religious affairs, and also members of the Parliamentary Committee on Local Authorities and Regional Development. It held talks with the Minister for Territorial Public Administration and Elections, as well as with the state secretaries for state administration and territorial administration, the President of the Constitutional Court, the President of the State Audit Office of Hungary and members of the Human Rights Commission. It also visited the town hall in the capital city, Budapest, where it met numerous members of the municipal council and representatives of minorities. Finally, it travelled to the municipalities of Gödöllő and Szentes and also met with the county council of Csongrad (see the detailed programme in appendix).

8. The co-rapporteurs wish to thank the Permanent Representation of Hungary to the Council of Europe and all those whom it met on the visit for their readiness to assist the delegation and for the information they so willingly supplied. They also thank the Hungarian national delegation to the Congress, the local and regional authority associations and the managers at the Ministry of the Interior who assisted with the organisation and smooth running of the fact-finding visit.

## 2. GENERAL INFORMATION, POLITICAL CONTEXT AND POLITICAL DEVELOPMENT OF HUNGARY SINCE RECOMMENDATION 116 (2002)

### 2.1. General information

9. Hungary lies at the centre of Europe, in the Carpathian basin, flanked by the Alps, the Carpathians and the Dinaric range. Its surface area covers around 1% of the European continent. Hungary extends for 268 km between its northern and southern extremities and for 528 km from east to west. The total length of its borders is 2,242 km.



10. Hungary has a surface area of 93 028 Km<sup>2</sup> and a population of 9 985 722 inhabitants according to the last census in 2011 (in this 15th census, Hungary dropped below the symbolic threshold of 10 million inhabitants). Hungary has been a member of the European Union since May 2004. Its currency is the Forint. The official language is Hungarian. There are 13 minorities which are recognised in law. The groups considered as national groups in accordance with the Law on Minorities are, in alphabetical order: Armenians, Bulgarians, Croats, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbs, Slovaks, Slovenians and Ukrainians.<sup>4</sup> Even though according to the National Census of 2001 only 3,1% of Hungarian population are minorities, the Hungarian government estimates the number of the biggest minority living in Hungary, Roma, up to 450,000 to 600,000,<sup>5</sup> while council of Europe estimations average reaches 750,000.<sup>6</sup>

11. Budapest, the capital of Hungary, was created by the unification of three towns in 1873: Buda, Pest and Obuda. With over two million inhabitants, it is the centre of the country, not only administratively speaking but also in cultural, scientific, industrial and commercial terms, and also forms a rail and road transport hub.

12. The Head of State is the President, elected by Parliament for a term of 5 years. János Áder has been President since 2 May 2012. He does not form part of the executive but symbolises national unity and ensures that the country's institutions function democratically. He signs Acts adopted by the Parliament and has the right to refer them back to the Parliament or to send them to the Constitutional Court for further examination. In the light of the results of the parliamentary elections, he makes a recommendation on the election of the Prime Minister who is then elected by the Parliament. Ministers are appointed and dismissed by the Head of State upon a proposal of the Prime Minister.

13. In the parliamentary system established by the Constitution, the Government is the exclusive holder of executive authority and is answerable for it to the National Assembly.

<sup>4</sup> See EuroMosaic [http://ec.europa.eu/languages/documents/hu\\_fr.pdf](http://ec.europa.eu/languages/documents/hu_fr.pdf)

<sup>5</sup> See report by the Hungarian government to the United Nations Committee on Economic, Social and Cultural Rights, E/C.12/HUN/3, para. 78.

<sup>6</sup> Data available at <http://hub.coe.int/web/coe-portal/roma/>.

The tasks and powers of the executive are defined by default.<sup>7</sup> The Constitution lays down the competences of the other organs in concrete and exhaustive terms but, where the Government is concerned, assigns only general tasks of management and organisation as well as providing for the sharing of competences for tasks to be carried out jointly with other organs.

14. The new Fundamental Law expressly stipulates that the functioning of the Hungarian State is based on the principle of the separation of powers. Article 15 of the Fundamental Law identifies the government as the general body of executive power whose responsibilities and competences includes all matters which are not expressly delegated by the Fundamental Law or by other legislation.

15. The Fundamental Law contains the principle of the separation of the state powers and identifies all those organs which are endowed with those powers; therefore in Article 15 of the Fundamental Law, it is expressly stipulated that the government is the general organ of the executive authority.

16. The Fundamental Law does not determine the different branches of state authority and names only one of them, stipulating that “the Government shall be the general body of executive power”. In other words, the Fundamental Law does not assign legislative power to a given organ but lists the prerogatives for drawing up and revising the Constitution and adopting laws among the competences of the National Assembly, the supreme body of popular representation. As for the courts, the Fundamental Law stipulates that they “shall exercise judicial activity” but does not bestow upon them the capacity of an autonomous branch of state authority.<sup>8</sup>

## **2.2. Previous reports and recommendations**

17. A previous monitoring mission to Hungary in 2002 resulted in Recommendation 116 (2002) on regional democracy in Hungary. In that recommendation,<sup>9</sup> the Congress, having noted that provision had been made for regionalisation in government programmes, regretted the fact that Hungary’s highly complex system of public administration and territorial authorities had not completely fulfilled the requirements of regional democracy in the light of the principle of subsidiarity.

18. It recommended a clear definition of the allocation of responsibilities and tasks between the State, the regional structures, towns and municipalities, and also of the origins of competences to be entrusted to the regional level.

19. The Congress asked Hungary to clearly opt for the creation of only one regional level and to create, on this basis, regions catering for the needs of a democratic society and economic development, and to equip the regions with proper competences, autonomous elected bodies and their own and sufficient budgetary resources, according to the criteria outlined in the draft European Charter of Regional Self-Government.

20. Ten years on from that recommendation, the delegation notes that a transition to regional self-government is no longer in the scheme of things. On the contrary, competences from local and regional authorities have been moved to the central government level.

21. The European Commission for Democracy through Law (better known as the “Venice Commission”, used hereafter) issued an opinion on the new Hungarian Constitution<sup>10</sup> in June 2011, at its 87<sup>th</sup> plenary session, which was read most attentively by the members of the delegation and discussed with their talking partners. The Venice Commission flagged up Articles 31 to 35 of the new Constitution, concerning local authorities, expressing concern in particular over the absence of any reference to the principle of local self-government.

<sup>7</sup> Article 15.1 of the Fundamental Law: “The Government shall be the supreme organ of the executive branch, whose activity and competence shall cover all those that are not delegated explicitly to another organ by the Fundamental Law or by law. The Government shall be responsible to the Parliament.”

<sup>8</sup> Source: Jozsef Petretei: Le pouvoir exécutif dans la nouvelle Loi fondamentale de la Hongrie Revue d'études politiques et constitutionnelles, numéro spécial 1-2012 <http://www.est-europa.univ-pau.fr/images/archives/2012-Hongrie/jozsef-petretei.pdf>

<sup>9</sup> <https://wcd.coe.int/ViewDoc.jsp?id=888249&Site=COE>

<sup>10</sup> [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)016-f.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)016-f.pdf)

### 2.3. *International context and relations with neighbouring countries*

22. The state of the Hungarian economy heavily influences its relations with European and international institutions. After a period of rapid transition between 1990 and 1994, Hungary enjoyed very strong economic growth and an influx of foreign investors.

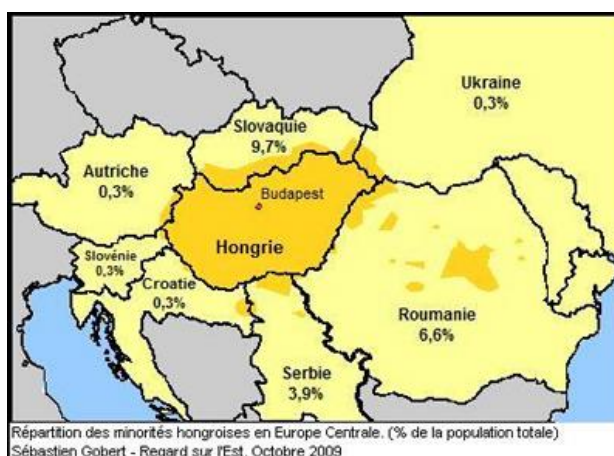
23. It was very badly hit by the crisis in 2008. The annual total deficit of local governments aggravated after 2008 following consequences of the global financial crisis and because of significant reductions of financial resources of local authorities. Consequently, in October 2008, Hungary was the beneficiary of a recovery plan worth 20 billion euros (12.3 billion loaned by the IMF, 6.5 by the European Union and 1 by the World Bank).

24. The Hungarian economy is heavily in debt and the economic crisis and the state of public finances are salient themes of public debate. The issue of Hungary's economic sovereignty and the constraints imposed by European and international institutions were at the heart of election campaigning. The majority party has focused its attention on bringing Hungary out of the crisis without external aid, despite sovereign debt of more than 82% of GDP, growing costs resulting from the financing of this debt and most alarming growth forecasts.

25. At the end of 2011 the Hungarian Parliament passed two laws despite the clearly stated contrary opinion of the European Commission: the law "on financial stability", passed on 23 December 2011, which introduces a fiscal system with a uniform tax rate, and the law on the Hungarian National Bank, which establishes direct political control over that institution and allows the government to dip into the Central bank's currency reserves, were negotiations with the EU or the IMF to fail. Such a measure would yet further destabilise the Hungarian forint and have ramifications for the entire Eurozone.

26. These laws ("cardinal laws") require a two-thirds majority to be amended, which will certainly be extremely difficult to achieve in the future. This situation prompted the European Commission to warn Hungary on 11 January 2012 that it could incur penalties owing to its inability to cut its budget deficit in response to calls from the Stability and Growth Pact, and to launch an infringement procedure on 17 January. Hungary's relations with the IMF are also strained.

27. The issue of Hungarian nationality is also key to shaping the country's relations with the neighbouring States. Hungary has nearly 10 million inhabitants. There are three and a half million Hungarians living outside the country within the Carpathian basin and another million further afield, notably in the United States. The most sizeable Hungarian minorities are in the adjacent countries: two million in Romania (1.2 million, or 6,5% of the population, according to the 2011 Romanian census<sup>11</sup>), some 600 000 in Slovakia (11% of the population), 400,000 in Vojvodina (340,000, or 3.5%, according to the Serbian census), 200,000 in Ukraine (163,000, or 0.3%, according to the Ukrainian census). There are also small communities in Croatia and Slovenia (see map below: Distribution of Hungarian minorities in Central Europe as percentage of the total population).



<sup>11</sup> National Institute of Statistics: <http://www.recensamantromania.ro/rezultate-2/>



28. During the election campaign, the current Prime Minister announced that he would grant Hungarian nationality to 3.5 million Hungarians minorities living outside Hungary's borders. The question of the nationality of Hungarian minorities had already resulted in the holding of a referendum in 2004 at the initiative of FIDESZ which was then an opposition party. Fewer than 40% of voters turned out, signalling a lack of interest in this topic at that time, and the ballot was cancelled. Six years later, a nationality law was passed as soon as he took power (in May 2010, following the parliamentary elections in April) and entered into force in January 2011, which does away with the requirement of residence for the acquisition of Hungarian nationality and facilitates naturalisation for people "who are of Hungarian ascendancy or believe it is likely that they are of Hungarian origin and demonstrate knowledge of the Hungarian language".

29. The question of Hungarian minorities in adjacent countries (particularly in Romania, Serbia and Slovakia) and also of minorities living on Hungarian territory are subjects on which the Council of Europe keeps a close eye.

#### **2.4. Internal political context**

30. Hungary's 386 deputies were elected in 2010 for four years, under the electoral law applicable at that time, in a mixed ballot combining majority voting and proportional representation. 176 deputies were elected in 176 single-seat constituencies, 146 deputies were elected in territorial constituencies (representing the counties and the capital) and 64 were elected from national lists known as "compensation lists" presented by the parties.

31. The Parliamentary elections of April 2010 were run in two rounds, yielding 263 seats for the FIDESZ-KDNP. The MSZP (Hungarian Socialist party) won 59 seats, while Jobbik (extreme right-wing party founded in 2003) entered Parliament for the first time with 47 seats. A recently created party, the LMP (left-wing ecologist) is represented with 16 seats.

32. Accordingly, FIDESZ has a majority accounting for 68% of the seats, more than two thirds, enabling it to implement its programme and also to transform Hungary's institutions via a revision of the Constitution. The Prime Minister, a founding member of FIDESZ, previously held this office between 1998 and 2002.

33. A new electoral law was passed in December 2011 by Parliament. This text provides for a radical overhaul of the voting system for parliamentary elections, which will now take the form of a single-round ballot. The number of deputies will be substantially reduced, from 386 to 199. This change in the voting system was accompanied by a major redrawing of electoral boundaries. Holding local office at the same time as a deputy's seat, currently fairly widespread after being previously prohibited in the 1990s, will now be impossible. The Hungarian Parliament is a single-chamber parliament, and some of the delegation's talking partners expressed concerns as to whether local interests will be taken into account in future by the legislator. The associations of local elected representatives (of which there are a great many in Hungary) will have to be particularly active and effective in putting across their viewpoint.

#### **2.5. Constitutional and legislative foundations of local self-government in Hungary**

34. Thanks to its exceptionally large majority in Parliament, FIDESZ has had Parliament pass a new Constitution, (the Fundamental Law) which entered into force on 1 January 2012.

35. Within a few months of taking power, the new majority secured the passing of fifty or so laws.

36. In accordance with the new Fundamental Law, many of these reforms are carried out via implementing laws requiring a two-thirds majority. Inversely, a fresh two-thirds majority is required to amend these texts.

37. The delegation's visit took place, therefore, in a context of reforms,<sup>12</sup> many of which are still underway, particularly in the area of relations between the State and local and regional government.

38. In particular, Cardinal Law No. CLXXXIX on Local Government (the Cardinal Act on Local Government in Hungary) of 21 December 2011 has made sweeping changes to the pattern of administrative organisation in Hungary and requires implementing texts currently in preparation for its concrete application. The Interior Ministry departments concerned believe that it will take one or two years to implement the local government reform. However, the rapporteurs remain sceptical about this timetable and consider that such a reform will take more time.

39. In particular, discussion on the fundamental issue of local government funding is still ongoing. This question will call for close scrutiny in the coming years, in a context of economic crisis, falling tax revenues and increased social needs. The equalising of resources and fiscal autonomy will be key challenges for the future.

## **2.6. Administrative organisation of Hungary**

40. When the communist regime collapsed in 1990, Hungary opted for an administrative and political organisation that left an important role for local government, seen as an essential outlet for democracy. Hungary's local structures are municipalities, counties, towns with county rights and the city of Budapest; the structures governed by common law are the municipalities and the 19 counties.

41. A sizeable proportion of the powers exercised by the State at that time were entrusted to local authorities and to the municipalities in particular. According to the previous regulation, municipalities, in specific terms, were given responsibility for primary teaching, water supply and wastewater services, road maintenance, local public transport, local development, environmental protection, land use, fire protection and protection of minority rights, which are all competences that are vital to citizens' everyday lives.

42. It is noteworthy that electoral legislation provides for separate elections for the mayor and the municipal council, which may result in political "cohabitation" at local level. Supervision of acts is exercised by the town clerk who is employed by the municipality as head of administration. In the event of finding an unlawful decision which the municipal council or mayor refuses to amend, the town clerk refers the matter to the Office of Public Administration. The town clerk has a formal obligation to indicate if s/he has an objection against the legality of a municipal act. The legal supervision over local governments is the exclusive power of the county governmental offices (earlier the county administrative offices).

43. A high proportion of Hungarians live in towns within a special institutional framework, as 60% of the population live in the 139 towns whose population numbers over 10,000 inhabitants. Towns with county rights have a specific status combining the prerogatives of a municipality and those of a county. They enjoyed strong expansion in the 1990s. Their inhabitants vote for their council but not for the council of the county in which they are located.

44. The city of Budapest is home to around one-fifth of Hungary's inhabitants. It is divided into 23 districts.

45. Local elections are held in the autumn following the parliamentary elections. Accordingly, the last local elections took place in October 2010. The electoral legislation was amended by the newly elected parliamentary majority, making it more difficult for smaller parties to participate.

46. The voting system used in local elections depends on the size of the municipality. For municipalities with over 10 000 inhabitants, a parallel mixed ballot geared to proportional representation is used. This is a system combining a majority ballot for one seat per constituency and a ballot for the allocation of compensatory seats on the basis of the remainders of votes that were not used for the allocation of constituency seats.

---

<sup>12</sup> See the programme of reforms published in April 2012 [http://ec.europa.eu/europe2020/pdf/nd/nrp2012\\_hungary\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/nrp2012_hungary_en.pdf)

47. The compensatory seats are either those which could not be allocated by electoral quotient in the constituencies or a predetermined number of seats reserved exclusively for compensation. The constituencies have been drawn up in such a way as to divide up the territory of the locality while respecting ethnic, religious and social diversity.

48. The composition of the municipal councils varies according to the size of localities:

- between 10,000 and 25,000 inhabitants: 8 members elected by a majority single-seat constituency vote and 3 members taken from compensation lists;

- up to 50,000 inhabitants: 10 members elected by a majority single-seat constituency vote and 4 members taken from compensation lists;

- up to 75,000 inhabitants: 12 members elected by a majority single-seat constituency vote and 5 members taken from compensation lists;

- up to 100,000 inhabitants: 14 members elected by a majority single-seat constituency vote and 6 members taken from compensation lists;

- over 100,000 inhabitants: one additional constituency must be defined for every additional 10 000 inhabitants and the number of members elected from compensation lists increases by one for every additional 25 000 inhabitants.

49. For municipalities with less than 10 000 inhabitants, a combination method is used, allowing voters to compose their own list, placing in order as many candidates as there are seats. This means that they may vote for candidates from the same party or choose candidates from opposing parties. The candidates elected are those having received the highest number of votes:

- up to 100 inhabitants: 2 members;

- up to 1,000 inhabitants: 4 members;

- up to 5,000 inhabitants: 6 members;

- up to 10,000 inhabitants: 8 members.

50. To manage European funding, Hungary has set up 7 "regions for statistical and development purposes" which are merely administrative structures serving the purpose of management. By January 2013, the counties (see below) should be capable of such management themselves and the "regions for statistical and development purposes" are destined to disappear.

51. The other local level (which corresponds to a regional level according to the Council of Europe's definition) is the county, which, up to 1990, constituted the foundation of territorial administration in Hungary (since the 11th century). The counties played a central role in Hungary in the communist era but became somewhat less important after 1990. They have few prerogatives and cannot raise taxes. In the past, counties were competent in public health, but this is not the case anymore, as they are under the responsibility of the central government since 2011.

52. The county council is elected by direct universal suffrage, from lists presented by political parties or associations, and its members elect the head of the council's executive. As for municipalities, the head of administration is designated and remunerated by the county.

53. Hungary has 19 counties.



54. While it did not call these structures into question, the Cardinal Act on Local Government of 21 December 2011 did make substantial changes to their competences and the division of powers between local authorities and the State (see *infra*).

### 3. HONOURING OF OBLIGATIONS AND COMMITMENTS OF HUNGARY IN THE SPHERE OF LOCAL SELF-GOVERNMENT

#### 3.1. Constitution and recent developments

55. The principle of local self-government was present in the old Hungarian constitution and adequately guaranteed by legislative texts, as demonstrated by the 2002 monitoring report. At that time, local self-government was regarded as one of the foundation stones of the Hungarian Democratic system, which was intended to be two-tier. The situation is very different in 2012.

56. The new Hungarian constitution takes a very dualistic approach: as the Venice Commission has pointed out, it contains no reference to international legal texts, including international instruments of human rights protection. It does not make any reference, therefore, to the Charter, notwithstanding the fact that it forms part of Hungary's international obligations. The Constitutional Court has had to interpret and apply the Charter on seven occasions; but in none of its decisions has it found a contradiction between national legislation and the text of the Charter. The delegation was unfortunately unable to examine the rulings concerned, which are available only in Hungarian. During the visit the rapporteurs were told by the President of the Constitutional Court that, since the Charter was received into the Hungarian legal system by Act XV of 1997, the Constitutional Court has treated the Charter as an international treaty. Consequently, the Constitutional Court, *ex officio* or upon petition, may review whether a subconstitutional domestic legal regulation conforms to a specific rule of the Charter.

57. When examining the Fundamental Law of Hungary, the Venice Commission pointed to the lack of references to local self-government in the new text of the constitution:<sup>13</sup>

*“Article 31 (1) of the new Constitution stipulates that “in Hungary local governments shall be established to administer public affairs and exercise public power at a local level”. Nevertheless, no explicit mention is made of the principle of local self-government. The Venice Commission recalls that the European Charter of Local Self-Government (CEAL), which is binding for Hungary, requires compliance with a minimum number of principles that form a European foundation of local democracy, including as a starting point the principle of local self-government.*

<sup>13</sup> [http://www.venice.coe.int/docs/2011/CDL-AD\(2011\)016-f.pdf](http://www.venice.coe.int/docs/2011/CDL-AD(2011)016-f.pdf) Page 24

*According to Article 2 of the CEAL, “the principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution”. It is recommended that the cardinal law entrusted with the definition of local governments rules duly stipulate this and other important key principles laid down in the CEAL: the principle of subsidiarity, the principle of financial autonomy and that of adequacy between resources and competences, the legal protection of local self-government, the limits of the administrative supervision of local authorities. Adequate guarantees should be provided for their effective implementation.”*

58. In reply to a query on this point from the rapporteurs, the President of the Constitutional Court emphasised that Article 31 of the Fundamental Law provides that Hungary should establish local authorities to administer public affairs and exercise public powers at local level. He further noted, with reference to Ruling 22/2012, that the Constitutional Court might refer to rulings made before the entry into force of the new Fundamental Law “related to those basic values, human rights and freedoms, constitutional institutions, which has not been modified basically”. The delegation wishes to underline that only a consistent reference to the principle of local self-governance satisfies the legal obligation undertaken by Hungary under the means of Article 2 of the Charter. In Addition, the delegation notes that Article 31 of the Fundamental Law, while it does indeed guarantee the existence of local structures, does not provide any guarantees as to the competences and autonomy of these “local authorities”.

59. In their written reply to the delegation’s questions, the Constitutional Court pointed out that the protection afforded to local authorities by Article 32 of the Fundamental Law, setting out the competences of those authorities, and stipulated in further detail by the organic law, provided a guarantee of that principle of autonomy. Article 32 also stipulates that those competences should be exercised “within the limits of the law”, which creates a risk of undermining local self-government through legislation. However, according to the President of the Constitutional Court, this phrase must be understood as a reference to the concept of the rule of law, which declares state powers, as much as local governments, as subjects to law. The rapporteurs wish to underline that, although this formulation is not in itself against the provisions of the Charter, which itself includes such a formulation, it still does not justify such an intensive centralisation of tasks and functions as took place currently in Hungary. In this respect, the delegation wishes to recall that the Charter requires the promotion of values and principles which imply to preserve a genuine local (and regional) democracy. The ongoing recentralisation is a negative sign, as far as local democracy is concerned.

60. This prospect is made all the more worrying by the fact that the supervision of constitutionality exercised by the Constitutional Court over the legislator has been substantially reduced since an amendment was passed in 2010 and included in the Fundamental Law of 2011. The Court may assess the constitutionality of any law, but the laws concerning the central budget, national taxes, stamp duty and contributions, customs dues and the central requirements applying to local taxes may be reviewed only in case of violation of the right to life and human dignity, personal data protection, freedom of thought, conscience and religion or rights connected to Hungarian citizenship.

61. The new constitution has introduced the right of individual constitutional complaint, a fact that the Venice Commission noted with satisfaction. The rapporteurs believe that the institution of constitutional complaints should be modified to include a right for local authorities to lodge a complaint to the Constitutional Court as well.

### **3.2. Local self-government in Hungary**

62. The high level of autonomy for local authorities written into the previous Hungarian Constitution has been compromised by the new Fundamental Law and Cardinal Act CLXXXIX on Local Government of 21 December 2011. The difficult economic context is cited by the government, as the reason to “rationalise” structures and to cut local public spending.

63. The delegation understands the political will of the government to reduce the national public debt, and the measures that have been undertaken to this end. This being said, the rapporteurs would like to stress that the principle of local self-government and the fundamentals of local and regional democracy, provided by the Charter which was ratified by Hungary, must not be undermined by these measures.

64. In the difficult economic context faced by Hungary, numerous cities are heavily indebted, and many small municipalities are struggling to exercise their powers: many of them have had to resort to state aid to balance the books. It is increasingly difficult for them to borrow money, which must be authorised by the government. Inflation remains high in sectors that have a direct impact on their budgets. And the co-funding required by structural policies is also reliant on cities and municipalities. Between 60 and 65% of local government structures are in a difficult financial situation, and between 10 and 15%, according to the figures provided by the Ministry of the Interior (20% according to the local government associations), in a critical situation.

65. Given the awkward financial situation for local authorities, the new government has opted for a radical solution, which entails taking direct charge of the most costly public services. Health and social care as much as education represent 86% of local government expenditure.<sup>14</sup>

66. The competences related to primary education effectuated by municipalities, and the powers exercised by the counties in the health sphere were almost completely shifted to the State. Accordingly, local government will no longer exercise its most costly prerogatives now taken over by the State. The counties did lose their main responsibilities where management of the everyday lives of their communities is concerned, while preserving, in Section 7 of Act CLXXXIX of 2011, more general competences in the area of spatial development, regional development, spatial planning and economic development for long-term projects. The municipalities will continue to manage school buildings and facilities but will no longer be competent as regards teachers and managers of education establishments. The State will henceforth be taking the decisions, on the appointment of teachers, the opening and closing of classes, and decide on the curriculum, that is, on the content of teaching.

67. Local organisation in Hungary currently hinges mainly on its 3,100 municipalities. As they are often very small, they lack the means to fulfil their local public services mission. There are over 1,700 municipalities with fewer than 1,000 inhabitants,<sup>15</sup> one-third of the 3,100 municipalities have fewer than 500 inhabitants. These very small municipalities are finding it even more difficult than the others to cope with the economic crisis.

<u>Number of municipalities:</u>	<u>Number of inhabitants:</u>
103	fewer than 100
473	between 100 – 300
462	between 300 – 500
683	between 500 – 1,000
1,721	1,000 or more

68. To tackle this major fragmentation of municipalities, Cardinal Act CLXXXIX on Local Government of December 2011 stipulates that the administrative structures of these small municipalities with less than 2.000 inhabitants are to be grouped together.

### *3.2.1. Institutional arrangements and devolution of powers*

69. The democratic transition of 1990 established an institutional system where local authorities, and municipalities in particular, held an important role. With their extensive prerogatives, local authorities could be seen, alongside the State, as the second pillar of a democracy geared to a two-tiered system.

70. After 1990, as the country made its democratic transition, they were entrusted with numerous powers which they exercised either alone or by delegation from the State.

<sup>14</sup> Source: National Audit Office, Summary of the 2011 monitoring of local government's financial situation and the management system.

<sup>15</sup> Source: "Local government in Hungary", Zoltan SZENTE, in "Local government in the member states of EU", Chapter 12

71. The municipalities, at the heart of local democracy, were responsible in their own right for:

- wastewater treatment and water supply,
- road maintenance,
- local public transport,
- public hygiene and social welfare,
- primary education,
- local development,
- environmental protection,
- land use,
- fire protection,
- minority rights protection.

72. The counties had a major role in the communist era since, despite their councils not being elected, they exercised a prerogative of supervision over the municipalities. They lost a great deal of influence after 1990. It is certain that they have a long history, and their representatives proudly point out that the counties go back to the 11th century.

73. However, with little in the way of powers, their authority has been further undermined by the emergence of towns with county rights (at the beginning of the 1990s), which often have a far larger budget than that of the surrounding department. The management of health services (and hospitals in particular) accounted for a large part of their budget.

74. Until January 2012, the counties were competent for:

- health services,
- specialised education services,
- economic development services,
- spatial planning,
- environmental protection,
- promotion of tourism.

75. One may therefore sum up the situation on the eve of the December 2011 reform by pointing out, along the lines of the 2002 monitoring report, that the local authorities consisted of municipalities enjoying substantial powers and very strong democratic legitimacy and counties with core prerogatives of health and economic development and a fairly moderate level of democratic legitimacy even though their councils were elected.

76. The 2002 monitoring report emphasised the strength of the municipal level and the need to establish a revitalised "regional" level in Hungary, possibly based on the counties which, on the scale of Hungary, could be regarded as the equivalent of regions in Europe.

77. Ten years after that first report, and in the light of recent or ongoing legislative developments, the delegation notes that Hungary has chosen a different path, with Cardinal Act CLXXXIX on Local Government of December 2011 allocating tasks, previously accomplished by local authorities and which are now in favour of the central level.

78. The Szell Kálmán economic plan presented in March 2011 resulted in the drawing up of a programme of structural reforms for Hungary for the period 2011-2014, which includes a section on local authorities. It states that local budgets are crucial to Hungary's financial recovery since, in the system still in force in 2011, they assumed responsibility for education and health. Local authority debt doubled between 2006 and 2009, attaining 3.9% of the GDP, and an essential share of that debt must be attributed to those two sectors. Following on from that finding, Cardinal Act CLXXXIX on Local Government of December 2011 concentrates competences at national level.

79. Whereas services had been essentially provided by local authorities since 1990, the new Cardinal act entrusted the State with two services that are key to citizens' everyday lives, namely schools and health. The new text has been applicable since 1 January 2012, with municipalities no longer being responsible for primary education and counties no longer being responsible for public health.

80. Beyond the financial issues and the argument for economic streamlining put forward in the explanatory memorandum to the law, the representatives of the State or the majority party met by the delegation discussed their ideas as to the role to be played by the State in ensuring egalitarian distribution of resources and services. Describing the previous distribution of powers in the areas of education and health as a source of inequalities, they believed that “bringing these powers back” into the remit of state departments was a factor in progress and efficiency. The programme of structural reforms of March 2011 underlines the fragmentation of health and education services in Hungary, portraying them as one of the least concentrated systems in terms of the average number of inhabitants per local authority. Accordingly, the reform plan highlights the need to align resources and powers and concludes that these tasks must be reassigned to the State.

81. According to the Ministry of Public Administration and Justice, the savings anticipated from these transfers of powers are considerable. This ministry argues that merging the administrations of small municipalities grouped into administrative “micro-regions” of at least 2,000 inhabitants would yield expected savings of 15 billion forints. Limiting local authority borrowing, now subject to state authorisation, could, according to the estimates passed on by Parliament, cut the local finance deficit by 20 to 23 billion.

82. Many of the local authority representatives deplore the fact that these services are no longer handled by democratically elected authorities.

83. The rapporteurs consider that the arguments put forward by the government are based on financial considerations whose practical application flouts the very principle of local self-government and its application in the field.

84. It may be said, then, that relations between the national and local levels are being redefined in Hungary. The powers of the State are highly expanding while those of local authorities are highly contracting. The two-tiered democratic system established in 1990 is undergoing a substantial overhaul which is probably not yet finished.

### 3.2.2. *Status of the capital city: Budapest*

85. The Hungarian capital, Budapest, enjoys a specific status taking account of its role and population size (one-fifth of Hungarians live in Budapest, it produces one-third of the country’s GDP and over half of foreign investments are concentrated there.<sup>16</sup> Accordingly, the Local Government Act lays down the provisions on Budapest and adapts the Hungarian administrative system to the specific circumstances of the capital, which has two levels of administration: one central administration and 23 districts, which each have a mayor and a council.

86. The districts have a status and powers comparable to those of municipalities, whereas the city of Budapest has a status similar to those of counties. There is no hierarchy between the central town hall and the districts.

87. The powers of Budapest City Council cover local government tasks concerning the whole capital. This fairly broad definition is not without its problems as regards interpretation and, in certain matters the “metropolitan” approach is not readily taken on board, since the districts wish to conserve independent policies.

88. While a global vision and management do exist in the transport sector (even though major financial problems subsist), in the area of construction and land management, it is the districts which continue to lay down building norms, to the detriment of a coherent approach to the urban area. While the trade-off between the interests of the central districts (wealthy and heavily built-up) and the outlying districts less well endowed with infrastructures remains perfectible, a balance appears to have been achieved between the Town Hall of Budapest and the districts. The fact that the districts are no longer represented on Budapest city council and that the Mayor of Budapest is elected by universal suffrage has certainly contributed to this new balance. Actually, the numerous parallel tasks and functions, and the non-

<sup>16</sup> Source [http://www.regard-est.com/home/breve\\_contenu.php?id=463](http://www.regard-est.com/home/breve_contenu.php?id=463) Dossier capitales de l'Est, sous le feu des lumières, By Krisztina KERESZTELY and Róbert KOVACS, 2004).



hierarchical relationship between the Capital City Council and the districts logically lead to a permanent rivalry between the two levels.

89. Cardinal Act CLXXXIX on Local Government of December 2011 stipulates that the distribution of powers between the city of Budapest and its districts are to be specified.

90. Relations between the city of Budapest and its urban district are not always totally clear. The urban district of Budapest is home to one-quarter of the country's population, with two-thirds of that figure living within the boundaries of the city of Budapest.

91. This raises the question as to whether the urban district of Budapest has the necessary means with which to ensure concerted urban development and spatial planning that is commensurate with a regional capital. Cardinal Act CLXXXIX of December 2011 does not provide for significant improvement in this respect.

### **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 also takes into account the latest recommendation on the situation of regional democracy in Hungary, adopted by the Congress (Rec 116(2002)).*

92. The previous system of local government in place since 1990 went far in implementing the principles of subsidiarity and local self-government, which was highlighted in the 2002 monitoring report. The new Fundamental Law and the Cardinal Act on Local Government of December 2011 are very recent and many aspects of these texts have not yet been applied. Some provisions have been applicable since 1 January 2012, while others will apply only in 2013 or require implementing legislation.

#### *3.3.1. Articles 2 and 3: Principle and concept of local self-government*

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

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

##### **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.

93. Article 31.1 of the new Constitution stipulates that “in Hungary local governments shall be established to administer public affairs and exercise public power at a local level” while the principle of local self-government is not expressly mentioned.

94. The explanatory memorandum to the Cardinal Act CLXXXIX on Local Government of 21 December 2011 expressly refers to the Charter (drawing a parallel with the traditions of local government in Hungary) but makes no mention of the principle of local self-government: “*The goal of the legislation is to create a local government system, based on the European Charter of Local Self-government, which is modern, cost-effective, task-oriented and provides the possibility for democratic and more effective operation.*”

95. The general spirit of the text, reiterated in the explanatory memorandum, is that the reduction of Hungary's debt is the central aim of its legislation. The Government stressed that this objective is to be attained by “rationalising” local management. The rapporteurs consider that the principle of local self-government is not taken into consideration in the implementation of this particular form of “rationalisation”.

96. It is noteworthy that the delegation's talking partners at the Ministry of the Interior rejected the term "centralisation" - except for the state powers which had been entrusted to local town hall clerks - and preferred to speak of "rationalisation". Most of the delegated administrative powers were taken back by the central government from local officials (mainly from the town hall clerk). Since 1 January 2013, almost all the local and regional state administrative tasks and functions have been carried out by 198 "district offices", which are the subordinate units of the county governmental offices. Although the latter have always been state administrative functions, (earlier delegated to municipal officials), as a consequence of their recentralisation, the mayor's offices have lost a large part of personnel and a large amount of financial resources.

97. The current division of powers between the State and local authorities does not take account of the Charter's stipulation that local authorities have "the right and the ability to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population".

98. The very notion of "public affairs" seems debatable: certain spheres referred to as "technical" or "purely administrative" by the State are to be recentralised.

99. Significant cuts in the powers of municipalities and counties were explained by a drive to cut public spending and the need for fair and equal treatment of citizens.

100. The delegation deplores the fact that neither the Constitution nor Cardinal Act CLXXXIX on Local Government of 21 December 2011 refers to the principle of local self-government. It is true that the explanatory memorandum to the Cardinal Act expressly refers to the Charter, but it does so only to strike a parallel with the traditions of local government in Hungary and avoids citing the principle of local self-government. Accordingly, the principle of local self-government is not explicitly guaranteed, which was also criticised by the Venice Commission in its opinion 621/2011 (see paragraph 117) on the New Hungarian Constitution. The Constitution guarantees only the existence of local authorities, not their powers. The local authorities' powers are exercised "within the limits of the law" which leaves the legislature with considerable room for manoeuvre. Local self-government is not presented as a fundamental principle of Hungarian institutions. On the contrary, local self-government appears as unfair and costly. The Hungarian system, which was by and large a two-tier one is now moving towards a single power-base (or indeed a monopoly) to the benefit of central government, although this shift has not yet become total, as local authorities remain very much a topic of political debate.

101. The share of public affairs entrusted to local government has decreased very significantly. The financial autonomy of local governments has severely reduced in the last two years, strengthening the control of central government over local government finance. In addition, numerous powers hitherto exercised by local government are described as being "naturally" recentralised. In particular, health and social care as much as education have now been almost completely centralised. All three sectors, accounting for 86% of local expenditure,<sup>17</sup> which were previously a matter for the municipalities and counties, have been transferred to the central level. Local authorities are therefore losing fundamental powers, with no real compensation, while in the spirit of the Charter, both the adequate finance and the public service functions of local interest should be allocated to them. Health and education will be managed by administrative authorities and not, as was previously the case, by elected authorities.

102. The manner of electing and organising local government councils complies with the Charter. The voting system for local elections was changed a few weeks before the ballot of 3 October 2010 in order to tighten the rules on eligibility.

103. In view of the facts objectively noted above, the rapporteurs are of the opinion that the situation in Hungary is not in conformity with Article 3 of the Charter.

---

<sup>17</sup> Source: National Audit Office, Summary of the 2011 monitoring of local government's financial situation and the management system.

### 3.3.2. 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.   |

104. This article of the Charter is at the heart of the debate that is ongoing in Hungary on the subject of local government. The division of powers between the State and the different levels of local government that was established in 1990 is undergoing a major rethink. It is true that it was particularly complex, combining the local authorities' own prerogatives and competences delegated by the State which are exercised not by elected local bodies but by an official, the town clerk, through decisions in which the municipal council is not authorised to intervene.

105. It is true that spending on health and education accounts for a large part of local budgets whose balance is now compromised by the economic crisis, but this observation alone does not justify a transfer of these competences to the central level. Other alternatives could also have been considered but the government has clearly opted to centralise powers. The wording used by the State's representatives was highly symptomatic in this respect: the delegation was told several times that local authorities had to be "relieved of the burden" of this expenditure. However, as the Ministry of State for Municipal Affairs points out, by transferring spatial development tasks to county local governments, county level parallel activities can be terminated and the supplementation of the spatial planning tasks, already performed by county local governments with spatial development tasks, can guarantee consistency of the two types of activities, which are closely related.

106. In addition, the Hungarian State took back control of the powers it delegated to local town hall clerks, who had been taking on increasing importance (by the reckoning of the Ministry of Public Administration and Justice). Instead of relying on the network of town hall clerks, the State is setting up a decentralised network of officials under its direct control. This reform movement, in progress at the time of the delegation's visit, is accompanied by a reform of the civil service within a unified legal framework. Law CXXIX on the civil service of 2011 establishes the general framework for this reform.

107. The delegation focused in particular on the application of Article 4.6 of the Charter which provides that "local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly".

108. This requirement was reiterated by Recommendation 171 (2005) of the Congress of Local and Regional Authorities: “The Congress, bearing in mind the proposal of the Chamber of Local Authorities, 1. Considers that the right of local authorities to be consulted, which is enshrined in Articles 4.6, 5, 9.6 and 10 of the European Charter of Local Self-Government (hereinafter referred to as “the Charter”, is a fundamental principle of European legal and democratic practice, the aim of which is to contribute to good governance; 2. Believes that, in the interests of promoting good governance, consultation of local authorities has to be a required part of policy-making and administrative processes, enabling the wishes of local authorities to be known in good time and properly taken into account in the decisions of central and regional authorities”. This requirement has been recently recalled in Recommendation 328 (2012) adopted by the Congress.

109. Hungary has several associations of local authorities, even compared with countries with considerably larger populations and surface areas. These associations all have differing missions, and their members appear to be keen on maintaining this diversity of representation.

110. The seven local authority associations are as follows:

- National Interest Group of Small Town Local Governments (*Kisvárosi Önkormányzatok Országos Érdekszövetsége, KÖÖÉSZ*)
- National Local Government Federation of Villages, Smaller Municipalities and Micro-Regions (*Községek, Kistelepülések és Kistérségek Országos Önkormányzati Szövetsége, KÖSZ*)
- The Hungarian Village Federation (*Magyar Faluszövetség*)
- Alliance of Cities of County Rank (*Megyei Jogú Városok Szövetsége, MJVSZ*)
- National Alliance of County Governments (*Megyei Önkormányzatok Országos Szövetsége, MÖOSZ*)
- National Alliance of Municipal Governments (*Települési Önkormányzatok Országos Szövetsége, TÖOSZ*)
- National Alliance of Local Governments (*Magyar Önkormányzatok Szövetsége, MÖSZ*)

111. This specific feature was already highlighted in the 2002 monitoring report: “The complexity of the system and the diversity of the interests of the different components are reflected in the large number of national associations of local and county authorities”.

112. The fact that the government has no single talking partner does not facilitate consultation with local authorities. Examples elsewhere show that a single association per level of authorities gives these authorities real influence in consultation. The counties have their own representative association, which is the only local authority association to cover the entire territory of Hungary.

113. Besides the difficulties caused by the large number of associations, the local authority consultation procedure merits close examination. A decree of 2010 established the principle of bi-annual consultation and the concluding of partnership agreements but this text has been rendered null and void by the new Cardinal act.

114. The dialogue between the State and the territorial authorities needs to be more clearly defined so that it is not of a purely formal nature. Local authority associations must be granted a reasonable period of time to read the government’s proposals and prepare their written replies. Even though in some counties for instance in Csongrád County as indicated by its president during the visit, the consultation process works well, other examples indicate a more troublesome consultation process. In any event, a deadline of 24 or 48 hours (the delegation was informed during its visit that such a deadline had already been given by central government to the local authorities to state their views on a text) cannot be considered as a reasonable period of time for such a purpose within the meaning of the Charter. The conditions in which hearings might take place must also be specified. Finally, they must have all the necessary information (particularly financial data) to give an enlightened opinion.

115. Consultation is crucial when reforms are carried out one after another within a short timescale and local authority powers and financing methods are at issue. Discussions on local government issues deserve an adequate time in order to achieve a proper maturation.

116. The scope of local self-government has been significantly reduced. The division of powers between the central tier and local government has been radically modified, to the exclusive benefit of the former.

117. It is clear to the rapporteurs that the movement towards centralisation of competences under way in Hungary does not conform to Article 4 of the Charter. The division of powers between the central level and local government has been radically overhauled, to the sole benefit of the central authorities.

118. Where Article 4.6 is concerned, the consultation procedure is a simply formal one. It is true that the number of associations representing local and regional authorities in Hungary does not make for effective consultation. This situation leads the rapporteurs to conclude that the situation is also not in conformity with this provision of the Charter.

### 3.3.3. *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.

119. It seemed to the rapporteurs during their visit that the Hungarian system respects the principles laid down by Article 5 of the Charter. The new text does not undermine these provisions (Chapter V of the Cardinal Act CLXXXIX on Local Government).

120. As provided for by the Charter, local authority boundary changes may be made only as a result of a local initiative and following consultation of the communities concerned. The delegation points out, however, that the current regrouping of municipalities' administration fails to comply with the spirit of Article 5 insofar as this took place without consultation with the communities concerned.

### 3.3.4. *Article 6: Administrative structures*

#### **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.

121. Article 6 of the Charter provides that local government shall be able to determine their own internal administrative structures and to recruit their staff on the basis of merits and competences.

122. There is substantial municipal fragmentation in Hungary, which has many very small municipalities. All those spoken to by the delegation acknowledged that this situation called for reform and the setting up of inter-municipal structures, enabling more municipalities to maintain an adequate level of services.

123. While preserving the principle that each local community may have its own municipality, laid down in 1990, Article 85 of the Cardinal Act on local government of December 2011 set the figure of 2000 inhabitants as the critical threshold for local administration. Municipalities below that threshold will have to group their administrative services together in a “district” or “micro-region” in 2013. Each municipality will keep its mayor and its municipal council but the administrative structures, and the exercise of prerogatives, will have to be pooled. The Ministry of State for Municipal Affairs emphasised in their written comments that, “the consolidation of the administrative structure (offices) of settlements having fewer than 2000 residents is not the same as a reduction of the independent exercise of competences (tasks) and the ability of self-governance. This grouping strategy is intended to generate savings and ensure that essential services are maintained for the communities despite the economic crisis.”

124. The question of where the staff who are to work in these new structures will come from remains to be settled, as part of the ongoing reform of the statute of civil service staff. In this respect, all municipalities concerned had to come to an agreement with the relevant county governmental offices with the transfer of the respective personnel and offices (buildings and rooms) until the 1 January 2013.

125. According to the delegation, this form of pooling at the supra-communal level (district) competences of municipalities of less than 2000 inhabitants, which is implemented through an administrative structure, composed of civil servants from the State, seriously infringes the principle of local self-government as provided by Article 6.

126. The delegation notes the substantial municipal fragmentation common in Hungary and is concerned over the purely administrative logic that prevails in the setting up of “micro-regions” and the distinction drawn between elected authorities within the municipalities and the administrative structures that will manage competences within the micro-regions. A model of inter-municipal cooperation including the one referring to tasks and competences is necessary in Hungary, but it should not be developed throughout non-elected administrative bodies. There is a real danger that the elected councils of small municipalities are stripped of their political substance and their political bodies.

127. The administrative structures and resources available to the local authorities in Hungary today do not appear to be commensurate with the tasks assigned to them - a situation which, in the opinion of the rapporteurs, is not in compliance with Article 6 of the Charter. In the light of the above, the rapporteurs conclude that the situation is not in conformity with Article 6 of the Charter.

### 3.3.5. *Articles 7 and 8: Exercise of responsibilities and administrative supervision*

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

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

128. The status of local elected representatives is established by Law XCVI which dates from 2000 and was not substantially amended by Law CLXXXIX of 2011.

129. The remuneration of local leaders is regulated by Law LXIV, which dates from 1994. The delegation notes that the voting system for local elections was amended a few weeks before the local elections held on 3 October 2010 in order to tighten up the rules on eligibility, which benefited the main political parties.

130. The conditions under which responsibilities at local level are exercised generally appear to be in conformity with Article 7 of the Charter.

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

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

131. The Venice Commission has voiced its concern over the lack of precision of Article 32.5 of the Fundamental Law relating to supervision of local authorities. The new Constitution empowers the governmental offices of the capital and of the counties to issue municipal decrees, by court decision, where a local authority fails to fulfil its “obligation to legislate imposed on it by law” (Article 32.5). Individual decisions can also be taken in this way, after the court has empowered the governmental office to do so.

132. At present, it is the government which ensures that local authorities comply with the law in their activities; it may respond to any shortcomings by prosecuting the authority in question. Articles 137 to 140 of the Local Government Act regulate the procedure. Other procedural rules are determined by the law on the administration of justice.

133. The delegation shares the view of the Venice Commission and reiterates its recommendation made in the opinion 261/2011 at paragraph 118 “that the subsequent local self-government legislation provides clarity in this respect. In particular, a clear distinction should be established between, on the one hand, the local authorities’ own competences and those delegated by the central government and, on the other hand, between the control of the local authorities’ activities’ legality and supervision of their decisions’ expediency”.

134. The Venice Commission report also highlights Article 35.5 of the Fundamental Law, which stipulates that Parliament may dissolve an elected body on the ground of a violation of the Constitution, after seeking the opinion of the Constitutional Court. When questioned on this point, the Constitutional Court’s representatives told the delegation that its opinion would be binding on Parliament, meaning that the country’s political authority would not be the only authority involved in this procedure. However, in legal terms, the opinion of the Constitutional Court is not binding either on the Government, or on the Parliament, as the Fundamental Law and the other relevant laws provide that the Government has to consult the Constitutional Court before conveying its proposal to the Parliament (for a dissolution).

135. According to the information provided by the Ministry for Public Administration and Justice, Article 17(3) of the Fundamental Law states that the Government’s regional administrative bodies with general competence should be the metropolitan and county government offices. Based on Article 34(4) of the Fundamental Law, the Government should perform the legal supervision of local governments through the metropolitan and county government offices. In accordance with Section 12 subsection b) of the Government Decree 212/2010 (VII.1) on the tasks and responsibilities of the Minister of State for the Prime Minister’s Office, since July 2010, the Minister of Public Administration and Justice is responsible for the legal supervision of local governments.

136. The Ministry for Public Administration and Justice has further pointed out that the Government office of the capital Budapest and the Government Offices of the 19 counties were – previously – entitled to perform the legislative control and legal supervision of the local governments which is now based on their territorial jurisdiction. However, local authority decisions may be annulled only on decision of the judicial authority.

137. The Fundamental Law provides for compulsory transmission of local authority decrees to the supervision office in the capital and the county (Article 32.4) which, where applicable, may take them to court with a request for their revision.<sup>18</sup> There is a procedure for issuing a deficiency report in the event of failure to execute a legal obligation.

138. Cardinal Act CLXXXIX on Local Government sets out the arrangements for supervision of the acts of local authorities by the government (Chapter VII, Articles 125 and following), as well as the means of appeal against those acts. As the rapporteurs were informed by the Ministry for Public Administration and Justice, Article 132 of the Cardinal Act on Local Governments and the Government Decree 119/2012 (VI.26.) provide for a definition corresponding to Article 8 paragraph 3 of the Charter.

139. Hungarian local and regional authorities are also subject to financial supervision by the State Audit Office, provided for in Article 34 of the Fundamental Law, and also in Article 119 of the Cardinal Act CLXXXIX on Local Government.

140. This supervision has been radically overhauled in recent years with a view to making a correct assessment of the state of local finances and providing local elected representatives with effective means of monitoring and evaluating risks. The points on which the audit was carried out were negotiated with local authority associations.

141. A vast programme of supervision of the management of municipalities and councils has been introduced, operating via desk-checks and on-the-spot checks: local government entities accounting for 80% of total local government debt have been checked using one of these two means.

142. The Audit Office, in compliance with international practices, does not content itself with a purely financial check focusing on the correct state of accounts and the viability of budgets. It also checks on the efficiency of spending and whether it is commensurate with the aims pursued. It attaches great importance to the internal control and audit mechanisms established by local and regional authorities, and guides them in the introduction of control mechanisms.

143. The audit report is public. The entity audited must produce an action plan to remedy any shortcomings found. This plan is evaluated by the audit office and, if it is found to be inadequate, may give rise to legal action.

144. If the Audit Office finds an irregularity, it makes no judgement itself, as it does not have the necessary judicial competence, but it may refer the matter to an ordinary court judge.

145. The new auditing system functions satisfactorily, and the rate of non-execution of the Audit Office's observations has markedly decreased. The Office issues an annual report on the execution of its observations.

146. Beyond the immediate consequences of publishing audit reports, the evaluation and auditing approach has a beneficial influence on the entire system, through the dissemination of good practices, its potential inspiration for the legislature and the overall spirit of making leaders responsible that underpins it.

147. The introduction of modern auditing methods makes it possible to identify weak points in the system. Firstly, training for local government leaders needs to be improved. The rules are increasingly complex and demand a higher level of professional expertise from those responsible for local finances.

---

<sup>18</sup> Article 32.4 of the Fundamental Law states: "Following the promulgation of a decree, the local authority shall immediately send that decree to the governmental office of the capital and the department. If the governmental office of the capital and the department finds that the municipal decree, or a provision thereof, contravenes a legal norm, it may apply to the court with a request for the revision of the municipal decree."



148. Secondly, the Hungarian rules on public accounting are not suited to modern management, as they are very arbitrary and not geared to reporting the real state of finances, particularly indebtedness. A reform incorporating analytical accounting is desirable. Along similar lines, the audit reports could integrate consolidated balance sheets compliant with International Financial Reporting Standards. Nonetheless, the delegation notes with satisfaction the progress made with regard to the auditing approach in the supervision of local authority management.

149. The undeniable progress represented by the introduction of an auditing approach cannot, however, overshadow the widely-held doubts about the financial autonomy of Hungarian local authorities. The Rapporteurs shares the concern expressed by the Venice Commission about the lack of precision of Art. 32.5 of the Fundamental law which concerns the supervision of local authorities and recommend the control of legality to be furthermore privileged.

### 3.3.6. 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.

150. Financial autonomy is a necessary precondition for genuine autonomy. Even though the new Constitution provides in Article 32 Paragraph 1 lit. f) that local governments “shall, to the extent permitted by the law” “determine their budgets and perform independent financial management accordingly”, the financial autonomy of local governments has been severely reduced in the last two years.

151. Counties' own revenues stayed stable (83 Billion HUF in 2007 and 82 billion HUF in 2010).<sup>19</sup> However, as a consequence of the reduction of government subsidies (minus 39 Billion HUF from 2007 to 2010) and the decrease of 35 Billion HUF in health finance from 2007 to 2010, the net operation income of the counties decreased from minus 1,814 million HUF in 2007 to minus 30,751 million HUF in 2010.<sup>20</sup> Furthermore, the system of central grants became stricter, as local governments have lost their freedom of spending central supports with discretion. The former “resource-based” finance has been changed to a more rigid “task-based” system.

<sup>19</sup> Source: National Audit Office, Summary of the 2011 monitoring of local government's financial situation and the management system.

<sup>20</sup> Source: *ibid.*

152. The delegation was informed by the Ministry of State for Municipal Affairs, local government debt reached 1,247.5 billion HUF by the end of 2010, which is largely debt in foreign currency. At the end of 2011, the government took over the responsibility for the counties' debt, originating from loans and bonds; at the end of 2012, the government also took over the debts of municipalities of 5,000 or less inhabitants. These decisions had an important impact on the decrease of the national public debt. Unfortunately they created simultaneously a strong negative impact on the principle of local self-government and the fundament of the local and regional democracy has been undermined. The local and regional authorities paid a high price.

153. Recentralisation in Hungary is not confined to tasks and powers, but also to the financial resources. There has been a significant decrease in central grants and the municipalities' share in some central taxes.

154. The financial autonomy of local authorities has been severely reduced in the last two years, leading to a strengthening of the control central government wields over local government finance. The system of central grants became stricter, as local governments lost their freedom in spending central subsidies as they want (transforming the old 'resource-based' finance to the more rigid 'task-based' system).

155. The Cardinal Act on Local Government of December 2011, in chapter VI "The economic foundations of local governments", emphasises the necessity of supervising local budgets.

156. Municipalities may create:

- land taxes;
- municipal taxes;
- local corporate taxes.

157. They may also collect real estate revenues or fees for public services. They receive state grants, which are voted each year by Parliament.

158. The counties are not allowed to levy local taxes. In the county of Csongrad, for example, 86.5% of budget resources in 2012 consisted of state grants.

159. In a context of economic crisis, local authority resources are particularly vulnerable. 70% of the fiscal resources of local government are collected by the cities and allocated to their budget, whereas in rural areas the municipalities are quickly becoming impoverished. In the absence of sufficient resources, the municipalities must ask for state funding, which may be granted to them twice a year. The rapporteurs consider that the equalisation between local budgets must be developed.

160. Borrowing must be authorised by the State, which judges if the investment project for a loan is financially viable. This state supervision of the indebtedness of local and regional authorities is written into the Fundamental Law,<sup>21</sup> which ties it to the requirement of maintaining balanced budgets. 93% of loans are granted to cities or counties, which means that borrowing is beyond the reach of small municipalities.

161. In the context of a crisis-hit economy and dwindling resources, reducing the competences of local authorities, and therefore their spending, is presented by the Government as the only possible solution.

162. There is provision for a reform of the system of local authority funding in the Cardinal Act CLXXXIX on Local Government of 21 December 2011. It is currently in preparation, and the delegation has not been able to establish the overall content.

---

<sup>21</sup> Article 34.5 of the Fundamental Law states: "In order to preserve the balance of the budget, a law may make borrowing or other contractual commitments by the local authorities within the limits established by legislation subject to government approval".

163. The delegation is concerned as to how the situation might evolve in the context of shortfalls in resources, at a time when local government is portrayed as a financial burden.

164. The new Fundamental Law introduces the principle of a single “national property”.<sup>22</sup> This principle appeared in the latter months of 2011, when all the assets and functions of the county councils had already been transferred to the national government, following a change to the old constitution. This new provision undermines the autonomous management of real estate by local authorities, and therefore their overall independence. One of the first measures announced recently (November 2012) by the Government as part of the reform of local finances has consisted in taking over the debt of almost 2,000 municipalities (i.e. almost two thirds of all local authorities). The technical details of the consolidation will be handled by the National Debt Management Centre (AKK). The economic crisis and indebtedness are inescapable realities in Hungary. However, the Rapporteurs wish to emphasise that debt management should not serve as a pretext for severe limitations of local autonomy and for state supervision of local authorities.

165. On the light of the above, the rapporteurs conclude that the current situation is not in conformity with Article 9 of the Charter, except as regard paragraphs 3 and 8.

### 3.3.7. *Article 10: Freedom of association*

#### **Article 10 – Local authorities’ right to associate**

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

166. Hungary has several associations of local and regional authorities (see above para. 109). Consequently, the situation is in conformity with Article 10 of the Charter. Nonetheless, the large number of representative partnerships at local level does not facilitate the consultation procedure for the national authorities.

167. Furthermore, Hungary has committed to a 15-year programme of transfrontier cooperation involving two Hungarian counties, three local authorities in Romania and one in Serbia. The programme comprises numerous projects, each involving several local authorities. The projects are run by the counties, and the municipalities only play an advisory role. Stronger involvement of the municipalities in this scheme would be in greater conformity with the subsidiarity principle and generate more support from communities for a scheme which is very active.

168. The rapporteurs underlined the positive aspects of the existence of active transnational programmes. Nonetheless, they expressed regret at the fact that the municipalities had only a consultative role in these programmes which were essentially run by the counties.

### 3.3.8. *Article 11: Legal protection of local self-government*

#### **Article 11 – Legal protection of local self-government**

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

169. The right of local and regional authorities to appeal to courts to ensure respect for their competences is not guaranteed in the domestic legislation. Local authorities do not have any effective judicial protection to secure the free exercise of their powers or protect their rights as provided in the Charter. Judicial remedies exist in some cases, such as for legal disputes between local authorities.

<sup>22</sup> Article 38 of the Fundamental Law: “The properties of the State and local governments shall be national assets.” See the note above.

170. Article 5 of the Local Government Law (N° CLXXXIX-2011) states that the lawful exercise of the constitutional powers of local authorities is protected by the Constitutional Court and ordinary courts. Local authorities may apply to the Constitutional Court only in case of conflict with another authority concerning their respective responsibilities.

171. Article 16 of the above mentioned law provides for the possibility (on the part of local authorities) of appealing to the court against decisions which go against their interests in very specific cases (such as when the government takes away a development project which would have been of local interest for a municipality). This leads the rapporteurs to conclude that the right to lodge a complaint, when the interests of local authorities are- or risk to be –undermined, is very limited and that the legal protection of local self-government is not effective in the light of the relevant provision of the Charter.

172. The rapporteurs regret that an effective legal remedy is not available to local authorities and they conclude that, in this respect, the situation is not in compliance with Article 11 of the Charter.

### 3.3.9. Article 12: Undertakings - possible “reservations” made by States

#### Article 12 – Undertakings

- 1 Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
  - Article 2,
  - Article 3, paragraphs 1 and 2,
  - Article 4, paragraphs 1, 2 and 4,
  - Article 5,
  - Article 7, paragraph 1,
  - Article 8, paragraph 2,
  - Article 9, paragraphs 1, 2 and 3,
  - Article 10, paragraph 1,
  - Article 11.
- 2 Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
- 3 Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

173. Hungary has no declarations or reservations in respect of the Charter, having withdrawn, on 8 March 2002, the declaration previously formulated in respect of Article 13 of the Charter upon ratification.

### **3.4. Analysis of the situation of regional democracy in Hungary**

#### **3.4.1. The regional level in Hungary**

174. While the local level is highly developed in Hungary, the regional level has minimal presence in the political architecture.

175. Different observers commonly regard the counties as representing the regional level in Hungary, even though the words “region” and “regional” are not used in their description. It is true that they are small entities but, compared to Hungary’s size and population, they are generally considered to correspond to NUTS2 of the European nomenclature. The “regions for statistical and development purposes” do not qualify for this role.

176. The issue of the place of regional democracy was at the heart of the monitoring report presented to the Congress in 2002. Looking ahead to Hungary’s accession to the European Union in 2004, the authors of the report called for the development of a relevant, effective regional level in Hungary. The counties had neither the decision-making powers, nor the tasks, or the resources corresponding to the regional level. The choice appeared to be between developing regions for statistical purposes and developing the counties.

177. On 4 June 2002, the Chamber of Regions of the Congress made a recommendation<sup>23</sup> in this connection and adopted a resolution<sup>24</sup> asking that the Congress closely follow the evolution of regionalisation.

178. Ten years after that recommendation, and a few months after the entry into force of the Cardinal Act on Local Government of December 2011, the question of regional democracy now arises in very different terms.

179. The counties, which, as the 2002 monitoring report emphasised, were in “a weak position” owing to many of their competences being shared, have had their tasks and role altered by the local government act of December 2011, and their current situation is largely weaker.

180. The overall idea of the reform is to turn the counties into economic development bodies capable of handling the management of European funds, clearly in line with the “NUTS 2” level.

181. The counties will therefore be deprived of their public health attributions and will be required to develop their current competences for economic development, spatial planning, environmental protection and promoting tourism. They will be responsible for co-ordinating the next European Union structural funds campaign from 2014 onwards. The regions serving statistical purposes (which had no democratic legitimacy) are to disappear by 2013.

182. The government presents this change as a “strengthening” of the regional level in Hungary, enabling the counties to devote their efforts henceforth mainly to economic development and planning tasks. The precise competences to be exercised by the counties in the future are yet to be specified, as are their resources. However, it is quite difficult to understand the real meaning of this “strengthening of the so-called regional level”. Counties have lost their public institutions (not only health, but also education institutions, museums, etc.) and the large part of their personnel and financial resources. The content of their real functions is still very vague, because the regional development resources are allocated at central and “regional” (not at county) level.

---

<sup>23</sup> Recommendation 116(2002) on regional democracy in Hungary

<sup>24</sup> Resolution 142(2002) on regional democracy in Hungary

183. When seen against the regionalisation objective laid down by the Reference Framework for Regional Democracy, today's shift in Hungary is moving in a different direction. The 2002 monitoring report emphasised the relative weakness of the counties and yet, in January 2012, they lost a major competence, representing a substantial budget, to be replaced by new competences still largely undefined.

#### 3.4.2. Transfrontier co-operation in Hungary

184. Hungary is active in the formation of Euro-regions and, more broadly, in transfrontier cooperation.<sup>25</sup> The delegation met the speaker of the assembly of Csongrad County, which participates in the Danube – Cris – Tisa regional cooperation programme (Euro-region DKMT,<sup>26</sup> Danube, Kris, Mures, Tisa).



185. The participation of two Hungarian counties in a programme of transfrontier cooperation with Romania and Serbia is a strong sign of the country's desire for integration into this sub-region. At the time of the delegation's visit, a symbolic opening of the border point between the three countries was organised to mark this cooperation.

186. The programme comprises numerous projects, many of which are geared to culture or tourism, as well as a global plan for the prevention of flooding risks and the creation of infrastructures of benefit to the euro-region.

187. The programme was devised in 1997 and has been up and running since 2003. The transfrontier programmes enable the counties to assert their presence, within the framework of their new competences. Giving the municipalities a more marked role in devising and implementing the programmes would help to strengthen this process.

188. The Ministry for Public Administration and Justice informed the delegation about their strong intention to join the Third Additional Protocol to the European Outline Convention on Transfrontier Cooperation, which is very welcome.

## 4. CONCLUSIONS

189. The delegation expresses its deep concern regarding the situation of local and regional democracy in this country, both as regards the two principles of local self-government and financial autonomy, and their application in practice.

<sup>25</sup> It has ratified the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities (on 21 March 1994).

<sup>26</sup> <http://www.dkmt.net/en/index.php>

190. The situation is not in compliance with Articles 2, 3 and 4 of the Charter. Whereas the system of local government in place since 1990 implemented the principles of subsidiarity and local self-government at a particularly high level, as made clear in the 2002 monitoring report, a global movement to return powers to the centre has since then been under way in Hungary. The Hungarian system, which was generally a two-tier one, is now moving towards a single power-base (or indeed a monopoly) in favour of central government, although it has not yet fully reached this stage.

191. The new Fundamental Law and the December 2011 Cardinal Act on Local Government are very recent and many aspects of them are not yet applied. Some provisions have been applied since 1 January 2012, others will be applied only in 2013 and yet others require implementing legislation. Nonetheless, the delegation was made aware of significant measures which are incompatible with the principles set out in the Charter. The reforms currently under way are introduced primarily by cardinal acts, modification of which requires a two-thirds majority, very difficult to reverse from now on.

192. The principle of local self-government is guaranteed by the Charter, the provisions of which Hungary has undertaken to comply with, irrespective of the economic context. This principle should not be interpreted differently depending on the economic context. However, as in a number of Council of Europe member states, it would appear that the economic crisis is used as a recurring argument for taking back powers from the local level, or indeed for introducing a form of supervision of that level. The situation is not in conformity with Article 9 of the Charter.

193. The large number of associations of local and regional authorities in Hungary is an indication of compliance with Article 10 of the Charter. These associations appear to function well. Nonetheless, the rapporteurs would emphasise the lack of a single talking partner does not facilitate the consultation process.

194. On the constitutional level, the delegation shares the views and concerns of the Venice Commission, particularly as regards the role of the Constitutional Court, whose powers related to a determined scope of budgetary laws have been considerably reduced by recent constitutional reforms. It further expresses its concern regarding the very weak level of protection afforded, at constitutional level, for the principle of local self-government, in particular due to the lack of an effective judicial remedy for local authorities, that would allow them to lodge a complaint to a domestic court when a decision undermines their interests or their rights as provided by the Charter. This situation does not comply with Article 11 of the Charter.

195. The rapporteurs would recommend the Hungarian authorities to introduce an effective consultation procedure, providing for the forwarding of the documents required for the local authorities to peruse. Unreasonable deadlines, by definition, are a practical barrier to constructive exchange. The consultation procedure would also be made all the easier if the number of associations representing local authorities were significantly reduced.

196. A model of inter-municipal structure including maybe tasks and functions is necessary in Hungary, but it must not be constructed for the benefit of non-elected administrative bodies. The elected councils of small municipalities have lost a lot of their political substance clearly endangering their political position. The situation in Hungary, from this point of view, is not in conformity with Article 6 of the Charter.

197. The rapporteurs think that an alternative may be found to respond to all stakeholders' need to work on practical issues (such as the delivery of public services) in order to provide efficiency, but without putting into question the basic principles of self-government as provided by the Charter.

198. The delegation wishes to emphasise the expediency of laying the foundations of strong and effective structures, but also points out that there is a danger of a breakdown in the dialogue on local democracy. Hungary appears to be engaged in a process of consolidating power at central government level to the detriment of the local authorities, which are portrayed as costly and inefficient. The rapporteurs would like to see solutions conducive to local self-government which will provide local and regional authorities with the requisite human and material resources. They point out that the signatory States to the Charter undertake to respect not only the letter but also the spirit of the Charter, which requires local responsibilities to be undertaken by elected authorities closest to the citizens throughout the country.

199. The rapporteurs understand that the Hungarian government needs to decrease the national public debt and has to conceive specific measures to this end. However, in this particular context as well as in the frame of the local government reform in Hungary, the delegation reiterates that the principles laid down in the Charter must not be ignored or minimised but, should be used as a reference treaty, providing, by means of its provisions, the tools enabling the authorities of a country to strike a balance between a central government-based approach and local aspirations in order to overcome the national difficulties and economic strangulation.



## Appendix 1 – Information provided to the delegation on the state of implementation of human rights at local and regional levels in Hungary

### Rights of minorities

1. Hungary has introduced an original system of representation of ethnic and linguistic minorities. Law LXXVII on the rights of national and ethnic minorities (also known as the law on minorities) was passed in 1993, revised by the Act No. CLXXIX of 2011 on the rights of national minorities. This law counts all the groups of people who have been living in Hungary for at least a century as national and ethnic minorities. The members of those groups are Hungarian citizens but they differ from the rest of the population through their language, culture and traditions and their desire to preserve them.

2. The groups regarded as minorities in Hungary under this law are, in alphabetical order, Armenians, Bulgarians, Croats, Germans, Greeks, Poles, Roma, Romanians, Ruthenians, Serbs, Slovaks, Slovenians and Ukrainians.<sup>27</sup>

### Linguistic rights

3. The law on minorities grants linguistic minorities very extensive rights, going beyond those granted elsewhere in Europe. Under this law, minority languages may be used by anyone, at any time and anywhere. An interpreter must be provided where necessary. Members of Parliament are entitled to use their own language in Parliament. Minority groups are entitled to found their own schools using the minority language and may also have schools using both languages.

4. There are numerous Hungarian minorities living outside the borders of Hungary, which explains why respect for cultural and linguistic rights is such a sensitive issue for Hungarians.

5. This position accorded to linguistic minorities is enshrined in the Fundamental Law, whose preamble proclaims the fundamental rights granted to Hungarian citizens.

Article XXIX of the Fundamental Law states:

“(1) Ethnic minorities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to a national or ethnic minority shall have the right to assume and preserve their identity. Ethnic minorities living in Hungary shall have the right to develop their own culture, use their native language, be educated in their native language and use their name in their own language.

(2) Ethnic minorities living in Hungary may create local and national self-government bodies.”

6. These rights are not merely of a formal nature, and Hungarian legislation ensures that they may be safeguarded through the courts or the Commissioner for Fundamental Rights. The National Office for National and Ethnic Minorities, created in 1990, is responsible for coordinating the implementation of government objectives in the area of minority protection. The Office is an administrative body which is independent of the national remit, operating under the supervision of the Ministry of Public Administration and Justice. The Office continuously assesses the situation and implementation of the rights of national and ethnic minorities. It produces analyses to underpin government decisions concerning minorities and also prepares programmes and policies aimed at minorities. Its tasks include providing a platform for exchanges of opinions and information between the government and the organisations representing minorities.

7. Hungary was one of the first countries to sign the Council of Europe’s European Charter for Regional or Minority Languages.

---

<sup>27</sup> See Euromosaic on the European Commission site [http://ec.europa.eu/languages/euromosaic/euromosaic-study\\_en.htm](http://ec.europa.eu/languages/euromosaic/euromosaic-study_en.htm)

## Self-government bodies

8. The law on minorities entitles the thirteen national minorities to establish self-governing local authorities. These are elected bodies representing the interests of national or ethnic minorities at local or national level. Accordingly, these self-government bodies have special competences for fixing the calendar for their festivals and celebrations, fostering the preservation of their traditions and participating in public education. These special local authorities may manage public theatres, libraries and science and arts institutions, award study grants and provide services for their community (legal aid in particular).

9. At local and regional level, these self-government bodies are to be found within both municipalities and cities or counties, and most of the minorities are present at these three levels in addition to the national level. Self-governing councils of different minorities are consulted on texts with ramifications for their members, at both local and national level. They have a right of veto on cultural questions.

10. For a self-governing council to be formed at local level, it has to be requested by a sufficient number of people. Since that number is proportionate to the number of inhabitants in the municipality, thirty or so people may be enough in a small municipality. It can happen that a group sets itself up as a minority in an attempt to influence municipal debate, which is known as a "cuckoo procedure". Electoral lists indicating the members of the different minorities were compiled as of 2006, in order to prevent abuses of the 1993 law.

11. However, on the whole, this arrangement catering for the cultural rights of minorities' functions to the satisfaction of the groups concerned. It is funded by the local authorities, or by the State where national bodies are concerned. Budapest City Council devotes 0.25% of its budget to the activities of minorities' self-governing councils.

12. This system of recognition for the cultural rights of minorities has no civic and political equivalent and minorities are not represented as such on municipal councils, on county councils or in Parliament. Representation has been considered on several occasions but always ruled out.

## The Roma minority

13. Some substantial reports from relevant bodies of the Council of Europe<sup>28</sup> are available on this specific issue. Having received contradictory information on this issue, the Rapporteurs have therefore decided not to deal with this item in the present appendix, and refer to the pertinent documents of the Council of Europe dealing with this subject.

## Commissioner for Fundamental Rights

14. The new Fundamental Law replaced three ombudsmen<sup>29</sup> (ombudsman for citizens' rights, ombudsman for minorities' rights, ombudsman for sustainable development and the environment) by the Commissioner for Fundamental Rights (former FR Ombudsman).<sup>30</sup>

<sup>28</sup> see Council of Europe website ([www.coe.int](http://www.coe.int))

<sup>29</sup> There used to be a fourth ombudsman for personal data protection, who was replaced by an independent authority.

<sup>30</sup> Article 30 of the Fundamental Law:

*"(1) The Fundamental Rights Ombudsman shall undertake activities aimed at protecting fundamental rights; anyone may request intervention by the Ombudsman.*

*(2) The task of the Fundamental Rights Ombudsman shall be to investigate or have investigated fundamental rights abuses brought to their attention and initiate general or specific measures to remedy them.*

*(3) The Fundamental Rights Ombudsman and their deputies shall be elected by the National Assembly, by a majority of two-thirds of the parliamentarians' votes, for a period of six years. The deputies shall uphold the rights of future generations and ethnic minorities living in Hungary. The Fundamental Rights Ombudsman and their deputies may not be members of a political party or engage in political activities.*

*(4) The Fundamental Rights Ombudsman shall report annually on their activities to the National Assembly."*

15. The possibilities of going to court to challenge local government decisions have been improved since 2010, which has resulted in fewer cases challenging municipal decisions coming before the Commissioner. But, owing to the economic recession and the associated social difficulties, the Commissioner has had to intervene in order to protect the fundamental rights of individuals in particularly vulnerable situations, often against local government decisions. In some of these cases, and always successfully, the Commissioner has sought a Constitutional Court ruling that fundamental rights have been violated by a local entity.

16. The Commissioner observes that it is often impossible to untangle social issues from issues relating to the protection of fundamental rights; this observation is particularly germane to the protection of the rights of the Roma minority.

17. The self-governing councils may turn to the Commissioner if they believe that the municipality or council fails to provide them with the material or financial means necessary for their activities, and 60 or so such cases are currently pending.

18. The great advantage of the Commissioner is being more easily accessible for citizens than a judge; citizens may be put off by the court procedure, whereas the procedure for applying to the Commissioner is more flexible and informal. The Commissioner's report draws on the examination of cases throughout the country, providing a great wealth of information and source of inspiration for a legislature wishing to work for respect of fundamental rights and towards improved protection for them.

**Appendix 2 - Programme of the Congress monitoring visit to Hungary (23-25 May 2012)**

**CONGRESS MONITORING VISIT TO HUNGARY  
Budapest, Gödöllő, Szentes and Szeged (23-25 May 2012)**

**PROGRAMME**

**Congress delegation**

Rapporteurs:

Mr Artur TORRES PEREIRA      Rapporteur on local democracy  
Chamber of Local Authorities, EPP/CD<sup>31</sup>  
Member of the Monitoring Committee of the Congress  
President of the Municipal Assembly of Sousel (Portugal)

Mr Devrim ÇUKUR                Rapporteur on regional democracy  
Chamber of Regions, SOC<sup>1</sup>  
Member of the Monitoring Committee of the Congress  
Member of the Provincial Council of Izmir (Turkey)

Expert:

Prof. Anne GAUDIN              Consultant, Associate Professor of Political Science, Bordeaux (France)

Congress Secretariat:

Ms Stéphanie POIREL            Secretary of the Monitoring Committee

**Wednesday, 23 May 2012 (Budapest)**

**Hungarian delegation to the Congress and representatives of municipal and regional associations:**

**Hungarian delegation to the Congress**

- Mr György ILLES, Head of the Hungarian delegation to the Congress
- Ms Csilla MAGYAR, Member of the delegation, Mayor of Kisköre
- Ms Andrea MÉNES, Member of the delegation, Mayor of Vámospércs
- Ms Erzsébet PÉNZES, Mayor of Hidegkút, member of the delegation, member of MFSZ and councillor of international affairs in TÖOSZ
- Mr Imre SZIRBIK, Mayor of Szentes, member of the delegation
- Mr György BENDE, Member of the delegation, member of Association of Small villages and Small Regions
- Ms Józsefné CZEFERNER, Member of the delegation, Mayor of Nagybajom

**Association of Hungarian Cities of County Rank**

- Mr Viktor LAZÁRY, Member of the delegation, vice-Mayor of Szombathely

**Association of Local Authorities and Hungarian Representatives**

- Mr György GEMESI, President of the Association of Local Authorities and Hungarian Representatives

**Hungarian National Association of Local Authorities**

- Mr Jenő SCHMIDT, President of the Hungarian National Association of Local Authorities

**Hungarian Village Association**

- Mr Gellert SZABO, President of the Hungarian Village Association

<sup>31</sup> EPP/CD: European People's Party - Christian Democrats of the Congress  
SOC: Socialist Group of the Congress

**National Association of Local Governments of Communes, Small Municipalities & Microregions**

- Mr Ferenc WEKLER, President of the Association of Local Governments of Communes, Small Municipalities and Microregions

**Partnership of Associations of Local Communities**

- Mr József DANCSÓ, President of the Partnership of Associations of Local Communities

**Working Lunch with experts on local and regional democracy**

- Dr. Zoltan SZENTE, Member of the Group of Independent Experts of the Congress Széchenyi István University of Győr, Faculty of Law (full-time)
- Dr. István TEMESI, Associate professor Corvinus University of Budapest department of public administration

**Ministry of Interior**

- Mr András TÁLLAI, Minister of State for Municipal Affairs
- Mr László FELKAI, Administrative State Secretary

**Constitutional Court of Hungary**

- Mr Péter PACZOLAY, President of the Constitutional Court
- Mr András HOLLÓ, Vice President of the Constitutional Court

**Thursday, 24 May 2012 (Budapest)****Municipality of Budapest**

- Mr Gábor BAGDY, Deputy Mayor of Budapest

**State Audit Office**

- Mr László DOMOKOS, President of the State Audit Office
- Mr. Zoltán GIDAY, auditor counsellor

**Meeting with representatives of the Hungarian Parliament:****Working lunch with representatives of the Committee on Local Government and Regional Development**

- Mr. Zsolt LÁNG, Chairman of the Committee on Local Government and Regional Development

**Meeting with representatives of the Committee on Human Rights, Minority, Civic and Religious Affairs**

- Mr Tamás LUKÁCS, Chairman of the Committee on Human Rights, Minority, Civic and Religious Affairs

**Ministry of Public Administration and Justice**

- Mrs Erika SZABÓ, Minister of State for Territorial Public Administration and Election
- Mrs Viktória ZÖLD-NAGY, Deputy State Secretary for Territorial Administration

**National Association of Hungarian County Local Governments**

- Mr Lajos SZÜCS, President of the National Association of Hungarian County Local Governments

**Friday, 25 May 2012 (Budapest, Gödöllő, Szentes and Szeged)****Meeting with members of the Office of the Commissioner for Fundamental Rights**

- Mr Máté SZABÓ, Commissioner for Fundamental Rights

**Municipality of Gödöllő and Hungarian Association of Local Governments (MÖSZ)**

- Mr György GÉMESI, Mayor of Gödöllő

**Municipality of Szentes**

- Mr Imre SZIRBIK, Mayor of Szentes

**Csongrád County Council**

- Mrs Anna MAGYAR, President of the General Assembly of Csongrád County Council