

The Congress of Local and Regional Authorities



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Local and regional democracy in Romania

Monitoring Committee

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Summary

This report follows a monitoring visit on the situation of local and regional democracy in Romania, which had already been the subject of a recommendation in 1995 and two information reports in 2002 and 2003, respectively. The report notes that, during the last decade, Romania initiated many legislative reforms which were carried out in accordance with the principles and the spirit of the European Charter of Local Self-Government.

The Recommendation calls on the Romanian authorities to continue to put into practice all the principles of the Charter, including further improvement of the mechanisms for consultation with local communities to achieve full compliance with Article 4 (6) of the Charter; to provide local communities with financial resources commensurate with their skills, as outlined in Article 9 (2) of the Charter; and to grant a special status to the capital city of Bucharest, in accordance with the Congress Recommendation 219 (2007). The Congress also calls on local authorities to continue their efforts to implement the measures aimed at integrating national minorities into local communities by ensuring their full participation in local politics. It should be noted that the delegation has not met representatives of the Roma minority and the issue is not addressed in this report.

Finally, it is recommended that the Romanian authorities continue regional development reforms in accordance with the principles set out in the Reference Framework for Regional Democracy and consider lifting the reservation to article 7 (2) of the Charter, which no longer seems to be necessary. The Romanian authorities are also encouraged to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in local affairs.

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



A. DRAFT RECOMMENDATION²

1. The Congress of Local and Regional Authorities, having regard to:

a. Article 2. paragraph 1b of Statutory Resolution [CM/Res\(2007\)6](#), which provides that one of the functions of the Congress is “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\(2007\)6](#), which provides that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

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

d. Recommendation 12 (1995) on local democracy in Romania;

e. Information Report CG/INST(8)55rev.1/2002, presented by Jean-Claude Frécon (France, L, SOC) and Lambert van Nistelrooij (Netherlands, R, EPP/CD) and the follow-up to Information Report CG/INST(9)45/2003 on the situation of local and regional democracy in Romania, presented by Jean-Claude Frécon (France, L);

f. Congress Resolution 299 (2010), which states that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities;

2. Recalling that:

a. Romania became a member of the Council of Europe on 7 October 1993 and ratified, on 28 January 1998, the European Charter of Local Self-Government (ETS no. 122, hereinafter referred to as the Charter), which came into force for Romania on 1 May 1998;

b. Romania has made a reservation concerning Article 7 paragraph 2 and an interpretative declaration regarding Article 4 paragraph 4 and 5 of the Charter;

c. the Institutional Committee³ of the Congress appointed Jean-Claude Frécon (L, SOC, France), Vice-President of the Congress, and Mariacristina Spinosa (R, SOC, Italy) as rapporteurs to prepare and submit a report on local and regional democracy in Romania;

² Preliminary draft recommendation approved by the Monitoring Committee on 17 February 2011.

Members of the Committee:

L. O. Molin (President), *M. Abuladze*, *U. Aldegren*, *K. Andersen*, *L. Avetyan* (alternate: *E. Yeritsyan*), *A. Babayev*, *M. Barcina Angulo*, *V. Belikov*, *G. Bergemann* (alternate: *C. Vossschulte*), *M. Bespalova*, *P. Bosch I Codola*, *Z. Broz*, *A. Buchmann*, *X. Cadoret*, *M. Capdevila Allares*, *S. Carugo*, *D. Chichinadze*, *I. Ciontoloj*, *B. Collin-Langen*, *M. Cools*, *J. Costa*, *D. Cukur*, *L. Dellai*, *M. De Lamotte*, *G. Doganoglu*, *M. Fabbri*, *M. Gaju*, *V. Gebel*, *G. Geguzinskas*, *S. Glavak*, *S. Guckian*, *M. Guegan*, *M. Gulevskiy*, *H. Halldorsson*, *D. Heatley*, *J. Hepburn*, *B. Hirs*, *J. Hlinka*, *C. Hughes*, *A. Ibrahimov*, *J. Jalinska* (alternate: *M. Juzupa*), *S. James*, *A. Jaunsleinis* (alternate: *N. Stepanovs*), *M. Jegeni Yildiz*, *J-P Klein*, *I. Kulichenko*, *O. Arild Kvaløy*, *J. Landberg* (alternate: *M. Juhkami*), *F. Lec*, *J-P Liouville*, *I. Loizidou*, *M. Magomedov*, *P. Mangin* (alternate: *J-M Belliard*), *T. Margaryan*, *G. Marsan*, *H. Marva*, *V. Mc Hugh*, *M. Merrild*, *I. Micallef*, *I. Michas*, *T. Mikus*, *K. Miskiniene*, *G. Mosler-Törnström*, *A. Muzio*, *A. Ocana Rabadan*, *V. Oluiiko*, *R. Paita*, *G. Pieper*, *H. Pihlajasaari*, *G. Pinto*, *C. Radulescu*, *R. Rautava* (alternate: *S. Ruponen*), *H. Richtermocova*, *A. Rokofillou*, *D. Ruseva*, *S. Sallaku*, *V. Salygin*, *V. Sau*, *J. Sauwens*, *P. Schowtka*, *W. Schuster*, *D. Shakespeare*, *P. Shatri*, *M. Tamiolos*, *A. Torres Pereira*, *V. Udovychenko*, *A. Ugues*, *G. Ugulava* (alternate: *P. Zambakhidze*), *A. Uss*, *V. Varnavskiy* (alternate: *A. Borisov*), *P. Van Der Velden*, *L. Vennesland*, *L. Verbeek*, *H. Weninger*, *K. Whitmore*, *J. Wiene*, *U. Wüthrich-Pelloli*, *N. Zeybekci*, *J. Zimola*, *D. Zmegac*.

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

Secretariat of the Committee : *S. Poirel*, *S. Cankoçak* and *L. Nikoghosyan*

³ Following the Congress reform, the monitoring activities carried out by this Committee were taken over by the Monitoring Committee set up on 1st December 2010.

d. the co-rapporteurs carried out an official visit to Romania from 24 to 26 May 2010, accompanied by Jean-Mathias Goerens (Luxembourg), a consultant and member of the Group of Independent Experts.

3. Thanks the government authorities, the Romanian delegation to the Congress and its Secretariat, as well as the representatives of the local authorities and representatives of the various associations and experts for the information provided and the comments made during and after their meetings with the delegation.

4. Notes with satisfaction:

a. the progress made by Romania since Recommendation 12 (1995), especially through legislative reforms, and the advances made on implementing the principles of local and regional self-government in co-operation with the associations of local authorities, and the new structures that derive from those reforms in order to modernise local and regional government in Romania;

b. the progress made on reforming regional development as a key component of administrative and economic decentralisation;

c. the political discussions underway and the perspective for a significant evolution concerning the status of the capital city of Bucharest;

d. the government's intentions, through the Reform Programme, to promote and implement instruments for developing ways of monitoring the decentralisation process at the sector level and for identifying and developing new tools to help improve the quality of the public services provided to the citizens;

e. the measures taken by the government to implement the programmes to increase administrative management capacity, especially through the local management of human resources, and by the specific programmes financed by the government and/or the European funds with a view to increasing the quality of life in rural areas.

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

a. continue the reforms begun on regional development in order to involve the regions in territorial administration, on the basis of the principles established by the Reference Framework for Regional Democracy adopted in Utrecht on 17 November 2009 at the Conference of European Ministers responsible for Local and Regional Government;

b. allocate to the local authorities financial resources commensurate with their responsibilities, as stated in Article 9(2) of the Charter, thus enabling them fully to exercise their functions;

c. continue to improve the consultation mechanisms in accordance with Article 4 (6) of the Charter, so that the local authorities are systematically consulted, in due time and in an appropriate manner, during planning and decision-making processes on all matters that concern them directly;

d. establish a special status to Bucharest, in accordance with Congress Recommendation 219 (2007);

e. clarify the current legislation in order to provide a precise legal framework for the districts of the municipality of Bucharest so that these administrative-territorial sub-units can be granted a legal personality;

f. revise Law no. 67/2004 in the light of the recommendations and observations of the Venice Commission in order to relax the conditions with which some organisations of national minorities have to comply in order to stand at local elections;

g. continue to implement measures aimed at the full integration of these national minorities into the local communities, especially by quickly examining new measures that facilitate their access to public services;

h. provide the local authorities with effective judicial protection by granting them a genuine right to bring an action in the domestic courts if there has been a breach of one of the principles guaranteed by the Charter ratified by Romania;

i. consider lifting its reservation to Article 7(2) made at the time of the ratification of the Charter since the regulations concerning this matter seem *de facto* to be in compliance with this provision of the Charter;

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

B. EXPLANATORY MEMORANDUM BY JEAN-CLAUDE FRECON, RAPPORTEUR

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Introduction

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution CM/Res(2007)6, the Congress of Local and Regional Authorities (“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”.

2. Romania joined the Council of Europe on 7 October 1993, thus becoming the Organisation’s 22nd member state. It signed the European Charter of Local Self-Government [ETS no. 122, (“the Charter”)] on 4 October 1994 and ratified it on 28 January 1998. The Charter entered into force in Romania on 1 May 1998.

3. Romania made a reservation and an interpretative declaration. The reservation concerns Article 7, paragraph 2 of the Charter, which does not apply in Romania; the interpretative declaration concerns the term “regional authority” referred to in Article 4, paragraphs 4 and 5 of the Charter as this corresponds in Romania to the county administrative authority (Romania has only one intermediate tier of administration, which is the county).

4. This is the first monitoring report on the state of local and regional democracy in Romania. However, the following documents have been taken into consideration: the Information Report CG/INST(8)55/2002 on the situation of local and regional democracy in Romania, presented by Jean-Claude Frécon (France, L) and Lambert van Nistelrooij (Netherlands, R); the follow-up to the Information Report CG/INST(9)45/2003 on the situation of local and regional democracy in Romania, presented by Jean-Claude Frécon (France, L); and the information collected by members of the Congress during earlier visits carried out in 1994 and 2001.

5. The Institutional Committee appointed Jean-Claude Frécon (France, L, SOC), Vice-President of the Congress, and Mariacristina Spinosa (Italy, R, SOC) co-rapporteurs respectively for local democracy and regional democracy. It tasked them with submitting to the Congress a report and recommendation on local and regional democracy in Romania.

6. A Congress delegation travelled to Romania from 24 to 26 May 2010 and met several different interlocutors in Bucharest and the county (*judet*) of Prahova. On that visit, the co-rapporteurs were assisted by Jean-Mathias Goerens, a consultant and member of the Group of Independent Experts on the European Charter of Local Self-Government, and by Anna Stahl, Co-Secretary of the Congress's Institutional Committee.

7. The delegation met representatives of the Romanian government and parliament, the President of the Constitutional Court, the Prefect of Bucharest, representatives of the Bucharest Mayor's Office, members of the Prahova County and Municipal Council, representatives of various associations and experts (see the detailed programme appended to this report).

8. The co-rapporteurs wish to thank everyone they spoke to during the visit for making themselves available and for the information that they were kind enough to provide to the delegation. They also thank the Romanian delegation to the Congress and its secretariat for contributing to the smooth running of the visit.

A. General considerations

I. The constitutional and legislative framework

9. The basic legislation on territorial administration, self-government and local democracy – for the communes, towns or municipalities and the districts of the municipality of Bucharest – consists of a set of legal instruments that have undergone significant development, especially in the last ten years. The most important of these are:

- the Constitution of Romania of 8 December 1991, published in the Romanian Official Gazette *Monitorul Oficial al României*, Part I, no. 233 of 21 November 1991;
- Law no. 215/2001 on local public administration, published in the *Monitorul Oficial al României*, Part I, no. 204 of 23 April 2001, as subsequently amended;
- Framework Law no. 195/2006 on decentralisation, published in the *Monitorul Oficial al României*, Part I, no. 453 of 25 May 2006, revised;
- Law no. 315/2004 on regional development in Romania, published in the *Monitorul Oficial al României*, Part I, no. 577 of 29 June 2004, revised;
- Law no. 273/2006 on local public finances, published in the *Monitorul Oficial al României*, Part I, no. 618 of 18 July 2006, revised;
- Governmental order no. 36/2002 on local taxes and charges, published in the *Monitorul Oficial al României*, Part I, no. 92 of 2 February 2002, revised;
- Law no. 67/2004 local elections, consolidated version published in the *Monitorul Oficial al României*, Part I, no. 271 of 29 March 2004, revised;
- Law no. 393/2004 on the conditions of office of local elected representatives, published in the *Monitorul Oficial al României*, Part I, no. 912 of 7 October 2004, revised;
- Law no. 340/2004 on the institution of the prefect, consolidated version published in the *Monitorul Oficial al României*, Part I, no. 225 of 24 March 2008 revised;
- Law no. 2/1968 on the administration of Romania, consolidated version published in the *Buletinul Oficial*, Part I, no. 54-55 of 27 July 1981, revised;
- Decree no. 284/1979 on the establishment of districts (*sectoare*) in the municipality of Bucharest, published in the *Buletinul Oficial*, no. 69 of 1 August 1979;

- Law no. 351/2001 on the approval of the National Spatial Planning Plan – Section IV – The network of localities, published in the *Monitorul Oficial al României*, Part I, no. 408 of 24 July 2001, revised;
- Law no. 350/2001 on town and country planning, published in the *Monitorul Oficial al României*, Part I, no. 373 of 10 July 2001, revised;
- Law no. 188/1999 on the civil service conditions of service, published in the *Monitorul Oficial al României*, Part I, no. 600 of 8 December 1999, revised;
- Law no. 35/1997 on the organisation and functioning of the institution of the People's Advocate, published in the *Monitorul Oficial al României*, Part I, no. 48 of 20 March 1997, revised.

10. As far as the incorporation of the Charter into Romanian law is concerned, it needs to be pointed out that the relations between the Romanian legal system and classical public international law are governed by the duality principle, according to which international legal instruments must be received in the domestic legal system. This explanation is based on the provisions of Articles 11 and 20 of the Romanian Constitution and on certain provisions of Law no. 590/2003 on the conclusion and ratification of treaties.

11. Article 11 of the Constitution provides that international treaties ratified by parliament form part of internal law. The Constitution does not confer direct applicability on public international law. It should be pointed out here that Romanian law recognises the primacy over domestic law of Community law and of certain parts of public international law, especially the international protection of human rights. According to Article 20 of the Constitution, only international treaties on human and fundamental rights take precedence over domestic legislation.

12. Romania has ratified the Charter of Local Self-Government by means of an institutional law in accordance with Article 73 of the Constitution. This law contains two articles, the first of which announces the ratification and sets out the reservation made and the second contains the interpretative declaration. This law includes the Romanian translation of the Charter, which thus assumes the force of law in Romania. The incorporation of the European Charter of Local Self-Government into Romanian law is thus formal, automatic and explicit. As it has legal force because it is enshrined in an institutional law, the Charter can entail obligations in Romanian domestic law even though it cannot produce direct effects.

13. The obligations imposed by the Charter are mainly reflected in Romania by its role as a source of inspiration for relevant domestic legislation (see above). Laws on local public administration have undergone a general revision to make them more compatible with the principles of the Charter. This is why, although the Charter is not directly applied, the domestic legislation is nevertheless adapted to its requirements.

II. The administrative-territorial structure of Romania – authorities and powers

14. According to Article 3, paragraph 3 of the Constitution of Romania, the territory is divided into communes (*comune*), which may include one or more villages, towns (*orașe*) and counties (*judete*), and there are a total of 3 219⁴ administrative-territorial units. Under the conditions specified by law, some towns are designated municipalities. The administrative-territorial units comprise two (infra-state) levels: on the one hand, the intermediate administrative level (*judete*) and on the other, the local administrative level which is constituted of communes (*comune*), towns (*orașe*) and municipalities (*municipii*).

15. The communes, towns and municipalities come under the provisions of the Council of Europe's European Charter of Local Self-Government, whereas the counties, according to the interpretative declaration concerning Article 4 paragraphs 4 and 5 made when the Charter was ratified by Romania, constitute "regions" within the meaning of the Reference Framework for Regional Democracy.

16. The administrative-territorial units constitute corporate entities subject to public law, have full legal capacity and possess their own assets⁵. Under the Constitution of Romania and Framework Law no. 195/2006 on decentralisation, the local public administration of the administrative-territorial units is

⁴ 2008 Guide to the Romanian rural localities.

⁵ Sections 20 and 21 of Law no. 215/2001 of local public administration.

based on the principles of decentralisation, local self-government and the decentralisation of public services.

17. A distinction is made between :

- territorial administration of the State (intermediate, only devolved (*déconcentrés*) services),
- self-governing local public administration (local and county level; decentralisation at the local authority level).

1. The intermediate administrative level

18. The intermediate administrative level consists of the counties (*judete*). Today, Romania has 41 counties plus the municipality of Bucharest (which, being a municipality but also integrated into a county, holds competences at both levels).

19. Local democracy at county level is based on the representative system. The management of local public interests is the responsibility of self-governing and deliberative local administrative authorities (the county council) and executives (the chair of the county council).

20. The authorities:

a) The county council (*consiliul judetean*) is made up of members elected for four years by universal, direct and secret ballot. Its tasks are to ensure the organisation and proper functioning of the institution, the socio-economic development of the county and the management of the county's public services and assets in compliance with the law.

b) The chairs (*preşedinte*) of the county council have executive responsibilities and are elected by the community (county level) by uninominal, direct and secret vote for four years. They represent the council in its relations with the other public authorities and with individuals and corporate bodies and represent the council in any legal action. The chair may delegate certain responsibilities to two deputy chairs, who are also appointed by the county council.

c) The prefects (*prefect*) are appointed by the government. They review the legality of instruments adopted by the local authorities and the county council, including by its chair. They are also responsible for having the government's strategy and programmes implemented at the local and county levels and represent the state on each county council and the council of the municipality of Bucharest.

Since they carry out functions established by law, the prefects constitute a public administrative body ranked by the Constitution as a local public authority⁶. According to legal commentators, since they represent the government and run the decentralised public services, they are not part of the system of local public administration but only exercise administrative supervision. It should be pointed out that Romanian legislation has recently appeared also to be moving away from the thesis that the prefect is a representative of the local administration. Following the recent amendments to Law no. 215/2001, the institution of the prefect is no longer to be found in the body of that law but in Law no. 340/2004 on the institution of the prefect. It should also be noted that the institution of the prefect is funded from the state budget, the budget of the Ministry of the Administration and the Interior and other sources specified by statute⁷.

2. The local level

21. The local level (also called basic administrative level) is made up of 2,858 communes (*comune*) and 320 towns (*oraşe*), including 103 municipalities (*municipii*) – the most important towns are designated municipalities. The rural localities include one or more entities called villages (*sate*). There were 12,951⁸ of these entities in 2008.

22. According to Article 20(4) of Law no. 215/2001, the municipalities can be divided into administrative-territorial sub-entities. To date, only the municipality of Bucharest, the national capital,

⁶ Article 123 of the Constitution.

⁷ Section 7 of Law no. 340/2004.

⁸ List of rural localities in Romania for 2008 and the National Statistical Institute.

is divided into 6 districts (*sector*)⁹. This law provides that local public administrative authorities may constitute themselves as sub-entities of the municipality. However, it should be noted that the districts which do not have a legal personality have budgets in accordance with Article 81 (2) – (d) of Law no. 215/2001. Having examined the above-cited law (particularly its articles 20(1), 21(1) and 81(2)-(d) et the observations of the general council of the municipality of Bucharest, the delegation considers that the districts could be accorded their own budgets in line with the Charter but this action should be accompanied by granting a legal personality to these sub-territorial units.

23. The authorities:

Local democracy at the basic administrative level (including in the municipality of Bucharest) is also based on the representative system. The management of local public interests is the responsibility the self-governing local administrative authorities (the local council and or the general council of the municipality of Bucharest).

a) The local council is the deliberative authority and its members are elected for four years by universal and direct suffrage. Even in the small rural localities, they are elected by list proportional representation, which normally results in coalition majorities made up of several lists or parties. For example, in the rural locality we visited in the county of Prahova, the council is made up of representatives of numerous political formations, which gave us the impression that everything worked well on the basis of the need to reach a consensus. Most of the formations present actually only had one representative on the council and accordingly were all subject to minority accountability.

b) The mayor: The communes, towns, municipalities and the districts of the municipality of Bucharest each have a mayor and deputy mayor, whereas the administrative centres of the counties and the municipality of Bucharest have a mayor and two deputy mayors, the election of whom is governed by law. The legislation in force (Law no. 67/2004) provides that mayors must be elected in their electoral constituencies by universal and direct suffrage on the basis of a two-round majority system. The mayor's term of office is four years. In Bucharest a general mayor (*primar general*) is elected in addition to the district mayors and the election is validated by the City of Bucharest Court¹⁰. Mayors are authorities of local public administration and act as executive authorities with the conditions of office of elected local representatives¹¹.

24. They are responsible for:

- housing;
- town planning;
- environmental protection, waste management and public health;
- transport infrastructure;
- water supplies and roads;
- education (except for universities);
- management of the cultural heritage;
- public order;
- the management of parks, public gardens and other green spaces, etc.

25. According to the law, the mayor's term of office automatically ends¹² in the following cases: a) resignation; b) disability for holding office; c) change of domicile to another administrative-territorial unit; d) sentence by a final court judgment to a term of imprisonment; e) placement under court supervision; f) loss of electoral rights (loss, through resignation, of membership of a political party or of an organisation of a national minority on the list of which he/she has been elected); g) death; h) impossibility of exercising the office owing to a serious, certified illness preventing the office from being properly exercised for a period of six months in the course of a calendar year. The mayor's term of office can also cease following a local referendum to bring about his/her dismissal.

26. The cessation of the mayor's term of office is notified to the prefect by means of an order, against which the mayor can appeal to the administrative tribunal within 10 days of the notification.

⁹ Article 78 of Law no. 215/2001 and Decree no. 284/1979 on the establishment of districts in the municipality of Bucharest.

¹⁰ Section 79(2) of Law no. 215/2001.

¹¹ Law no. 393/2004 on the conditions of office of local elected representatives.

¹² Section 15 of Law no. 393/2004 on the conditions of office of local elected representatives and section 69 of Law no. 215/2001 on local public administration.

27. The mayor's term of office is automatically suspended if he/she is placed in preventive detention. Even though the legislature has not expressly provided for this, an appeal against the suspension order may be lodged with the administrative tribunal, especially if the order was in breach of the legality principle.

III. The regional level: the eight development regions

28. In accordance with the interpretative declaration formulated by Romania concerning Article 4, paragraphs 4 and 5 of the Charter, the "regional" authority corresponds to the county authority (*județ*). Accordingly, and in application of Resolution 299(2010), these entities are based on the principles set out in the Reference Framework for Regional Democracy¹³.

29. In Romania, there are no regions in the sense of entities with their own structures and responsibilities and located between the counties and the central government.

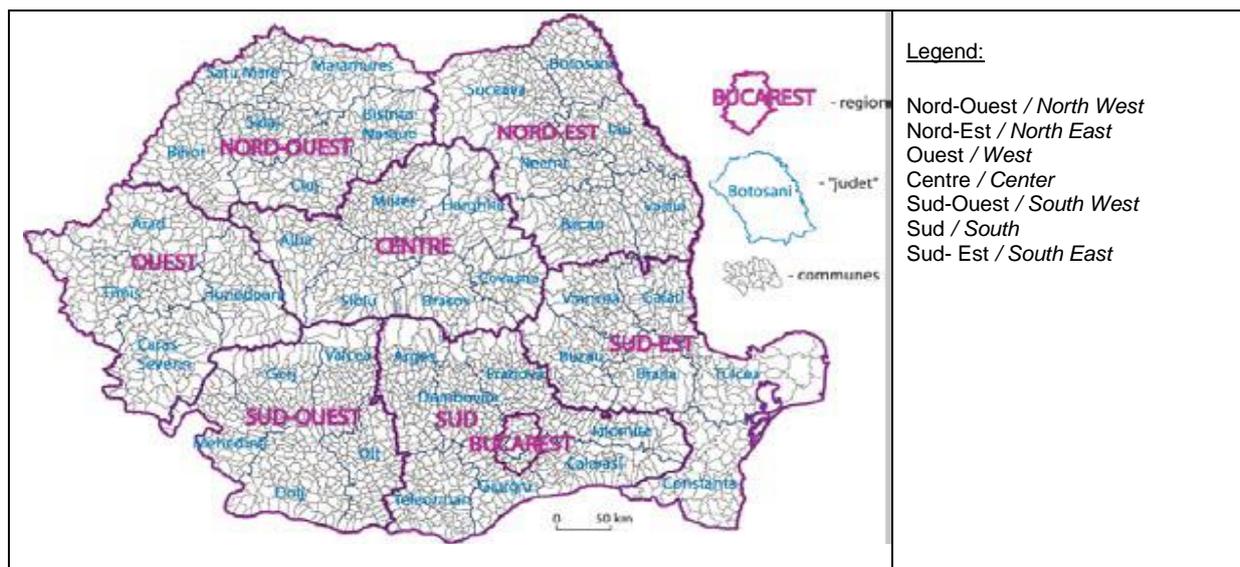
30. Regional development has been conceived by the Romanian legislature as a key component of the general reform strategy and of the policy of administrative and economic decentralisation. This new concept of administrative decentralisation was introduced by Law no. 151/1998 on the regional development of Romania, which was repealed by Law no. 315/2004.

31. According to Article 5(1) of Law no. 315/2004, the territory of Romania is divided into eight development regions, namely:

- the North-East Region, which comprises the counties of Botoșani, Vaslui, Iași, Suceava, Neamț and Bacău;
- the South-East Region, which comprises the counties of Brăila, Galați, Constanța, Tulcea, Vrancea and Buzău;
- the South Region, which comprises the counties of Argeș, Dâmbovița, Prahova, Teleorman, Giurgiu, Ialomița and Călărași;
- the South-West Region, which comprises the counties of Dolj, Olt, Mehedinți, Gorj and Vâlcea;
- the West Region, which comprises the counties of Timiș, Arad, Caraș-Severin and Hunedoara;
- the North-West Region, which comprises the counties of Cluj, Bihor, Satu-Mare, Maramureș, Bistrița-Năsăud and Sălaj;
- the Centre Region, which comprises the counties of Brașov, Sibiu, Covasna, Harghita, Mureș and Alba;
- the Region of Bucharest.

32. The regional, county and local divisions are as depicted in the following map:

¹³ The European ministers responsible for local communities have taken note thereof at the Ministerial Conference in Utrecht on 17 November 2009.



33. Only the National Council for Regional Development can authorise a change in the name of a region¹⁴.

34. The development regions are not administrative-territorial units and do not have legal personality¹⁵. These are areas comprising two or more counties. They are set up on the basis of an agreement concluded between representatives of the county councils and, as the case may be, representatives of the General Council of the municipality of Bucharest¹⁶.

35. The basic objectives¹⁷ of regional development in Romania are as follows:

- a) reducing the existing regional imbalances by encouraging balanced development, rapidly making up for the backward development of areas that are disadvantaged for historical, geographical, economic, social and political reasons and by avoiding the emergence of new imbalances;
- b) linking sectoral government policies and activities at the level of the regions, by fostering initiatives and exploiting local and regional resources with the aim of sustainable socio-economic and cultural development;
- c) fostering interregional, internal and international cooperation as well as transfrontier cooperation, including in the context of the Euroregions;
- d) encouraging the participation of the development regions in the structures and European organisations concerned with economic and institutional development in order to implement projects of mutual concern in accordance with the international agreements signed by Romania.

36. In order to coordinate the programming of the objectives arising from the regional development policies, the following bodies have been set up both at the territorial and the national level. At the level of each development region, a Regional Development Council, as a deliberative body, and the Regional Development Agency, as an executive body coordinated by the council, have been created. At the national level, the National Council for Regional Development has been set up.

37. The delegation was informed that on 10 February 2010 the Magyar Democratic Union of Romania (UDMR), the parliamentary group which represents the Hungarian minority, tabled in the Romanian parliament an amendment to Law no. 315/2004 on the regional development of Romania. This proposal, which has long been supported by the UDMR, provides for important changes concerning the current composition and boundaries of the development regions. Instead of the present eight development regions, there would be sixteen. The opponents to the proposal believe that its basic aim is the creation of a development region (counties of Covasna, Harghita and Mures) with a strong

¹⁴ Section 8(2) of Law no. 315/2004.

¹⁵ Section 5(2) of Law no. 315/2004.

¹⁶ Section 6(1) of Law no. 315/2004.

¹⁷ Section 3 of Law no. 315/2004.

ethnic character. In the present structure, these three counties form the Centre Regions together with the counties of Alba, Braşov and Sibiu.

38. At the European Union level, the current structure of the development regions is to be found in Regulation (EC) No 176/2008 of the European Parliament and of the Council amending Regulation (EC) No 1059/2003 on the establishment of a common classification of territorial entities for statistics (NUTS) by reason of the accession of Bulgaria and Romania to the European Union. The Council of Europe has also endeavoured to promote regionalisation in Romania in the context of the draft Charter of Regional Self-Government. This debate has not yielded any results since the last visit to Romania, which was in March 2003.

39. The rapporteurs have the impression that regionalisation in Romania is being hampered by the historical legacy associated with the national minorities and the concerns of the chief executives of the counties that they will lose their powers to the new regions. Accordingly, the regionalisation process is felt on the one hand to be associated with ethnic self-government, which is more suggestive of the weakening of the unitary state than decentralisation and subsidiarity, and on the other hand to be a lack of will. The Romanian authorities seem to have treated the issue of regionalisation more as an expectation on the part of the European bodies and as a precondition for accessing the structural funds. Despite this feeling, the authorities assured us that regionalisation remained a priority for Romania, especially as the European funds would only be accessible through the regions from 2014 onwards.

40. The delegation observes that the development regions are at present only formal entities that facilitate access to the European funds and direct these funds to the stakeholders concerned. They do not have legal personality, are not administrative-territorial units and have no territorial political powers and responsibilities. The absence of such powers and responsibilities, owing to the refusal to integrate the regions into the politico-territorial organisation, is clearly having a negative impact on regional development.

41. However, the regional framework must conform to the European model and the Congress has stated on several occasions that it is ready to help the Romanian authorities to carry out the reforms provided for by Law no. 315/2004 on regional development in Romania. The delegation recalls that Jean-Claude Frécon also brought up this matter during his visit in 2003 by proposing that the size of the counties be increased and that they be given more responsibilities and resources. This solution would have the advantage of not creating a third tier of decentralised administration and make it possible not to amend the country's constitution.

IV. Administrative supervision by the prefect

42. On the basis of Article 123 of the Constitution of Romania and of Law no. 340/2004 on the institution of the prefect, administrative supervision at the local level is carried out by the prefect. Accordingly, on the proposal of the Minister of Administration and the Interior, the government appoints a prefect in each county and in the municipality of Bucharest.

43. By providing for the institution of the prefect at the level of the territorial unit of the county, the Romanian legislature established their dual role¹⁸:

- a) They are the government's representatives and can, on request, during their term of office represent the government or the prime minister through a legal advisor. They guarantee compliance with the law and respect for public order at the local level;
- b) They manage the decentralised public services of the ministries and other central government bodies in the administrative entities.

44. As government representatives at local level, prefects provide liaison between each ministry. The head of central public administration is accountable to the government and the head of the decentralised public service is subordinate to the prefects.

¹⁸ Study carried out by Razvan Viorescu, professor at Petru Maior University, Târgu Mures, Romania.

45. The ministers and the head of the other central public administration bodies can delegate certain management and supervisory powers to the prefects.

46. The delegation points out that despite the improvement in the role of the prefects compared with the situation described in Recommendation 12 (1995), prefects still seem in practice to have a political role as a result of the law of 2004 designed to depoliticise their function and role. They not only carry out the government's programme approved by parliament in the territory concerned but also have a role as authorities since they are mandated by the government to exercise administrative supervision over the local public authorities¹⁹. The associations of municipalities and of counties have mentioned instances of political pressure exerted by prefects (as representatives of the party in power) on mayors or members of a county council. The associations have also criticised the excessive supervision of the local authorities by the prefectures.

47. The Prefecture, a public establishment with legal personality, is run by the prefect and has its own assets and a budget.

48. The seat of the prefecture is located in the administrative centre of each county, in a building owned by the state, the county or the municipality.

49. The prefects' tasks are laid down by government decision. In particular, the prefects:

- a) ensure the supervision and implementation of compliance with the Constitution, the laws and other legal instruments in the counties and in Bucharest;
- b) supervise the arrangements for carrying out inter-ministerial measures with the aim of improving the quality of public services;
- c) ensure co-operation with the local authorities to determine the priorities of local development;
- d) verify the legality of administrative acts of the county council, the local council or the mayor;
- e) supervise the use of public funds allocated to the decentralised public services, etc.

50. At the request of the government's secretariat general or, as the case may be, the prime minister's office, the prefect has to provide, through the prefecture's legal advisors, the representation of the government before the courts.

51. There is no relationship of subordination between the prefects and the local councils and mayors on the one hand and the county councils and their chairs on the other.

52. Prefects may challenge before the administrative tribunal an act or decision of the county council, the local councils or the mayor if they consider it illegal. The act or decision thus challenged is suspended by operation of law.

53. In order to carry out their duties, prefects issue individual or legislative orders, which, in order to have legal effect, are communicated or published and then become enforceable. Legislative orders have to be communicated to the superior institution, which can propose their annulment to the government if the latter considers them unlawful and unfounded.

B. Aspects of local and regional self-government from the perspective of the Charter

54. It is worthwhile recalling that, in ratifying the European Charter of Local Self-Government, Romania, like other Council of Europe member states, solemnly embarked on a process of "territorial democratisation" based on principles of decentralisation that command a remarkably broad national and international political consensus, even though their implementation is sometimes actually blocked.

55. It can be said that the legislative framework has been considerably improved but decentralisation has not been completed.

¹⁹ Ibid.

Articles 2 and 3 of the Charter:

56. In Romania, the principle of local self-government is recognised in the Constitution (Articles 120 and 121) and other legal instruments.

57. The general legal framework of local self-government consists of a set of legislative acts that have undergone significant development, especially during the last decade.

58. The law on local public administration passed in 1991, which was considerably improved by another law on the subject passed in 2001, was revised in 2006 to reflect real progress in local self-government. The concept of local self-government contained in Article 3 (1) and (2) of the Charter was adopted in the general revision of this law on 16 March 2008. It is to be found for example in Article 3(1), (2) and (3) of Law no. 215/2001 as well as in Law no. 67/2004 on local elections and Law no. 393/2004 on the conditions of office of local elected representatives. Article 4(1) of Law 215/2001 also states that local self-government only relates to administrative and financial matters and is exercised on the basis of, and within the limits imposed by, the law.

Article 4 of the Charter:

59. The basic powers and responsibilities referred to in Article 4(1) of the Charter are provided for by Article 36 of Law no. 215/2001 in the case of the local councils and Article 91 in the case of the county councils.

60. Article 4(2) of the Charter has been adopted in Article 5(2) of Law no. 215/2001.

61. For Article 4(3) of the Charter, it is necessary to point out that the local council possesses local self-government powers by virtue of the principle of subsidiarity, provided for by section 3(a) of the framework Law on decentralisation (Law no. 195/2006). The local council can freely decide on what task to carry out to meet the needs of the local community.

62. As stated above, Romania has made an interpretative declaration concerning Articles 4(4) and (5) of the Charter.

63. Article 4(6) of the Charter is reflected in Article 8 (1) of Law no. 215/2001 and in Government Decision no. 521/2005 on the procedure for consulting the associations of local authorities on the drafting of legislative instruments. Furthermore, the delegation welcomes the fact that Government Decision no. 521/2005 expressly refers to the Charter and to Article 4 (6) in its preamble.

Article 5 of the Charter:

64. The protection of local authority boundaries is guaranteed in Romanian law by Article 22 of Law no. 215/2001.

Article 6 of the Charter:

65. In accordance with the framework regulation on the organisation and operation of the local councils, published in *Monitorul Oficial* no. 90 of 2 February 2002, local councils can adopt their own regulations on their organisation and operation adapted to their specific needs. These internal regulations must be approved by two-thirds of the elected councillors.

66. Law no. 215/2001 provides that one of the first tasks of the local council and the county council is to approve the council's charter and the regulations for the organisation and operation of the council, the town hall and other local public institutions. The activities and internal rules for the organisation and operation of the each community are thus governed by (local or county) council decisions.

67. Staff are governed by Law no. 188/1999 on the civil service conditions of service (the local authorities also employ contract staff) and by various ministerial orders relating to pay. Staff salaries, which are paid from public funds, are now governed by Framework Law no. 330/2009, while the number of staff that may be employed by the central and local public authorities is laid down by Government Emergency Order no. 63/2010.

Article 7 of the Charter:

68. Article 7(1) – The conditions of office of local elected representatives are guaranteed by Law no. 393/2004 on the conditions of office of local elected representatives. The free exercise of their functions is provided for by Articles 4 and 20 of that law.

69. As far as Article 7(2) is concerned, our delegation reiterates that Romania made a reservation concerning this paragraph when it signed the Charter. Nonetheless, it is interesting to note that Law no. 393/2004 provides for several arrangements for paying elected representatives bonuses and financial compensation in the exercise of their functions, and even afterwards in the case of former elected representatives who reach retirement age.

70. During the visit, the associations stated that in some cases local administrative officials received a salary higher than that of the mayor. However, the Ministry of the Administration and the Interior informed us about a draft legal instrument aimed at reassessing the mayor's salary in the light of the pay of local officials.

71. Article 7(3) – Any functions and activities that are deemed incompatible with the holding of local elective office are set out in Part IV of Law no. 161/2003 on certain measures for guaranteeing transparency in the exercise of public activities and missions and in the business sphere, as well as guaranteeing the prevention and punishment of corruption. They are also set out in Law no. 176/2010 on integrity in the exercise of public offices and functions, which amends and complements Law no. 144/2007 on the creation, organisation and operation of the National Integrity Agency and amends and complements other legislative instruments.

Article 8 of the Charter:

72. Although Article 123(4) of the Romanian Constitution does not expressly say so, a combined reading of the provisions of the law on local public administration and the law on the prefect and the institution of the prefect indicates that administrative supervision of the local authorities is carried out by the prefect.

73. In the exercise of the task for which he or she has been elected, the mayor issues legislative or individual provisions and takes unilateral administrative decisions. The secretary of the administrative-territorial unit communicates the provisions to the prefect within five days of their being signed. The prefect thus reviews the legality of acts and decisions (i.e., is responsible for administrative supervision). If necessary, he or she can call for the revision or revocation of the administrative act or measure considered partly or entirely illegal. If this is refused, the prefect can bring the matter before the administrative tribunals to call for the decision to be set aside.

74. In the exercise of their functions, the local council and the county council issue orders that are submitted to the prefect for a review of their legality. In the event of the council refusing to set aside decisions considered illegal by the prefect, the latter can bring the matter before the administrative tribunals. The regulation of the supervision by the prefect of administrative acts and decisions seems appropriate and proportionate, although some abuses can be reported as far as past practice is concerned.

Article 9 of the Charter:

75. Article 9(1) and (2) of the Charter was adopted when Law no. 215/2001 was last revised²⁰.

76. The same principles have recently been guaranteed by Article 3 of Law no. 195/2006 and sections 16(1) and 17 of Law no. 273/2006.

²⁰ Section 9. — In the context of national economic policy, the rural localities, towns and counties are entitled to their own resources, which the local public administrative authorities shall manage in accordance with their functions and under the conditions laid down by law. The local public administrative authorities' financial resources shall be proportional to the powers and responsibilities laid down by law. Section 10. — The local public administrative authorities shall manage or, as the case may be, have made available to them the financial resources as well as the public or private assets of the rural localities, towns and counties in accordance with the principle of local self-government.

77. The local authorities' financial resources, as provided for by Article 9(3) and (4) of the Charter, are guaranteed in Romanian law by section 27 of Law no. 215/2001, section 5 of Law no. 273/2006, which provides for the establishment of the income and expenditure of the local budget, and in section 16 (2) of that law. The latter states that "the local administrative authorities have the power to determine the rate of taxes and local charges in the conditions foreseen by the law". These principles have been recently supplemented by section 27 of the same law, which refers to "powers and responsibilities with regard to the determination of taxes and tax rates".

78. Article 9(5)-(8) of the Charter is also adopted in Law no. 273/2006, namely in section 15, entitled "The principle of solidarity, section 6(3) and various other sections of that law, which has since its last revision in particular permitted financial equalisation at the central level (between counties) and the local level (between the rural localities of the same county) as well as the sharing of resources between the central and local levels. It also authorises the local authorities to issue capital on the European and international capital markets and to take out loans.

79. Under Government Emergency Order no. 51/2010, local councils can, in order to pay their debts to economic operators, request loans from the state at an annual interest rate of 6.25% for a period of five years with interest payments not beginning until the second year. In order to benefit from these loans, local authorities must be given permission by the Public Finance Ministry's Commission for the Authorisation of Local Authority Loans. According to the new provisions of Law no. 273/2006 on local public finances, failure to comply with the obligation to request the Public Finance Ministry's consent makes the local authority representatives criminally liable and is punishable by three to ten years' imprisonment or, in the case of serious consequences, from five to fifteen years' imprisonment plus a ban on exercising certain rights. Moreover, if the representatives of the local public authorities do not comply with the obligation to send the Public Finance Ministry the required information on the loans raised and the local public debt, they will incur a penalty in the form of a fine of 10,000 to 30,000 lei (€2392.80 to €7178.40²¹).

80. Chapter V of Law no. 215/2001, entitled "The financing of local administrative authorities", is equally important. It provides that the administrative-territorial units shall receive amounts for specific purposes deducted from certain state income, in order to guarantee the vertical and horizontal balance of local budgets. The arrangements and criteria for the allocation of the shares and amounts to balance the local budgets are determined by the law on local public finances. The size of the amounts for balancing the local budgets is determined by the law on finances.

81. The co-rapporteurs were also informed that in practice the county council remains strongly politicised, especially as far as the budget is concerned, and that the distribution of resources is affected by problems of political cronyism, which extend to all government parties. The process whereby budgets are prepared at local level seems to be the object of political negotiation, at the expense of the real needs of the local communities.

82. Article 9(6) of the Charter is incorporated into section 18 of Law no. 273/2006.

Article 10 of the Charter:

83. The local authorities' right to associate and the conditions applicable to their associations are laid down in Law no. 215/2001 (sections 11 to 16). On 16 July 2003, Romania also ratified, with two reservations, the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS 106), adopted in Madrid on 21 May 1980.

84. By section 12(2) of Law no. 215/2001, the government permits associations of administrative-territorial units in the context of national development programmes. These programmes are financed on an annual basis from the state budget by means of a separate allocation from the budget of the Ministry of the Administration and the Interior in accordance with the law on local public finances.

²¹ Exchange rate (Romanian National Bank) at 31 May 2010: €1 = 4.1792 lei.

Article 11 of the Charter:

85. Romanian legislation does not grant the local authorities a right to lodge a legal remedy in order to secure the free exercise of the right to local self-government. Nonetheless, the local authorities can take legal action, before the ordinary courts, to demand compliance with the provisions of the Constitution and/or domestic legislation that affect them directly.

86. The local communities, the administrative-territorial units and the local or county authorities do not have their own right to apply to the Constitutional Court, but administrative-territorial units can appeal to the Constitutional Court by filing a plea of unconstitutionality. There are a number of examples of decisions in which the Constitutional Court has ruled in the local authorities' favour.

87. Similarly, the local communities, the administrative-territorial units and the local public authorities defend their right to self-government, which is understood to be an individual right, before a court (administrative tribunal or court of law). The only remedies available to certain local public authorities concern their composition and their internal organisation. These local public authorities can be considered an aspect of administrative self-government, in the sense given by the institutional law to this concept. However, these remedies do not constitute effective legal protection for self-government within the meaning of the Charter.

C. Complaints to the Congress

88. Two letters dated 9 and 20 February 2009 were sent to the Congress by the Association of Romanian Counties and the Association of Romanian Rural Localities, respectively.

89. By decision of 7 July 2009, the Bureau of the Congress asked the Institutional Committee to examine the content of these complaints.

a) The complaint by the Association of Romanian Counties is mainly an allegation concerning a violation of the principles of decentralisation and subsidiarity (Articles 3, 4(3), 4(4) and 4(6)) and, more particularly, to the obligation to consult the local authorities when their financial interests are involved, as well as Article 9(2) of the Charter.

b) The complaint by the Association of Romanian Rural Localities alleges a possible violation of Article 9(6) of the Charter, draws the Congress's attention to certain aspects of non-compliance with the principles of local self-government and the decentralisation of finances and informs the Congress that Article 11 of the Charter does not apply in the Romanian legal system.

90. The two associations asked the Congress to examine, from the perspective of the Charter:

- the financial and administrative obstacles to local self-government in Romania;
- the situation of local resources and finances in the light of Article 9 of the Charter.

91. In a letter dated 26 March 2009, the Congress's acting President, Ian Micallef, asked the Romanian government to provide detailed information on the latest developments in the area of local public administration, on the dialogue with the local authorities and on the reasons underlying its financial policy, to which the Romanian associations had raised objections.

92. In a letter dated 10 May 2009, the Deputy Prime Minister and Minister of Administration and the Interior, Dan Nica, assured the Congress that Romania possessed broad legislation that adhered to the principles of the Charter and that, in practice, the process of administrative and financial decentralisation had recorded considerable progress, as confirmed by various European Commission reports.

93. In addition, the government assured us that it was determined to continue this process and that one of the priority objectives of its programme for 2009-2012 was the development of local self-government by continuing with the decentralisation of decision-making parallel to that of financial matters and public assets while at the same time complying with the principle of subsidiarity.

94. During the monitoring visit carried out from 24 to 26 May 2010, the co-rapporteurs discussed the matters raised in the two letters.

95. The delegation recently learned that the Ministry of Public Finances, in accordance with Government Decision no. 521/2005 on the procedure for consulting the associations of local authorities on the drafting of legislative instruments, had held on 11 January 2009 a consultation with the local authority associations on the draft budget for 2009. At that meeting the Association of Romanian Counties put forward the following series of recommendations:

- an increase in the amounts deducted from certain state budget income items and allocated to the local budgets and the distribution of these amounts to the administrative-territorial units through the county councils;
- an amendment to the existing legislation on the financial resources of the local budgets regarding the charges and local taxes mentioned in Law no. 571/2003 on the Tax Code, as amended and extended.

96. The delegation also established that Article 138 of the Romanian Constitution provides that the national public budget comprises the state budget, the state social insurance budget and the local budgets of the rural localities towns and counties.

97. The local budgets are drawn up, approved and executed under conditions established by law. As provided by Law no. 273/2006, the local budgets contain a section on operations and one on development. According to the government, the Ministry of Public Finances and the decentralised public services ensure the local and central public administrative authorities' free access to information on the process of allocating budgetary resources.

98. According to the reply from the Ministry of the Administration and the Interior, the request for increases in the local authority budgets made by the Association of Romanian Counties has not been granted by the Ministry of Public Finances owing to the austerity measures taken at the time of the international economic and financial crisis, which has not spared Romania and has had a major impact on the income of the state budget.

99. The delegation was informed that it had always been relatively difficult in Romania to implement local self-government, especially in financial matters (the adoption of the local authority budgets). The way in which budgets were prepared created major difficulties for the local authorities: they cannot adopt their own annual budget until after the adoption of the state budget and sometimes even not until after the commencement of the current tax year (beginning of January) since the draft local budget has to take account of the rules established by the state annual budget for the coming year.

100. The situation in Romania became even more complicated in 2009 for economic reasons associated with the national and international financial context.

101. Furthermore, the government explained that in the new international economic context the main focus of Romania's budget policy for 2009 was on three objectives: supporting economic growth, reducing inflation and managing to bring the budget deficit down to a level in line with the macroeconomic objectives imposed on Romania as a member of the EU.

102. The delegation also noted that local development programmes are being implemented in Romania despite the financial crisis gripping the country. Local government benefits from various financing programmes, and a considerable proportion of the resources lacking at the local level have been compensated for by various national financing programmes and rural investment projects. These programmes are funded from the state budget, by outside reimbursable or non-reimbursable funds or by loans taken out by the Romanian state. Without drawing up an exhaustive list of the local development programmes, mention might be made of the most important ones:

- The National Rural Development Programme for 2007-2013;
- The Regional Operational Programme for 2007-2013;
- The programme for surfacing, renovating and modernising local roads and for providing village water supplies;
- The government's village water supplies programme;
- The 2007-2013 operational programme for the development of administrative capacity;
- The National Reform Programme;
- The programme for the development of infrastructure and sports facilities in rural areas;
- The "Greater economic competitiveness" sectoral operational programme, etc.

103. The delegation also noted that the local authorities benefit from several territorial co-operation programmes set up by the EU and that the 2009 Budget Law provided for the allocation of 16,755.8 million lei (€4,009,331)²² from VAT receipts for local budgets, in addition to the amounts granted by the EU for various projects.

104. Despite all these programmes, the delegation is of the opinion that these fund allocations are sometimes too complex for the beneficiaries. It would accordingly be helpful if the government were to standardise and simplify the allocation of these funds at the local level as far as possible in order to guarantee transparency and foreseeability, two criteria of priority. The simplification of the allocation mechanism is crucial if the funds allocated are to be used at the time needed. Moreover, the ability to monitor these funding projects should be significantly increased.

105. The delegation observed that the articles 32, 33 and 34 of the revised Law no. 273/2006 on the local public finances, supported by Decree no. 63/2010, which sets out the allocation rules for financial transfers to local administration to balance local budgets. The county council retains 27% of the global envelope earmarked for the local budgets for its own budget. 73% of this global envelope is allocated to local communities in two ways: 20% is distributed by the county councils to local councils to assist local development and 80% is distributed by the Directorate General of County Public Finances in stages and according to the following criteria: population, constructible land surface in each locality and the financial capacity of the administrative-territorial unit. This distribution is done on the basis of a mathematical formula foreseen by law.

106. As far as the consultation process between the central and the local tier is concerned, the Government informed the delegation that the local authorities had been consulted since 2004-2005, and they seem to have been involved in a decision-making process in accordance with the principle of consultation provided for by Articles 4(6) and 9(6) of the Charter. This being the case, the delegation, referring to the recent complaint made by the Association of the Counties of Romania on 20 February 2009, considered that it would be suitable to follow-up on the systematic compliance with the established consultation procedure through the county and commune associations in Romania.

107. Moreover, the Romanian government informed the delegation of the establishment on 4 March 2009 of the Inter-Ministerial Committee for the decentralisation of the public services, which is tasked with providing the legal framework for drawing up draft legislative instruments. This body, which is coordinated by the Ministry of the Administration and the Interior, is made up of representatives of the various ministries and of the local authority associations, especially the Association of Romanian Counties, the Association of Romanian Rural Localities, the Association of Romanian Municipalities and the Association of Romanian Towns. The five meetings that took place since the creation of the committee until 5 May 2009 enabled decisions to be taken on the areas to engage in, the action to take and the deadlines for the implementation of the new stages of the decentralisation process, as well as, in particular, on the arrangements and time required for drawing up minimum quality and cost standards for the decentralised public services.

108. Set up in June 2007, this body has a consultative role in the process of drawing up certain financial regulations directly relating to the local budgets and to the determination of the amounts transferred from the state budget to the local budgets for budget balance purposes.

109. Based on the situation described and in order to bring about effective communication between the central and local government authorities, the rapporteurs consider it necessary:

- that all the public services provided by the central and local government authorities be assessed;
- that the transfer of powers concerning local public services be accompanied by sufficient financial resources;
- that the allocation of responsibilities to all the tiers of administration involved in the exercise of shared functions be transparent and comprehensive;
- that a system of monitoring the decentralised public services and the operation of local public administration be put in place;
- that inter-ministerial co-operation with the associations of local public administrative authorities, even though it is already provided for by law, become standard practice for the ministries;

²² Exchange rate (Romanian National Bank) at 31 May 2010: €1 = 4.1792 lei.

- that the local and central government authorities make additional efforts to ensure organisational and institutional development on the basis of modern assessment and strategic planning methods.

110. The delegation notes that Romania is planning:

- through the National Reform Programme, to carry out organisational and institutional development on the basis of modern methods of assessing the existing situation and planning strategies in order to make better use of the resources provided by the structural funds and the state budget;
- to draw up a framework for quality and cost standards, promote and implement instruments for the modernisation of the public administration (for example, the common framework for the self-assessment of the operation of the public institutions and the modernisation of the Multi-Annual Programme), develop ways of monitoring the decentralisation process at the sectoral level and identify and develop new tools to help improve the quality of the local public services provided to the citizens;
- to implement programmes to increase administrative capacity, especially with regard to human resources management at the local level;
- to increase the quality of life in rural areas through specific programmes financed by the government and/or the European funds.

111. During the visit, the associations also complained about a new government initiative to limit the local authorities' ability to ask for loans. The delegation established that the government had adopted a tougher stance on the limitation of loans in May 2010. However, according to information provided by the Romanian National Bank, the total amount of the loans granted to the local authorities by the Romanian banks has reached a historical high of 5.09 billion lei, which is 40% more than at the beginning of the crisis in September 2008.

112. These limitations do not apply to projects that receive non-reimbursable European Union funds but only to applications for the approval of loans made on behalf of the local administrative authorities to the secretariat of the Commission for the Authorisation of Local Authority Loans before 31 August 2010. Since that date, the Commission has authorised reimbursable loans raised by mayors in the order of their registration, within the limit of available funds. Under Article 63(4) of Law no. 273/2006 concerning local public finances, administrative-territorial units do not enjoy the right to raise loans which exceed 30% of their own annual revenues.

113. The delegation is firmly of the opinion that, in a period of economic depression that could have serious consequences for the local authorities' financial situation, co-ordination between the representatives of the central government administration and the local authorities has a role crucial to play.

114. The delegation can therefore only urge the central government to continue with and increase the consultations already undertaken and to do so at the same time as pursuing the decentralisation process. The co-rapporteurs recall the fundamental principle of the Charter which requires that the local authorities be consulted "in an appropriate manner" on the way in which redistributed resources are allocated to them. Although the obligation to consult the local authorities "in an appropriate manner" does not imply that their proposals are accepted, the associations of local authorities must be involved in the decision-making process. On the other hand, the nature of economic austerity measures is not a sufficient argument to justify the absence of meaningful negotiations. Accordingly, the interest and recommendations of the local authorities must be carefully considered and those authorities must be informed about any decisions taken and the reasons for them.

115. Finally, the Association of Romanian Rural Localities complains that Romanian legislation does not permit the rural localities to defend their rights in judicial proceedings or to bring a case before an ordinary court or the Constitutional Court in the event of a direct violation of the principles of local self-government. It claims that Romanian law does not comply with Article 11 of the Charter, according to which "(l)ocal 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".

116. In examining this matter, the rapporteurs established the following:

- justice is administered in the name of the law and access to justice is a right protected by Article 21 of the Romanian Constitution, the application of which cannot be limited by any law;

- the right of petition is also protected by the Constitution, Article 51(2) of which provides that “(l)egally established organisations have the right to forward petitions exclusively on behalf of the collective body they represent”, and by Law no. 233/2002 on the procedure for dealing with petitions;
- the principles set out in the Charter can be found in several domestic laws, as mentioned above;
- Law no. 554/2004 on administrative disputes provides, in sections 1(8) and 2(1, a), that the applicant in an administrative dispute may be any “aggrieved person”, an individual or legal entity or a public authority. Entities subject to public law may bring an action pursuant to section 1(8) of Law no. 554/2004 in order to defend their own right (subjective dispute) or defend a legitimate interest, which may only be a public interest (dispute relating to the law). Such actions may be brought by a prefect or the National Civil Servants’ Agency as well as any entity subject to public law.

117. That being the case, the delegation emphasises that:

- the Charter cannot be applied directly, whether it be at the level of the executive or the judicial authorities;
- the Constitutional Court has only been asked to rule on local self-government in a small number of cases involving pleas of unconstitutionality;
- judges leave the legislature considerable scope as far as local self-government is concerned, with the result that decisions of unconstitutionality in relation to this principle are extremely rare;
- the law on local public administration does not clearly state which entities have the right to local self-government. On the one hand, section 3 expressly provides that local self-government is “a right exercised by the local councils and mayors and by the county councils”; on the other hand, section 9 states that “the rural localities, towns and counties are entitled to their own financial resources”; section 20 provides that “the rural localities, towns, municipalities and counties are administrative-territorial units in which local self-government is exercised and the local public authorities are organised and operate”; finally, section 1(i) provides that “the administrative-territorial units are the rural localities, towns and counties; under certain conditions specified by law, towns are designated municipalities”. The legislature therefore needs to reword the law in clear terms. Moreover, the effective judicial protection of local self-government should be introduced as an individual right of the local authorities.

118. The co-rapporteurs reiterate that it is absolutely necessary in an effective democracy to grant the right to be a party to judicial proceedings and to be able to refer to a court a regulation that has a direct impact on the local communities. Only if they are given this ability to bring a matter before a court will the local authorities be able to guarantee compliance with the application of the Charter and its principles.

119. The delegation welcomes the initiative of the Association of Romanian Rural Localities to draw up the 2008 Guide to the Romanian rural localities, which describes by means of a detailed analysis the situation of the Romanian rural localities from the point of view of their public policies and local public services. The delegation acknowledges the important role of this analysis, which could be used in the years to come to compare levels of efficiency.

D. The status of Bucharest

I. The operation of the municipality of Bucharest

120. The legal basis of the status of Bucharest as the national capital is to be found in Article 14 of the Romanian Constitution of 1991, which states that “(t)he capital of Romania is the municipality of Bucharest”. Certain aspects of the organisation and operation of the municipality of Bucharest are also mentioned in domestic legislation. There is currently no specific law on the capital of Romania along the lines proposed by Congress Recommendation 219 (2007).

121. According to information published by the National Statistical Institute, the capital had 1,944,367 inhabitants at 1 January 2010, or nearly 9% of the country’s population.

122. Under the Constitution, Law no. 215/2001 on local public administration and Decree no. 284/1979 on the establishment of districts (*sectoare*) in the municipality of Bucharest, the municipalities can be divided into administrative sub-entities. Under the law, only the municipality of Bucharest is divided into districts (six in number).

123. As far as the historical background is concerned, the “City Council” (the equivalent of today’s local public administration) was created in 1830 and the first cadastral plan of the city was drawn up in 1846. Bucharest became the capital of Romania in 1877. The first law to deal specifically with the capital was the law of 1893 on setting up a workhouse in Bucharest. In 1895, another law specifically relating to the City of Bucharest, the law for the establishment of the boundaries of the City of Bucharest, was passed. After the law on administrative unification was passed in 1925, the country’s capital was no longer the subject of specific regulation, so the law on the organisation of the local administration of the City of Bucharest was passed a year later. This divided the city into four districts and incorporated ten suburban localities within its boundaries²³.

124. The law of 1929 on the organisation of local administration preceded the law on the organisation of the administration of the municipality of Bucharest. The capital also incorporated twelve suburban localities.

125. The law of 1939 on the organisation of the municipality of Bucharest turned the four districts into supervisory districts. The districts accordingly lost the legal personality given to them by the previous laws. This benefited the twelve suburban localities, which obtained that legal personality.

126. Under the terms of the law of 1950 on the administrative division of the country, the capital was directly subordinated to the central organs of the state and the country was split into administrative entities known as “*raioane*”.

127. Since 1950, the various laws on administrative organisation have contained a specific section on the capital. The law of 1968 gave Bucharest the same legal status as the county, while under the decree of 1981 the agricultural district of Ilfov was attached to the municipality of Bucharest. For this reason, the capital was split into six urban districts and one agricultural district. The agricultural district of Ilfov was enlarged in 1982 and 1985 and now has county status.

128. Today, the administration of the municipality of Bucharest is regulated by Chapter V of Law no. 215/2001 on local public administration. Law no. 273/2006 on local public finances and several other legislative instruments also regulate various aspects of the operation of the capital.

129. According to information provided by the Academic Society of Romania, the municipality of Bucharest has several characteristics that distinguish it from the country’s other localities and counties (higher GDP, high socio-professional standard, its business potential, its institutional and cultural facilities of international standard, etc). Other aspects testify to the capital’s socio-economic importance: it has 8.9% of the stable population and 10.1% of the civilian labour force, 6.3% of the operational tourist accommodation capacity, 21.1% of the country’s gross domestic product (current prices), 44.7% of total trade (current prices), 46.4% of the subscribed share capital and 45.0% of foreign investment.

130. The deliberative body of the municipality of Bucharest is the General Council. Each district of the municipality also has its own deliberative body, which is the local district council. The General Council and the local district council are elected for four years by universal, equal, direct, secret and freely expressed suffrage.

131. The executive authority of the municipality of Bucharest is the General Mayor (*primar general*), who is assisted by deputies. Each district of the municipality of Bucharest also has its own executive authority, namely the District Mayor, who is assisted by deputies.

132. The General Mayor of the municipality of Bucharest and the district mayors are elected for four years by universal, direct suffrage. Their term of office is four years. The deputy mayors are elected by the deliberative body. The local councils and mayors of the six districts are elected by universal direct suffrage.

133. The current mayors are members of the following parties:

²³ Study carried out by the Department of Geography at the University of Lausanne.

- District 1 – National Liberal Party (PNL)
- District 2 – National for the Advancement of Romania (UNPR)
- District 3 – Democratic Liberal Party (PDL – the party in power)
- District 4 – Conservative Party (PC)
- District 5 – Social Democratic Party (PSD)
- District 6 – Liberal Democratic Party (PDL)

134. The administration of financial resources is relatively complex owing to the simultaneous existence – and without any co-ordination between them – of a budget of the General Mayor's Office and budgets of the six districts. The consequences of this situation emerge clearly from an examination of the districts' level of development, which varies considerably.

135. The supervision exercised over the municipality of Bucharest and its districts is the same as that exercised over Romania's other territorial authorities. This supervision mainly consists of a review by the prefect (the government's representative in each county and in the municipality of Bucharest) of the legality of decisions taken by local administrative bodies. The prefect can ask the administrative tribunal to rule on the legality of, and set aside, any decision he/she considers illegal.

136. Financial supervision is carried out by the decentralised bodies of the Court of Auditors.

137. The General Mayor of the municipality of Bucharest, an executive authority, has a very important status in terms of direct popular legitimacy as he/she ranks immediately below the President of Romania.

138. In Romania, it is well-known that relations between the general mayor's office in the capital and the district mayor's offices are tense and that there are continuous conflicts between the district mayors.

139. Apart from the political competition, one bone of contention is the preparation of a draft law on the municipality of Bucharest.

II. The debate on the status of the municipality of Bucharest

140. At the moment, the specific and distinctive character of the capital Bucharest is to be found in numerous legislative instruments but the references are fragmentary and contradictory: in the Constitution as well as in the law on local public administration, the law on the territorial administration of Romania, the law on local public finances, the law on local elections, etc.

141. The delegation observed that the preliminary draft special law on the status of the municipality of Bucharest, which has been the subject of political debate for many years, has not yet been completed. There are a number of proposals for a preliminary draft law on the status of the capital.

142. Bucharest has always needed a specific law and an appropriate administrative and legal framework to express and look after its inhabitants' interests and aspirations.

143. However, it seems that political dissensions prevail over the will to complete the legislative process. The majority members of the Parliament are in favour of such a preliminary draft law and underline that they are in line with the spirit of the subsidiarity principle. The delegation was informed that a referendum could be envisaged in the near future on this question²⁴.

144. The delegation feels it is necessary to speed up the process of adopting a specific law on the status of Bucharest, in a spirit of political consensus, especially owing to the fragmentation of the capital's institutions in several areas:

a) The administration of educational establishments: by law, schools are the responsibility of the districts, which prevents any monitoring and control measures by the mayor's office of the municipality of Bucharest (MMB).

²⁴ The information dates back to February 2011.

b) Urban planning, planning permission and building site regulation: each district approves its own standards and issues permits for all types of construction, with the exception of cultural monuments and road infrastructure sites. The districts also carry out supervision and land sectioning, including making amendments. The General Council of the municipality of Bucharest has identical tasks in this area.

c) The administration of health facilities: the law states that most of the hospitals, clinics and medical centres of the capital are the responsibility of the districts of Bucharest, which prevents measures of co-ordination, supervision and control.

d) Trade in products and services: each district authorises commercial activities and carries out inspections. Sometimes, the location of businesses does not comply with the standards of the MMB.

e) Local public finances: there are 7 budgets, 7 principal commitments officers responsible for authorising loans and 7 public debt contractors, and there is no connection between the MMB and the districts in this area. Moreover, the Tax Code allocates the most important taxes (taxes and charges on buildings, land, hotels, vehicles, etc) directly to the district budgets. Furthermore, the districts are responsible for the administration of taxes, which means that the monitoring and collection of taxes are carried out under six different systems, with the Bucharest Municipal Council only establishing the annual amount of taxes within the limits prescribed by national law.

f) The local police: there are 7 independent local police forces, with no relationship of subordination.

g) Sanitation: by law, the districts can establish, organise and contract sanitation services. However, these tasks are the responsibility of the General Council of the municipality of Bucharest and the Bucharest General Mayor's Office, with the result that it is difficult to find out in practice who takes the final decision in the event of any overlap with regard to the areas served.

145. The fragmentation of the institutions is even more acutely felt as far as resources are concerned. For example, a study by the Open Society Institute of Budapest shows that 80% of Bucharest's own income is passed on to the districts. Accordingly, the central administrative level of the capital only "survives" thanks to the transfers of national taxes made by the Treasury.

146. The delegation established that there is currently no integrated taxpayer database for the main types of local taxes paid directly by the citizens (taxes on land, buildings and vehicles) but six different databases, one for each district. According to the same study, Bucharest is the only capital in central and eastern Europe that is unable to make estimates of its own income, owing to a lack of precise instruments. In actual fact, Bucharest is a city that does not function with a single budget but with six separate budgets and with no communication between them apart from the communication that might come about on the initiative of officials. Under these conditions, it is difficult to obtain financial information for state loans or issues of municipal bonds.

147. Moreover, it seems that the problem of the local (administrative and financial) co-ordination of the municipality of Bucharest is getting worse because of permanent government interference, as shown for some years by the various conflicts caused by the fact that the principal individuals involved (the general mayor of the capital and the six district mayors) are of different political persuasions.

148. The conflict between the general mayor and the district mayors is compounded by the difficult relationship between the general mayor and the prefect of Bucharest. During our visit, however, the prefect pointed out that the division of tasks between him and the general mayor was very clear: the mayor was responsible for the application of the law and the prefect was charged with reviewing legality. The prefect also told us that he supported the recent legislative proposal to abolish the powers of the six district mayors and mentioned a model comprising one mayor and six deputy mayors.

149. It is therefore clear that the capital urgently needs a specific law, adopted by political consensus and with a minimal impact whoever the next occupant of the General Mayor's Office may be. It is equally urgent to carry out fundamental changes, which will have to take effect after consultation with the other mayor's offices and the population of Bucharest.

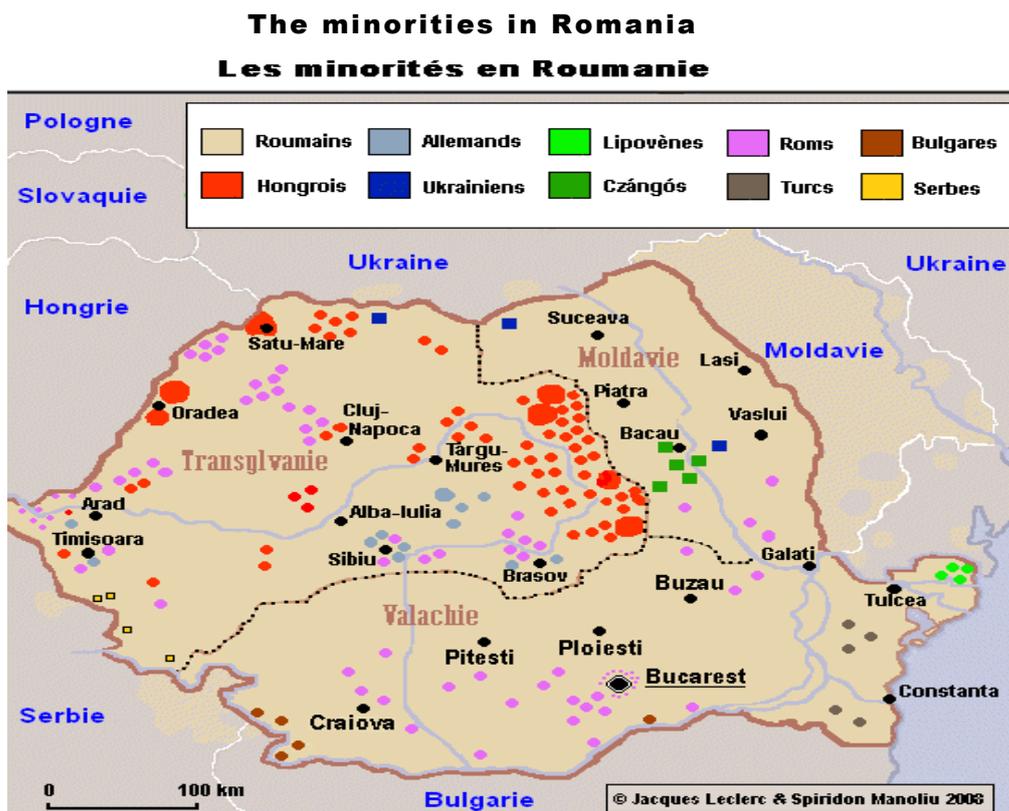
150. Our delegation has just learnt that a "questionnaire" on the local public administration of the municipality of Bucharest will be distributed at the district mayor's offices to speed up the process of adopting the capital's charter. We welcome this initiative and urge the Romanian authorities to take all measures necessary to bring this process to a conclusion as quickly as possible in order to put in place a robust system capable of meeting all needs identified. This major reorganisation can only take place if a parliamentary majority supports the restructuring efforts undertaken at the local level.

E. The minorities in Romania's local and regional authority areas

151. The delegation wishes to stress that the issue of the Roma minority is not mentioned in this report as it was not possible to meet any of its representatives.

152. Romania has at least 19 national minorities today. The promotion of interethnic dialogue is ensured by the Ministerial Department of Interethnic Relations, a government body with no legal personality, established in 2005 by Decision no. 111/2005 under the aegis of the Prime Minister of Romania and in coordination with the Deputy Minister for the Coordination of the Secretariat General of the Government.

153. The map overleaf shows the distribution of the minorities in the country as a whole:



154. Romania has signed and ratified the European Charter for Regional or Minority Languages²⁵, the Council of Europe Framework Convention for the Protection of National Minorities²⁶, the Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 12 thereto.

155. As regards the participation of minorities in local public life, the delegation would underline the importance of the following texts:

- Government Decision no. 1206/2001 on approving the criteria for applying the provisions on the right of citizens who are members of a national minority to use their mother tongue in dealings with the local public administration. This decision is contained in Law no. 215/2001 published in the *Monitorul Oficial al României* no. 781 of 7 December 2001, revised;
- Law no. 67/2004 on local elections, republished in *Monitorul Oficial al României* no. 333 of 17 May 2007, as amended. Etc.

156. The rapporteurs point out that both the Romanian Constitution and Law no. 67/2004 or Law no. 215/2001 provide an appropriate framework for the participation of organisations of national minorities in local elections. On the other hand, Law no. 67/2004 introduced, in its Article 7, a distinction between

²⁵ By Law no. 282/2007.

²⁶ By Law no. 33/1995.

organisations of minorities represented in parliament and legally established organisations of minorities (or organisations not represented in parliament) and for which it is, it seems to us, more difficult to take part in elections.

157. The delegation recalls that the Congress, in its Report GC/BUR(11)25 on the observation of local and regional elections in Romania (6 June 2004) had not wished to comment on Article 7 of Law no. 67/2004. In fact, the Congress had considered that this very controversial Article merited an opinion from the Venice Commission. The Venice Commission, in its opinion, noted that this article was “so severe that it could almost be considered excessive” with regard to certain minority organisations. Consequently, it recommended “that Article 7 of the Law be amended to guarantee equal participation of national minorities and of organisations within a national minority in public affairs at local level, in particular equal representation in the elected bodies at local level.”²⁷

158. The delegation took note of the observations made by the Venice Commission in its Opinion 300/2004 on the law on the election of the local public administration authorities in Romania.²⁸ To this date, Article 7 remains part of Law no. 67/2004.

159. The delegation considers that Romania should continue its efforts to ensure the participation of all minorities in local political life and to make positive efforts against all forms of discrimination of minorities at local level. The improvement of the integration of minorities particularly from the point of view of access to public services is of special importance.

F. Conclusions

160. During their visit to Romania, the co-rapporteurs found that considerable progress had been made by the Romanian authorities since Recommendation 12 (1995) and the last information reports, of 2002 and 2003.

161. All the legislative instruments that provide for territorial administration, self-government and local democracy have undergone considerable development in the last decade, having been revised in accordance with the spirit and principles of the Charter.

162. The delegation considers that measures should be taken to complete the process of regional development in order to involve the regions in territorial administration on the basis of the principles set out in the Reference Framework for Regional Democracy.

163. It is crucial to provide the local authorities with financial resources commensurate with their responsibilities, as stated in Article 9(2) of the Charter.

164. In the co-rapporteurs’ opinion, the question of the consultation of local authorities by the national authorities on matters that affect them should be given particular attention by the bodies responsible for ensuring that this right is strictly respected in practice, in due time and in the appropriate manner, during the planning and decision-making processes with respect to all matters that concern the local authorities directly especially as regards the allocation of financial resources.

165. The delegation considers that since the districts of the municipality of Bucharest have their own budgets, these territorial sub-units should also be granted a legal personality.

166. Similarly, the delegation hopes that a political consensus will be reached in order to grant a special status to the city of Bucharest in accordance with Congress Recommendation 219 (2007).

167. It is important to provide the local authorities with effective judicial protection by granting them a genuine right to bring an action in the domestic courts if there has been a breach of one of the principles guaranteed by the Charter.

168. Bearing in mind all the relevant Council of Europe recommendations on the subject of minority rights and non-discrimination, Romania should continue its dialogue with all the national minorities and

²⁷ Opinion 300/2004 cited above: see para. 49.

²⁸ Opinion adopted by the Venice Commission during its 61st plenary session on 3 – 4 December 2004

pursue the implementation of measures concerning the integration of minorities within territorial communities.

169. Compliance with the principle of political and democratic pluralism through an appropriate legal framework for the participation of organisations of national minorities in local elections is an inherent part of a democratic society. In the delegation's opinion, Law no. 67/2004 should be revised in order to relax the conditions with which some organisations of national minorities have to comply in order to stand at local elections.

170. The legislative efforts by Romania to comply with the principles of the Charter should continue in order to reflect all these principles also in practice, taking particular note of the conclusions of the present report and keeping in mind the principles of the Charter. In this respect, the delegation considers that the Romanian authorities should envisage lifting the reservation on Article 7(2) made at the moment of ratification.

171. The delegation underlines that it is important that Romania signs and ratifies the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS no. 207).

Appendix 1**Programme of the Monitoring Visit by the Congress of Local and Regional Authorities to Romania (24 – 26 May 2010)**

Mr Jean-Claude FRECON	Rapporteur on local democracy, member of the Institutional Committee of the Congress, Municipal Councillor for Pouilly-lès-Feurs and Senator for the Loire, France ;
Ms Mariacristina SPINOSA	Rapporteur on regional democracy, member of the Institutional Committee of the Congress, Councillor for the Region of Piemonte, Italy;
Mr Jean-Mathias GOERENS	Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress, Luxemburg.

Monday 24 May 2010

- 10.00 – 16.00 Meetings in the Prahova « judet »
Mr Mircea COSMA, Président of the Prahova Council
Members of the Prahova Council
Mr Andrei VOLOSEVICI, Mayor of Ploiesti and members of the Municipal Council of Ploiesti
Mr Vasile NEACSU, Mayor of Valea Calugareasca
- 18.00 – 19.00 Prof. Dr. Elena-Simina TANASESCU and Prof. Dr. Marius Constantin PROFIROIU, Members of the Group of Independent Experts on the European Charter of Local Self-Government

Tuesday 25 May: Bucharest

- 9.00 – 9.45 Mr Alexander BALANESCU, Vice-Ombudsman, People's Counsel
- 10.00 – 10.45 Mr Ioan OLTEAN, Vice-President of the Chamber of deputies, Parliament
- 11.00 – 12.00 Members of the Romanian delegation to the Congress and the Association of Romanian Communes, the Association of Romanian Municipalities and the Association of Romanian Cities of the Federation of Romanian Local Authorities
- 13.30 – 14.30 Group of deputies from the «Hungarian Democratic Union» (UDMR), Chamber of Deputies, Parliament
- 14.30 – 15.30 Group of deputies from the national minorities, Chamber of Deputies, Parliament
- 16.00 – 17.00 Members of the Public Administration Commission of the Chamber of Deputies and of the Senate
- 17.30 – 18.30 Mr Gheorghe GHERGHINA, Secretary of State, Minister of Public Finance
- 19.00 – 20.00 Mr Mihai-Cristian ATĂNĂSOAEI, Prefect of Bucharest

Wednesday 26 May: Bucharest

- 9.00 – 10.00 Prof. Dr. Sorin Mircea OPRESCU, Mayor of Bucharest
- 10.30 – 11.15 Presidents of the « judet » councils and members of the National Union of Romanian Councils
- 11.30 – 12.00 Mr Gyorgy FRUNDA, President of the Human Rights Commission of the Senate, Parliament
- 12.00 – 13.00 Mr Ioan VIDA, President of the Constitutional Court
- 15.00 – 16.00 Mr Gheorghe EMACU, Secretary of State for Local Communities and Mr Marius Tiberiu MARTINESCU, Secretary of State for the Reform of Public Administration, Ministry of Administration and Internal Affairs
- 18.00 Representative of the Ministry of Regional Development and Tourism

Appendix 2

REMARKS OF THE MINISTER OF ADMINISTRATION AND INTERIOR TO THE MONITORING MISSION REPORT OF THE CONGRESS OF LOCAL AND REGIONAL AUTHORITIES OF THE COUNCIL OF EUROPE

1. Concerning the amendment to Law no. 67/2004

According to the stipulations in art 6 para. 2 of the Consolidated Version of the European Union Treaty and the Treaty Establishing the European Communities „The Union should respect the fundamental rights of the human being, as they are guaranteed in the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on the 4th of November 1950 and as they result from the fundamental acts of the Member States, as general principles of the European Community law

The fundamental rights of the human being, as well as the principles representing the basis of the European electoral inheritance – universal vote, equally and freely expressed, secretly and directly – are sanctioned by the Constitution of Romania.

The provisions for exercising these rights are stipulated in Law 67/2004 regarding the election of the local public administration authorities, Law 373/2004²⁹ for the election of the Chamber of Deputies and the Senate, the Law 14/2003 regarding the political parties and the Ordinance no. 26/2000 regarding the associations and foundations, attached herewith.

The Constitution of Romania and the laws mentioned above fully respect the political criteria established by the European Council of 1993 in Copenhagen, as well as the Guidelines on the European electoral inheritance, adopted by the Venice Commission at its 51st plenary session of July, 5th and 6th 2002.

As a matter of fact, the legal acts of the Romanian legislation, previously mentioned, were adopted in 2003 and 2004, before the accession of Romania to the European Union and they were the subject of the European experts' analysis within the monitoring process made by the European Commission and the same process made by the Council of Europe.

All reports made by the European Commission in 2004, 2005 and 2006, as well as the two reports of the Advisory Committee of the Framework Convention on the Protection of National Minorities mention that Romania respects the fundamental rights of the human being and the rights of the national minorities. The local elections of 2004, organized on the basis of Law 67/2004, were the object of a monitoring mission of the Council of Europe Congress of Local and Regional Authorities. The experts' report mentions that the local elections were “well organized, transparent, respecting the standards of a democratic society”.

Furthermore, concerning these elections, the European Commission Report (COM(2004)657final) reads: „ **Les élections locales ont eu lieu en juin 2004, ce sont les premières élections organisées dans le pays; elles ont été jugées, généralement, à la fois libres et équitables**” – “**the local elections took place in June 2004 and they were the first elections organised in the country ; they were considered, generally, free and fair**”.

Concerning the stipulations in art. 7 of Law 67/2004 on the election of local public administration which makes the subject of the European Commission letter, we are making the following statements:

- a) The provisions of art 7 of Law no. 67/2004 fully respect art 29, para. 1 of the Constitution, on the freedom of conscience, since any person who complies with the conditions stipulated by the law can be elected, can run for elections as independent, without being obliged to adhere to an organization of which ideology does not share. Otherwise, in case of which the respective person runs for elections on the list of an organization, it represents the respective organization and this duty cannot be exercised in the absence of a consensus between the ideology and the aspirations of the organization that advances it as a candidate and its own belief.

²⁹ Law 373/2004 represented the legal basis for the local elections of 2004 and 2008. Currently, Law 35/2008 is in force. It introduced the uninominal vote for the election of the Chamber of Deputies and the Senate.

- b) Art. 16, para 1 of the Constitution sanctions the equality in rights of the Romanian citizens, without privileges and discriminatory measures. This principle is respected by the provisions of Law 67/2004, since the citizens belonging to national minorities can, by abiding the law, deposit their independent candidature, the same as the citizens of Romanian citizenship. The provisions of para. 3 and para. 4 of art. 7 of the Law 67/2004 should be met only by the organizations of the Romanian citizens belonging to the legally established national minorities, other than those represented in the Parliament, on the same reasons as in establishing the provisions for the registration of political parties in the register of political parties, as they are stipulated by art. 19, para 3 of the Law 14/2003.

Comparing the provisions established by art. 7, para 4 of the Law 67/2004 with those established by art. 19, para 3 of the Law 14/2003, one can conclude that it is rather a positive discrimination of the citizens belonging to national minorities.

- c) **Art. 8 para. 1 of the Constitution, concerning political pluralism**, is respected, as well. We consider that the existence of a multitude of organizations, indifferently of the name they bear – political parties, organizations of the citizens belonging to national minorities represented in the Parliament, other organizations and alliances, as well as individual citizens, who act in the electoral process – represents an expression of the principle of pluralism in the Romanian society.
- d) Concerning the right to be elected, the provisions of art. 7 of Law 67/2004 settle a distinct segment of the electoral process – the deposition of candidatures. The provision of this article respects the provisions of art. 20 of the Constitution, corroborated with those of art. 2 and 21, point 1 and point 2 of the Universal Declaration of Human Rights, as long as the likely differentiations between the provisions for depositing candidatures for the citizens of Romanian nationality and those of other nationality are not intended to create discrimination on the nationality criterion.

The depositing of candidatures is stipulated by art. 19 para 3 and art. 55 of the Law on political parties no. 14/2003 and by art. 7 of the Law 67/2004 on the election of local public administration authorities.

These provisions have the following content:

- Art. 7 para.(3) and (4) of the Law no. 67/2004:

“(3) Candidatures can be deposited as well by other organizations of the citizens belonging to national minorities, legally set up, which present at the Central Electoral Bureau a list of members. The number of members cannot be lower than 15% of the total number of citizens who declared themselves as belonging to the respective minority at the last census.

(4) If the number of the members necessary for carrying out the provisions established by para (3) is bigger than 25,000 individuals, the list of members should comprise at least 25,000 persons residing in a minimum of 15 of the country’s counties and the city of Bucharest, but not fewer than 300 persons for each of these counties and the city of Bucharest.”;

- Art. 19 para. (3) of the Law no. 14/2003:

"The list should comprise at least 25,000 founding members, residing in at least 18 of the country’s counties and the city of Bucharest, but not under 700 persons for each of these counties and the city of Bucharest;

- Art. 55 of the Law no.14/2003:

"The provision of the present law applies accordingly to the citizens belonging to national minorities’ organizations which take part at the elections, with the exception of art. 6, art 10 e), art. 12 para (1), art. 18, 19, 27, art. 46 para. (1) e) and f), art. 47, 48 and 53.”

By analyzing the content of these legal provisions, one cannot conclude that they are discriminatory regarding the citizens belonging to national minorities and nor that it hinders the free exercise of the right to be elected.

The setting up, by law, of the mentioned provisions does not run counter to the invoked constitutional texts and international conventions, the legislator having the exclusive competence to set up the modalities and conditions of the electoral system functioning.

The provision of presenting a list with the members of the citizens belonging to national minorities’ organization, in order to deposit candidatures for the local elections does not restrict the exercise of being elected, having in mind that a list of members comprised of 15% individuals out of the total number of citizens who declared themselves as belonging to the respective minority is

required. **This restricted number allows to any national minority to set up organizations with the possibility to deposit candidatures, which stands for the full application of the principle of political pluralism.**

The organizations of citizens belonging to national minorities represented in the Parliament are not privileged, on the subject of depositing the candidatures for the local councils, since they complied more strictly for acceding to the Parliament.

In this way, according to art. 4 para. 2) of the Law no. 373/2004 for the election of the Chamber of Deputies and the Senate, "The organizations of the citizens belonging to a national minority defined according to para. (1), legally set up, which did not obtain at the elections at least one mandate of deputy or senator have the right, according to art. 62 para (2) of the Constitution of Romania, amended, to a mandate of deputy, if they obtained, at whole country, a number of votes equal to at least 10% of the average number of votes cast per country for the election of a deputy."

The provisions of art. 7 para. (3) and (4) of Law.67/2004 are designed in the interest of national minorities, considered in their entirety and they are opposed to divergent interests that could manifest inside themselves. Moreover, they can provide for the elimination of the elected bodies partition and their proper operation.

We underscore, once again, that the law offers the Romanian citizens belonging to national minorities the possibility to deposit their candidatures on the lists of the organization to which they belong, or as independents.

Concerning the Opinion no. **300/2004 on the Law no.67/2004** regarding the election of the local public administration authorities in Romania, adopted by the Venice Commission at its 61st plenary session in Venice, of 3-4 December 2004, invoked in the letter of the General Directorate for Justice, Liberty and Security of the European Commission, we mention the following:

The Office of the Parliamentary Assembly of the Council of Europe (PACE) invited the Venice Commission to give its opinion on the conformity of the principles presented in Law 67/2004 with those of the basic legal instruments of the Council of Europe: the Convention on the Protection of Human Rights and Fundamental Freedoms, the Framework Convention for the Protection of National Minorities and the European Charter on Local Autonomy.

This invitation was presented following a request addressed to the (PACE) to adopt a decision concerning law 67/2004. As a result, Opinion no.300/2004 of the Venice Commission was elaborated, which reads at point IV, entitled "Conclusions", that the law in its entirety is complying with the norms of the European electoral inheritance.

Moreover, the application of the law on the occasion of the 2004 elections did not pose a specific problem. Nevertheless, the document says that the provisions of art. 7 of the law creates difficulties because "they restrict the possibility that more than one group of persons, belonging to a national minority (more specific the Hungarian minority) is represented within the local authorities at the country level, and the restrictions of the text do not seem to be justified by the necessity to ensure the unity for conserving the electoral ratio of a minority, since the voters know how to safeguard their interests as minority."

We underline that the Opinion no. 300/2004 of the Venice Commission was not followed by a Council of Europe resolution or a decision of the PACE concerning Law 67/2004.

In conclusion, the Government of Romania considers that in Romania the fundamental human rights and the principles standing at the basis of the European electoral inheritance are fully respected. They apply without discrimination and by protecting the rights of the national minorities.

As a consequence, 18 organisations of the national minorities comprised of representatives of 19 minorities (the Slovaks and the Czechs being represented by the same organization) and 5 political parties – the National Liberal Party, the Social Democrat Party, the Democrat Liberal Party, the Great Romania Party and the Conservatory Party are represented in the Romanian Parliament.

All 18 organisations of the national minorities represented in the Parliament presented candidatures at the local elections in June 2008.