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## **Local and regional democracy in the Slovak Republic**

Monitoring Committee

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Recommendation 387 (2016).....	2
Explanatory memorandum .....	5

### *Summary*

This report follows on from the two adopted by the Congress in 2001 and 2006 respectively on local and regional democracy in the Slovak Republic. An improvement has been noted since the last report in 2006, primarily as a result of the country's ratification of the articles in the Charter which it had not ratified upon accession. All the provisions of the Charter therefore now apply throughout Slovakia. The delegation noted with satisfaction the efforts made in terms of decentralisation. The rapporteurs also welcome the registration of the association of representatives from the eight regions, which has enhanced the existing dialogue between central government and the regional level, but has not, however, improved communication between the local and regional tiers, which is still deemed to be too limited – with the result that there are frequent cases of overlapping of responsibilities. Difficulties were also noted concerning the decision-making process in Bratislava, where the status of the capital does not give the mayor's decisions precedence over those of the districts. The rapporteurs also noted inadequate funding for investment projects in certain municipalities, and expressed concern about low voter turnout in local elections.

Consequently, it is recommended that the Slovakian authorities clarify the legislation on the distribution of powers (Article 4, paragraph 2) so as to avoid any overlapping and make co-operation between the regional and local levels more effective, and also grant Bratislava a special status as capital city or metropolitan city so as to facilitate decision-making by the mayor. With regard to the financial aspects, the rapporteurs recommend that the system for allocating funds to local and regional authorities (Article 9) be reviewed, while encouraging the merging of certain authorities with a view to rationalising their budgets.

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1 L: Chamber of Local Authorities / R: Chamber of Regions  
EPP/CCE: European People's Party Group in the Congress  
SOC: Socialist Group  
ILDG: Independent Liberal and Democratic Group  
ECR: European Conservatives and Reformists Group  
NR: Members not belonging to a political group of the Congress

## RECOMMENDATION 387 (2016)<sup>2</sup>

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

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

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

c. Resolution 307 (2010) REV2 on procedures for monitoring the obligations and commitments entered into by the Council of Europe member states in respect of their ratification of the European Charter of Local Self-Government;

d. Resolution 109 (2001) and Recommendation 88 (2001) on local and regional democracy in Slovakia, and Recommendation 204 (2006) on regional democracy in the Slovak Republic.

e. the appended explanatory memorandum on local and regional democracy in the Slovak Republic.

2. The Congress notes that:

a. the Slovak Republic – then Slovakia – acceded to the Council of Europe on 30 May 1993. It signed the European Charter of Local Self-Government (ETS No. 122, hereafter “the Charter”) on 23 February 1999 and ratified it on 1 February 2000;

b. the Slovak Constitution recognises in Chapter IV the principle of local and regional self-government;

c. the Slovak Republic is also a party to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), which it ratified on 1 February 2000. The Slovak Republic also ratified on the same day the additional protocol to the convention (ETS No. 159). Finally, the Slovak Republic ratified the Protocol No. 2 to the same convention on 31 October 2000. However, it has neither signed the Protocol No. 3 to the same convention (CETS No. 206), nor the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144) and 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);

d. the Monitoring Committee decided to review the situation with regard to local and regional self-government in the Slovak Republic in the light of the Charter. It tasked Mr Artur TORRES PEREIRA (Portugal, L, EPP/CCE) and Mr Leen VEERBEK (Netherlands, SOC), the respective rapporteurs on local and regional democracy in the Slovak Republic, with drawing up a report on local and regional democracy in the Slovak Republic and submitting it to the Congress;<sup>3</sup>

e. the monitoring visit took place from 7 to 9 December 2015. During the visit, the Congress delegation conducted several interviews with senior officials of the central administration, especially from ministries, as well as the President of the Bratislava Self-Governing Region, several mayors, members of the Slovak delegation to the Congress, members of the National Parliament, representatives of Associations of Municipalities and Regions, the Audit Office and the Defender of Rights (Ombudsman) among others. The detailed programme of the visit is appended hereto;

f. the delegation wishes to thank the Permanent Representation of the Slovak Republic to the Council of Europe and all interlocutors met during the visit for their readiness to assist and the information they supplied. The delegation also thanks the Slovak delegation to the Congress and the national

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<sup>2</sup> Debated and adopted by the Congress on 24 March 2016, 3<sup>rd</sup> sitting (see document [CG30\(2016\)09-final](#), explanatory memorandum), co-rapporteurs: Artur TORRES PEREIRA, Portugal (L, EPP/CCE) and Leen VERBEEK, Netherlands (R, SOC).

<sup>3</sup> They were assisted by Prof. Dr. Angel Molina Moreno, expert-consultant and Chair of the Group of Independent Experts, as well as the Secretariat of the Monitoring Committee of the Congress.

associations of local and regional authorities, which contributed to the organisation and smooth running of the visit.

3. The Congress notes with satisfaction:

a. the overall positive situation of local and regional democracy in the Slovak Republic;

b. the ratification, since the last visit of the Congress in 2006, of Article 1, Article 3 paragraph 1, Article 4 paragraphs 3 and 5, Article 6 paragraph 2, Article 9 paragraphs 1, 5, 6 and 7 and Article 10 paragraphs 2 and 3, in September 2007, and its application on the whole territory of the Slovak Republic;

c. the efforts made by the Slovak authorities to foster decentralization through the creation of two subnational levels of authorities – regional and local – and the devolution of key powers to local authorities, which rendered the Slovak Republic a decentralised State;

d. the registration in 2006 of the association including representatives from eight regions, which promoted freedom of association and political dialogue with the central State;

e. the active co-operation between local authorities, including transfrontier co-operation.

4. The Congress expresses its concerns regarding:

a. the weakness of the current system of communication and co-operation between the regional and the local level, both independently connected only to the central level, which results in a frequent overlapping of responsibilities;

b. the difficult financial situation in some local authorities due the weak financing in the domain of investment costs, notably public services and infrastructures;

c. the very low voter participation to the local and regional elections;

d. the present status of the capital city of Bratislava which does not enable a unified decision-making at city level.

5. In light of the foregoing, the Congress asks the Committee of Ministers to recommend the Slovak authorities to:

a. draw up a legislation which would clearly define the exclusive fields of competence of the regional and the local level respectively to avoid any overlapping of responsibilities, and consider elaborating a legislation allowing local authorities to take initiatives when the corresponding competence has not been expressly attributed to them and when this is not explicitly prohibited by the law (Article 4, paragraph 2);

b. simplify the legal, regulatory and administrative organization of small municipalities, especially in rural areas, for instance by promoting their merging in order to have stronger local authorities ;

c. fully implement the 2015 conclusions of the National Audit Office's report on the financial situation of local governments, consider rebasing the tax redistribution system on the criteria of the local authorities' needs rather than on their fiscal effort for a fairer equalization system, notably in order for them to perform a comprehensive program of investments (Article 9, paragraphs 5 and 2 respectively);

d. reinforce the technical capacity and the managerial abilities of the human resources of the local and regional authorities by training civil servants at the regional level in order to satisfy the challenges of the regional governmental activities (Article 6, paragraph 2);

e. give Bratislava a full and operational status of capital city, or a self-governing region and revising the present structure of districts, in order to ensure a more efficient and expedient decision-making system on the general problems and policies affecting the city as a whole;

f. give larger access to remedies for local and regional authorities by considering the possibility of establishing a special appeal of unconstitutionality when a national law breaches one of the provisions

of Chapter IV of the Slovak Constitution, and the opening of regional offices for the Defender of Rights, which may constitute an alternative remedy (Article 11);

*g.* sign and ratify the Additional Protocol to the European Charter of Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) in the near future.

6. The Congress calls on the Committee of Ministers to take account of this recommendation on local and regional democracy in the Slovak Republic and the accompanying explanatory memorandum in its activities relating to this member state.

## EXPLANATORY MEMORANDUM

### Table of contents:

1. INTRODUCTION: OBJECTIVE OF VISIT, TERMS OF REFERENCE, SCOPE .....	6
2. POLITICAL CONTEXT AND DEVELOPMENTS SINCE THE LAST RECOMMENDATIONS .....	7
2.1. International context and relations with neighbours.....	7
2.2. Internal political context.....	7
2.3. Previous reports and recommendations by the Council of Europe .....	8
3. HONOURING OF OBLIGATIONS AND COMMITMENTS: BASIC FEATURES OF LOCAL AUTHORITIES .....	8
3.1. Constitutional and legal developments .....	8
3.2. Local self-government.....	9
3.2.1. Institutional arrangements .....	9
3.2.3. Relations between central and local authorities .....	10
3.2.4. Status of the Capital City .....	11
3.3. Analysis of the situation of local democracy in light of the European Charter on Local Self-Government (ECLSG) on an article-by-article basis .....	12
Article 2: Principle of local self-government.....	12
Article 3: Concept of local self-government .....	13
Article 4: Scope of local self-government; competences.....	14
Article 5: Protection of boundaries .....	15
Article 6: Administrative structures .....	15
Article 7: Exercising responsibilities.....	16
Article 8: Government supervision .....	17
Article 9: Financial resources.....	19
Article 10: Right to associate .....	22
Article 11: Legal protection of local self-government.....	23
Article 12: Undertakings – reservations formulated by the Slovak Republic.....	24
3.4. Regional democracy : the Reference Framework for Regional Democracy.....	24
3.4.1. Antecedents: main developments concerning regional democracy in the Slovak Republic .....	24
3.4.2. Statutory scheme for regional democracy .....	25
3.4.3. The number and size of the regions (HTU) .....	26
3.4.4. Internal organisation .....	26
3.5. Analysis of the situation of regional democracy on an article-by-article basis.....	27
3.5.1. Regional competences .....	27
3.5.2. Relations with other sub-national territorial authorities.....	28
3.5.3. Involvement in the State decision-making process .....	28
3.5.4. Supervision of regional authorities by State authorities .....	28
3.5.5. Protection of regional self-government.....	29
3.5.6. Right of association .....	29
3.5.7. External relations. Trans-frontier co-operation .....	29
3.5.8. Regional finances .....	30
3.6. Miscellaneous .....	32
4. CONCLUSIONS.....	32
Appendix 1 - Programme of the Congress monitoring visit to the Slovak Republic.....	34
Appendix 2 - Human rights: The performance of local and regional governments in the domain of human rights.....	37

## EXPLANATORY MEMORANDUM

### 1. INTRODUCTION: OBJECTIVE OF VISIT, TERMS OF REFERENCE, SCOPE

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2011) 2 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter referred to as “the Congress”) regularly prepares reports on the state of local and regional democracy in all Council of Europe member states.

2. The Slovak Republic is one of the signatory States to the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”). The signature and ratification of the Charter by the Slovak Republic has undergone a long process. After the 1998 general elections, the incumbent government signed the Charter for the Slovak Republic on 23 February, 1999. The National Council of the Slovak Republic gave permission to ratify the Charter (Decree No. 516 of 26 October, 1999), and later on, the instrument of ratification was tabled on 1 February 2000. The Charter, then, entered into force on 1 June 2000, and was published in the Slovak Collection of Laws on 26 October 2000. At that time, Slovakia declared itself to be bound by the following provisions of the Charter: art. 2; art. 3, par. 2; art.4, pars.1, 2, 4 and 6; art. 5; art. 6.1; art. 7, par.1, 2 and 3; art. 8, par.1, 2 and 3; art. 9, par.2, 3, 4 and 8; art. 10, par. 1; and article 11. Apart from being a rather limited ratification, Slovakia made several reservations to some key provisions of the Charter.

3. Subsequently, the Slovak Republic has ratified different articles of the Charter, the idea being that the country should first adapt its territorial structure and the domestic legislation to the demands of the said international treaty. This ratification process eventually ended up in September 2007 and today, the Slovak Republic is bound by the Charter in its entirety. According to leading Slovak scholars, the Charter “was incorporated as an acceptance of an international treaty, and according to the Slovak Constitution, international treaties are approved by Parliament, and will supersede domestic laws”.<sup>4</sup>

4. On the other hand, the ratification of Slovakia has a praiseworthy aspect: unlike other countries, Slovakia has not limited the scope of the Charter to a part of its territory or to a certain kind of territorial units. Therefore, the Slovak Republic belongs to the minority group of Council of Europe’s members whose acceptance of the Charter has been full, complete and without reservations.

5. In the domain of local and regional democracy, the Slovak Republic has also signed and ratified the following Council of Europe Treaties and Protocols:

- The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.106): signed on 7 September 1998 and ratified on 1 February 2000. Entry into force for Slovakia: 2 May 2000.
- The addition protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, of 9 November 1995 (ETS No.159): signed on 7 September 1998 and ratified on 1 February 2000. Entry into force for Slovakia: 2 May 2000.
- The Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation, of 5 May 1998 (ETS No.: 169): signed on 1 February 2000 and ratified on 31 October 2000. Entry into force for Slovakia: 1 February 2001.

6. However, The Slovak Republic has not signed yet the following Council of Europe’s Conventions having a connection with local and regional government:

- The Convention on the participation of foreigners in public life at local level, of 5 February 1992 (ETS No. 144).
- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, of 16 November 2009 (ETS No.: 207).
- The Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euro-regional Co-operation Groupings, of 16 November 2009 (ETS No.: 206).

7. The Congress of Local and Regional Authorities adopted the decision to perform a report of local and regional democracy in the Slovak Republic. For this purpose, the Monitoring Committee of the

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<sup>4</sup> M. Bucek & J. Nemeč: “Local government in Slovakia”, in: Local government in the member states of the European Union: a comparative legal perspective (A.M. Moreno, editor). INAP, Madrid, 2012 p. 557.

Congress appointed Mr Artur TORRES PEREIRA, from Portugal (rapporteur on local democracy L, EPP/CCE) and Mr Leen VEERBEK, the Netherlands (rapporteur on regional democracy, SOC) as rapporteurs, and instructed them to prepare and submit to the Congress such report. An official monitoring visit in Slovakia was then organised, and was carried out by the aforementioned rapporteurs and the secretariat of the Congress. The delegation was assisted by Prof. Dr. Angel M. Moreno (expert-consultant). The rapporteurs wish to express their thanks to the expert for his assistance in the preparation of this report. This group of persons will be hereinafter referred to as “the delegation”.

8. The official monitoring visit took place on 7-9 December 2015. During the visit, the delegation conducted several interviews with top officials of the central administration (Ministries), one President of a Slovak region, several mayors, members of the Slovak delegation to the Congress, members of the National Parliament, representatives of Associations of Municipalities and Regions, the Accounting Office, the Ombudsman, etc. The detailed programme of the visit appears as Appendix 2 to this document. The delegation would like to thank all the authorities and different bodies that were met during the visit, for their proactive assistance during the visit.

## 2. POLITICAL CONTEXT AND DEVELOPMENTS SINCE THE LAST RECOMMENDATIONS

### 2.1. International context and relations with neighbours

9. The Slovak Republic, as an independent country, was born on 1 January 1993 as a result of a negotiated split of the former Czechoslovakia, which resulted in two different countries: The Czech republic on one hand, and the Slovak republic, on the other. The Slovak Republic has a total population of over 5,417.000 inhabitants (2014) and an area of 49.035 km<sup>2</sup>, which results in a population density of 110 inhabitants / km<sup>2</sup>. Currently, the country is a young democracy, with an active presence in the most important international organisations. Namely, the country joined the Council of Europe in 1993 and the European Union in 2004.

10. The country keeps peaceful and amicable relations with all its neighbours, and especially with those belonging to the EU. As a result of historical reasons, there is a significant part of Slovak people with Hungarian descent (9.7% of the population, 2011 data)<sup>5</sup> concentrated especially in the south (where Hungarians may be the large majority in many municipalities). In any case, the possible tensions between the two countries are nowadays limited and smoothed by the fact that both countries are partners in the EU, they both apply the “Schengen acquis”, they both are members of the *Visegrád* Group (V4), etc.

### 2.2. Internal political context

11. The form of government of Slovakia is that of a parliamentary democratic Republic, “a sovereign, democratic state governed by the rule of law” (Art. 1 of the Slovak Constitution of 1992). The head of State is the President of the Republic, who is directly elected by the people every five years (Art. 101, the Slovak Constitution). The last presidential elections (following a two-round system) took place on 15-29 March 2014. As a result, Mr. Andrej Kiska, an independent, is the current President of the Slovak Republic.

12. The legislative power of the republic resides exclusively at the State level, in the National Council (*Národná rada Slovenskej republiky*). This is a unicameral chamber, composed of 150 representatives. The MPs are elected every four years. The last general elections were held in March 2012 which marked the victory of the party “Smer” (direction), Social Democracy, which won 83 seats in the National Council, well above the absolute majority. As a result of those elections, Mr Robert Fico (SMER) was appointed as Prime Minister of the country. The next general elections are due in March 2016.

13. The Slovak Republic is a unitary country. In this sense, the Slovak Constitution proclaims that “the territory of the Slovak Republic is united and indivisible” (Art. 3). On the other hand, the country has experienced a sustained process of administrative decentralisation at the local and regional level, which is discussed below.

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<sup>5</sup> In accordance with the official data from 2011 census, the share of Hungarians living in Slovakia is 9.7%.  
[http://www.statistics.sk/webdata/scitanie/def\\_sr/Data%5C100000%5CZ155A\\_100000.pdf](http://www.statistics.sk/webdata/scitanie/def_sr/Data%5C100000%5CZ155A_100000.pdf)

### 2.3. Previous reports and recommendations by the Council of Europe

14. The Slovak Republic received attention by the Congress a couple of times in the last years: in 2001, the state of local and regional democracy in the Slovak Republic was the object of a specific report and resulted in [Recommendation 88 \(2001\)](#) and [Resolution 109 \(2001\)](#) on local and regional democracy in the Slovak Republic, adopted by the Congress in 2001.

15. In 2006, the Congress evaluated the situation of regionalisation in Slovakia. This monitoring eventually resulted in [Recommendation 204 \(2006\)](#), on regional democracy in the Slovak Republic.<sup>6</sup>

## 3. HONOURING OF OBLIGATIONS AND COMMITMENTS: BASIC FEATURES OF LOCAL AUTHORITIES

### 3.1. Constitutional and legal developments

16. Articles 64 to 71 of the Slovak Constitution form its chapter four and deal with the “territorial self-administration”. These provisions lay down the fundamental elements of local (and regional) self-government. Namely, article 64 describes the « municipality » as the central element of territorial self-administration, being an « independent territorial and administrative unit » (Art. 64a). The municipality (that is, a local or municipal territorial body, a town or city) is considered to be a full, juridical person that « under conditions set out in a law, independently manages its own property and financial resources » (article 65, first indent). The self-government unit is deemed to finance its needs from own revenues and from state subsidies (Art. 65, 2<sup>nd</sup> indent). On the other hand, local State administration may transfer some of their tasks to the communities (Art. 71). The Constitution also recognises the municipalities the power to « issue generally binding decrees in matters of local self-administration » (Art. 68). Finally, the Constitution provides for “direct” administration, through the calling and development of local referendums (Art. 67). In the light of these constitutional provisions, it can be said that the requirements of article 2 of the European Charter of Local Self-Government are satisfied in the Slovak Republic (see below para 40).

17. Beyond these constitutional provisions, the organisation, competences, finances and operational aspects of local authorities are regulated by a comprehensive set of laws and regulations. The most relevant pieces of Slovak legislation dealing with local self-government are the following:

- a. Act 369/1990, on local government units, amended more than thirty times, is the very backbone of the Slovak legislation on local self-government.
- b. Act 346/1990, on elections to municipal bodies, as amended;
- c. Act 138/1991 on municipal property;
- d. Act 416/2001, on decentralisation; and
- e. Act 502/2001, on financial control and audit.

18. Apart from those specific laws, more than 50 pieces of legislation (like the law on public procurement) have, in one way or another, an impact on municipalities.

19. Thus, the Constitutional provisions on local self-government have been specified and supplemented by harmonic body legislation on local affairs, grounded on the Constitution, which expressly recognises local self-government.

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<sup>6</sup> Debated and approved by the Chamber of Regions on 14 November 2006 and adopted by the Standing Committee of the Congress on 15 November 2006.



## 3.2. Local self-government

### 3.2.1. Institutional arrangements

20. At present, the territory of the Slovak Republic is divided into the following layers of government: a. the central, state administration; b. eight self-governing regions<sup>7</sup> (*Samosprávny kraje*) and c. the local level (cities and towns, *mesta, obci*). Apart from that, there is a structure of deconcentrated administrative territorial units of the State administration, whose number and institutional profile have evolved over the last years. The territorial State administration has been reformed several times, the most recent one through the so-called “ESO reform”<sup>8</sup>. After this reform, there are 72 districts (*okresy*)<sup>9</sup> and 8 district offices, one in the seat of each region. Regional and district offices discharge in a deconcentrated way some of the State competences (civil protection, management of crisis situations, cadastre, national defence, environmental protection, agriculture, forestry, hunting, etc.).

21. The local layer of self-government of the Slovak Republic is composed of 2,930 municipalities<sup>10</sup> in total (including magistrate of Bratislava and Kosice and 140 towns: 22 – city districts Kosice; 17 – city districts Bratislava and 4 military districts - total 2,933), of which 140 have the status of « cities ». In this respect, Art. 70 of the Slovak Constitution provide that “the prerequisites for a community to be declared a town, and the method of doing so, will be defined by law, which will also designate the names of town bodies”. Apart from the independent municipalities, it should be underlined that the boroughs or districts in the cities of Kosice and Bratislava have also the status of municipalities by themselves.

22. In the light of the information and impressions collected by the delegation during the visit, it is possible to point out that the number and size of local authorities seems to be one of the most controversial features of the current situation. The average population of Slovak municipalities is 847 inhabitants, and over two-thirds of the municipalities have less than one thousand inhabitants, most of which are small, rural villages.<sup>11</sup> On the other hand, the institutional profile of Slovak municipalities, their competences and sources of revenue is the same, independently from their population. The system then is very “symmetric” or homogeneous. Therefore, the competences of a very small municipality with less than a dozen residents are the same as, for instance, Bratislava.

23. The situation, which is a structural pattern rooted in history, was unanimously considered as rather negative by the interlocutors: there are too many local authorities, and they are too small. This feature has a negative impact on the operations and working of these bodies. The hosts were fully aware of this situation, but there is no agreement on how to solve the problem. They mentioned, for example, the possibility of merging several small municipalities in order to form bigger ones, more solvent and operationally fit. However, merging small municipalities always faces political and popular resistance from the affected constituencies<sup>12</sup>. Moreover, this possibility is supported neither by the current government nor by ZMOS (the largest local authorities association, see *infra*). The Slovak Ministry of the Interior currently has no intention to merge municipalities. During the consultation process, the delegation was informed that the official position of ZMOS is in line with the still valid governmental Local Self-Government Modernization Concept and its implementation strategy. This strategic document focuses on several areas including economization, ICT development, HR development, monitoring and evaluation of local government powers’ execution, establishment and development of so-called centres of effective administrative promotion of competencies and duties, and (specific) social protection measures for mayors after end of public mandate. From this point of view they do not consider the issue of municipalities’ size to be relevant or a priority. Their position is rather that municipalities should be let free in order to decide what the best course of action is, and a merger is only acceptable after a successful local referendum.

7 Also called “Higher Territorial Units” (see, *infra*).

8 Act 345/2012 Coll., on some measures in local state administration. This law has abolished a number of local state authorities.

9 Some documents refer to 79 such districts

10 The delegation noted that there are different figures concerning the exact number of municipalities in the country, which differ according to the official sources: 2,871 (Congress internal sources); 2,890 (SAO and Ministry of the Interior), 2,927 (City of Bratislava); 2,917 (Zmos); 2,887 (Ministry of Interior).

11 According to data facilitated by the Supreme Audit Office, 379 Slovak municipalities have less than 200 inhabitants, the smallest one be that of Havranec, with just 11 residents; 1,948 municipalities have less than 1,000 inhabitants, and only 2 have more than 100,000 inhabitants. On the other hand, almost 87% of Slovak municipalities have less than 2,000 inhabitants (J.Kolarovic: “Self-government & Slovak SAO Audit”, Dec. 2015)

12 What is more, the total number of local authorities is even growing slightly over the years, since the splitting of municipalities (giving birth to smaller local units) is not unusual.

24. As indicated by some Slovak local leaders, another possible cure to the said problem of the hyper-fragmentation of local governments could be the promotion of inter-municipal agreements and co-operation in order to share resources. For instance, the creation of “joint municipal offices” would be a workable solution for the municipal fragmentation. According to the Ministry of the Interior, these “joint municipal offices” contribute to the rationalisation and improvement of the quality of services rendered by local authorities. Joint municipal offices (JMOs) involve the voluntary association of two or more municipalities for the purposes of executing delegated competences, such as construction proceedings, land transport, nature and environmental protection, domiciliary services, primary education, water management, etc. Offices are “headquartered” in a single municipality, but serve multiple participating municipalities. According to the Ministry of the Interior (2014), as of May 2014, there were 233 JMOs in Slovakia and they implement co-ordination arrangements covering 21 different domains. In the context of the “Concept of modernization of territorial self-government”, the Government has expressed its intention to further support the creation of these “joint municipal offices”, by facilitating IT technologies.

25. On the other hand, the Ministry of the Interior favours the option of establishing a legal *categorisation* of municipalities, which would imply to respect the current *status quo* in the number of municipalities, but differentiating their duties and competencies according to their size. This option would largely alleviate the small towns, while reducing their competences.

26. The other big municipal association in the country, the UMS, is in favour of a more radical change in the current territorial structure: according to the association, the number and size of municipalities should definitely be modified. The main target should be to carry out a comprehensive municipal reform.

### 3.2.3. Relations between central and local authorities

27. Two issues need to be addressed here: on the one hand, the consultation and participation of local authorities in the decision-making of State authorities; on the other hand, the inter-administrative co-operation.

28. For what concerns the first topic, the Congress delegation drew the conclusion that there is a real and vigorous pattern of consultation and participation of local authorities in the political decision making on matters that affect them. Indeed, the two major municipal associations (see, infra point 3.3.7) described the many ways and procedures (both formal and informal) that allow such participation and consultation. Thus, the associations of local and regional authorities (UMS, ZMOS, SK-8) are recognized and respected as equal partners by the government and other central authorities. Their representatives are active in several advisory bodies of the government and in interdepartmental panels, as well as in all managing and monitoring committees of the European Funds, programmes and initiatives.

29. According to ZMOS, this association conducts a wide array of negotiations and political dialogue with the top political institutions of the country. The association ZMOS holds regular meetings with the National Council (the Slovak Parliament) and sits (since 1999) as a member of the legislative council of the Government of the Slovak Republic. It must be consulted on any legislative proposal before the draft is ready. ZMOS has also an adequate representation in the Economic and Social Council (two seats), which meets once a month. It meets the President of the country once a year, and twice a year the Prime Minister and the National Council. Political negotiations and talks with the national Government are a common and important feature of ZMOS activities. According to their own sources, the first bilateral negotiations between ZMOS and the government dates back to 1994<sup>13</sup>, while today there are dozens of bilateral negotiations at the highest level.

30. For what concerns the UMS, their representatives also told the delegation that they are in regular contact with the Office of the President of the Slovak Republic, especially regarding the national legislation. They hold regular meetings with different central authorities, Ministries (especially that of Interior) and the like. For instance, the UMS president meets the Prime Minister a few times during the year to address current issues and they are in contact with the Office of the President of the Slovak Republic to address current legislation issues, if necessary. The UMS also lobbies intensively for the achievement of the reform of the current system of Slovak public administration.

<sup>13</sup> See the institutional work: 10 years of ZMOS, 2000

31. The delegation concluded that ZMOS and the other organizations are qualified organized pressure group for representing and advancing the interests of the local authorities in the Slovak Republic. Lastly, it should be underlined that in the Slovak Republic the position of Mayor and that of member of the National Council are compatible. Moreover, a person can be simultaneously a member of a local council and a member of the National Parliament, or a mayor and a member of the national Parliament. Therefore, many legislators have first-hand knowledge of the municipal life and can introduce the viewpoint of local authorities in the legislative process.

32. In the domain of inter-administrative co-operation, though, the situation is less satisfactory. Apparently, the system of inter-administrative co-operation is not well developed in the Slovak republic. The main reason is that all three territorial levels (State, regions, municipalities), have their own spheres of responsibilities and competencies, but they are designed as rather independent cogs, like watertight compartments. There is no relationship of subordination between municipalities and regions, but inter-administrative co-operation between these two levels is poor, too. The fact that the process of double decentralisation was conceived and implemented in a rather up-down fashion since the end of the nineties may have produced that result.

#### 3.2.4. Status of the Capital City

33. Bratislava is the capital of the country, as well as the most important Slovak city from the political, economic and social perspective. The territory of the city of Bratislava is also the seat for many State administration offices and departments, for five District offices and one Regional office. The status of the city of Bratislava has been detected as hot issue by the delegation. According to the SC (Art. 10) "*Bratislava is the capital of the Slovak Republic. The status of Bratislava as the capital of the Slovak Republic will be set out in a law*". In this sense, the Slovak legislation devotes specific provisions for Bratislava and Košice, the two biggest cities in the country. As far as Bratislava is concerned, the key piece of legislation is the Act No. 377/1990, on the capital city of Slovakia.

34. This piece of legislation lays down specific provisions on the internal territorial and administrative structure of the city. Indeed, the institutional structure of Bratislava (and that of Košice) is different from the other Slovak cities, due to historical reasons. Currently, the internal organization of the city of Bratislava is two-fold. At the « central » level, there is a Mayor (*Primator*) and a Council (composed of a number of members that varies according to the number of inhabitants). There is also a second territorial level, since the capital is divided into 17 districts, and each one is considered a local authority (a municipality) on its own. Moreover, the districts are quite uneven, both in population and in extension. In each of the districts, the dual structure (council/mayor) is reproduced: there is an executive organ (the mayor) and a deliberative, decision-making organ (a council, whose members range from 9 to 40). All these district rulers and representatives are also elected in general, direct elections. As a consequence, each citizen of Bratislava votes in the municipal elections to designate four different representatives in the different local government bodies.

35. The relations between the "main" Mayor and the "main" council" on the one hand, and the councils and mayors of the several districts, on the other hand, are regulated by Act 377/1990 and by internal by-laws. Each district has its own budget, which is separated from the general budget of the city, and manages it in an autonomous way. This situation is assessed by the City Mayor as unsatisfactory due to over-fragmentation and misalignments. For instance, almost every municipal district has its own building licensing authority, something that hampers the possibility of developing a coherent and integral development policy for the whole Bratislava.

36. Despite this specific institutional arrangement, the current legislation does not grant Bratislava a true "special status", as other big European capitals have (such as Prague, London or Paris), in terms of powers, competences and financing. The sources of funding of Bratislava are the same as other Slovak cities, and so are its competences, with a slight increase (fire-fighting, road-maintenance, etc.). There is no specific benefit enjoyed by the city for the reason of being the capital of the country. The city of Bratislava does not collect any special tax. There is no specific fund designed for Bratislava, neither, although, on exceptional occasions, the City has received from the Central Government special donations or transfers, to cover extraordinary expenses.<sup>14</sup> Likewise, the Mayor and the Council of Bratislava have the same status and competences as any other municipality. In reality, one can even assume that the Mayor of Bratislava has fewer competences than any other regular Slovak

<sup>14</sup> For instance, the City has received a special donation of 15 million € to cover the activities that will be held in Bratislava on the occasion of the Slovak presidency of the EU Council, in the 2nd semester of 2016.

mayor, since many “local” competences are allocated at the district level, and not at the “central” city level.

37. In connection with this situation, the Mayor of Bratislava (and other interlocutors of the delegation), claimed that a special and true “status” for Bratislava, deserving that name, should be approved by the National Council. Namely, the said mayor provided several examples from the day-to-day life, where the lack of that “status” prevents Bratislava City from performing and satisfying the services and needs of its residents, and those of the thousands of citizens who commute every day to go to the city. The city allegedly lacks adequate competences and a specific financing arrangement to cope with its task and with the challenges associated to its condition of capital city. It cannot fulfil appropriately the services that it must deliver as the capital, in domains such as waste, roads and transportation. The situation is urgent, according to the official position of the City of Bratislava.

38. The local leaders also complained that, despite the fact that the Slovak legislation stipulates that the top political bodies will assist Bratislava to discharge its functions; there is a lack of co-operation from regional and state authorities. The city allegedly incurs in expenses derived from the provision of services to non-residents and commuters that are not covered by regional or national authorities. On the other hand, many real estate properties located in the city are exempted from paying the real estate tax (governmental and diplomatic buildings); plus, the tourist sector needs better transport infrastructures and security, that cannot be provided by the city, etc. The Mayor claimed that the available funds barely cover the day-to-day running of the city, while there is no money for investing in infrastructures, green areas or municipal properties.

39. On the other hand, apparently there are no formal and stable platforms of co-operation between the City of Bratislava and the Bratislava Region, although the respective steering directors do work jointly in certain projects and events. There is nothing like a “metropolitan area” for Bratislava and its area of influence, an idea that the local leader would support. In the meanwhile, the City governing team tries to reach agreements with the concerned municipalities and introduce structures for co-operation. For instance, they have reached an agreement with neighbouring cities for the gradual introduction of an integrated transport system. On the other hand, a Partnership Council (a form of functional co-operation platform) has been created for the period 2014-2020, signed by the City of Bratislava, the Bratislava city districts, the Bratislava Region and 35 villages of the districts of Malacky, Pezinok and Senec.

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

#### *Article 2: Principle of local self-government*

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

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

40. Although the principle of local self-government is not explicitly recognised or proclaimed as such or with this precise wording, it can be implied from Art. 65 of the Slovak Constitution (see *supra*). Apart from that, the legal scheme for local authorities is clearly pervaded by the idea of “independence” or self-administration (*samospráva*, in Slovak). Furthermore, the interlocutors ensured the delegation that the principles enshrined in the European Charter on Local Self-Government do inspire domestic legislation on local governments. Therefore, it can be said that the requirements of Art. 2 of the Charter are satisfied by the present legal and constitutional situation of the Slovak Republic

*Article 3: Concept of local self-government***Article 3 – Concept of local self-government**

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

41. Concerning Article 3 para 1, the main question that must be addressed under this heading is whether, in the present situation, Slovak municipalities do regulate and manage a “substantial share of public affairs”. The impression of the rapporteurs is that this is so, in the light of the number and importance of local competencies, the fact that they have to power to enact binding local regulations, and the lack of “a priori” controls from State agencies and departments, for most of the decisions taken by municipalities (see, *infra*).

42. Concerning Article 3 para 2, the internal structure and organisation of local authorities stem directly from art. 69 of the Slovak Constitution, whose provisions have been supplemented and defined by the laws that have been passed since 1990, mentioned *supra*. In the light of this legal framework, the main bodies of the municipality are the city council and the mayor.

43. The representative body composed of “deputies”, elected through a process of secret, general, and direct voting. The municipal council is the body for debate and decision-making, and its members are directly elected by the citizens of the municipalities. The number of the council members is proportional to the town’s population. The council adopts the most important political decisions affecting the municipality: the local budget, the local master plan, and the generally binding regulations. These legal regulations or ordinances must be approved by a qualified majority. The sessions of the council are public. The city council approves its own internal by-laws and rules of procedure.

44. In some large cities (like Nitra) there are boroughs, which, contrary to what happens in Bratislava, are not considered to be local authorities. In each of the boroughs there is a committee, comprised of local councillors and regular citizens.

45. The mayor (*Starosta* in most municipalities, “Primator” in Bratislava and Košice and in other 140 municipalities that have city status) is the top executive authority of the municipality. He is the head of the local authority personnel, he discharges all the executive functions and executes the budget. He is also elected directly (and independently from the council) by the citizens for a four-year term, through a secret and general voting process. Therefore, and contrary to what happens in many European countries, in Slovakia the two key bodies of the municipalities enjoy full and direct democratic legitimacy. In both cases, the electoral law (basically: Act No. 180/2014, on conditions of performance of suffrage and Act No. 181/2014 on political campaign) is based on a majority system, under which the elected members of the council or the mayor of the community are those candidates who get the highest number of valid votes in their respective constituency. The last local elections were celebrated on 15 November 2014. They had a turnout of 48.34 % and they saw a massive success for independent candidates, including the independent mayoral candidate in Bratislava<sup>15</sup>.

46. The Act No. 253/1994, as amended, defines the legal status and the salaries of mayors, and they are considered *infra*. The mayor cannot be dismissed either by the State or by the city council. The grounds for the dismissal of the mayor of the municipality are exhaustively set out in the Act 369/1990 (§ 13a, paragraph 1). These grounds are: the expiry of his term of office; resignation; a final conviction for an intentionally committed criminal offence or a final conviction for a criminal offence, or the deprivation of his legal capacity or restriction of legal capacity.

<sup>15</sup> According to the media, the local elections would have confirmed the erosion of traditional parties, since independent candidates gained almost 38 % of the mayoral seats and 29 % of local councillors throughout Slovakia. See: *The Slovak spectator*, 17 November 2014.

47. Apart from the “formal” bodies for decision-making, the Slovak Constitution provides specifically for citizens’ participation: in addition to the regular voting rights in local elections, the local residents may vote on important questions of municipal life through *local referenda* (art. 67). One special type of this referendum is the one by which the local population may dismiss the mayor, a possibility that has happened only in rare occasions.

48. Local residents may also participate in the regular meetings of local bodies and assemblies. They may also file motions and complaints against local authorities. Citizens’ participation is generally regarded as fairly appropriate regarding the existence of formal mechanisms, but it is not very developed in practice.

49. In the light of the precedent considerations, the Slovak Republic does fully comply with Art. 3 of the Charter.

*Article 4: Scope of local self-government; competences*

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

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
- 4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
- 5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
- 6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

50. Under current Slovak Law, local authorities manage autonomously (“independently”) several matters. Competences may be divided into “original” competences and “transferred competences”, with the *caveat* that, under Slovak legislation, if the law does not determine that a given municipal competence is “transferred”, then it must be considered to be an original competence.

51. Municipalities have original competences in the following fields: management of movable property and real estate owned by the municipality, or transferred temporarily by the State; drafting and approval of their own budgets; administration of local taxes and fees; supervision of economic activities; protection of the environment; kindergarten and nurseries; housing and town planning, building permits; water supply, sewage, and heating; refuse collection and disposal; cemeteries and consumer protection; parks and open spaces; public lightning; housing; social services; culture; certain offences; municipal police; participation in regional planning.

52. Municipalities also enjoy transferred or delegated State competences in the following areas: registry offices, construction, public order; schools, environmental protection. This is performed by sectoral legislation and is allowed by Art. 71 of the Slovak Constitution. This is usual practice, although local authorities claim that, in general, these delegated tasks are not appropriately funded (see, para 69).

53. The current situation in the field of competencies for municipalities has been the result of subsequent processes of decentralisation, run by the central government since the nineties. In total, it is estimated that, along a multi-annual program of decentralisation, the State has ended up transferring more than 400 tasks and responsibilities to the municipal and regional level. In many

cases, the allocation of public responsibilities has been decided on a rather up-down approach and following a technocratic criterion, based on reasons of scale. For instance, in the domain of education the local authorities are responsible for pre-school and primary schools, while Regions are responsible for secondary schools and the State is responsible for Universities. In the domain of health services, local authorities are responsible for first aid stations and primary medical centres, while Regions are responsible for first-level hospitals and the State is responsible for national hospitals. In the field of social services, local authorities have split competences with the regions, etc.

54. The overall feeling expressed to the rapporteurs by their interlocutors was that the depth and breadth of local autonomy is fair and reasonable, in the context of the historical evolution of the nation and the most usual practices in neighbouring countries. The situation has certainly improved since the last local monitoring visit in 2001.

55. This being said, the Slovak system lacks a *residual powers clause* or a *clause générale de compétence* (as French Law depicts it) in favour of local authorities, which is common in other European countries. The rule is precisely the reverse, since it is provided that if a certain competence or responsibility is not expressly allocated to the municipal level of government, the power is understood to be allocated to the State administration. Furthermore, municipalities and regions can only take action or adopt measures when the Law clearly stipulates that they have the authority to do so. Summing up, it can be said that the local decentralisation in the Slovak republic, at least from the viewpoint of the scope of self-government, makes that municipalities do enjoy an administrative, limited autonomy on explicitly legally designated areas of intervention.

56. Therefore, the requirements of Art. 4 of the Charter are respected in the Slovak Republic.

*Article 5: Protection of boundaries*

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

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

57. It seems that this article is respected in Slovakia, and the rapporteurs did not hear anything to the contrary. To begin with, Art. 66 of the Slovak Constitution provide that “the unification, division or cancellation of a municipality shall be regulated by a law”. In relation to mergers, domestic legislation stipulates that the merging of several municipalities (to create another, independent and bigger one) requires the celebration of a previous referendum in all the municipalities concerned, and an agreement between the said municipalities. Officially, the merger is subject to the approval by the deconcentrated State administration and implemented by means of directives of the central Government.

58. In the light of the precedent, the Slovak Republic complies with Art. 5 of the Charter.

*Article 6: Administrative structures*

**Article 6 – Appropriate administrative structures and resources for the tasks of local authorities**

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

59. As a rule, Slovak local authorities are able to determine their own internal administrative structures, with due respect to general legislation. Thus, each municipality is supposed to have its own office, consisting of administrative officials who are responsible for discharging the instructions of the mayor and other municipal bodies. In large municipalities, the municipal office is sometimes run by a “principal”, appointed by the municipal assembly, responsible to the mayor. Towns and cities in

Slovakia are quite independent in the field of human resources and as a matter of fact, they can freely appoint and withdraw their own employees. Municipalities also appoint an internal auditor or comptroller, usually elected for a 6-year term by the Council, as an independent and impartial employee. The comptroller is accountable to the council deputies, not to the mayor.

60. The overall impression is that Slovak local authorities do not have enough qualified personnel. The rapporteurs were told that, in general, the salaries are low, and the work in local administration is usually unattractive for young, qualified people.

61. Contrary to what happens in some European countries, in the Slovak Republic there is no "*fonction publique territoriale*", or any *corps* or division of local civil servants, regulated or recruited at central level. Each municipality is responsible for hiring, managing and paying its own public employees, within the framework of applicable legislation and the by-laws and regulations adopted by each city. Large cities, such as Bratislava, do sign collective agreements with the local trade unions. These agreements regulate issues such as the mutual relations between the city and the unions, the working conditions and social benefits, the salaries and payments, etc. What is more, Bratislava has its own salary code. Small municipalities follow the general laws and regulations on the matter, and may, eventually take decisions by the council. They may also adhere to collective agreements made at national level for municipalities. In this sense, the ZMOS has the legal capacity to negotiate and conclude collective nationwide agreements, in partnership with the trade unions of the local employees.

62. Therefore, it can be concluded that the requirements of Article 6 of the Charter are met by the Slovak Republic

*Article 7: Exercising responsibilities*

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

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

63. Slovak municipalities cannot determine freely the remuneration or financial compensation to be granted to the mayors or to the members of the local council. As a rule, local council members do not receive a permanent "salary" or wages. Only in big and some middle-sized municipalities do they receive a compensation for attending the regular meetings of the councils.

64. Slovak mayors are entitled to a minimum salary. They do receive such fixed remuneration, but this is strictly regulated by national legislation, in a manner that may summarised as follows: first of all, the gross average salary in the country serves as the basis for calculation (in 2014: 882 €). Then, this figure is multiplied by a coefficient, which differs according to the number of inhabitants of the municipality, for instance:

- a. 501 to 1000 inhabitants: 1,65;
- b. 50,000 to 100,000 inhabitants: 3,19;
- c. more than 100,000 inhabitants: 3,58 (in this case, the maximum salary would be around 3,150 €).

In addition, this "fixed" remuneration may be increased by the local council in up to 70%, according to the performance of the mayor, additional responsibilities, special dedication, etc. Apart from this main "retribution", mayors may receive allowances and other types of compensations for expenses incurred in the fulfilment of their tasks. In general, local leaders are satisfied with the present system of remunerations for the mayors. They find it fair in the light of the overall economic situation of the country and the salaries that are paid in the public and private sectors.

65. Consequently, the current Slovak system complies with the requirements of Art. 7 of the Charter.



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

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

66. The control of the State over local authorities is very limited, and strictly regulated in the Law. Three different aspects need to be addressed here: the system of inter-administrative appeals and the role played by the General Prosecutor's Office (*prokuratura*), and, finally, the action of the National Accounting Office (NAO).

67. For what concerns the first issue, sectoral legislation foresees, in some fields of tasks delegated by the State, the possibility to appeal a measure or a decision adopted by a local authority before the local State administration (for instance, the corresponding district office). This happens in the domain of building, urban planning procedures, roads and transportation. The reason for these inter-administrative controls (which are foreseen in the Slovak Constitution, Art. 71.2)<sup>16</sup> is that in those cases the municipalities do perform State administrative functions, and they do so with the monies that the State allocates to the local entities.

68. Apart from these relatively few cases of inter-administrative appeals, the most important role in the control or oversight of municipalities is played by the General Prosecutor's Office (*Prokuratura*), who is an independent body established by the Constitution (arts. 149 to 151), and governed by the Act No. 153/2001, on Prosecution, as amended<sup>17</sup>. The General Prosecutor's Office ensures that the Law is observed by all individuals and all governmental and public bodies. According to this general and comprehensive competence, it may also supervise the legality of the decisions, measures and binding regulations adopted by local (and regional) authorities. The *Prokuratura* is a peculiar feature of the Slovak Republic, and follows apparently the German model of the *Staatsanwalt*. The Prosecutor acts either on request or on its own motion (*ex officio*). Thus, he may conduct inspections on local authorities in any matter. Inspections, though, are considered to be a preventive mechanism instead of "ex post" supervision.

69. The control exercised by the *Prokuratura* over local bodies is only a control of legality and "ex post facto". The *Prokuratura*, for instance, cannot cancel or quash whatsoever the decision of the local authority. In no case can the Prosecutor order a local authority to do or to refrain from doing something. The prosecutor cannot suspend a local body decision, neither. In some cases, the *Prokuratura* may intervene at the drafting stage, when a local authority asks for its advice on a given legal matter.

70. Contrary to what happens in other countries, Slovak municipalities are not obliged to communicate to the State authorities the decision or measures that they adopt. Therefore, the Prosecution can only initiate a procedure if it receives a complaint from local politicians or from affected persons, or as a result of an investigation file. By either way, the *Prokuratura* may decide to have a closer look on any decision, measure or binding regulation adopted at municipal level. If the findings show that the activity of the local body is not in conformity with the Law, then the Prosecutor's Office can issue "warnings" or protests, addressed to the local authority. The local body has the duty to answer in a time limit of 30 days, accepting or refusing the Prosecutor notice. If the local authority refuses to amend or modify its decision or measure, then the Prosecutor may lodge an appeal in court within two months, asking the annulment of the contested decision. Litigation in this field, however, is not very

<sup>16</sup> Moreover, the Constitution underlines that "the execution of State administration transferred to the municipality is steered by the law and controlled by the Government" (Art. 71.2).

<sup>17</sup> There is also a specialized Prosecutor working on corruption cases.

usual (it only happens three or four times a year). It seems that local decrees and decisions are usually drafted with care from the legal point of view, and sometimes the *Prokuratura* itself is consulted on a preliminary basis, as noted above.

71. According to the General Prosecutor's Office statistics, there is a clear improvement in the way municipalities are applying the Law. In this field, each Slovak municipality is independent and may independently decide to recruit a legal official or not. Large towns may have a more or less large legal department, but not small cities. If a municipality requires special legal advice on a precise manner, they may either hire a lawyer in the free market, or ask for an opinion or advice to the Prosecution Service. According to its annual reports, the number of allegedly unlawful local decisions has decreased over the years.<sup>18</sup> The main areas of non-legal compliance, according to the *Prokuratura*, are the following ones:

- Building permits
- Land registry
- Administrative offences
- Taxes collection and management
- Local fees
- The legality of local binding ordinances can also be supervised, and there is also number of cases in this field.<sup>19</sup> They usually impose duties and obligations on the citizens that fall beyond what the Law authorizes (for instance, a local ordinance limiting the number of dogs per household was found illegal).

72. In general, the current system of inter-administrative control does not seem to raise concern or controversy on the part of local authorities, and they feel free to take the decisions they find more convenient. Most of the interlocutors said that they did not have experienced any real case of attempt of unlawful control from the State authorities, and that the control takes place at the legality stage<sup>20</sup>. However, some local leaders made three different complaints in this area:

a. Firstly, they complain that in recent years there has been an increase of State legal regulations that lay down detailed procedures addressed to municipalities, which allegedly limit the way how municipalities are supposed to execute their powers (in case of original competences).

b. Secondly, they complain that the *Prokuratura* implements a too narrow interpretation of the principle of legality and that of conferral of powers. Therefore, in some cases, when a Municipality decides to implement a decision or initiative, this is challenged by the *Prokuratura* on the ground that the said initiative has no explicit basis in the legislation. The interpretation is that municipalities can only act in those cases where there is a clear conferral of competences by the Law. This interpretation of the Law leaves little (if any) room to "implicit" or residual powers on the part of municipalities, as noted *supra*. The principle according to which municipalities are entitled to take actions and initiatives for the benefit of the local residents, as long as these are not prohibited by the Law, is ignored in the country as is opposed by the *Prokuratura*.

c. Finally, local leaders also complained about certain cases of inconsistency among the activity and proceedings followed by the different regional offices of the *Prokuratura*. Apparently, there have been cases where a given local initiative or decision has been considered to be legal by the corresponding regional office of the Prosecutor's Office, while the same type of local decision, adopted by a municipality in a different Region, has been found illegal by the respective regional office. This causes uncertainty among local leaders.

73. As noted above, the National Accounting Office (NAO) performs a role in the control of local (and regional) accounting, budgeting and public expenditures, a role that has been reinforced by the recent *Fiscal Responsibility Act* (see, *infra*, para 69). This body is an independent agency, set up by Act No. 39/1993. The NAO supervises all financial and property operations of local governments. In doing so, it performs different types of audits, such as compliance audits, financial audits and performance audits. In this later case, the NAO controls the ability of municipalities to perform their original competences within their remit, as well as the competences transferred from the State. For

<sup>18</sup> According to their own data, the *Prokuratura* dealt with 24,851 cases related to local/regional authorities between 2012 and 2015.

<sup>19</sup> According to their own data, the *Prokuratura* inspected 6,333 local or regional binding rules between 2012 and 2015. Out of these inspections, the *Prokuratura* issued 2,222 protests and 840 warnings.

<sup>20</sup> Moreover, the possibility for the State to dissolve a local authority is not foreseen by the Constitution of by domestic legislation.

each local authority that is surveyed, a NAO report is released and sent to the mayor and to the Council, as well as to the Ministry of Finance and to the National Council. Then, the Ministry of Finance may take additional measures, if needed. On the other hand, if the NAO finds a misdemeanour, they transfer the case to the criminal prosecutor.<sup>21</sup> The NAO, though, has no power to paralyse or suspend a public expenditure by a local authority.

74. In the light of the above, the Slovak Republic fully complies with Art. 8 of the Charter.

*Article 9: Financial resources*

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

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

75. As in many other European countries, finances are perceived by local politicians as one of the most controversial aspects of the current situation. It should be stressed that the local finances system is homogeneous across the country. Therefore, there are no specificities or differences between regular municipalities and “cities”, or between small towns and large cities. The key piece of legislation in this field is the Act No. 564/2004 Coll., on budget determination of income tax yields to territorial self-government, the Act No. 582/2004, on local taxes and fees, amended several times, and the Act No. 583/2004, on budgetary rules of the local self-government. Fiscal decentralisation was deepened in 2005 and 2008. The main sources of local income are formed by exclusive local taxes and shared taxes, non-fiscal income and transfers. The main ideas underlying the system is that the original competencies of municipalities should be financed through “own revenue” (tax and non-tax revenue) while the tasks delegated by the State should be financed through transfers from the State budget.

76. In the domain of taxation, local authorities are entitled to the following taxes:

a. *Personal Income tax (PIT)*: this is the main source of funding for municipalities.<sup>22</sup> According to data provided by the Ministry of Finance in 2014, the personal income tax amounts for

<sup>21</sup> The NAO informed the delegation that the cases of serious financial mismanagement at local level are very rare.

<sup>22</sup> According to data provided by the Ministry of the Interior, the personal income tax amounts for 68-70% of total tax revenues; the property tax is accountable for 16% of the said revenues, 8% comes from specific services and 8% comes from corporate income tax

72.3% of total tax incomes; the real estate tax is accountable for 17.9% of said incomes and 9.8% comes from other own tax incomes. This State tax, regulated and collected at State level, but the national collection of this tax is mainly allocated to the regional and local governments.<sup>23</sup> According to two memoranda of co-operation signed by the Government with ZMOS and SK8, the local and regional authorities receive the following percentages of the income tax collection:

a. local authorities: 66-67% in 2014; 68.5% in 2015, and 70% in 2016;  
 b. regions: 21.9 in 2014, 29.2% in 2015 and 30% in 2016. Therefore, in 2016 the whole national collection of the personal income tax will be granted to the regions and to local authorities.<sup>24</sup> In addition, the system incorporates a formula allowing a certain degree of equalisation, because the actual amount of money that each municipality receives for this category is determined according to a complex formula that takes into account several variables and coefficients,<sup>25</sup> such as the number of children under 15; the number of inhabitants of the municipality, the number senior residents who are older than 65, the altitude of the municipality, etc.

*b. Real estate tax:* municipalities also collect the real estate tax and are entitled to 100% of the collection thereof. Tax rates are approved by the city council in the form of general binding bylaws, with due respect to applicable State tax legislation.

*c. Other local taxes* are the lottery tax, the local tax on dogs, the tax on vending machines.

*d. Charges and fees:* municipalities collect a number of different charges, such as the one for the municipal collection of waste, or for the use of municipal property.

77. Amongst the non-tax revenue: revenue from business, commercial activities, revenue from the ownership of property (sale of movable and immovable property); donations received; interests from deposits or other financial products; collection of traffic fines and other administrative offences; financial operations – the municipalities (like the self-governing regions) can ask for loans from the private sector and they can issue bonds. The prior approval of the Ministry of Finance is not required. However, municipalities and regions can only enter into these financial operations if they respect some ceilings or limits (see below).

78. Municipalities do receive transfers for the performance of delegated, State administration tasks. These transfers are earmarked transfers and are calculated by State agencies so as to cover, theoretically, the cost of discharging these delegated tasks. However, the rapporteurs received many complaints that the funds transferred do not cover adequately the provision of those services, especially in the domain of primary schools.

79. Municipalities may also benefit from the several EU funds established in the domain of urban development, rural development and other fields related to the municipal life. However, these revenues are in no way stable or periodic and depend on a large series of factor which mainly stand outside the municipalities reach.

80. The current overall situation of local finances was diagnosed in a contradictory way by the interlocutors met by the rapporteurs. For what concerns the local leaders, the situation was diagnosed as unsatisfactory in general, as far as the flexibility and sufficiency of financial resources is concerned. They claim that a great part of the money still comes from the State; that the system of local taxes is not satisfactory; that the total amount of disposable resources is not enough; and that the spending power of local authorities is still small as compared to the State. Small municipalities allegedly receive the minimum money for the functioning of their administrative apparatus, but Bratislava also complains. This aspect seems to be a permanent discussion in the Slovak political landscape. Some local leaders are not satisfied with the manner how funds are calculated, the system is considered not to be fair, and according to them there is not enough equalisation. According to the UMS, the formula of fiscal decentralisation should be changed because it is disadvantageous for small cities and towns.

<sup>23</sup> In accordance with the Slovak Act No. 583/2004 Coll. (budgetary rules of the territorial self-administration) a personal income tax is the own revenue to municipalities and self-governing regions and they have autonomy how to use it.

<sup>24</sup> Correspondingly to this increase in the money transferred, local and regional authorities have pledge to consolidate their finances and to reduce their deficits by 3%.

<sup>25</sup> Established by Regulation No. 668/2004 Coll.

81. In this sense, mention should be made to a study performed by the National Accounting Office in 2005. The NAO conducted audits in 100 municipalities, chosen according to previously established statistical selection criteria. At the end of this comprehensive survey, the NAO found that municipalities under 5,000 inhabitants could not really discharge their competencies and statutory responsibilities.

82. A different viewpoint is that of the central government. The relevant ministries claim that the current arrangement is fair and adequate for the country, which is suffering from the economic crisis. The Ministry of Finance considers that the level of financial autonomy of local authorities is satisfactory and that the principle of commensurability of local finances (as proclaimed by the Charter on local self-government and by art. 71 of the Slovak Constitution) is fully respected. Furthermore, the Ministry claims also that the amounts of transfers (to finance delegated tasks) have been sufficient over the last years. As an evidence of this assertion, it seems that in 2012-2014 the territorial self-governments showed a budget surplus or balanced budget. The crisis in 2008-2010 resulted in the decrease funds from the personal income tax and for that reason the Government granted an additional transfer to the municipalities of €100M in 2009 and €72.5M in 2010.

83. For what concerns the actual figures, the structure of revenues for municipalities can be broken down as follows for the years 2012, 2013 and 2014.<sup>26</sup>

Source of funding/revenues	Share of total revenue in 2012	Share of total revenue in 2013	Share of total revenue in 2014
<b>Own revenues, of which</b>	<b>62%</b>	<b>65%</b>	<b>67%</b>
Tax revenues	48%	48%	50%
<i>Personal income tax (PIT)</i>			
<i>Other local taxes</i>			
Non-tax revenues	14%	17%	17%
State subsidies	<b>38%</b>	<b>35%</b>	<b>33%</b>
Total revenues	100%	100%	100%

84. Independently from the official position of the Government, it is clear from the above table that, at least, the own revenues of municipalities have increased, while the state transfers have decreased. On the other hand, the fiscal decentralization has been deepened in the last years, something that can be understood to be right: during the last Congress monitoring visit on local democracy in 2001, local authorities spent some 7% of total government expenditures, while currently both local authorities and regions account for 18% of total government expenditures. However, it is true that the setting up of the regions has established a certain “cap” on the potential increase of financial autonomy of local authorities. Moreover, the said figure of 18% can be still considered to be low in the light of common practices in Europe.

85. In the domain of budgeting, all municipalities are free to draft and to approve their own budgets, but they must respect the budget structure established by the Law, which sets a unified legally binding system of budgetary classification<sup>27</sup>. The local council is the competent authority to approve the budget. Local authorities are free to decide on what they spend their own revenues, and the Central government or other State authority cannot interfere with the municipalities budgetary autarchy. The Ministry of Finance respects the autonomy of municipalities and does not address binding instructions or guidelines to municipalities or to self-governing regions in the domain of budgeting.

86. However, the Law sets some specific limits or rules on the local public debt, such as: (a) loans which can only be used for capital purposes; (b) the total debt stock which cannot exceed 60% of the budget of the previous year; and (c) the annual debt payments which may not exceed 25% of the budget of the previous year. In the aftermath of the economic crisis, and in view to reduce the public deficit of local and regional authorities, some extraordinary measures and controls have been implemented on local/regional bodies as a consequence of the economic crisis: in accordance with

<sup>26</sup> Data provided by the Ministry of Finance

<sup>27</sup> The budgeting process is regulated by Act No. 523/2004, on budgetary rules

the Constitutional Act No. 493/2011 Coll. on fiscal responsibility (Fiscal Responsibility Constitutional Act) and with the Law on Budgetary Responsibility of 1 March 2013, since 2016 these obligations or limits have been stringed, since the Act establishes a fine to the municipalities and self-governing regions in the event of exceeding the limit of debt (in December 31th 2015).<sup>28</sup> During the consultation process, the Ministry of Finance informed the delegation that: "The government made an agreement ("Memorandum of Understanding") with local and regional authorities (ZMOS, SK8). The basic goal of memorandum was "consolidating public finances in order to bring the general government deficit below three per cent of GDP in 2013. Following the successful fulfilment of the Memorandum have been further discussions with territorial government authorities. The local and regional authorities negotiated an increasing their in the income of share from PIT as explained under para 76 (a, b, c) above.

87. Finally, and as far as municipal property is concerned, Slovak municipalities have their own property, goods and assets. The key piece of legislation in this field is the Act No. 138/1991, on the municipal property. In addition, the right to own land and real estate property is fully recognised to local authorities, and they manage them in a freeway.

88. In the light of the above, the Slovak Republic meets the basic standards enshrined in Art. 9 of the Charter.

*Article 10: Right to associate*

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

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

89. In Slovakia, the right of local authorities to associate and to form common platforms is fully recognised. Local authorities are entitled to freely associate with others and thus form national associations. In this sense, Art. 66 of the Slovak Constitution provides that "a municipality shall have the right to associate with other municipalities for securing matters of common interest. Consequently, several associations have been established during the last two decades.

90. The oldest and most important association of local authorities is the « Association of towns and villages of Slovakia » (*Zdrudenie Miest a Obcí Slovenska, ZMOS*). The foundation of the association dates back to January 1990, well before the creation of the new independent Slovak state. Based on the principle of voluntary adherence, ZMOS members currently include 95% of all cities and towns in Slovakia Today, ZMOS is regarded as a non-partisan organisation that defends and represents the interests of local authorities. The association acts as a local interlocutor with the government and conducts lobby in favour of vigorous territorial decentralisation in the country. The financial sources of ZMOS come from the contribution of its members.<sup>29</sup> As a matter of fact, out of 140 municipalities with a city status, 132 are members of ZMOS.

91. The other important association at national level is the UMS (*Únia Miest Slovenska – Union of Towns and Cities of Slovakia*) founded in 1994. The UMS comprises only "cities" (in the technical sense), and an amendment of the UMS statutes in 2012 cancelled the possibility for villages to become extraordinary members, although it seems that several towns do participate actively in the

<sup>28</sup> "If the total amount of debt of a municipality or a self-governing region reaches or exceeds 60% of its actual current revenues in the previous fiscal year, the municipality or self-governing region concerned shall pay a penalty imposed by the Ministry of Finance in the amount of 5% of the difference between the total debt amount and 60% of the actual current revenues in the previous fiscal year"

<sup>29</sup> The membership fee is calculated at the rate of 0,17 € per local resident.

UMS activities, Currently, the UMS has 63 *de jure* members (“cities”) in total. Is it possible for a city to be both a member of UMS and of ZMOS.

92. Besides these two main associations, two other “sectoral” associations have been established:

- the “K8 Association”, which is the Association of the city of Bratislava and seven regional capitals of Slovakia. It was founded in 2006 as an independent organisation or regional capitals. K8 priorities include the reform of public administration and the financing of the larger cities;
- the Association of Historic Towns and Cities of Slovakia (AHTSoS), formed by cities having historical districts and its main goal is the maintenance and development of their historical heritage.

93. Apart from “institutional” associations, formed by “genuine” local entities, there are other “personal” or professional associations at local level, such as:

- the Association of Municipal Finance Officers of the Slovak Republic (AMFO SR);
- the Slovak City Managers Association (SCMA);
- the Association of the Chief Controllers of Towns and Cities of the Slovak Republic (ACCoTC);
- the Club of the Mayors of Slovak Towns and Cities (CMSTC)
- the Slovak Association of IT experts working in self-governing institutions (ZISS) – supporting eGovernment implementation on self-government layer

94. Therefore, the association phenomenon is very well developed at local level in Slovakia. All the main associations entertain frequent and fluent negotiations and political dialogue with national authorities (Parliament, Prime Minister, President) (see para 27 *supra*).

95. As noted in the introduction of this report, the Slovak Republic has signed and ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities and two of its protocols. This, in connection with art. 10.3 of the Charter, provides for a robust legal and political basis for engaging in transfrontier co-operation. The situation may be depicted as being fairly positive, and local leaders and associations told the rapporteurs that they do not perceive limitations or constraints from the State in this domain.

96. As a matter of fact, many municipalities have established partnerships, agreements and twinning with towns and cities in other countries. For instance, the city of Bratislava is very active in the area of international co-operation. It conducts a strong co-operation scheme with Vienna, which has resulted in a number of joint projects (transport links, social housing, bike paths, etc.). Another cooperative structure has been done with the Austrian Land of Lower Austria. The agreement covers 11 main areas (transport, infrastructure and mobility, tourism, etc.). The city is also very active within the context of the Council of Danube Cities and Regions.

97. Besides the individual municipalities, both the ZMOS and the UMS associations are also very active in trans-frontier local co-operation.<sup>30</sup>

98. Consequently, the present situation of the right of association is fully in compliance with the requirements of Art. 10 of the Charter.

*Article 11: Legal protection of local self-government*

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

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

99. The implementation of this article of the Charter deserves a nuanced assessment. It is true, as noted *supra*, that Slovak municipalities enjoy a large scope of autonomy and that State control, as

<sup>30</sup> The most significant achievements of the UMS in this fields are the following ones: this association has joined various European networks and initiatives, for instance ALDA, Energy-Cities, Smart-Cities etc. They cooperate closely with the Association of Austrian Towns and Cities and with the Association of Polish Towns and Cities, with the association “*Unia Metropolii Polskich*”, in the Czech Republic and with the association “*Národní síť zdravých měst ČR*” (Healthy Cities of the Czech Republic). The UMS also participates on projects of interregional and cross-border Co-operation, and cooperates on thematic projects of tourism development, etc.

presented in the previous points, is legally limited and light in practice. It is also true that municipalities, as legal entities, do have the right to go to courts in order to defend their rights, ownerships or interests, but just as another entity would do. Therefore, municipalities can have access to the regular courts, where they can defend their autonomy, if it were ignored or reduced by the central government or by State agencies. The same is true concerning litigation in the Constitutional Court. Under Art. 127a of the Slovak Constitution, the court has competence to decide “on complaints of the bodies of territorial self-administration against unconstitutional or unlawful decision or against other unconstitutional or unlawful action into the matters of self-administration”. Furthermore, the court has the power to cancel the challenged decision, or if the infringement of the right lay in an action different than in a decision, “it shall prohibit continuing of infringement of the right and shall order, if it is possible, to reinstate the status before the infringement”.

100. The frequency of this type of litigation remains unclear, in any case, and so is the question whether this provision could be used by local authorities to challenge an Act of Parliament in the Constitutional Court, in the case that the said law would reduce or cripple local self-government.

101. In the light of the above, the Slovak Republic meets the basic standards enshrined in Art. 11 of the Charter.

*Article 12: Undertakings – reservations formulated by the Slovak Republic*

102. As noted in the Introduction to this report, the Instrument of ratification of the Charter that was first deposited by Slovakia contained several declarations or “reservations” to the Charter. Once the ratification process was fully culminated in 2007, there are no longer reservations, and this international instrument is fully applicable and binding on Slovakia. As compared to the practice of other countries, the Slovak approach must deserve a positive appraisal, and fully complies with Art. 12 of the Charter.

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

#### *3.4.1. Antecedents: main developments concerning regional democracy in the Slovak Republic*

103. Regional democracy in the Slovak Republic has experienced a radical change in the last fifteen years. From the stage of a strong unitary country, it has evolved to a decentralised one, articulated in three territorial levels, where the regional level is the “intermediate” government layer, between municipalities and the State. Although the country had known several types of sub-state territorial divisions in the past, they were mere districts for the execution of the competences and tasks of the State. Therefore, the Slovak politicians decided by the end of the nineties the inception of the self-governing regions in Slovakia. This endeavour went through a process whose milestones deserve to be briefly presented here, for the sake of performing a sound assessment of the present state of regionalisation in this country:

i. *Strategy formulation.* In 1999-2000, and when the municipal decentralisation had already reached a certain degree, the Government then in power approved a strategic political document, called the “Concept for decentralisation and modernisation of public administration”, supported by all the parties in the cabinet and approved by Resolution of the Council of Ministers of the Republic of Slovakia (N° 230, of 11 April 2000). Most of the developments that took place afterwards were anchored in that strategy. The final target was to have a streamlined government, territorially divided in three layers: (a) State administration, with a central organisation and a deconcentrated one; (b) the regional layer; and (c) the local authorities.

ii. *Reforming the Constitution.* Although the creation of self-governing Regions (or “Higher Territorial Units”, HTU or “Upper Territorial Unit”) was foreseen in the Slovak Constitution since 1992, the *Magna Carta* was amended in 2001 with the purpose, among others, to introduce regional democracy in the country. The President of the Republic eventually promulgated the revision on the Slovak constitution on 8 March 2001. Thus, the Slovak Constitution contains basic provisions, setting up a level of regional self-government. Articles 64, 64a, 66, 68 and 69 of the SC do provide for a very sketchy regulation of the regions. These provisions deal at the same time with local and regional self-government, clear evidence that the process of regionalisation cannot be understood independently from local decentralisation. Processes are parallel, both are inspired by the same main goal, and many legal provisions are applicable to municipalities and regions. For instance, the Constitution



provides that “territorial self-administration shall be composed of a municipality and a higher territorial unit” (Art. 64). The self-governing regions are depicted, as in the case of municipalities, as “independent territorial and administrative units of the Slovak republic”, whose details will be laid down by a law (Art. 64a). They may issue general binding regulations (Art. 68). Furthermore, Article 69 of the Constitution lays down the basic institutional organisation of the regions (see *infra*).

iii. *Legislation of self-governing regions.* In the summer of 2001, the National Council (Parliament) approved the Law on the “Higher Territorial Units” or “HTU”: the Act of 4 July 2001<sup>31</sup>.

iv. *Regional elections.* In the summer of 2001, the Parliament approved the law on regional elections. The Act No. 303, of 4 July 2001, called for elections to the self-governing regional bodies. The first regional elections to be held in Slovakia’s history took place on 1<sup>st</sup> December 2001.<sup>32</sup> These elections experienced a very low turnout of voters: 26% of electoral participation in the first round and 22% in the second one. This structural pattern has not improved in the subsequent regional elections, and will be discussed below.

v. *Effective establishment of the Regions.* After the elections held in December 2001, the governing bodies of the Regions were established and took up their functions. The autonomous regions started their activities in 2002. During the first two years, the process of establishment was progressive. Different national laws were enacted to set up a full and comprehensive statutory framework of the regions (see *infra*). The transitional period finished in late 2003. January 2004 marked the beginning of the full life of the self-governing regions in the Slovak Republic.

### 3.4.2. Statutory scheme for regional democracy

104. The Act of 4 July 2001, on the “higher territorial units” (Act No. 302/2001 Coll) is the basic statutory regulation of the regions. It has been amended several times. The Act – in the English version depicts the HTU as “autonomous (*samospravny*) territorial self-government and administrative unit of the Slovak Republic”. The Act established eight HTU: Bratislava, Trnava, Trenčín, Nitra, Žilina, Banská Bystrica, Košice and Prešov. Each regional government has its seat in the city of the same name, which is the capital of the region. The prospect of Slovakia becoming a member to the EU played a decisive role in the final territorial definition of the “HTU”. Actually, they were conceived as “NUTS-3” in the terminology of the EU Regional Policy and associated funds. Progressively, the terminology “Higher Territorial Unit” was replaced by that of “self-governing region” (*samonspravny kraje*), which sounds less technocratic and more in line with European terminology.

105. The Act of 4 July 2001 defines the self-governing regions as a legal person that, under the conditions laid down by a law “manages its own property and revenues independently, ensures and protects the rights and interests of its inhabitants” (Article I, Section 1-5). Its territorial demarcation can only be changed by a law (Article I, Section 1-4). As for the institutional organisation, the Act develops the over-concise constitutional provisions and says that the region is endowed with directly elected organs: an Assembly or Council (Art. 1, Sect.11) and a “Head” or President (Art.1, Sect.16). All these provisions, plus the fact that regional self-government is regulated by the Constitution, should be understood to be in full compliance with the core concepts and common principles on regional self-government enshrined in the Reference Framework for Regional Democracy.

106. However the Act of 4 July 2001 is not a comprehensive “code” of regional government. Instead, it lays down the basic elements of the institutional profile of the regions. In many key features of the regions’ institutional regime, the Act refers to other pieces of legislation: the Act on the property of the HTU (dealing with the transfer of state property to regions); the Act on the elections of organs of the HTU; the Act on the allowances and salaries of the Presidents of the HTU; the Act on budgetary rules of territorial self-government; the Act on budgetary determination of the yields from the income taxes of the territorial self-government; etc. In spite of its limited scope and content, the Act establishes a set of autonomous regional entities whose legal regime largely complies with the key principles of the Reference Framework for Regional Democracy.

31 The Bureau of the Congress adopted an opinion on this Act (see. Doc CG/Bur (8) 57). There was also a reaction of the part of the Committee of Ministers of the Council of Europe: Report on the self-government regions in the Slovak Republic, [Doc. RAP-LOC (2002)1]

32 In November 2001, at the request of the Slovakian authorities, the Bureau of the Congress took the decision to observe the regional elections. As a result of that activity, on 20 December 2001 the Bureau adopted the report on the observation of the first regional elections held in the Slovak Republic, 1 December 2001 Doc CG/BUR (8) 99, Rapporteur: Mr. Haas.

107. For instance, the 2001 Act lists a group of competences of the regions. It also rules that the regions do possess own resources, and that they will receive state subsidies (for delegated tasks). Furthermore, the regions are endowed with rule-making power (they can approve “generally binding regulations”). The Law also provides that they can develop a strong trans-frontier co-operation, by the subscription of the appropriate agreements, and even become a part of international associations. On the other hand, the regions may be delegated the discharge of duties corresponding to state administration. Finally, the Act establishes that the regions have their own administration. Each one of these statutory provisions refers to one or several aspects that are included in the Reference Framework for Regional Democracy. One can well support the view that all those provisions do follow consistently the requirements of the said Framework Reference.

#### 3.4.3. *The number and size of the regions (HTU)*

108. Determining the number, size and capital of the several regions was probably the most critical issue for political discussion during the process of establishing those territorial entities. The proposal of the Government was to create twelve HTU, following a model connected with political and historical background (the *župan* or old territorial districts). The government proposal was supported by the vast majority of local authorities, experts and NGOs. However, the Act of 4 July 2001 divided the Slovak Republic into eight self-governing regions, using the same territorial basis as the governmental regional offices that were created in 1996. The final decision seems to have been the result of a compromise between historical and economic considerations. It is commonly understood that the 2001 Act established the regions according to a model mostly connected with technocratic guidelines than with the real, historical or natural borders or the regions. Even the original terminology (“Higher Territorial Units”, or HTU) gave this impression.

109. Although this issue was very controversial during the first Congress monitoring visit on regionalisation, back in 2006 (see, supra, para15), during this visit the rapporteurs could notice that this issue is now more or less settled. Even if some still consider that the Self-Governing Regions are not homogeneous; that they do not form a coherent picture; and that their borders do not follow natural, historical lines, they concede that the situation is now well-settled and very difficult to change. There are still some discussions, though, on transforming Bratislava into the “ninth” region. In any case, the current government does not have in its political agenda the project to change the number or the basic features of the present regions, although the political developments that could take place in the country after the March 2016 general elections are hard to predict at this stage.

#### 3.4.4. *Internal organisation*

110. As noted above, Article 69.4 of the Slovak Constitution lays down the basic institutional organisation of the regions, consisting of “the representation of the upper territorial unit” (the Council of the Region) and “the head of the upper territorial unit” (the President of the region). The members of the council -the representatives - shall be elected for a four-year term. Elections of the representatives are performed on the basis of free, universal, equal and direct suffrage by secret ballot (Art. 69.5, the Slovak Constitution). The institutional profile and competences of council of the Region largely replicates that of the municipal council. The council, for instance, approves the budget of the Region.

111. Concerning the “Head” of the region (the President), this body is regulated at Art. 69.6 of the Slovak Constitution. He is also elected by the inhabitants of the territorial district, on the basis of a universal, equal and direct suffrage by secret ballot for a four-year term. The elections are organised on a two-round model. In the first round, the candidate obtaining more than 50% of the votes is appointed to the office of president. If no candidate obtains this threshold, a second round is organised, in which the victory goes to the candidate that gets the higher number of valid votes. In each region, the President is elected independently from the Regional council. He is not a member of it, but he chairs the meetings of the council. The president of a Region can appoint deputies. The relations between the president and his deputies and the possibility of delegating presidential responsibilities have been ruled by the 2005 amendments to the Act on HTU.

112. As in the case of the mayors at municipal level, the head is the executive authority of the region, the political leader and its “visible head”. He is responsible for the management of the regional bureaucracy, means and resources. He is also the natural representative of the Region. Therefore, the institutional framework of the region follows the national tradition of double legitimacy: at the local level (Mayor and Council are elected directly and independently), at the regional level (Presidents and Councils of the regions) and at the national level (President-Parliament). The president has a veto

power, but the council may overrule the president's veto if it votes in favour of the proposal for the second time. Each council can approve its own code of procedure, and they can establish in an internal regulation the procedural requirements, steps and phases of their decision-making process, including the handling of a veto from the president of the Region.

113. For what concerns human resources, the self-governing regions have their own staff, which is independent from the central or local bureaucracy. All the people working for the regions are civil servants at the regional level, except in the case of teachers. The regions may establish their own salaries for their own employees, and they have autonomy to hire and dismiss their own civil servants, as in the case of municipalities.

### **3.5. Analysis of the situation of regional democracy on an article-by-article basis**

#### *3.5.1. Regional competences*

114. In general, most of the competences that the regions exercise today belonged traditionally to the central administration. As noted *supra*, the State transferred through a multi-annual process of devolution a high number of competences (around 400) to the local and regional level through a multi-year period of time. Decentralisation was performed through a dual-level (albeit simultaneous) process, composed of five stages. The powers were transferred from the State to the regional and/or the local layer, according to the territorial or economic scale of the competence at stake. For instance, in the domain of education regional governments are responsible for secondary schools, conservatories and "upper fine arts schools". The process was conducted by the Ministry of the Interior, and took place mainly between 2001 and 2003. The transfer implied not only the nominal or formal conveyance of the competences, but also of infrastructures, personnel and resources.

115. The Act on the self-governing Regions regulates the competences and the domains of responsibility of the regions (article 1, section 4), although it does not identify a comprehensive list of competences. For instance, the Law says that the region will "carry out planning activities" relating to its own territory, but does not describe what concrete plans are to be approved by the region, as this done through sectoral legislation on development planning. In any case, and as noted *supra*, the Act lists a group of competences of the regions, then fulfilling at this point the Reference Framework.

116. Today, the regions have a fair share of powers, basically in the domain of economic management and regional development, education, schools, culture, transportation. The Slovak system is a "symmetric" one, in the sense that all the regions have the same legal status and the same and homogenous share and number of powers. The competences of the Slovak self-governing Regions may be divided into original and delegated by State, as it happens with municipalities. The most important original competencies of regions are the following ones:

- regional planning and development;
- transportation (they own and maintain roads of the second and third class, whereas 1<sup>st</sup> class roads, expressways and motorways are owned by the State owned);
- healthcare (they own and run hospitals of the second category);
- social services (they run some types of social services having supra-municipal scope, such as retirement homes, social services for children, etc.);
- education (they run secondary schools);
- cultural services (galleries, museums, theatres, some types of libraries);
- tourism;
- participation in civil protection;
- licences for pharmacies and private physicians.

117. As far as delegated competences are concerned, the regions execute some tasks transferred from the state administration (for example, a part of the competencies in education, health system, road transportation, etc).

118. Furthermore, each region may enact regulations on regional taxes, fees, healthcare system, regional services and so on. Although regions are commonly perceived as having the primary task of regional development, the management of the EU structural funds is performed by the central administration.

119. The process of transfer of powers to the self-governing Regions is widely considered to be finished by now. New transfers of powers from the central government to the HTU are not foreseen in the near future, while the results of the next general elections (March 2016) might open the door to reconsider this state of facts. Most regional leaders and officials met by the delegation expressed their views that the number and importance of their competencies is rather satisfactory, in view of the unitary nature of the country. In the rapporteurs view, the share of powers attributed to the regions clearly satisfies the requirements of the Reference Framework for Regional Democracy.

### 3.5.2. Relations with other sub-national territorial authorities

120. In this field, the delegation observed that the current Slovak territorial system consists of three somehow watertight compartments or layers of government: the central administration, the regions and the local level. The regions and local self-government have both contacts with the central one, but they do not have relations between each other. Furthermore, there is no institutional, operative or financial relation between the regional and the local governments. The co-operation and communication between these two levels of government is very weak.

121. The regional and local layers of government have the same hierarchy, none is superior to the other, and there is neither superiority nor subordination. The regional level is in no way "superior" to the municipal level, and municipalities are in no way subordinated to the regions. However, in some respects the local authorities have a sort of natural subordination to the regional decisions, as in the domain of planning, for instance (the city planning has to respect regional planning). The respective competences of regions and towns seem to overlap sometimes, according to one regional leader met by the delegation, although it received contradictory versions on that.

122. Finally, it should be pointed out that some city mayors are at the same time members of the Council of the region. And, as noted *supra*, under Slovak law, it is possible to be, at the same time, a mayor, a Member of Parliament and a member of the regional council.

### 3.5.3. Involvement in the State decision-making process

123. Self-governing regions, according to the regional politicians and representatives met by the delegation, are broadly involved in consultation and participation in the decision-making process of State authorities, for most decisions, plans and legal initiatives that affect them. Hence, it is possible to reproduce here what has been noted at point 3.5.6., *supra*, for the municipalities: the central government consults regularly the regions in regard to the different legislative proposals that affect them. Several examples may be provided here.

124. To begin with, the Slovak Republic has approved in recent years a number of plans and strategies on regional development, the most important being the present *National Strategy on Regional Development* (NSRD). The Act 539/2008, on the support of regional development, was amended in 2014 to increase the participation and intervention of the regions in the framing and adoption of development plans. According to the Ministry of Transport, the preparatory work and the implementation of such strategy were done with close and active participation with the self-governing regions and other stakeholders. The Chapter five of the NSRD, which describes development strategy of regions, was elaborated by the self-governing Regions.

125. Another example of regional involvement in the State planning procedures has been the preparation of the 2<sup>nd</sup> and 3<sup>rd</sup> class Transport Master Plan. It was coordinated by the Ministry of Transport, with the active participation of the Regions. For the preparation of strategic documents in the transport sector, a working group for programming was developed and the Regions were all invited, and they are members with voting rights. Furthermore, The Ministry is currently updating this National Master Plan with an outlook to 2030 and allows Regions to participate in this process. Finally, the National Concept of Territorial Planning was elaborated by the State departments with the comments of regional authorities.

### 3.5.4. Supervision of regional authorities by State authorities

126. Slovak regions do act as autonomous territorial units, free from day-to-day guidance, prior approval or consent from the Central administration. Under strictly legal terms, the Government cannot give orders to a region, but it can forward suggestions or recommendations. Therefore, the remit of self-government enjoyed by the regions is respected by State authorities. However, self-government is

compatible with some types of control, which, in the case of the regions do follows the same lines governing the control of municipalities (see, *supra*, para 59). A distinction should be made between “original” competences and “delegated” competences.

127. Thus, in the domain of “original” competences or tasks, there are no inter-administrative appeals. There is no expediency control or appeal before the state administration, but activity of the regions may be controlled by different forms. Firstly, through the intervention of the General Prosecutor’s Office (*Prokuratura*). This control is performed exactly in the same way as in the case of municipalities. The system of external control is, consequently, purely base on legality and the courts have, eventually, the last word in any controversy. However, inter-administrative litigation is unusual, and challenges in courts of regional activities by central administration are infrequent. As in the case of municipalities, regions may also be subject to inspections carried out by the National Accounting Office (NAO). There is also an internal control, since the Council of the region must appoint a comptroller under the Act of 4 July 2001, with the same institutional profile than the local comptroller.

128. However, in the exercise of delegated State competences, there is room for the central administration to issue guidelines or to check the manner of how the regions are exercising those competences. Furthermore, when the regions exercise delegated State tasks, the sectoral legislation provides for the possibility of appealing the regional decisions before the district offices (for instance, in the field of transports).

### 3.5.5. Protection of regional self-government

129. In this domain, what has been said *supra* in the case of municipalities can be reproduced, *mutatis mutandis*, to regions and the assessment must be the same (see, paragraph 99).

### 3.5.6. Right of association

130. Art. 66 of the Slovak Constitution provides that “*a municipality shall have the right to associate with other municipalities for securing matters of common interest; higher territorial units shall likewise have the right to associate with other higher territorial units*”. Consequently, the right of association for the self-governing Regions is safeguarded by the Constitution. Until 2006, though, there was no specific organisation or association to promote the common interests of Slovak self-governing regions. However, the presidents of the eight regions established first a sort of informal meeting or conference, commonly called the “Club of the eight”. Later, this “club” was transformed into a true, formal association, with its own legal status: the “SK-8” which was eventually registered as such in 2006. The presidency rotates every six months, among the different presidents of the regions. The association was established with the aim of becoming an interlocutor with the Parliament, the mayors and ministers with respect to decentralisation. The councils of the regions have authorised the respective presidents to enter such agreements.

131. As in the case of the association of municipalities, the SK-8 plays an active role in political dialogue with the central government in all the major issues that affect the regions. As in the case of municipalities, the situation deserves a positive assessment (see para 27 *supra*).

### 3.5.7. External relations. Trans-frontier co-operation

132. Regions are allowed to perform trans-frontier co-operation. They are free to enter into agreements with regions and other entities of other neighbouring countries. As a matter of fact, the Self-Governing Regions do not require the prior approval from the Central Government to conclude a co-operation agreement, although, according to existing legislation, they submit the agreements that they conclude with foreign partners to the Ministry of Interior. That is, they notify the central government after the signing of the agreement. As a consequence of this liberal legislative framework, trans-frontier co-operation seems to be very active at regional level.<sup>33</sup>

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<sup>33</sup> For instance, the Delegation was informed that the Self-governing Region of Bratislava has a customs co-operation agreement with the Federated Republic of Lower Austria and the Federated Republic of Burgenland within Austria, with the county Győr-Moson-Sopron in Hungary and with the South Moravian region in the Czech Republic. The *samospravny kraj* Bratislava also cooperates with these “foreign” through different cross-border co-operation programs. On the other hand, the region is a member of the Working Community of the Danube Regions (ARGE Donauländer), and is actively engaged in the programs of interregional co-operation such as “INTERREG IVC” or “ETC Danube”, etc.

133. Furthermore, some regions have their own representative office in Brussels, to advance the regional interests among the EU institutions. In addition, the regions are adequately represented in the delegation of the Slovak Republic to the Committee of the Regions of the EE. This delegation is composed of 9 members and 9 alternates. Among the members, there are 5 representatives of the regions (presidents or vice-presidents of the regions), and 4 of the municipalities (mayors of large cities). The same proportion is respected among the alternates.

### 3.5.8. Regional finances

134. The statutory framework for the financing of the regions is to be found in the Act on the HTU (as amended several times) and on the general laws on public financing mentioned supra. Basically, Slovak regions do cover financially its needs with their own revenue, with transfers from the State budget and with other resources. Here, there is also a great parallelism with the municipalities.

135. The funding of the regions has evolved during the last ten years, along the lines of the process of creation and establishment of the regions. In the period 2002-2004, the regions were mainly financed by direct transfers and subsidies from the State. Progressively, the central administration increased the freedom of the self-governing Regions in the use of those grants. The financial system of the regions was completely renovated in 2004-2005<sup>34</sup>. This was supposed to strengthen the autonomy of the regions. The new statutory scheme is basically composed by the following laws and regulations:

- Act No. 564/2004 Coll., on budget determination of income tax yields to regional self-government and on amendments and supplements to certain laws, as amended.
- Act No. 583/2004 Coll., on budget rules of the regional self-government and on amendments and supplements to certain laws, as amended.

136. The new financing system (regional fiscal decentralisation) has increased step by step the financial autonomy of the Regions. Thus, while the proportion of regional own revenues in the "old" system was estimated to be only 7%, under the current system the proportion of own revenues has increased and has eventually reached the proportion of roughly 60% (see table below). The basic sources of funding for the regions are:

i. *Regional taxes*. The only source of genuine, own tax for the region was a tax on motor vehicles. In the past, this tax hit corporate cars and was calculated on the basis of the power of the car. However, this tax was transferred to the State in 2015. The loss of revenues produced by this fiscal reform was allegedly compensated by increasing the share of the regions in the collection of the Personal Income Tax, although there is a predominant view among the regional leaders that the resulting situation was detrimental to them.

ii. *A proportion in the Personal Income Tax*. Like municipalities (see, supra, point 69), the regions get a proportion of the money collected by the central government on the basis of the personal income tax. The share of the regions in the total national collection of this tax is stipulated by the law (Act. No. 564/2004, as amended), and not decided by the regions. The relevant idea here is that the proportion allocated to the regional level has increased in the last years, from 23.5% in 2005, to 29.2% in 2015 and 30% in the year 2016. As noted supra, the remaining 70% goes to the municipalities.

137. As in the case of municipalities, the regional share in the total collection of the tax is further distributed among the eight existing regions. For this purpose, the system uses a complex set of criteria and coefficients related to statistical and empirical data for each region, each one having a different weight in the final formula. The delegation was told that these criteria had been discussed and agreed at the political level, and they are connected to the devolved competencies. The application of these factors and coefficients are supposed to work as a redistribution and horizontal equalization, and for solidarity purposes. That is, each region gets a different amount of revenue that can vary from one year to the other. The central administration then transfers the monies to the regions, and they may decide freely how they spend them.

138. Like in most countries, the implementation of redistribution and equalisation mechanisms triggers contradictory versions among the several regions, on the basis of the final outcome of the

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<sup>34</sup> In its Recommendation (204) 2006 on regional democracy in the Slovak Republic, the CLRAE recommended (*i.a.*) to increase "the financial autonomy of the Regions, so that they are able to cover not only operating expenses, but also to perform a comprehensive program of investment".

equalisation. The most critical position was voiced by the President of the Self-Governing Region of Bratislava, who provided the delegation data showing that the region allegedly receives at the end of the day much less money than is collected in the region (fiscal effort), and therefore is a net loser in the current system. This situation is worsened by the fact that this region does not qualify to receive funding from the EU regional funds, because its income per capita is above the required threshold, according to Eurostat statistics. Overall, the leader expressed a feeling of discrimination and dissatisfaction with the system that he finds doubly unfair.

139. For what concerns the big figures at national level, the structure of revenues for regions can be broken down as follows for the years 2012, 2013 and 2014:<sup>35</sup>

Type of revenues	2012	Share of total revenue	2013	Share of total revenue	2014	Share of total revenue
Own revenues	648 128	57%	704 472	59%	714 637	59%
Tax revenues	546 765	48%	561 074	47%	582 098	48%
<i>Personal income tax (PIT)</i>	401 102		410 961		426 658	
<i>Other taxes</i>	145 663		150 113		155 440	
Non-tax revenues	101 363	9%	143 398	12%	132 539	11%
State subsidies	481 149	43%	482 502	41%	488 624	41%
Total revenues	1 129 277	100%	1 186 974	100%	1 203 261	100%

140. The governmental position in this matter is that the current state of fiscal decentralization at regional level has made possible the generation of a budget surplus in the current budgets of self-governing regions. According to the Ministry of Finance, in 2013 the self-governing regions generated a budget surplus in amount €70 million, and of €67 million in 2014, a surplus that could be used by the regions in investment programs. Furthermore the government increased the regional share in the Personal Income Tax from 29.2% to 30% in those years.

141. In general terms, the fiscal decentralisation is seen in an overall positive way by regional leaders. It is important to stress the fact that the financial resources transferred by the State under the heading "own resources" are not "ear-marked", that is, once the regions receive the monies they can freely decide on which item it should be spent. However, as noted above, some regional leaders consider that this situation is unfair, since each region should receive a part of the central tax collection in proportion of the tax actually collected in that region (the criteria of the fiscal effort of the regional residents). In their view, problems still remain in the financing of some services and infrastructures, such as public transportation and hospitals. They also complain (like the President of the Self-governing region of Bratislava) that the suppression of the car tax has not only been a negative step, but even constitutes a violation of Art. 9 of the Charter. In any case, it is uncontroversial that the financial decentralisation has fuelled regional government. However, the current system seems to cover satisfactorily only the operating costs of the regions, but there is room for improvement in the domain of investment costs.

142. As for the recourse to debt, Self-Governing Regions can borrow money from banks, and they can sign loan contracts. The limits of debt (and eventually the sanctions for not respecting them) that apply to municipalities do also apply to regions.

143. In addition to those regular elements of regional finances, the self-governing Regions may also apply for funding to the central government in connection with a specific project, which may be financed by the State alone or within the framework of the several structural funds of the EU. In that respect, the territorial units for the purpose of the EU Cohesion funds are following ones: the whole Slovak Republic is a NUTS I, the grouping of two or more regions form a NUTS II, and one single region is a NUTS III. In the selection of the projects to be financed under the European funds, the delegation was told that the regions have a *small* participation in the selection of projects, while the final decision, the spending and management of those funds is the sole responsibility of the central

<sup>35</sup> Data provided by the Ministry of Finance

government. For a further description of the regional involvement in the decision-making process in the domain of State plans and strategies, see *supra*, para 114.

### 3.6. Miscellaneous

144. The rapporteurs noticed two recurrent issues during the visit. The regional self-government in the Slovak Republic does not trigger the amount of popular interest and electoral participation it should do. As explained *supra*, Slovak regional elections have constantly seen a low level of participation. The very first regional elections (1<sup>st</sup> December 2001), experienced a very low turnout of voters: 26% of electoral participation in the first round, and 22% in the second one. This structural pattern did not change in the subsequent regional elections: the second regional elections took place in November 2005 and the electoral participation was, again, quite low (average voter turnout of 11.07%). The last regional elections took place in November 2013, and saw a turnout of 20.11%.<sup>36</sup> This is a situation that raises some concern among officials and regional leaders interviewed by the Congress rapporteurs. Several factors might explain this state of facts:

- In general, the public has not fully understood yet the role of regions. There is little knowledge of the political position and competences of the regions.
- The strong national identity makes that there are no regional identities having the need to manifest themselves in electoral processes.
- The absence of tradition in the field of regional democracy.
- General passivity in electoral processes, as evidenced by the low participation in other elections. For example, in the last elections to the European Parliament, held in May 2014, there was a voter's turnout of just 13, 5%. The situation might improve in the future, as the regions will be taking an increasing role in the day-to-day life of the citizens. In any case, the situation is considered unsatisfactory by the Slovak authorities.

145. Another debated issue concerns the territorial definition of the current regions, and especially the role of Bratislava. In the past, many advocated that Bratislava should become also a self-governing region. During this visit, thought, the delegation observed that this idea does not enjoy that much support. As noted above, currently the idea that gains support is the creation of a sort of "metropolitan area" for Bratislava and its neighbouring cities.

## 4. CONCLUSIONS

146. In the last fifteen years, the Slovak Republic has made an important effort in the domain of decentralisation: full and unreserved ratification of the Charter; constitutional amendments; comprehensive modification of the internal legal order aimed at the inception of two autonomous sub-state territorial levels; massive devolution of competences to municipal and regional entities; double fiscal decentralisation, etc. From the stage of a strong unitary country, it has evolved to a decentralised one. The reform was conducted on a comprehensive basis, developing at the same time the local and the regional layers of government.

147. As a consequence of this ambitious endeavour, the present situation of local and regional self-government deserves an overall positive assessment, in the light of the history of the Slovak republic, taking into consideration the political and social context of the country, and with due attention to Slovakia's size, population and current political priorities. The double process of decentralisation (local and regional) has involved an impressive amount of efforts and political strength, and the result seems to be a fair, sensible and reasonable arrangement responding to a delicate balance between the need to be in line with European standards on territorial organisation and the historical unitary character of the country.

148. In the case of local self-government, municipalities are endowed with a large remit of self-government. The State intervention in local affairs is strictly limited and regulated by the law, therefore fulfilling the requirements of the Charter.

149. The so-called "higher territorial units" may be perfectly considered as true regions in the light of the present constitutional and legislative framework, largely meeting the criteria for regional self-government set out in the Reference Framework for Regional Democracy in Europe. The process of

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<sup>36</sup> Lowest turnout: Region of Trenčín (17. 37%). Highest turnout: region of Banská Bystrica (24. 59%). See: Statistics Office of the Slovak Republic.



regionalisation is irreversible, and the regions constitute a stable and developing layer of government. In the general perspective, the process of regionalisation can be considered successful.

150. However, the precedent conclusions are compatible with the existence of some weaknesses and unsatisfactory points in the system, detected by the delegation. They are presented in the following recommendations, respectfully addressed to the Slovak central authorities and powers.

**Appendix 1 - Programme of the Congress monitoring visit to the Slovak Republic**

**CONGRESS MONITORING VISIT TO THE SLOVAK REPUBLIC  
Bratislava, Nitra and Dunajská Streda  
(7-9 December 2015)**

**DRAFT PROGRAMME**

**Congress delegation:**

**Rapporteurs:**

Mr Artur TORRES PEREIRA	Rapporteur on local democracy Chamber of Local Authorities, EPP/CCE <sup>37</sup> President of the Municipal Assembly of Sousel (Portugal)
Mr Leen VERBEEK	Rapporteur on regional democracy Chamber of Regions, SOC <sup>38</sup> King's Commissioner of Flevoland (The Netherlands)

**Congress Secretariat:**

Ms Stéphanie POIREL	Secretary to the Monitoring Committee of the Congress
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**Consultant:**

Prof. Dr. Angel M. MORENO	Chair of the Group of Independent Experts on the European Charter of Local Self-Government Professor of Law at Universidad Carlos III de Madrid (Spain)
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**Interpreters:**

Mr Peter BAJCIK  
Mr Pavol SVEDA

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<sup>37</sup> EPP/CCE: European People's Party in the Congress  
<sup>38</sup> SOC: Socialist Group in the Congress

**MONDAY, 7 DECEMBER 2015,  
Bratislava**

**National Delegation of Slovakia to the Congress  
Association of Towns and Communities of Slovakia (ZMOS)  
Union of Slovak Towns and Cities (UMS)  
Association of Self-Governing regions (SK8)  
Experts**

**Mr Jaroslav HLINKA**, Head of delegation, Mayor of City Kosice (South Part)

**Mr Stanislav HORNIK**, Mayor of Hrinova

**Ms Anna AFTANASOVA**, Member of the Regional Council of Presov

**Ms Lubica LASSAKOVA**, Member of the Regional Council of Banská Bystrica

**Mr Juraj NEMEC**, Member of the Group of Independent Experts on the European Charter of local self-government (Slovak Republic)

**Mr Tomas CERNENKO**, Alternate Member of the Group of Independent Experts on the European Charter of local self-government (Slovak Republic)

**General Prosecutor of the Slovak Republic**

**Mr René VANEK**, First Deputy of the General Prosecutor

**City of Bratislava**

**Mr Ivo NESROVNAL**, Mayor of Bratislava

**Ministry of Interior**

**Mr Marian SALON**, State Secretary of the Ministry of Interior

**Ministry of Transport, Construction and Regional Development**

**Mr František PALKO**, Secretary of State to the Minister of Transport, Construction and Regional Development

**TUESDAY, 8 DECEMBER 2015,  
Bratislava**

**National Council of the Slovak Republic**

**Mr Igor CHOMA**, Chairman of the Committee on Public Administration and Regional Development and Mayor of the city of Žilina

**Ministry of Finance**

**Mr Jozef MIKS**, Plenipotentiary for Fiscal Decentralization  
**Mr Martin PAVLUVCIK**, Senior State Counsellor, Planning and methodology Department, Audit and Control Section  
**Ms Iveta LUKACOVA**, Senior State Counsellor, International Institutions Department, International Relations Section

**Bratislava Self-Governing Region**

**Mr Pavol FREŠO**, President of the Bratislava Self-Governing Region  
**Ms Anna ZEMANOVA**, Chairman of the Financial Committee  
**Mr Peter ŠVARAL**, Chairman of the Committee for Regional Development, Local Planning and Environment

**Supreme Audit Office of the Slovak Republic**

**Mr Karol MITRÍK**, President of the Supreme Audit Office of the Slovak Republic

**Public Defender of Rights**

**Ms Jana DUBOVCOVÁ**, Public Defender of Rights

**WEDNESDAY, 9 DECEMBER 2015,  
Nitra and Dunajská Streda**

**City of Nitra**

**Mr Igor KRŠIAK**, Head of the City Hall

**Nitra Self-Governing Region**

**Mr Milan BELICA**, President of Nitra Self-Governing Region  
**Mr Ladislav MARENČÁK**, Vice President  
**Mr Paul MENKE**, Chair of the Financial Committee  
**Mr Jaroslav IVAN**, Chair of the Committee for Regional Development and Spatial Planning

**City of Dunajská Streda**

**Mr Hájos ZOLTÁN**, Mayor

## Appendix 2 - Human rights: The performance of local and regional governments in the domain of human rights<sup>39</sup>

1. Slovak legislation does not provide for the creation of local or regional “ombudsmen” or “defender of rights”. There is a national Public Defender of Rights (“PDR”) for the whole nation, an independent body who has competences over all types and levels of government. The office of the PDR is established by the Constitution and it is based in Bratislava. The present Defender of Rights proposed to create an office in each region, but the proposal was not backed by the Government.

2. The PDR has the power to review the procedures followed by the local and regional authorities, in the light of human rights requirements, since the Slovak republic has ratified several treaties in the domain of human rights. In its 2013 report, the PDR pointed out that the office completed more than 30 investigations in connection with the activities of local or regional bodies, where individual human rights were allegedly violated. Some 20 cases, in connection with building and urban development cases. 2 cases, on petition rights, 2 cases on the right of information, and 10 cases in the field of legal protection. In any case, the most serious violation of rights by municipalities are constituted by the cases of eviction of Roma people in some municipalities such as Kosice.

3. In other cases, the PDR tries to advance procedural human rights in the day-to-day activities of local authorities. For instance, in 2015 the PDR received a complaint from members of the public who wanted to be present at the city council of Nitra. However, in December 2015 the Prosecutor’s Office did not support the PDR. The PDR also investigates cases of maladministration at local and regional level.

4. Although the general impression of the delegation was that the human rights are generally observed and respected at local and regional level (with two conflicting areas such as refugees and minorities) it is also true that local and regional bodies are not very active in the dissemination and advancement of human rights within their spheres of competences, they are rather passive. Therefore, there is a low level of awareness at local and regional level. Two examples could be provided in this area: first, the education of Roma children in elementary schools, which is a competence of the municipality; second, the schools for people with special needs. In most cases, local authorities do not take the necessary steps to remove and avoid the *de facto* discrimination of these children. According to the PDR, much needs to be done in terms of education, information and dissemination in the field of human rights.

5. This general picture is not incompatible with recognising the existence of valuable initiatives and programs in the field, especially in some large cities (such as Bratislava). They have taken specific initiatives in favour of the homeless people (communities, shelters, doss houses, etc) and do have a modest social budget for social services. Bratislava, for instance, is also become a member of the Regional Plan for Domestic Violence Prevention.

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<sup>39</sup> For a full account of the country performance in the field of human Rights, see: Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to the Slovak Republic in June 2015