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The status of capital cities

Governance Committee

Rapporteur¹: Amelie TARSCHYS-INGRE, Sweden (L, ILDG)

Recommendation 452 (2021)	2
Explanatory memorandum	4

Summary

Capital cities play a distinguished role in the life of their respective countries of which they are often the economic, cultural, intellectual and political centres. They are also usually the largest municipalities being the seat of the national government and main institutions.

Building on the Congress commitment to protect capitals' local autonomy, this report updates Congress Recommendation 219 (2007) on the status of capital cities. Based on the findings highlighted during the Congress monitoring visits, it analyses whether granting the capitals a special status is always justified, in view of their special role vis-à-vis the national government, or whether, in some cases, other special legal safeguards could be used to better protect local autonomy and democracy against interference from other levels of government.

The report concludes that the undoubtedly particular role of capital cities does not always translate into a special status, given the specific realities of capital cities and country-specific conditions. On these grounds, it suggests that instead of a rigid approach to "impose" a specific kind of special status on all capitals, countries should have some flexibility to account for these individual conditions.

At the same time, the report stresses that care must be taken to ensure that the right of capital cities' authorities to self-government is effectively protected in line with the principles laid down by the Charter and that public responsibilities are managed by democratically elected representatives. It provides guidelines to governments at all levels to ensure the implementation of appropriate legal safeguards and highlights the areas to which specific attention should be paid to achieve this objective.

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

RECOMMENDATION 452 (2021)²

1. The Congress of Local and Regional Authorities of the Council of Europe (hereinafter “the Congress”) refers to:

a. Article 2, paragraph 1.b, of the Charter of the Congress appended to Statutory Resolution CM/Res(2020)1, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Rule 23, paragraph 1.c of the Rules and Procedures of the Congress on Distribution of matters to committees and working groups, stipulating that “The Bureau of the Congress must consider all:” (...)”c. proposals, including proposals for reports, events or other activities) presented by a committee or working group”;

c. The priorities of the Congress for 2017-2020, in particular related to enhancing the quality of local and regional democracy;

d. Congress Recommendation 133 (2003) on management of capital cities;

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

f. 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) opened to signature on 16 November 2009;

g. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

h. The sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goal 11 on sustainable cities and communities.

2. The Congress points out that:

a. Capital cities are usually demographic, cultural, economic and political centres of their countries and this may entail both positive and negative implications for their autonomy.

b. The undoubtedly specific role of capital cities does not always translate into a special status. Where granted, this status may take different forms, depending on a great variety of factors.

c. Instead of a rigid approach intending to “impose” a specific kind of special status on all capitals, states should have some margin of appreciation to take into account country-specific conditions while setting up and implementing appropriate legal safeguards to protect their capitals’ local autonomy and address changing trends in central-local relations. This flexibility should, however, be matched with strict compliance with the principles laid down by the Charter, in particular with regard to consultation with the local authorities concerned as set out in Article 4.6.

d. Establishing special legal safeguards is vital for protecting the local autonomy of capital cities given their extraordinary political role vis-à-vis the national government. Capitals are particularly vulnerable to political conflicts that may arise from the inherent physical proximity of the administration of a capital city with the national government, notably in cases where they have different political affiliations.

3. In light of the above, the Congress invites the governments and parliaments of member States to:

a. promote a better understanding of the role of a capital city as a symbol of the whole country and of their specific realities. Even if capitals obviously share certain challenges with other cities, their capital functions give them a central position on a national and sometimes also international scale with regard to several spheres such as politics, the economy and culture.

² Debated and adopted by the Statutory Forum on 12 February 2021 (see Document [CG-FORUM\(2021\)01-04](#), explanatory memorandum), rapporteur: Amelie TARSHYS-INGRE, Sweden (L, ILDG).

b. provide substantial procedural safeguards to guarantee capital cities' autonomy and minimise the risk of interference from other levels of government. This should be done in conformity with the Charter and, with a special focus on the following critical areas:

i. with regard to capital city administration:

- introduce an elected citywide administration in capitals as a legal safeguard to represent and promote their specific interests and to this end, refrain from splitting the capital's territory into a number of municipalities. The need to have "small" local authorities close to the people is not incompatible with an elected citywide administration, as it can equally be fulfilled by establishing districts as internal subdivisions;
- make sure that local elections are held in accordance with the national legal framework and in conformity with international standards for fair and free elections;

ii. with regard to competences:

- divide the responsibilities between the capital city, the city districts (where applicable) and the higher levels of government, in line with the subsidiarity principle enshrined in Article 4.3 of the Charter;
- consider setting up an administrative system comprising elected district authorities with competences clearly delineated from those of the city-wide administration, in line with the principle of subsidiarity with a view to ensuring effective management (advisable, under the Charter, in particular for larger capital cities);

iii. with regard to financial resources:

- ensure adequate financial resources both to the capital cities and their districts (where applicable);
- consider the compensation of capital cities for additional expenditure arising from carrying out the specific functions of a capital city;
- match capital cities' tasks and responsibilities with concomitant funding;
- ensure that capital cities have adequate revenue-generating capacities, including through local taxes, and benefit from adequate financial transfers in order to shield them from the risk of underfunding;

iv. with regard to intergovernmental co-operation:

- formalise the co-operation of capital cities both horizontally, with neighbouring municipalities, and vertically, with higher levels of government (including the regional tier where applicable);
- ensure that the national and/or regional supervisory powers are appropriately counterbalanced by co-operation and consultation mechanisms, as set out in Article 4.6 of the Charter, to avoid potential conflicts linked to "political cohabitation" between the capital and the national government, especially in case of different political affiliations;
- consider establishing or reinforcing special bilateral channels for co-operation between capital cities and the national government when the specific interests of capitals cannot be effectively represented by local government associations;

v. with regard to citizens' participation:

- bring public affairs, as a necessary complement to intergovernmental relations, closer to the people by creating an enabling environment for local authorities to apply a wide range of mechanisms to increase citizens' participation in local decision making, including by making use of new information and communication technologies and deliberative democracy tools.

c. In the case of opting for a general special status of a capital city, ensure that the decision-making process and its implementation strictly comply with the principles enshrined in the Charter.

4. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation and the accompanying explanatory memorandum in their activities relating to Council of Europe member States.

EXPLANATORY MEMORANDUM

Table of contents

Introduction	5
Special role (often) without special status	5
Why legal safeguards for capital cities?	6
What legal safeguards for capital cities?	7
<i>Elected citywide administration</i>	7
<i>Clear responsibilities in line with the subsidiarity principle</i>	8
<i>Adequate financial resources</i>	9
<i>Formalised intergovernmental cooperation</i>	11
More than one capital city? The splitting of capital functions	12
Conclusions.....	13

Introduction³

1. Capital cities very much epitomise the national government. If the latter acts, then this action is often linked in political and media jargon to the capital. It is then said that “Paris raised taxes” or “Warsaw introduced a new policy”. Beyond this symbolic function, capital cities are also special in many other ways, as they have specific burdens to carry but also enjoy certain specific benefits. This raises the fundamental question whether and to what extent capitals shall be granted, in view of their special role, special legal safeguards that better protect local autonomy and democracy against interference from other levels of government.

2. Seeking to answer this question, this report first demonstrates that the undoubtedly particular role of capital cities does not always translate into a special status, something which the Congress had recommended repeatedly since at least a Recommendation passed in 2007 (section 2). It then makes the case for capital cities being granted legal safeguards in certain particularly critical areas, if not a more general special status (section 3). Thereafter, the report lays out what safeguards in what areas should be recommended (section 4). In conclusion, it presents four options of how typical capital city functions are and can be split between more than one city (section 5) before offering concrete recommendations (section 6).

Special role (often) without special status

3. In 2007, the Congress adopted a Recommendation, in which it “[c]onsiders it justified, in view of specific problems which capital cities face, that they are rewarded with a special constitutional or legal status, such as granting the municipality of the capital city regional or provincial status or giving it the power to enact specific regulations.”⁴ Yet, the monitoring missions since then have demonstrated that only several states effectively grant this special status. Others have been reluctant to grant it and instead assign to the capital essentially the same status as other municipalities.

4. But how can we actually identify a country’s “capital”, at least for the purpose of this report? Basically, there are three different ways. In some countries the status of a capital city is only based on historical convention and political consensus, in others on some recognition in ordinary law and in most countries on some form of constitutional recognition. The latter may be explicit through a provision naming the capital or implicit by attributing to a city typical functions of a capital. For example, some constitutions determine the location of the seat of government (e.g. Belgium), of the official residence of the president (e.g. Ireland) or of the sittings of parliament (e.g. Latvia).⁵

5. It should be noted that this report focuses on “national” and not “regional” capitals. Yet, as we shall see, the latter sometimes play a role for the status of national capitals. Moreover, it seems important from the perspective of the Congress, as an organisation bringing together representatives from both local and regional authorities, to bear in mind certain important aspects for capital cities that are characteristic of multilevel systems of government. First, in such systems, regional capitals sometimes play a similarly special role within their region so that certain problems faced by national capitals may re-emerge at a lower level of government and possible solutions may be applicable there as well. Secondly, the context of a multilevel system also impacts on the type of special status that national capitals may have, if they have it at all. The classical distinction is between three types:⁶ a capital city forming a special district (e.g. Washington DC, United States); a capital constituting, as a city-state, also a region (e.g. Berlin, Germany); and a capital located within a region having no or little special status (e.g. Bern, Switzerland). It is important to recognise that each of these three types of status, which national capitals may have within multilevel systems of government, has specific implications for the degree of autonomy, not least also in economic terms.⁷

3 Report drawn up with the contribution of Dr. Karl Kössler, Senior Researcher at Eurac Research (Bolzano/Bozen, Italy) and Scientific Coordinator of the EU-Horizon 2020 project “Local Government and the Changing Urban-Rural Interplay (LoGov)” which involves 18 partners, among them Eurac Research and the Congress. This project has received funding from the European Union’s Horizon 2020 research and innovation programme under Marie Skłodowska-Curie grant agreement No 823961.

4 Congress Recommendation 219 (2007) on the status of capital cities, para 5.

5 For an overview, see Explanatory Memorandum (CPL(14)4REP) to Congress Recommendation 219 (2007) on the status of capital cities, paras 27-34.

6 D Rowat, ‘The Problems of Governing Federal Capitals’ (1968) 1(3) *Canadian Journal of Political Science*, 345-56; E Slack and R Chattopadhyay, ‘Introduction’ in E Slack and R Chattopadhyay (eds.), *Finance and Governance of Capital Cities in Federal Systems* (Montreal and Kingston, McGill-Queen’s University Press, 2009) 6-7.

7 H Zimmermann, 2010. ‘Do Different Types of Capital Cities Make a Difference for Economic Dynamism?’ (2010) 28 *Environment and Planning C*, 761-67.

6. Whenever capital cities are in such states effectively granted one of the different types of special status mentioned above, it is important to bear in mind the context- and in particular, often history-dependent nature of this highly political decision. The recognition of such a status is always linked with intergovernmental relations (and the potential conflicts in these relations) of capitals with the national government, with regional governments, if they exist, and also with other cities. This recognition may reflect, however, very different rationales. While the particular status accorded to Berlin is, among other things, a symbol of German reunification, the decision not to do that in the case of Bern followed a reasoning of pragmatic compromise. The idea was back in 1848 to balance intergovernmental power relationships and to geographically separate political and economic power, with the latter being already concentrated in Zurich. Such thinking is typical of what has been called “secondary capital cities”,⁸ defined as capitals that are overmatched in terms of economic importance by at least one city within the respective country. A similar situation arose in Turkey where the national government decided to proclaim Ankara as the capital of the new republic, in 1923, whereas Istanbul had been the seat of power during the Ottoman era. This decision was both a geopolitical and symbolic one. Ankara’s location, distant to the coasts and almost equally close to all parts of the country, made it a relatively more secure and strategic capital. It also had a symbolic value, portraying the creation of a nation. Today, although Ankara continues to hold the seat of the national government, Istanbul, currently representing nearly one third of Turkey’s national economy⁹, is the country’s major hub for the trade, industry, finance and tourism sectors. Even though the following is not the case for the relationship between Ankara and Istanbul, this constellation can have negative implications, especially in the absence of special legal safeguards, for the protection of local autonomy because secondary capital cities are often vulnerable to influence from the national and, sometimes, regional government.

Why legal safeguards for capital cities?

7. One of the main arguments for capitals to have special legal safeguards is that they are, in many respects, different from other cities. In fact, they are in spite of exceptions, such as the above-mentioned “secondary capital cities”, typically the demographic, cultural, economic and political centers, a fact which has a number of implications. And it should be borne in mind that these implications are both positive and negative with the balance between the two being different in each individual case.¹⁰ Put simply, “the capital can be both victim and beneficiary of its position in the nation.”¹¹

8. Evident advantages are prestige as the place of national ceremonies and commemorations, cultural and other infrastructure, material benefits from tourism and high-quality jobs, especially in the public sector by hosting the national government and other significant national institutions. On the other hand, capital cities often bear the brunt of much-lamented overtourism, loose tax income from national government properties and foreign embassies and have to put up with extra costs as a result of typical capital city tasks. Cases in point are higher expenses for public safety, especially in view of capitals being more prone to protests, or public transportation.

9. Besides capitals being different in nature from other cities, their extraordinary political role vis-à-vis the national government is another core argument for having special safeguards for their local autonomy. The inherent physical proximity of the administration of a capital city with the national government can result in political tensions, compromise the autonomy of the capital and more or less overt attempts by the national government to penalise it through various means. That this is actually not a rare scenario in Council of Europe countries is demonstrated by the Congress noting “with regret that the financial system of a capital city is occasionally misused – as a political instrument in conflicts arising from differing party affiliations between the municipality and central government.”¹² The events that led to the suspension of the Riga city council are just a recent reminder of potential conflicts between a capital city administration and the national government.¹³

10. It needs to be underlined that developing special safeguards for the protection of capital cities’ autonomy is also very much in line with the political priorities of the Congress for 2017-2020. Under the

8 D Kaufmann, *Varieties of Capital Cities: The Competitiveness Challenge for Secondary Capitals* (Cheltenham, Edward Elgar Publishing, 2018).

9 www.tuik.gov.tr, Turkish Statistical Institute

10 E Slack and R Chattopadhyay, ‘Comparative Conclusions’ in E Slack and R Chattopadhyay (eds.), *Finance and Governance of Capital Cities in Federal Systems* (Montreal and Kingston, McGill-Queen’s University Press, 2009) 295-96.

11 S Campbell, ‘The Enduring Importance of National Capital Cities in the Global Era’ (2003) 8 *University of Michigan Working Paper Series (Urban and Regional Research Collaborative)*, 28.

12 Congress Recommendation 219 (2007) on the status of capital cities, para 6.

13 <https://www.coe.int/en/web/congress/-/fact-finding-mission-to-latvia-monitoring-committee-concerned-about-the-conditions-of-implementation-of-territorial-reform>.

first priority “Enhancing the quality of local and regional democracy”, the Congress defines as its primary role “to promote and defend local and regional democracy in keeping with the values and priorities of the Council of Europe.”¹⁴ More specifically, it vows to combat the reduction of local autonomy¹⁵ and address changing trends in central-local relations,¹⁶ both of which very much speaks to the currently topical issue of capitals needing safeguards against excessive intrusion by national governments.

What legal safeguards for capital cities?

11. In view of the arguments for establishing legal safeguards, as discussed in the preceding section, the next step is to identify what safeguards for capitals, both substantive and procedural ones, are most essential and in what areas. This report identifies four such areas: an elected citywide administration to credibly and effectively promote the (specific) interests of the capital; a division of capital city responsibilities from those of other government levels that is clear and respects the principle of subsidiarity; financial resources matching responsibilities; and formalised intergovernmental cooperation, vertically, with the national and, if existing, regional governments, as well as, horizontally, with neighbouring municipalities.

Elected citywide administration

12. As for an elected citywide administration as a precondition for promoting specific interests, it must be acknowledged that a local authority whose jurisdiction extend to the whole territory of the capital is not something to be taken for granted. Historically, one exception was London (United Kingdom) between 1986 and 2000, that is the period between the dissolution of the Greater London Council (with responsibilities then transferred to the London boroughs and other entities) and the restoration of a citywide administration through the Greater London Authority.

13. Another exception is Baku (Azerbaijan), which merely has the Baku City Executive Committee as a citywide body but is otherwise governed by 52 separate municipalities. As Azerbaijan’s Electoral Code establishes a maximum population size of 299,999 for the election of municipal councillors, a city like Baku with 3 million inhabitants currently cannot be unified in a single municipality. The Congress thus called for the removal of this legal obstacle in one of its recommendation to Azerbaijanis Authorities.¹⁷ Its rapporteurs remained unconvinced by the reasons that Azerbaijan’s authorities provided for maintaining the status quo. They would not justify depriving the capital of the right to local self-government which represents a clear example of a relationship between the capital and central government that is tilted in favour of the latter. Instead, the role of the central government should be scaled back to the regulation of the capital’s scope of local autonomy and its administrative supervision along the lines of Articles 4 and 8 of the European Charter of Local Self-Government (hereinafter, “the Charter”).

14. The Congress reiterated its view laid out in its Recommendation of 2007, according to which “the management of the capital city by centrally appointed authorities or by local district authorities, without an elected municipal government at the level of the capital city, does not comply with the fundamental principles of the Charter.”¹⁸ The issue of representation is linked, in particular, to Article 3(2) of the Charter providing that the right to local self-government “shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage”.

15. In other cases than that of Baku the problem for local self-government was not the lack of a citywide administration in the capital, but the lack of elections to this administration. For example, in 2012 in Ukraine, after the mayor of Kyiv resigned one day before the end of his term of office, the mayoral election was not held for several years during which time the functions of the Mayor were carried out on an interim basis by the Secretary of Kyiv City Council, Deputy Mayor and the centrally appointed Head of Kyiv City State Administration¹⁹. This situation, accompanied by political and judicial controversies, led the Congress to recommend without ambiguity to “organise, in the shortest possible time, elections ... in the capital city of Kyiv”²⁰. The snap mayoral elections in Kyiv were finally held in 2014. Since then, the Mayor of Kyiv has been also holding office of the Head of Kyiv City State Administration.

14 Congress of the Council of Europe, *Priorities of the Congress 2017-2020*, <https://rm.coe.int/168071b2cb>, para 35.

15 Ibid, para 38.

16 Ibid, para 44.

17 Explanatory Memorandum to Recommendation 326 (2012), para 130-134.

18 Congress Recommendation 219 (2007) on the status of capital cities, para 3.

19 Explanatory Memorandum to Recommendation 348 (2013), paras 196-201.

20 Recommendation 348 (2013), para 7b.

16. However, a Congress report adopted in 2013 already pointed to the issue of certain bicephalism in the functioning of local self-government in Kyiv, as a result of unclear distribution of functions and overlapping of competences between the Mayor and the Head of the City State Administration who exercises the executive power in Kyiv (and operates as executive body of Kyiv City Council). One of the latest attempts to address this issue has been a draft law “On the Capital of Ukraine – Hero City Kyiv” (No. 2143-3), which aims to substantially amend the law from 1999 regarding the distribution of power²¹. This draft law was adopted by the Parliament of Ukraine in the first reading in October 2019.

17. It proposes to separate local self-government (through the Kyiv City Council and Mayor) and the state executive power in the city (through the Kyiv City State Administration). The draft law envisages that the mayor will head a new executive office of the Kyiv City Council whereas the Head of the Kyiv City State Administration will exercise oversight over the decisions of local government. It has however met with criticism from the Mayor of Kyiv, the Association of Ukrainian Cities and some other local experts who consider that the legislative initiative, if finally adopted, would weaken local self-government in Kyiv. The legal expertise of the draft law provided by the Congress on 29 August 2020²² has positively assessed the proposed clear separation between the local self-government and state executive power, but has pointed to the unbalanced shift of power to the state city administration, which runs contrary to the proportionality principle laid down in Article 8.3 of the Charter. At the moment of drafting this report, the Ukrainian Parliament Committee in charge of local governance, has recommended the adoption of this draft law in the second reading.

Clear responsibilities in line with the subsidiarity principle

18. A second issue that requires strong legal safeguards is the clear division of capital city responsibilities from those of higher levels of government and, internally, from the districts of the city. The latter point was rightfully emphasised by the Congress by recommending that member states “provide a clear and transparent division of responsibilities between the municipal and possible district levels of local government in a capital city.”²³

19. The subsidiarity principle is a guideline for the allocation of responsibilities. Even if the term is not explicitly mentioned in the Charter, it is without doubt enshrined in Article 4(3) of the Charter. According to this provision, “[p]ublic responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.” As this weighing up process will always depend on specific contexts and capacities of individual local governments, subsidiarity is something differentiated. In other words, the result of this process must be different for small rural municipalities and cities, and still different for capital cities.

20. Importantly, the subsidiarity principle can be invoked not only when capital cities argue against losing responsibilities (e.g. Copenhagen (Denmark) in 2007 when it became one of 29 municipalities of the *Hovedstaden* region and had to transfer some of its competences to the new region).²⁴ It can also be invoked to argue for gaining new responsibilities (e.g. Helsinki (Finland) in 2016 when municipalities of the capital city region claimed the right to pursue its own path concerning social welfare and health care reform with reference to their above-average know-how and resources).²⁵

21. Moreover, as the Congress clearly pointed out in the Urban Charter II of 2008 that “the principle of subsidiarity cannot stop halfway between the central government and the local level. It must also guide the distribution of responsibilities between the different levels of local government and within local areas.” That is why it “should apply, for example, both to large conurbations and to infra-municipal areas (neighbourhoods, wards, districts), which should be able to have their own elected assemblies, budget and local powers and responsibilities.”²⁶ This understanding of a subsidiarity principle operating both above and below a citywide administration is particularly relevant in the case of capitals.

21 The context for this draft law is the reform package launched by the new President of Ukraine which includes a proposal to amend the Constitution with regard to local self-government and decentralization. In December 2019, the President submitted to the *Verkhovna Rada* a revised version of the draft law “On Introducing Amendments to the Constitution of Ukraine (on decentralisation)” (#2598). All this follows a failed attempt in 2016 to amend the Constitution on these very same issues.

22 See Analysis Report on the Draft Law of Ukraine “On the City of Kyiv – Capital of Ukraine” (No. 2143-3) by Francesco Palermo, from 29 August 2020

23 Congress Recommendation 219 (2007) on the status of capital cities, para 10.

24 Explanatory Memorandum to Recommendation 350 (2013), para 6e.

25 Explanatory Memorandum to Recommendation 396 (2017), paras 68-70.

26 Congress Resolution 269 (2008)1 European Urban Charter II – Manifesto for a new urbanity, 3.

22. While the Charter does not contain an explicit provision on the division of responsibilities with districts, it certainly does not rule out what has been called a “divided” administrative system as opposed to a “unified” one.²⁷ As a matter of fact, the Charter provides a justification for the choice of a divided system, especially in case of bigger cities like capitals, as “local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management” (Article 6(1)).

23. Since the Congress has called upon European countries already in 2007 to “provide a clear and transparent division of responsibilities between the municipal and possible district levels of local government in a capital city”,²⁸ monitoring missions have revealed quite different forms of such internal subdivisions. Districts in a narrow sense, have elected councils at the helm and such subdivisions often indeed only exist, as in the case of Tirana (Albania),²⁹ in a country’s capital and not in other cities. But other institutional designs of districts, based not only on elected representation, are possible too. For instance, the above-mentioned new draft law aiming to regulate the status of the Ukraine’s capital Kyiv foreseeing at the district level – alongside elected councils – as head of the executive a manager who is hired for two years.

24. Irrespective of whether districts are more or less guided by elected representatives, another critical issue for their responsibilities in relation to those of the capital city administration is the entrenchment of these subdivisions. On the one hand, there are “real” two-tier systems where the distribution of responsibilities is enshrined in law. A case in point are the districts of Budapest (Hungary), even if the adequacy of the respective responsibilities in certain policy fields has sometimes been questioned.³⁰ On the other hand, there are subdivisions of capital cities whose competences are not legally guaranteed in the same way. In 2013, the tasks of Tbilisi’s districts (Georgia), for example, were delegated and thus dependent on the exercise of discretionary power.³¹ However, in the latest monitoring report on local and regional democracy in Georgia, adopted in 2018, this issue was not raised any longer.

25. If there shall be a clear division of capital city responsibilities from those of their districts, another crucial issue is the criteria for this division. Understandably, the city-wide administration is generally in charge of issue that concern the whole capital or more than one district. Besides this criterion of territorial impact, it is certainly fair to say that it is responsible for most of the important tasks, while districts are primarily occupied with day-to-day administration.³²

26. A particularly contested policy field in relations between the capital and its districts is in several cases spatial planning. The issue of tensions with internal subdivisions regarding planning activities was raised by the Congress in the case of Budapest.³³ It should be noted, however, that land-use planning is also a delicate issue in the relations of the capital city with neighbouring suburban municipalities and with the central government. The latter’s interest in this matter is reflected in a number of countries having national planning commissions in charge of spatial planning regarding the capital and its surroundings.³⁴

Adequate financial resources

27. It is self-evident that for capital cities, as for other local authorities, a clear division of responsibilities following the subsidiarity must be accompanied, to be effective in practice, by *financial resources that are adequate*. In the words of Article 9(2) of the Charter, they “shall be commensurate with the responsibilities”. As the Explanatory Report to the Charter warned “[t]he legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out.” While the Congress particularly emphasises the realisation of this “concomitance principle” as one of its priorities concerning all local authorities,³⁵ it also recommends, more specifically, that all member states ensure that “subdivisions of the capital city have sufficient financial resources”.³⁶ This brings us again back to the issue of districts.

27 Explanatory Memorandum (CPL(14)4REP) to Congress Recommendation 219 (2007) on the status of capital cities, para 67.

28 Congress Recommendation 219 (2007) on the status of capital cities, para 10.

29 Explanatory Memorandum to Recommendation 349 (2013), para 93.

30 Explanatory Memorandum to Recommendation 341 (2013), paras 89-91.

31 Explanatory Memorandum to Recommendation 334 (2013), paras 76-83.

32 For an overview, see the table in Explanatory Memorandum (CPL(14)4REP) to Congress Recommendation 219 (2007) on the status of capital cities, para 115.

33 Explanatory Memorandum to Recommendation 341 (2013), paras 89-91.

34 E Slack and R Chattopadhyay, ‘Comparative Conclusions’ in E Slack and R Chattopadhyay (eds.), *Finance and Governance of Capital Cities in Federal Systems* (Montreal and Kingston, McGill-Queen’s University Press, 2009) 304.

35 Congress of the Council of Europe, *Priorities of the Congress 2017-2020*, <https://rm.coe.int/168071b2cb>, para 39.

36 Congress Recommendation 219 (2007) on the status of capital cities, para 10.

28. As a matter of fact, the allocation of funds for both the city-wide administration and its subdivisions follows quite different methods and principles. The important thing from the perspective of the Charter is, of course, that both have financial means commensurate with their responsibilities. In the case of Skopje (North Macedonia), for instance, there is a joint fund with the respective shares determined by a methodology of the ministry of finance, even if the lack of a clear distinction between the competences of the city and its ten districts arguably makes compliance with the concomitance principle rather difficult to assess.³⁷ From a comparative perspective, however, the model of the capital city dominating financial relations with their subdivisions through their power of allotting funds to these two tiers of local administration,³⁸ is certainly still the most widespread. In such cases it is obvious that the city-wide administration has more leeway to make sure that financial resources are commensurate in accordance with the Charter.

29. Obviously, avoiding underfunding depends for both tiers on two variables, i.e. the extent of the spending requirements resulting from their responsibilities and of the financial means at their disposal. Importantly, the expenditures include in the case of capital cities also those related to extra tasks which are less or not relevant for other cities such as the protection of national institutions, the preservation of national monuments, the maintenance of infrastructure connecting the capital with other places within the country and beyond.

30. How then to ensure that financial capacity matches spending needs? Basically, capitals may benefit, like other local authorities, from two general types of resources, i.e. own revenues (taxes, user fees, etc.) and financial transfers.³⁹ But unlike others they are with regard to both kinds of resources in a particular situation. Concerning own revenues, it needs to be mentioned that capitals sometimes rely, like other local authorities, to a quite significant extent on property taxes. This raises the question on what financial arrangements to make for national government properties. From a comparative point of view, the main solutions are that the national government pays property taxes (e.g. South Africa) or that it makes payments in lieu of such taxes (e.g. Belgium).⁴⁰

31. In respect of financial transfers from the national government and/or, in the context of a multilevel system, the regional government, there are further issues that testify to the particularity of capital cities. An important insight to start with is that their frequently considerable reliance on transfers is best mitigated by increasing self-sufficiency through diversification of the local economy. This is because the national government's priority is often not the economic development of the capital but to run there an effective administration. Unless it becomes adequately diversified, a capital city can therefore "resemble a company town".⁴¹

32. Apart from general financial transfers schemes that are also open to other local authorities, a very specific issue regarding payments from other governments is if and how indemnify a capital city for additional expenditures related to the above-mentioned extra tasks. This very topic has actually received considerable attention in reports of the Congress for almost two decades. Already in 2003 it pointed to the necessity of special funds to compensate for the extra needs concerning the development and maintenance infrastructure appropriate for a capital city and serves the rest of the country.⁴²

33. Slovenia's Capital City Act of 2004, amended several times since then, provides an interesting example of a special financial arrangement. The law defines additional responsibilities of Ljubljana stemming from its role as the country's capital and grants additional resources, as a share in personal income tax, to carry out those tasks.⁴³ By contrast, the absence of a mechanism of indemnification, often despite repeated requests, has been a central issue in a number of Congress reports. For example, the lack of a financing system taking into account extra costs from capital city functions has been criticised with regard to Madrid (Spain)⁴⁴ and Reykjavík (Iceland).⁴⁵ Also with regard to Bern (Switzerland), the Congress recently called on the Swiss authorities to establish a legal framework

37 Recommendation 329 (2012), para 5.

38 Explanatory Memorandum (CPL(14)4REP) to Congress Recommendation 219 (2007) on the status of capital cities, para 117.

39 See F Palermo and K Kössler, *Comparative Federalism: Constitutional Arrangements and Case Law* (Oxford, Hart Publishing, 2017) 300-305.

40 See E Slack and R Chattopadhyay, 'Comparative Conclusions' in E Slack and R Chattopadhyay (eds.), *Finance and Governance of Capital Cities in Federal Systems* (Montreal and Kingston, McGill-Queen's University Press, 2009) 318-21.

41 S Campbell, 'The Enduring Importance of National Capital Cities in the Global Era' (2003) 8 *University of Michigan Working Paper Series (Urban and Regional Research Collaborative)* 11.

42 Congress Recommendation 133 (2003) on the management of capital cities.

43 Explanatory Memorandum to Recommendation 308 (2011), para 119.

44 Explanatory Memorandum to Recommendation 336 (2013), para 63.

45 Explanatory Memorandum to Recommendation 402 (2017), para 116.

concerning “funding of the cost to Bern of hosting not only the Federal Government and Parliament but also foreign embassies and diplomatic representations”.⁴⁶

34. Comparative research demonstrates that compensation of specific capital city costs may be effected in least two different ways.⁴⁷ First, the capital may benefit from grants that come with the condition that the funds be used for specific tasks such as the development and maintenance of the additional infrastructure need for the political centre (e.g. Brussels in Belgium). Secondly, it is also an option that the central government directly delivers certain services and assumes the costs (e.g. Ottawa in Canada).

Formalised intergovernmental cooperation

35. A fourth area where special safeguards appear to be of critical importance is that of *formalised intergovernmental cooperation*. In this regard, it is important to bear in mind that such cooperation can, and actually should have, both a vertical and horizontal dimension. The latter refers to the relations of a capital city with its neighbouring municipalities. This is of course a topic that is relevant for other cities too and which has received increasing academic attention through burgeoning research on the governance of metropolitan areas.⁴⁸ An example for multifunctional cooperation with a certain degree of institutionalisation are the “Hauptstadtregion Schweiz” (capital city region Switzerland) which brings together Bern with other municipalities and even several cantons in an effort to strengthen the wider area regarding seven key issues.⁴⁹ From a comparative perspective, the most common issues for horizontal collaboration are waste management, public transport, environment protection, public utilities such as gas, electricity and water supply, as well as spatial planning.⁵⁰

36. The nature of vertical cooperation is different because it is complemented by powers of supervision of the central government and, if it exists, the regional government and by the hierarchy that comes with them. It is therefore key to the protection of local autonomy, in view of their politicised position perhaps even more for capitals, that control is appropriately counterbalanced with cooperation.

37. In this regard, Article 4(6) of the Charter stipulates that “[l]ocal 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”. Importantly, cooperation is not only a general requirement but should guide, more specifically, the process of granting them particular legal safeguards. In this respect, the Congress expressly recommended that member states “involve the municipal government of the capital city, which is in the process of being granted a special status, in the decision-making process, guaranteeing the possibility of prior consultation, according to Article 4.6”.⁵¹ On the other hand, the Charter also provides guidelines regarding administrative supervision which shall normally be limited to checking compliance with the law (Article 8(2)) and be proportionate to the importance of the interests to be protect (Article 8(3)).

38. Apart from the delicate balance between cooperation and supervision, the relations between the capital and the central government also raise the question of whether their particular nature should also be reflected in special bilateral channels. Indeed, the experience of the Congress has shown that representatives from capital cities sometimes perceive their specific interests as not being effectively represented by local government associations. The latter are, however, usually the key actors for multilateral collaboration through institutionalised conferences or informal channels. Therefore, mechanisms of bilateral cooperation with higher government levels could be considered. In 2003, the Congress lamented that legislative frameworks for such cooperation are absent in most cases, as is effective participation in the national (and possibly regional) legislative process affecting capital cities.⁵² Not much seems to have changed since then. Quite recently, the Mayor of Reykjavik echoed exactly the two aforementioned points. First, his city’s interests are too different from those of other local governments in order to be effectively represented by the country’s association of municipalities. Secondly, the electoral system for Iceland’s Parliament overrepresents voters in rural areas so that urban interests are marginalised in the law-making process.⁵³

46 Recommendation 407 (2017), para 5.

47 See E Slack and R Chattopadhyay, ‘Comparative Conclusions’ in E Slack and R Chattopadhyay (eds.), *Finance and Governance of Capital Cities in Federal Systems* (Montreal and Kingston, McGill-Queen’s University Press, 2009) 315-18.

48 See e.g. R Stren and R Cameron, ‘Metropolitan Governance Reform: An Introduction’ (2005) 25 *Public Administration and Development* 275; E Slack and R Chattopadhyay (eds), *Governance and Finance of Metropolitan Areas in Federal Systems* (Oxford, Oxford University Press, 2013).

49 <https://hauptstadtregion.ch/>.

50 Explanatory Memorandum (CPL(14)4REP) to Congress Recommendation 219 (2007) on the status of capital cities, para 134.

51 Congress Recommendation 219 (2007) on the status of capital cities, para 10.

52 Congress Recommendation 133 (2003) on the management of capital cities.

53 Explanatory Memorandum to Recommendation 402 (2017), para 117.

39. In light of the requirements of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, it is also crucial to bring public affairs closer to the people. Taking part in local decision-making can therefore be seen as a necessary complement to intergovernmental relations that mainly involve politicians and civil servants. Capital authorities should have a wide range of participation mechanisms at their disposal to involve citizens in the conduct of local affairs. The use of new information and communication technologies is an effective tool to increase citizens' participation in local decision making.

More than one capital city? The splitting of capital functions

40. There can be no doubt that countries having one single capital are by far most common. Yet, there are certain particular cases in which one and the same country has in certain respects two or even more capital cities. In Europe, such cases are more frequent than one might think, even though they differ considerably from each other. From a comparative point of view, there appear to be four types that should be distinguished.

41. In some countries, there is a *split between the constitutional capital and the seat of government*. The most obvious case is the Netherlands where Amsterdam has been recognised as capital ever since the defeat of the French in 1814, even if this fact was mentioned in the Dutch Constitution only much later. It was a revision in 1983 which stipulated that "the King shall be sworn in and inaugurated as soon as possible in the capital city, Amsterdam" (Article 32). While the latter city is therefore considered the constitutional capital, the seat of government is in The Hague which is home to the Parliament, Ministries and the Supreme Court of the Netherlands. Furthermore, and this is important in terms of additional functions entailing both advantages and burdens, The Hague is, of course, also a center of international law and global politics by hosting the International Court of Justice, the International Criminal Court and more than 100 international organisations. Another example of a split between the constitutional capital and the seat of government, albeit at the sub-state level and due to different historical reasons, is the Republika Srpska (Bosnia and Herzegovina). The Constitution of this entity of Bosnia and Herzegovina declares that "[t]he capital of the Republic shall be Sarajevo." (Article 9). In fact, however, Sarajevo today only hosts the state Government, while the seat of the Government of the Republika Srpska is located in Banja Luka.

42. In a second set of cases, there is a *split of the seat of government function* between cities. After the reunification of Germany, for example, Berlin became the official capital by virtue of the Unification Treaty of 3 October 1990. Yet, this did not imply that all parts of the national government left Bonn, the former (Western German) capital. In fact, only the Berlin/Bonn Act enacted in 1994 regulated the relationship between the two cities. First, the law awarded to Bonn a unique title by calling it "federal city". Secondly, it also included substantive provisions such as the foundations for concluding in the same year an agreement on compensation measures for the region of Bonn, which amounted to almost 1.5 billion EUR to be spent between 1995 and 2004. Thirdly and most importantly, the piece of legislation regulated the move of many national institutions to Berlin, but also the move of other institutions to Bonn. These transfers were implemented over several years and 1999 was most important, as it witnessed the move of the German Parliament (*Bundestag*) to the Reichstag building in Berlin. However, at the same time, the Federal Court of Auditors and the Federal Cartel Office were moved to Bonn. Still today, six federal ministries, such as the important ministries for defence, environment and health, are mainly located there. Moreover, the ministries moved to Berlin have second offices in Bonn, which is also the second official residence of the German President, the Chancellor and the Federal Council (*Bundesrat*), i.e. the legislative body bringing together representatives of the sixteen *Länder*. To a much more limited extent, also Montenegro splits the seat of government function between two cities. While most offices are certainly in Podgorica, the old royal capital Cetinje has its special status recognised in the national constitution and is the place of the official residence of the President of Montenegro. Moreover, also the National Museum, National Library and National Archive, as well as the Ministry of Culture are located in this town of little more than 14,000 inhabitants.

43. A third set of countries is characterised by having the *supreme judiciary bodies located outside the (primary) capital*. Such a geographical split of the branches of government is not only the case in Germany where Karlsruhe hosts the Federal Constitutional Court (*Bundesverfassungsgericht*) and the

Federal Court of Justice for civil and criminal matters (*Bundesgerichtshof*).⁵⁴ The fact that Article 13 of the Czech Constitution declares that “[t]he capital city of the Czech Republic is Prague”, does not prevent the country from having most of the higher courts located in Brno. Actually, this was precisely done in order to counter *pragocentrism*, i.e. an excessive concentration of power in Prague. There is a similar situation in Russia. Article 70(2) of the Constitution proclaims that “[t]he capital of the Russian Federation shall be the city of Moscow” and that “[t]he status of the capital shall be established by federal law”. Nonetheless, the country’s Constitutional Court was in 2009 moved from Moscow to Saint Petersburg, often unofficially called “the northern capital of Russia”, which thus also has a share in typical capital city functions.

44. In still other cases, there may not be two seats of government institutions but still a *split of certain typical political functions of capital cities*. For example, Bern certainly fulfills most of these functions, even if it is called “capital” only sometimes and colloquially but “federal city” in official terms. The country’s constitution uses neither term. After Bern had been selected by parliamentary vote in 1848 as “federal city” and main seat of federal government institutions, other cities were “compensated” as hosts of other significant institutions. Examples are the location of the Swiss Federal Institute of Technology (*Eidgenössische Technische Hochschule – ETH*) in Zurich and of the Federal Supreme Court (*Bundesgericht*) in Lausanne. Yet, despite the central status of Bern for the politics of Switzerland not all typical political functions of capital cities are concentrated there. As a recent study revealed,⁵⁵ activities of policy consultants or lobbyists, are in the Swiss case not so much concentrated in the capital than in other countries. Cities like Zurich or Geneva are very important too in this regard. To make an example, Zurich hosts many influential media organisations and also powerful unions such as Economiesuisse and Avenir Suisse. This “polycentrism” of political functions is certainly facilitated by short distances (and efficient transport infrastructure) and therefore not easily replicable in other cases.

Conclusions

45. This report builds on a commitment of the Congress to capital cities which has been strong since, at least, the early-2000s. This is exemplified by two Congress Recommendations, adopted in 2003 and 2007 which focused, respectively, on the management and status of such cities.⁵⁶ The latter Recommendation was accompanied by an explanatory memorandum based on a comparative study that brought together replies to a questionnaire from 41 members of the Group of Independent Experts.⁵⁷ and provided a comprehensive overview of the situation in the Member States of the Council of Europe.

46. Capitals obviously share certain challenges like air pollution, urban sprawl and congestion with other cities, but they still differ from them because “the capital function secures strong and lasting centrality”.⁵⁸ Capitals have such centrality on a national and sometimes also international scale, and typically regarding a number of spheres such as politics, economy and culture.

47. The rapporteur finds it very important to draw appropriate political and legal conclusions from the understanding of specific realities of capital cities, their individual contexts and wishes that vary from country to country in the light of the findings highlighted during the monitoring visits.

48. On these grounds, the rapporteur considers that instead of a rigid approach to “impose” a specific kind of special status, tout court, on all capitals, countries should have some margin of appreciation to account for these individual conditions while finding and implementing appropriate legal safeguards in the four above-mentioned areas.⁵⁹ Such flexibility should be the guideline as long as the political process involves consultation and cooperation with the authorities of the capital city, something that is mandated, by Article 4(6) of the Charter.

54 It should be noted that also the remaining supreme federal courts stipulated by Article 95(1) of the German Basic Law are located outside of Berlin (and Bonn): the Federal Administrative Court (*Bundesverwaltungsgericht*) in Leipzig, the Federal Finance Court (*Bundesfinanzhof*) in Munich, the Federal Labour Court (*Bundesarbeitsgericht*) in Erfurt and the Federal Social Court (*Bundessozialgericht*) in Kassel.

55 https://www.myscience.ch/en/news/2012/sonderfall_hauptstadt_bern.

56 Congress Recommendation 133 (2003) on the management of capital cities; Congress Recommendation 219 (2007) on the status of capital cities.

57 Explanatory Memorandum (CPL(14)4REP) to Congress Recommendation 219 (2007) on the status of capital cities.

58 J Gottmann and RA Harper, *Since Megalopolis: The Urban Writings of Jean Gottmann* (Baltimore and London, The Johns Hopkins University Press, 1990) 63.

59 See above paras 11-37.

49. One should also bear in mind that the physical proximity of the capital city administration with the central government may entail political conflicts⁶⁰ and possibly misuse of “the financial system of a capital city” as a “political instrument”⁶¹. As demonstrated by several examples, the “political cohabitation” of a widely popular mayor of the capital with the national government is often more antagonistic or even openly hostile if they have different party affiliations.⁶²

50. In the light of the above and given the capital cities’ political role vis-à-vis the national governments, capitals’ autonomy needs to be effectively protected by strong legal safeguards established in line with the principles laid down by the Charter.

60 See above para 9.

61 Congress Recommendation 219 (2007) on the status of capital cities, para 6.

62 Explanatory Memorandum (CPL(14)4REP) to Congress Recommendation 219 (2007) on the status of capital cities, para 127, citing examples from Hungary, Romania and Greece.