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Monitoring of the application of the European Charter of Local Self-Government in Bulgaria

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

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Summary

This report follows the third monitoring visit to Bulgaria since the country ratified the European Charter of Local Self-Government in 1995.

It welcomes the considerable progress Bulgaria has achieved in implementing a decentralisation strategy, devolving the powers to the local level while increasing municipal resources, and institutionalising several consultation procedures. The establishment of regional development councils (RDCs) promotes the participation of local representatives in decision making on regional development policies. In addition, Bulgaria has ratified previously non-ratified Article 7.2 of the European Charter of Local Self-Government (the Charter) and the Additional Protocol on the right to participate in the affairs of a local authority.

Nevertheless, important problems persist concerning the discretion of local authorities to adapt the fulfilment of delegated tasks to local conditions, a strong dependency of local authorities on State budget transfers, the lack of revenues coming from local taxes, the lack of commensurate resources available to local authorities and a generally low level of local self-government financial autonomy.

Consequently, the recommendation invites the Bulgarian authorities, among other things, to clarify the responsibilities allocated to different levels of government, enlarge local authorities' discretion in adapting the exercise of delegated powers to local conditions, reduce local self-government dependency on State financial transfers and enhance local authorities' taxation powers. It is also recommended to entitle local authorities to a right of direct recourse before the Constitutional Court whenever a law violates their constitutional status, the Charter or both.

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

RECOMMENDATION 460²

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

a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, 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. Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that: “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government”;

c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the Congress priorities for 2021-2022, in particular priority 6b that concerns the quality of representative democracy and citizen participation;

e. the Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goals 11 on sustainable cities and communities and 16 on peace, justice and strong institutions;

f. Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

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. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities, adopted on 4 April 2019;

i. Congress Recommendation 310(2011) on the monitoring of the European Charter of Local Self-Government in Bulgaria 310/2011;³

j. the explanatory memorandum on the monitoring of the application of the European Charter of Local Self-Government in Bulgaria.

2. The Congress points out that:

a. Bulgaria joined the Council of Europe on 7 May 1992, it signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 3 October 1994 and ratified it on 10 May 1995, declaring itself bound by all the provisions of the Charter except for Article 7, paragraph 2. The Charter entered into force in Bulgaria on 1 September 1995. Following the adoption of a Law by the National Assembly of the Republic of Bulgaria on 11 July 2012, the Republic of Bulgaria has withdrawn its declaration with regards to Article 7, paragraph 2 and is henceforth bound by all the paragraphs of Part I of the Charter;

b. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local democracy in Bulgaria in the light of the Charter. It instructed Ms Bryony RUDKIN,

² Debated and adopted by the Congress on 17 June 2021, 3rd sitting (see Document [CG\(2021\)40-20](#), explanatory memorandum), co-rapporteurs: Bryony RUDKIN, United Kingdom (L, SOC/G/PD) and Randi MONDORF, Denmark (R, ILDG).

³ Debated and adopted by the Congress on 18 October 2011, 1st sitting (see Document CG(21)14, explanatory memorandum), rapporteurs: A. Torres Pereira, Portugal (L, EPP/CD) and J. Sauwens, Belgium (R, EPP/CD).

United Kingdom (L, SOC/G/PD) and Ms Randi MONDORF, Denmark (R, ILDG), with the task of preparing and submitting to the Congress a report on the implementation of the Charter in Bulgaria;

c. The monitoring took place on 14 and 15 December 2020 remotely. The Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the remote visit is appended to the explanatory memorandum;

d. The co-rapporteurs wish to thank the Permanent Representation of Bulgaria to the Council of Europe and all those whom they met during the meetings.

3. The Congress notes with satisfaction:

a. considerable progress made in Bulgaria through the implementation of a decentralisation strategy, the devolution of powers and the transfer of responsibilities to local level, especially in the fields of education, public health and social services;

b. the ratification of Article 7.2 of the Charter, which means that Bulgaria is now bound by all articles of the Charter;

c. the institutionalisation of several consultation procedures on matters related to local authorities and the active participation of the National Association of Municipalities of the Republic of Bulgaria in the consultation;

d. the ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority;

e. the establishment of regional development councils where representatives of local authorities participate in decision making on regional development.

4. The Congress expresses its concerns on the following issues:

a. the overlapping of competences and fragmentation of responsibilities that reduces decision-making powers of local authorities in delivering the public services under their own responsibility (Article 4.4);

b. the lack of discretion of local authorities with regard to adapting the exercise of delegated powers to local conditions (Article 4.5);

c. a low level of local financial autonomy as a result of a strong dependence of Bulgarian municipalities on financial transfers from the State budget and the lack of municipalities' discretion in defining spending priorities when the relevant activities are financed through the State transfers (Articles 9.1, 9.7);

d. the lack of commensurate financial resources available to local authorities to perform their functions, while in practice the municipalities carry a heavy burden of tasks without sufficient funding. The system of local finances cannot be characterised as buoyant enough to ensure that delegated tasks are matched with necessary funds (Articles 9.2, 9.4);

e. a low share of municipal resources deriving from local taxes and charges (Article 9.3);

f. the restrictive rules applied to local budgeting that constrains budgetary autonomy of local self-government (Article 9.1);

g. the lack of specialised qualified staff in particular in smaller municipalities (Article 6.2).

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the authorities of Bulgaria to:

a. clarify the distribution of competences allocated to different levels of government in order to eliminate overlapping of responsibilities;

b. increase local authorities' discretion to adapt the exercise of delegated powers to local conditions;

- c.* reduce local authorities' dependence on financial transfers from the State budget by increasing the share of local taxes (or local shares of taxes) and charges in local revenue;
 - d.* introduce an objective, adaptive, reliable, and accurate system to calculate commensurate resources that should cover the cost of performing the municipal tasks;
 - e.* revise legislation to increase local government fiscal autonomy by enlarging local tax-levying powers;
 - f.* simplify the rules applied to local budgeting in order to lighten the budgetary supervision and by doing so provide more budgetary autonomy;
 - g.* provide for an efficient and accessible system for training of local employees to strengthen the administrative capacity of municipalities;
 - h.* introduce the right of a constitutional recourse for local authorities to be able to directly address the Constitutional Court whenever a law violates their constitutional status, the Charter or both.
6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the application of the European Charter of Local Self-Government in Bulgaria and the accompanying explanatory memorandum in their activities relating to this member State.

EXPLANATORY MEMORANDUM

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1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. Pursuant to Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulates that "The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government."

2. Bulgaria joined the Council of Europe on 7 May 1992, it signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 3 October 1994 and ratified it on 10 May 1995, declaring itself bound by all the provisions of the Charter except for Article 7, paragraph 2. The Charter entered into force in Bulgaria on 1 September 1995. Following the adoption of a Law by the National Assembly of the Republic of Bulgaria on 11 July 2012, the Republic of Bulgaria has withdrawn its declaration with regards to Article 7, paragraph 2 and is henceforth bound by all the paragraphs of Part I of the Charter.

3. In the domain of local and regional democracy, Bulgaria has also ratified:

- the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207), with entry into force on 1 July 2016;
- the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.106), with entry into force on 8 August 1999;
- the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159), with entry into force on 1 October 2005 (declared that it will apply the provisions of Article 4 only);
- Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169), with entry into force on 1 October 2005 (declared that it will apply the provisions of Article 4 only).

4. Bulgaria has not signed Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (ETS No. 206). Recommendation 310/2011 had asked the Bulgarian authorities to consider signing and then ratifying this Protocol.

5. The Congress has adopted the following previous recommendations on local and regional democracy in Bulgaria:

- Recommendation 45 (1998) on the situation of local and regional self-government in the Republic of Bulgaria;
- Recommendation 310 (2011) on local and regional democracy in Bulgaria.

Concerning local elections in Bulgaria, the Congress has issued:

- Recommendation 318 (2012) on the local elections in Bulgaria (23 October 2011);
- Resolution 338 (2012) on the local elections in Bulgaria (23 October 2011).

6. The Chair of the Monitoring Committee of the Congress appointed Ms Bryony RUDKIN, United Kingdom (L, SOC/G/PD) and Ms Randi MONDORF, Denmark (R, ILDG), as rapporteurs, and instructed them to prepare and submit to the Congress this report. An official monitoring mission in Bulgaria was carried out remotely by the aforementioned rapporteurs. The delegation was accompanied by a representative of the Congress secretariat and was assisted by Prof. Nikolaos CHLEPAS (expert). The rapporteurs wish to express their thanks to the expert for his assistance in the preparation of this report. This group of people will be hereinafter referred to as "the delegation".

7. The remote monitoring mission took place on 14 and 15 December 2020. During the mission, the Congress delegation had remote meetings with representatives of local and national authorities of Bulgaria. The detailed programme of the visit is appended to the present report.

8. The delegation would like to thank the Permanent Representation of Bulgaria to the Council of Europe as well as all the interlocutors for the information they provided to the delegation during the monitoring mission.

9. According to Rule 88.3 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent on 9 March 2021, to all interlocutors met

during the visit for comments and possible adjustments or corrections (hereinafter referred to as “consultation procedure”). The present report is based on the comments received, which have been considered by the co-rapporteurs before submission for approval to the Monitoring Committee.

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

10. In 1989, the ruling Communist Party gave up its monopoly on power and allowed multiparty elections. The country transitioned into a democracy and a market-based economy. Today, Bulgaria is a member of the European Union, NATO, and the Council of Europe. The Bulgarian economy is part of the European Single Market, but the country has the lowest GDP per capita and joint-lowest Human Development Index in the European Union with its population shrinking annually since the late 1980s; it currently numbers less than seven million, down from a peak of nearly nine million in 1988.⁴

11. Bulgaria is a parliamentary democracy. The legislative powers lie with the National Assembly, a body of 240 deputies elected to four-year terms by direct popular vote. The National Assembly has the power to enact laws, approve the budget, ratify international treaties and agreements, schedule presidential elections, select and dismiss the prime minister and other ministers. The executive power is exercised by The Council of Ministers. The prime minister is the head of government and the most powerful executive position. The directly elected president serves as head of State and has the authority to return a bill for further debate, although the parliament can override the presidential veto by a simple majority vote. The President has an initiative to refer to the Constitutional Court with a request for establishing the unconstitutionality of the laws and the other acts of the National Assembly. Competence disputes between the local governments and the central executive authorities may also be referred to the Constitutional Court by the municipal councils.

12. Elections are supervised by an independent Central Election Commission (CEC) that includes members from all major political parties. Parties must register with the commission prior to participating in a national election. Bulgaria’s largest party is the centre-right Citizens for European Development of Bulgaria (CEDB or GERB), followed by the Bulgarian Socialist Party (BSP), the Patriotic Front (a coalition of nationalist parties), the Movement for Rights and Freedoms (a party representing the Turkish/Muslim minority) and Volya, a recently formed party. Another important grouping was the Reformist Bloc (a coalition of centre parties), which lost ground in the general election of 2017.

13. In early May 2017, the CEDB formed a new government with the participation of the Patriotic Front. The CEDB leader, Boyko Borisov (elected by the National Assembly vote – 133 to 100), formed a new ruling coalition which includes the United Patriots and can also rely on the backing of Volya. In February 2019, the Bulgarian Socialist Party (BSP) boycotted the parliament and by July 2020, Bulgaria was facing anti-government protests and rallies. In August, Prime Minister Boyko Borisov presented a plan for constitutional reform that was criticised by the Venice Commission and finally rejected by the Bulgarian parliament in November, receiving only 110 votes in favour, while a qualified majority of 160 out of 240 deputies was needed to continue the procedure.⁵

14. In 2020, Freedom House listed Bulgaria among “Free” countries (scores 80/100, with 34/40 for “political rights” and 46/60 for “civil liberties”).⁶ Freedom House, however, has reported a decline in freedom during the last decade, citing reduced media independence, stalled reforms, abuse of authority at the highest level and increased dependence of local administrations on the central government. It has pointed to the country’s continuing struggle with political corruption and organised crime and stressed that the media sector is less pluralistic, as ownership concentration has considerably increased in the last 10 years. Despite funding shortages and other obstacles, civil society groups have been active and influential. The Economist Intelligence Unit’s Democracy Index has also reported deterioration in recent years, classifying Bulgaria as a “flawed democracy” (7.03/10 in 2019).⁷

4 <https://worldpopulationreview.com/countries/bulgaria-population>

5 <https://www.voanews.com/europe/bulgaria-parliament-rejects-draft-new-constitution>

6 <https://freedomhouse.org/country/bulgaria/freedom-world/2020>. Scores of Bulgaria’s neighbours in comparison: Romania 83/100 (‘free’), Serbia 66/100 (‘partly free’), North Macedonia 63/100 (‘partly free’), Greece 88/100 (‘free’) and Turkey 32/100 (‘not free’).

7 <https://infographics.economist.com/2020/democracy-index-2019/>. Scores of Bulgaria’s neighbours in comparison: Romania 6.49/10 (‘flawed democracy’), Serbia 6.41/10 (‘flawed democracy’), North Macedonia 5.97/10 (‘hybrid regime’), Greece 7.43/10 (‘flawed democracy’) and Turkey 4.09/10 (‘hybrid regime’).

15. Bulgaria is a unitary State with a centralised structure. The Constitution of the Republic of Bulgaria (CRB) was passed by the Grand National Assembly in July 1991. It is the supreme law of the country and may not be contravened by any other law. The constitution recognises the principle of local self-government (Articles 135-146):

Chapter seven

Local self-government and local administration

Art. 135.

(1) The territory of the Republic of Bulgaria shall be divided into municipalities and regions. The territorial division and the prerogatives of the capital city and the other major cities shall be established by law.

(2) Other administrative territorial units and bodies of self-government should possibly be established by law.

Art. 136.

(1) A municipality shall be the basic administrative territorial unit at the level of which self-government shall be practiced. Citizens shall participate in the government of the municipality both through their elected bodies of local self-government and directly, through a referendum or a general meeting of the populace.

(2) The borders of a municipality shall be established following a referendum of the populace.

(3) A municipality shall be a legal entity.

Art. 137.

(1) Municipalities shall be free to associate in the solution of common matters.

(2) The law shall establish conditions conducive to association among municipalities.

Art. 138.

The body of local self-government within a municipality shall be a municipal council elected directly by the populace for a term of four years by a procedure envisaged by the law.

Art. 139.

(1) The mayor shall be the executive power within a municipality. He shall be elected for a term of four years by the populace or by the municipal council in a manner established by law.

(2) In his activity a mayor shall be guided by the law, the acts of the municipal council and the decisions of the populace.

Art. 140.

A municipality shall be entitled to own municipal property, which it shall use to the interest of the territorial community.

Art. 141.

(1) A municipality shall have its own budget.

(2) A municipality's permanent sources of revenue shall be established by law.

(3) (New-SG 12/07)⁸ The municipal council shall determine the size of local taxes under conditions, by a procedure and within the frames, established by law.

(4) (New-SG 12/07) The municipal council shall determine the size of local charges by a procedure, established by law.

(5) (Former para 3- SG 12/07) The State shall ensure the normal work of the municipalities through budget appropriations and other means.

Art. 142.

The region shall be an administrative territorial unit for the conduct of a regional policy, the implementation of State governance on a local level, and the ensuring the concurrence of national and local interests.

Art. 143.

(1) Each region shall be governed by a regional governor aided by a regional administration.

(2) A regional governor shall be appointed by the Council of Ministers.

(3) The regional governor shall ensure the implementation of the State's policy, the safeguarding of the national interests, law and public order, and shall exercise administrative control.

Art. 144.

The central bodies of State and their territorial sub-divisions shall exercise control over the legality of the acts of the bodies of local government only when authorized to do so by law.

Art. 145.

A municipal council shall be free to challenge before a court any act which infringes its rights.

Art. 146.

The organization and the procedures of the bodies of local self-government and local administration shall be established by law.

16. In addition, the Local Self-Government and Local Administration (LSGLA) Act, adopted later in 1991, consolidated the guidelines provided by the constitution, regulated the administrative territorial structure of Bulgaria and defined the organisation and functions of local self-government units.

⁸ Concerning the Constitution of Bulgaria as amended in 2007 (SG No. 12/6.2.2007) see the relevant opinion of the Venice Commission adopted at its 74th Plenary Session (Venice, 14-15 March 2008), Opinion No. 444/2007. CDL-AD(2008)009: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2008\)009-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2008)009-e)

2.1 Local government system (constitutional and legislative framework, reforms)

17. Bulgaria is divided into two NUTS-1 regions, six NUTS-2 level planning regions, 28 districts or regions (*oblasti*), including metropolitan city Sofia-Grad, and 264 municipalities. Districts (*oblast*) are deconcentrated government units at the intermediary level which were created in 1999. They are headed by a district governor, appointed by the Council of Ministers. The chairman of the District Development Council is the District governor, permanent members are mayors of municipalities in the respective district, one representative of the municipal council of each municipality in the district, delegated representatives of the district structures of the representative organizations of employers and employees at national level.

18. Bulgaria has a single tier of subnational government, composed of municipalities. There are 265 municipalities subdivided into 3 771 sub-municipal units or mayoralties.⁹ The average municipal population is 26 604 inhabitants (median 10 326) and the average surface area is 416 km². The average municipal population size is quite large compared to the OECD average (9 700 inhabitants) and, especially, to the EU28 average (5 900 inhabitants). While the median size is around 10 300 inhabitants, 19% of municipalities have fewer than 5 000 inhabitants (vs. 47% in the EU28). Most Bulgarian municipalities have between 5 000 and 20 000 inhabitants (55% vs. 27% in the EU28).

19. The 1995 Act on Administrative and Territorial Structure of the Republic of Bulgaria states that municipalities with more than 300 000 inhabitants (namely Sofia, Plovdiv and Varna) shall be subdivided into wards (*gradski rayon*). There are currently 24 in Sofia, six in Plovdiv and five in Varna. The municipalities are also subdivided into towns and villages (*naseleno myasto*), totalling 5 257 at the end of 2019 (hence 20 on average per municipality).¹⁰ Around 1 968 of these settlements are “mayoralties with elected mayors”, that is deconcentrated municipal units established by decision of the municipal council, governed by elected mayors and comprising at least 350 inhabitants. Smaller settlements have mayor’s representatives appointed by the mayor.

20. Municipalities are governed by municipal councils (*obshtinski savet*), which are deliberative bodies and mayors who constitute the executive branch. Municipal councillors, whose number varies according to the population of the municipality (from 11 to 51 councillors, 61 in Sofia), are elected by direct universal suffrage for a four-year term. The councils are headed by chairs elected from among councillors. Mayors (*kmet*) are elected by direct universal suffrage based on a majority system, also for a four-year term.

21. According to the Local Self-Government and Local Administration Act (Article 17),¹¹ local self-government shall be expressed as the right and actual opportunity of citizens and their elective bodies to resolve on their own all issues of local importance that the law has empowered them to resolve in the fields of:

- a. municipal properties, municipal enterprises, municipal finance, taxes and fees, and the municipal administration;
- b. the planning and development of the territory of the municipality and the settlements therein;
- c. education;
- d. health;
- e. culture;
- f. public works and utilities;
- g. social welfare services;
- h. the protection of the environment and the reasonable use of natural resources;
- i. the maintenance and conservation of cultural, historical and architectural monuments;
- j. the development of sports, recreation and tourism;
- k. protection from disasters.

22. Besides the Constitution of 1991, the Local Self-Government and Local Administration Act, the Municipal Property Act and some other acts define the competences attributed to the municipalities. The Administration Act (amended in 2014) describes the bodies of local self-government.¹²

9 Regions, districts and municipalities in the Republic of Bulgaria 2019

https://www.nsi.bg/sites/default/files/files/publications/ROO_2019.zip

10 Idem

11 Amended and supplemented, SG No. 65/1995, amended, SG No. 69/2003.

See also <http://www.sng-wofi.org/country-profiles/Fiche%20BULGARIA.pdf>

12 Ibid.

23. In addition to their own local activities, municipalities are also responsible for implementing State-delegated tasks for which the State retains the power to define policies. This includes municipal administration, defence and security, education (primary and secondary), social protection, healthcare, culture and other economic activities and services.

24. A legality control over the acts of local government units (Article 144 of the constitution) is exercised by the districts which are also in charge of co-ordinating municipal activities, and co-ordinating with the national level authorities.

25. According to Article 9 of the Local Self-Government and Local Administration Act, municipalities may co-operate on a voluntary basis. Pursuant to this legal text in 1996 the National Association of Municipalities in the Republic of Bulgaria was established in which all 265 municipalities are members today. Amendments to this act in 2006, supplemented in 2018 set out the regulatory framework for inter-municipal co-operation, which, however, is not widespread. The 2016-25 Decentralisation strategy aims at developing inter-municipal co-operation further.

26. In 2017, subnational expenditure was 3.6 billion euros (501 euros per capita), and constituted 7.1% of GDP, 20% of total public expenditure. Out of this subnational expenditure, 35.5% covered the compensation of employees and in respect of different sectors, 32% was spent on education and 8.7% on health. Subnational revenue was 3.7 billion euros (519 euros per capita), 7.3% of GDP and 20.2% of public revenue.¹³

27. Financial provisions are set in the constitution (changed in 2007 to grant taxing powers to municipalities), the Local Self-Government and Local Administration Act, the Local Taxes and Fees Act (enacted in 1999 and amended in 2018) and the 2014 Law on Public Finance, which contains the legal basis for preparation of the municipalities' autonomous budgets and which repeals the Municipal Budgets Act effective hitherto.

28. According to the legislation, exclusive municipal responsibilities are financed through local taxes and other proceeds from the utilisation of municipal assets and the provision of services, whereas delegated activities are financed by transfers from the national budget. However, each municipal council may assign additional funding from its own revenue to finance the execution of delegated tasks. Thereby, municipalities' own revenue is used for financing delegated services above the national average, which may generate imbalances and possible disparities between municipalities. Local revenues account for 14% of the total government revenues. According to the data provided by the National Association of Municipalities in the Republic of Bulgaria (NAMRB), in 2019, 64% of municipal revenue came from the State transfers.

29. In 2018, expert groups were set up to discuss further amendments to the Local Taxes and Fees Act, to enhance municipalities' own-revenue base. Proposals included the introduction of a municipal personal income tax, increasing local discretion on tax assessments, and the creation of new fees for street lighting and urban congestion.¹⁴

30. According to the World Observatory on Subnational Government Finance and Investment (SNG WOFI),¹⁵ in 2002, the process of decentralisation had taken a new step with the adoption of a concept paper on fiscal decentralisation. It was then boosted by the EU accession process, resulting in the adoption in 2006 of the Decentralisation Strategy: 2006-15. The strategy was revised in 2010 and monitored by the Council for Decentralisation of State Governance, (hereinafter "the Council"), which was set up in 2006. The main objectives were the decentralisation of services, powers, and resources from higher to lower levels of government.

31. In 2011, the functions of the Council were transferred to the Council for Administrative Reform (CAR). During the consultation procedure, the Ministry of Regional Development and Public Works informed the delegation that the merger of the Council with the CAR was made in order to optimize the coordination of the reform in the administration and the decentralization process. However, this merger did not have a positive effect on the decentralisation process. In 2013, the Council was restored by Decree No. 157 of the Council of Ministers. The Council coordinates the implementation of the Decentralisation Strategy. The

¹³ Ibid.

¹⁴ <http://www.sng-wofi.org/country-profiles/Fiche%20BULGARIA.pdf>

¹⁵ <http://www.sng-wofi.org/country-profiles/Fiche%20BULGARIA.pdf> https://ec.europa.eu/info/sites/info/files/2019-european-semester-country-report-bulgaria_en.pdf

Minister for Regional Development and Public Works has been appointed chairman of the Council, and the members are deputy ministers, district governors and representatives of the local government and the National Association of Municipalities in the Republic of Bulgaria (NAMRB). The number of members of the council, representatives of the local government, is equal to the number of members, representatives of the central government.

32. A progress report was published in 2016, within the framework of the new Decentralisation Strategy: 2016-25. According to the Ministry of Regional Development and Public Works (MRDPW), the results of the 2006-15 phase were unsatisfactory as only 39% of the measures were implemented. The review highlighted, however, that the process of decentralisation slowed considerably because of the impact of the global crisis and the financial policy during that period. The municipalities were the most affected by the public institution crisis.

33. The new 2016-25 Decentralisation Strategy and the programme for its implementation in the period 2016-19 have been developed in implementation of Priority 4.10 from the Programme of the Government for Stable Development of the Republic of Bulgaria for the period 2014-18. The strategy sets out to achieve a certain vision for the state of decentralisation of public administration in Bulgaria by 2025. As explained by the SNG WOFI,¹⁶ it has four main strategic objectives: the transfer of powers and functions from central to local authority in key sectors; fiscal decentralisation with better assignment of revenues across levels of government to expand municipalities' revenue bases; development of civil control of public institutions; and increasing the role of regional institutions for the implementation of co-ordinated policy for regional development. In 2020, a report¹⁷ on the current problems and challenges of the decentralisation process in Bulgaria was prepared by the Ministry of Regional Development and Public Works and discussed within the Council, aiming to improve the strategic orientation and the management of the process at national, regional and local level in the short and medium term. The report contains information on the implementation of the specific measures of the Programme for the Implementation of the Decentralisation Strategy for the 2016-2019 period, as well as proposals for updating the objectives, priorities and measures to be incorporated in the Decentralisation Strategy for the period until 2025.

34. Bulgaria has established the National Platform of Partners for Good Democratic Governance at Local Level pursuant to Ordinance No. РД-02-14-726 / 26.07.2019 of the Minister for Regional Development and Public Works. The national platform operates on a public basis and is a form of partnership between State bodies at national and regional levels, bodies of local self-government and local administration and the NAMRB, organisations and structures of economic and social partners, civil society, the academic community, mass media and the Ombudsman of the Republic of Bulgaria.

35. The national platform, as part of its core activities, adopts a National Action Plan for Innovation and Good Governance at the local level to implement the Innovation and Good Governance Strategy; ensures co-ordination and interaction between partners, including at international level, in the implementation of measures and activities in the field of innovation and good local governance; performs the functions and responsibilities of an accredited body for managing the European Label of Governance Excellence (ELoGE).

2.2 Status of the capital city

36. Sofia is governed by the same law that specifies the internal division of the other large cities in Bulgaria such as Plovdiv and Varna.¹⁸ Sofia City or Sofia Municipality is divided into 24 districts administered by district mayors. Neither the constitution nor the law on local self-government attributes to Sofia a special status in terms of special competences, or in terms of a special relation with the central government for the administration of affairs that derive from the presence of central government institutions in the city. Sofia city does not belong to Sofia region. With a population of 273 279 inhabitants, the latter is the only region in Bulgaria that does not include a major city: instead, it includes many small but important towns situated around Sofia city. There are 22 municipalities in Sofia region.

¹⁶ Ibid.

¹⁷ Report "Implementation of the Decentralisation Strategy 2016-2025 and development of the decentralization process in the 2016-2019 period", Ministry of Regional Development and Public Works, 2020.

¹⁸ Congress report CG(21)14 "Local and regional democracy in Bulgaria" adopted in 2011, part 3.

2.3 Legal status of the European Charter of Local Self-Government

37. According to Article 5, paragraph 4 of the constitution, “international treaties which have been ratified in accordance with the constitutional procedure, promulgated and having come into force with respect to the Republic of Bulgaria, shall be part of the legislation of the State. They shall have primacy over any conflicting provision of the domestic legislation”. All international treaties, which are ratified pursuant to the constitutional procedure, are considered part of domestic legislation.

38. Moreover, according to Article 85 of the constitution, (3) “Treaties ratified by the National Assembly may be amended or denounced only by their built-in procedure or in accordance with the universally acknowledged norms of international law”. (4) “The conclusion of an international treaty requiring an amendment to the Constitution shall be preceded by the passage of such an amendment”.

39. Concerning the Constitutional Court, Article 149, para 1 provides, inter alia that this court shall (3) “rule on competence suits between the National Assembly, the President and the Council of Ministers, and between the bodies of local self-government and the central executive branch of government; (4) rule on the compatibility between the Constitution and the international treaties concluded by the Republic of Bulgaria prior to their ratification, and on the compatibility of domestic laws with the universally recognized norms of international law and the international treaties to which Bulgaria is a party.”

40. According to the previous report (2011) on local and regional democracy in Bulgaria,¹⁹ the legal system is offering direct application to the Charter, meaning that the Charter has been ratified and incorporated into its domestic legal system. The Charter is enforceable but cannot be directly relied upon before an ordinary court. It is up to the Constitutional Court to make use of the Charter, whenever necessary, to justify its decisions regarding the constitutionality of specific provisions of an ordinary law. In the event of a conflict between the Charter and an ordinary law, it is the provisions of the Charter that prevail.

41. The 2011 report concluded that the state of reception of the Charter, then, is broadly satisfactory. The Congress delegation encouraged the Bulgarian authorities to guarantee direct access by the local authorities to the Constitutional Court and to envisage making the ordinary courts responsible for the direct application of the Charter.

42. According to the same report, concerning the implementation of Article 11 of the Charter, “the Bulgarian system responded to Recommendation 45 (1998) by according legal recognition to these rights, for example as regards direct access by local authorities to the Constitutional Court.” The right of direct access is restricted to litigations on competences between local authorities and central executive organs. However, access is not granted to put the constitutional legitimacy of a law of the State concerning local self-government in question. For that, access is indirect: the question of the constitutionality of a law can be brought before ordinary judges (Supreme Court of Cassation or Supreme Administrative Court). If they consider the question important, they will suspend the procedure and apply to the Constitutional Court. In both cases (direct access on competence or indirect access), the Constitutional Court can ground its judgments on the Charter because the latter has direct application. It can also declare an internal norm which contradicts the Charter as unconstitutional.

2.4 Previous Congress reports and recommendations

43. During the 2010 Congress’ monitoring of local and regional democracy in Bulgaria the following main shortcomings relating to the implementation of the Charter were identified.

- a. The budgetary regulations, and particularly the procedure for the “consolidated budget” which is adopted by the government, restrict local authorities’ autonomy, thereby raising a problem of conformity with Article 9 of the Charter.
- b. Bulgarian municipalities’ level of financial autonomy is relatively low. The gradual decrease in financial resources made available to local authorities is not in accordance with the provisions of the Charter. More than half of local authorities’ budget derives from government transfers.
- c. The lack of clarity in the division between delegated powers and authorities’ own powers persists. Powers delegated to local authorities are still in the majority, compared with authorities’ own powers.

¹⁹ Local and regional democracy in Bulgaria, Monitoring Committee Rapporteurs: Artur Torres Pereira, Portugal (L, EPP/CD) and Johan Sauwens, Belgium (R, EPP/CD) 21st Session CG(21)14, 21 September 2011.

- d. Since the adoption of a law in 2011, the principle of direct universal suffrage for municipal council elections has been limited to certain tiers of local administration.
- e. The procedure for the direct annulment of administrative activities by governors, which brings to mind a “supervision of expediency”, is not in accordance with the provisions of the Charter, namely Article 4, paragraph 4, taken in conjunction with Article 8.
- f. Domestic legislation does not define precisely enough those cases in which an administrative body of a municipality may be dismissed or dissolved.
- g. The Charter may not be relied on by local authorities in ordinary courts.
- h. The discussions on establishing a regionalisation strategy have not yet been completed.
- i. The local ombudsperson remains an optional institution in Bulgarian municipalities due to lack of financial resources of local authorities.
- j. The Additional Protocol to the Charter on the right to participate in the affairs of a local authority (CETS No. 207) has not been signed by Bulgaria.

44. In the light of these shortcomings the Congress requested, *inter alia* the Committee of Ministers to invite the Bulgarian authorities to:

- a. revise the budgetary procedure in force and amend the current regulations in order to give local authorities budgetary autonomy in accordance with the principles set out in the Charter in conformity with Article 9 thereof;
- b. allocate to local authorities sufficient financial resources commensurate with their competences and responsibilities, *inter alia* by revising the legal provisions in force on the financing of municipalities;
- c. allocate to local authorities more powers of their own, in order to give them a level of local autonomy which conforms to the Charter, namely Article 4, paragraphs 4 and 5, and Article 8;
- d. maintain direct elections for councils at all levels of local administration without any distinction based on population size;
- e. give effective judicial protection to local authorities and grant them a proper right of appeal to ordinary courts;
- f. revise the legislation on the supervision of administrative activities related to their own competences in order to ensure that any annulment of these is carried out only through a judicial procedure, on referral by the regional governor;
- g. revise the legislation on the supervision of local governance bodies in order to specify those cases in which dismissal or dissolution may be carried out;
- h. encourage continuing dialogue between all actors in order to find the most appropriate way to implement decentralisation in the interests of Bulgaria and take into account the principles laid down in the Reference Framework for Regional Democracy.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)

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

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

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

45. According to the contemporary commentary of the Charter,²⁰ Article 2 binds the parties to recognise “the principle” of local self-government. This expression introduces in the Charter the difference between “principles” and “rules”. Consequently, it must be considered sufficient for a party to comply with Article 2, to recognise the core elements of local self-government.

46. To define these “core elements”, a key role is played by the Preamble and by Article 3 of the Charter. Both refer to the aspects of local self-government that have always been considered as the essential features of this concept in the modern European tradition: (a) “local authorities endowed with democratically constituted decision-making bodies”; (b) “a wide degree of autonomy with regard to their responsibilities”; (c) “ways and means by which those responsibilities are exercised, and the resources required for their

²⁰ A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>

fulfilment". Therefore, it would be necessary to check not only the formal recognition of the principle in the domestic legislation, but also whether those core elements are enshrined in that legislation.

47. According to Article 136(1) of the constitution, "a municipality shall be the basic administrative territorial unit at the level of which self-government shall be practiced. Citizens shall participate in the government of the municipality both through their elected bodies of local self-government and directly, through a referendum or a general meeting of the populace." Furthermore, Article 138 of the constitution stipulates that "The body of local self-government within a municipality shall be a municipal council elected directly by the populace for a term of four years by a procedure envisaged by the law", while Article 139(1) defines that "the mayor shall be the executive power within a municipality. He shall be elected for a term of four years by the populace or by the municipal council in a manner established by law". Bulgarian municipalities are therefore endowed with democratically constituted decision-making bodies.

48. While the constitution does not directly refer to the municipal sphere of responsibility, the Local Self-Government and Local Administration Act (LSGLA: Article 17)²¹, stipulates that local self-government shall be expressed in the right and actual opportunity of citizens and their elective bodies at the municipal level "to resolve on their own all issues of local importance that the law has empowered them [with]", also including an indicative list of municipal responsibilities.²²

49. The constitution stipulates that "a municipality shall be entitled to own municipal property, which it shall use to the interest of the territorial community" (Article 140). Article 141 stipulates that "(1) A municipality shall have its own budget. (2) A municipality's permanent sources of revenue shall be established by law. (3) The municipal council shall determine the size of local taxes under conditions, by a procedure and within the frames, established by law. (4) The municipal council shall determine the size of local charges by a procedure, established by law. (5) The State shall ensure the normal work of the municipalities through budget appropriations and other means." In other words, the constitution itself provides for means and resources for the fulfilment of municipal responsibilities. Further relevant regulations are included in the legislation and especially in the Local Taxes and Fees Act (LTFA)²³ and Public Finance Act.

50. The rapporteurs conclude that local self-government in Bulgaria is guaranteed by the constitution as regards principles of exercise, bodies, property rights and municipal finance. The constitutional norms are further developed in domestic legislation. Therefore, the rapporteurs consider that the requirements of Article 2 of the Charter are satisfied in Bulgaria. Nevertheless, they would encourage the Bulgarian authorities to include more specific provisions about the sphere of local government responsibilities in the constitution, following a relevant amendment, since explicit constitutional safeguards would further protect municipal powers and discretion.

3.2 Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

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

3.2.1 Article 3.1

51. According to the contemporary commentary of the Charter,²⁴ this provision defines the content and the subjects of local self-government. As subjects, the Charter mentions the "local authorities". These are territorial public entities endowed with their own legal personality having the power to make decisions and enforce them. These authorities should have the democratic features provided by Article 3.2. Different types

21 Amended and supplemented, SG No. 65/1995, amended, SG No. 69/2003. See also <http://www.sng-wofi.org/country-profiles/Fiche%20BULGARIA.pdf>

22 See part 2.1 of the current report.

23 Promulgated, State Gazette No. 117/10.12.1997, effective 1.01.1998, amended and supplemented several times and most recently SG No. 99/12.12.2017, effective 1.01.2018.

24 Ibid.

of local authorities are the addressees of the Charter since they are not confined to the lowest or “local” level of territorial organisation and may encompass also “regional” bodies (see Article 13 of the Charter). Therefore, the notion of “local authorities” should be understood and interpreted in a broad sense. It comprises different types of entities such as urban and rural municipalities, county-type cities and capital cities with special status, supra-municipal or provincial entities. In the case of Bulgaria, however, the notion of “local authorities” only applies to municipalities since mayoralties and wards are defined as “component administrative and territorial units of municipalities” without a distinct legal personality (Article, 2 paragraph 2, LSGLA), while regions lack directly elected bodies.

52. According to the Charter, local governments should regulate and manage a “substantial share of public affairs”. The Charter grants a certain margin of appreciation to States to set “the limits of the law” and to identify the radius of action of local authorities. However, the Charter stresses that the share of public affairs managed by local government should be “substantial” and not residual. In other words, local authorities should have a range of responsibilities offering the possibility of local public policies for the benefit of the local population.

53. Local authorities cannot regulate and manage effectively a “substantial share of local affairs” if these authorities are too small and/or are deprived of the resources necessary to fulfil their tasks. Therefore, amalgamations of municipalities may be advisable in some cases. Another possibility is the use of inter-municipal co-operation to achieve joint service provision.

54. The general conclusion that prevails is that the decentralisation strategy must integrate clearly defined sectoral policies and objectives that effectively contribute to achieving optimal and balanced decentralisation of power and resources, as well as measures encouraging the local authorities to pursue policies for sustainable economic and social development.²⁵

55. Bulgaria has experienced a substantial increase in local government competence, even though the output of the ambitious decentralisation strategy has not been considered as satisfactory. According to information provided by the NAMRB, local government responsibilities include, *inter alia* in the following fields:

- public works and communal activities, 100% of the services: cleanliness, street maintenance (57 000 km), street lighting, plumbing, parks and green areas (95 million m²);
- municipal road network: almost 50% of all roads in the country (19 500 km of municipal roads) – maintenance, repair and construction of municipal roads;
- education: 86% of all schools (2 018) and 96% of kindergartens (1 726) are municipal, and 74 schools (with "Agriculture", "Veterinary Medicine", "Food Industry" profiles) were transferred to municipalities with the entry into force of the new Preschool and School Education Act in 2016;
- healthcare: 122 municipal institutions for hospital care (36% of total), 152 institutions for out-patient care (7% of total), 820 nurseries, including nursery groups in kindergartens (over 90% of total);
- social services: municipalities are responsible for the management of all social services as a State-delegated activity, while municipalities directly provide 87% of all services, the rest is provided by private entities, out of which, specialised institutions: 167 are homes for adults with various disabilities, or for the elderly; 569 are daycare centres and daycare in the community services: 625 are residential services in the community; 1 387 are pensioners' clubs; social patronage at home is provided in 231 municipalities and patronage care is provided in all municipalities;
- recreation, culture, and sports: municipal theatres, philharmonic associations and operas, orchestras, and ensembles, and libraries, museums, galleries, and ethnographic complexes, media, ritual halls, zoos, sports facilities, and sports schools;
- economic activities and services (tourism, other economic activities): support for tourist bases, sports and tourist schools, municipal markets, and other auxiliary activities.

56. Despite some deficiencies, it is obvious that the decentralisation reform has led to the transfer of several important responsibilities and the devolution of power to municipalities that has enlarged the scope of action for local self-government. Therefore, the rapporteurs conclude that Article 3.1. is respected in Bulgaria.

²⁵ Ministry of Regional Development and Public Works, Decentralisation Strategy, 2016-25, Sofia 2016.

3.2.2 Article 3.2

57. The right of self-government must be exercised by democratically constituted authorities. The Charter prioritises a system of representative democracy at local level, in which the decision-making power is exercised by councils or assemblies directly elected by the people. Direct democracy plays a complementary (and not substitutive) role. Thus, local elections play a key role in local democracy: local representatives must be directly elected in free elections, by secret ballot based on direct, equal, universal suffrage. In addition, the right to participation that has been especially developed in the Additional Protocol, considers both forms of participation: a) as voters or candidates in local elections; b) direct involvement in consultative processes, local referendums, and petitions.²⁶

58. As for the structure of government at local level, the Charter does not express an option in favour of one specific form of local political organisation, leaving the choice in the hands of domestic legislation. The Charter only points out the central role that must be recognised to elected councils and assemblies. The representative body is indeed the organ required to deal with matters of the greatest importance to the local community, such as budgetary or tax matters. But the Charter does not refer to the necessity of having executive bodies, or to the way in which they are appointed: it is only stated that elected councils or assemblies “may possess executive organs responsible to them”.²⁷

59. The Charter underlines that existing executive organs are “responsible” to the elected councils or assemblies. The interpretation of the notion of “responsibility” has important consequences for the local form of government. In any case, the primacy of the directly and universally elected council or assembly means that this body takes the most relevant decisions and that there should be some tools to make the executive body accountable to the council. The concept of “responsibility” does not necessarily mean that the executive must be dismissible by the assembly. The minimum that is necessary for the “responsibility” requirement to be met is the introduction of a system of effective supervision of the executive by the assembly, allowing regular scrutiny of the executive’s activities.²⁸

60. In Bulgaria, the constitution itself defines in Article 138 that “the body of local self-government within a municipality shall be a municipal council elected directly by the populace for a term of four years by a procedure envisaged by the law”. Thereupon, Article 139 clarifies that “(1) The mayor shall be the executive power within a municipality. He shall be elected for a term of four years by the populace or by the municipal council in a manner established by law. (2) In his activity a mayor shall be guided by the law, the acts of the municipal council and the decisions of the populace.”

61. The LSGLA provides a comprehensive framework for the interaction between the two local authorities’ bodies. The municipal council shall formulate the policy of the municipality’s growth and development in connection with the activities provided by the LSGLA (Articles 17 and 21), as well as in connection with other activities provided by law. It will furthermore resolve other issues of local importance that do not fall within the exclusive competence of other bodies.

62. The municipal council exercises control over the work of the local administration through the possibility to address different questions to the mayor of the municipality. The municipal council may annul administrative acts of the mayor that contradict their acts, as well as challenge illegal ones before the court. The municipal council and its standing committees may request references, reports, information and other materials related to the implementation of the decisions taken from the mayor of the municipality, deputies and the municipal administration.

63. The mayor of the municipality is a body of the executive power in the municipality (Article 38, LSGLA). In his or her activity the mayor is guided by the law, by the acts of the municipal council and by the decisions of the population. At the same time, the mayor is obliged to perform functions assigned to him or her by the central State bodies, but only when this is determined by law (Article 44, paragraph 4, LSGLA).

26 A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

27 See Recommendation 113 (2002) on relations between the public, the local assembly and the executive in local democracy (the institutional framework of local democracy).

28 Ibid.

64. The mayor of the municipality shall send to the municipal council his or her acts, issued in implementation of the council's decisions, the contracts and their amendments and supplements, within three days from their issuance. The mayor of the municipality is obliged to organise the implementation of the acts of the municipal council by submitting a report on their implementation twice a year.

65. The mayor is the only body that can assess the expediency of the acts of the municipal council, return the inexpedient ones for a new discussion (Article 45, LSGLA) and challenge them before the administrative court. The act referred for new consideration shall not enter into force and shall be considered by the municipal council within 14 days after its receipt. The municipal council may rescind, amend, or adopt the act referred back for a second consideration. The act referred back for new consideration shall be adopted again with a majority specified by law but not less than one half of the total number of municipal councillors. The amended or adopted for a second time administrative act may be contested before the respective administrative court under the procedure of the Administrative Procedure Code (APC).

66. The right to participate in the affairs of a local authority is currently regulated in the Constitution of the Republic of Bulgaria (Article 136(1) "...Citizens shall participate in the government of the municipality both through their elected bodies of local self-government and directly, through a referendum or a general meeting of the populace"), the APC, the Electoral Code, the Law on Direct Participation of Citizens in State Authority and Local Self-Government, LSGLA, the Access to Public Information Act, the Public Finance Act (PFA) and the Municipal Debt Act. The right to participate in the affairs of a local authority is applied in the local acts and activities of the Bulgarian municipalities. According to information provided by the NAMRB, ordinances for civic participation in the affairs of the respective municipality have been adopted in a number of municipalities, and separate ordinances for specific policies specify the manner of participation of the local community. The Additional Protocol does not provide for the possibility for the member States of the Council of Europe to express reservations and declarations under its provisions, so that the Republic of Bulgaria is bound by all its provisions.

67. In light of the foregoing, the rapporteurs consider that Bulgaria complies with Article 3.2 of the Charter.

3.3 Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

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

3.3.1 Article 4.1

68. Article 4.1 requires clarity and legal certainty for the regulation of the "basic powers and responsibilities" of local government bodies. They should be prescribed by the constitution or by statute, so as to provide predictability, permanence and protection for the benefit of local self-government. Therefore, the tasks of local authorities should not be assigned on an ad hoc basis and should be sufficiently enshrined in written parliamentary legislation. Establishing local powers and competences by means of administrative regulation should be avoided and goes against the spirit of the Charter. This general rule is not incompatible with the attribution to local authorities of powers and responsibilities "for specific purposes" in accordance with the law.

69. National legislation follows different patterns on regulating the allocation of local responsibilities. In some countries, there are general statutory provisions that use broad terms in order to describe the “matters” or domains of such responsibilities (e.g. “elementary education”, “green spaces”, etc.). Then, in a second step, sector-specific legislation precisely identifies the concrete tasks to local governments. In other countries, there are no general provisions and the concrete tasks and responsibilities of local governments are singled out in a wide range of sector-specific legislation. In such cases, it is nearly impossible to get a comprehensive picture, a situation that could frustrate transparency and obstruct efficient consultation of local authorities according to Article 4.6.

70. The fundamental powers and responsibilities of municipalities are mainly set out in Articles 17, 21 and 44 of the LSGLA that introduces a system for allocating powers between the different organs of an authority (council, mayor). An emerging question is which powers and responsibilities can be “basic” and do require, in principle, systematic regulation. But the definition of “basic” powers cannot be the same in the different countries and national authorities have a wide margin of discretion in defining these “basic” powers. Traditional tasks characterising local government operation in a specific country would certainly be part of those basic powers.

71. Apart from the LSGLA which mentions some important responsibilities of local government, the distribution of competencies between central and local authorities is regulated in a number of laws and other normative acts in the respective spheres of activity. According to information provided by the Ministry of Regional Development and Public Works, responsibilities of local authorities are currently regulated in eight codes, 131 acts, over 500 bylaws. Thus, the municipalities are engaged in the implementation of the national sectoral and horizontal policies on their territory.

72. The NAMRB has prepared some key proposals formulated under the framework for the preparation of a programme for implementation of the strategy for decentralisation of public administration for the period 2021-25. Concerning the “Protection and development of the own sphere of activity of the local self-government”, the NAMRB has proposed, *inter alia*:

- granting/expanding the powers to manage activities important for the local community, including some of the delegated ones (in the field of secondary education, in the management of water supply and sewerage associations, in the control of compliance with local regulations, etc.);
- providing the management, respectively the revenues of resources with local importance – natural, cultural, historical and others (caves, mineral waters, etc.);
- expanding the powers of local authorities to act in emergencies and extraordinary situations;
- more tools to encourage investments of local importance in the construction of industrial parks, and so forth.;
- stimulation of public investments by creating funds and programmes for financing municipal infrastructure.

73. The rapporteurs welcome the adoption of the aforementioned proposals, provided that commensurate resources are granted and local authorities obtain a relevant space of discretion when exercising tasks on behalf of the State. In general, the existing responsibilities are prescribed by the legislation and the rapporteurs conclude that Article 4.1 is respected in Bulgaria.

3.3.2 Article 4.2

74. It is important to the conception of local authorities as political entities acting to promote the general welfare of their inhabitants that they have the right to take initiatives on matters not explicitly excluded from their competence by the law.²⁹

75. In Article 21(2) of the LSGLA, it is provided that the municipal council can “resolve other issues of local importance that do not fall within the exclusive competence of other bodies”. According to interlocutors representing local authorities, however, the case-law shows that there are many cases of repeal of municipal ordinances or part of their texts due to the lack of an explicit legal delegation for regulation through local ordinances of the respective issue. Moreover, these interlocutors complained about the extensive State regulation of different fields of action that would barely leave any margins for local statutes and initiatives. In fact, this kind of critique emerges in many European countries, due to the tendency of domestic

²⁹ A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

legislators to regulate even the details in many policy fields and, in addition, to introduce several controls and requirements for previous State approvals that suffocate local initiatives. But this is a common problem that does not seem to have extraordinary dimensions in Bulgaria; moreover, the rapporteurs had the impression that it would rather be the lack of resources that would frustrate local initiatives. Their conclusion is, therefore, that Article 4.2 is respected in Bulgaria.

3.3.3 Article 4.3

76. This paragraph of the Charter introduces the “subsidiarity principle”, whereby public responsibilities should be exercised “in preference” by those authorities or bodies that are closest to the citizen. This principle crosscuts all levels of territorial organisation and introduces closeness to the citizens as a primary criterion for the allocation of responsibilities unless there are overriding considerations of efficiency and economy because of the extent and the nature of the task. It is of central importance for the protection of local authorities against up-scaling and re-centralisation tendencies that threaten to empty the substance of local self-government. Moreover, subsidiarity can reduce the possible rigidity that unity of application can involve. In this sense, subsidiarity better achieves efficiency, responsiveness, and accountability of governmental action.³⁰

77. In Bulgaria, this principle has been involved when additional tasks were transferred to municipalities in the fields of environmental protection, spatial development, the primary sector, social services, education and health, and so forth. Despite these efforts, the principle of subsidiarity in the sense of strengthening local self-government is not yet sufficiently implemented at present. It seems that the principle of subsidiarity is still essentially understood as a principle of de-concentration. With the legal amendments in the field of education and social assistance, for instance, municipalities were assigned many new responsibilities. They were defined as State-delegated activities. A relevant general tendency becomes clear also from the predominantly task-related financing of municipal tasks (see below).

78. Therefore, the rapporteurs encourage the Bulgarian authorities to combine decentralisation efforts with increased discretion at the local level. In view, however, of important efforts to decentralise responsibilities and enlarge the scope of local government competence, the rapporteurs conclude that Bulgaria complies with Article 4, paragraph 3.

3.3.4 Article 4.4

79. According to Recommendation CM/Rec(2007)4 of the Committee of Ministers to member States on local and regional public services,³¹ law makers should establish a clear definition of the responsibilities of the various tiers of government and a balanced distribution of roles between these tiers in the field of local services. This would make it possible to avoid both a power vacuum and the duplication of powers. Moreover, this allocation of responsibilities should promote predictability and guarantee continuity in the provision of certain local public services that are essential for the people.

80. In several monitoring reports it has been pointed out that confusion and lack of clear demarcation of powers would blur responsibility and lead to a power shift for the benefit of higher level and especially of central authorities. Due to the lack of resources at lower governmental levels, complementary action by higher-level authorities is often required, but quite often this is not made on the basis of parity and partnership; local authorities would then be reduced to mere agents of regional or national authorities.³²

81. A characteristic example mentioned by the NAMRB is the Water and Sewerage Services. Since the municipalities became owners of a significant part of the water supply and sewerage networks and facilities in 2010, they acquired new responsibilities for the maintenance and development of the networks and for the quality of the service to the citizens. These responsibilities are accompanied by severely limited management rights. Municipalities are obliged to join the so-called water supply and sewerage associations in designated territories, concluding contracts with commercial companies – water supply and sewerage operators. The State has a blocking quota in these associations, which mainly perform advisory functions

³⁰ Ibid.

³¹ Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers’ Deputies, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d6b5e

³² A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

in the adoption of the regional master plans for water and sewerage and the business plans of the water and sewerage operators. Thus, municipalities cannot really influence the process of investments to improve the networks, nor the quality and price of the service.

82. Another example that has been mentioned is the field of education: Municipalities do not have instruments to influence good governance, although they are the owners of the material base and are in charge of its maintenance. The municipalities are not employers of the school management, they do not participate in their attestation.

83. Local interlocutors have also mentioned the field of healthcare: municipalities are the owners of 122 municipal hospitals (36% of all hospitals in the country), which compete on a market basis in their activities with other public, private, and mixed hospitals. Municipalities have no legal basis to finance their activities but can only participate in the improvement of the material and technical base.

84. One of the main challenges of the decentralisation reform process is to allocate clearly the management and relevant responsibilities to the different levels and to eliminate overlapping of competences. As long as this is not yet achieved at a satisfactory level, there is only partial compliance of Bulgaria with Article 4, paragraph 4, of the Charter.

3.3.5 Article 4.5

85. Delegation of competences and governmental tasks may adopt different mechanisms. Usually, the State or regional authorities keep the ownership of the competence and transfer to local entities the exercise or application of that competence. At the same time, the delegating bodies (in their capacity as “master of the competence”) keep the power to instruct the local ones on how to implement the delegated tasks and to supervise the execution of those delegated tasks.

86. According to Recommendation CM/Rec(2007)4 of the Committee of Ministers to member States on local and regional public services, the proximity to the population of local public services is a fundamental necessity. In order to ensure that services are adapted to the citizens’ needs and expectations, local entities should benefit from a high degree of decentralisation and a capacity for independent action. Delegating authorities should adopt minimum standards for the protection of the users of the delegated services and create the necessary machinery for monitoring compliance with them.³³

87. According to the NAMRB, the scope of the State-delegated activities includes new services, mainly in the field of education, social care, as well as healthcare, defence and security. The scope of the most important delegated activities is the following:

- education: 86% of schools and 95% of kindergartens are municipal;
- healthcare: 36% of all hospitals or 122 municipal health facilities; nearly 100% of all nurseries, health offices in kindergartens;
- social assistance and care: 90% of social services are provided by municipalities.

88. The vague formulation of the own sphere of local self-government makes it possible to assign atypical responsibilities to the municipalities through changes in normative acts in the sectoral legislation. Such cases are: service (delivery) of administrative and judicial proceedings; control over the observance of copyright and related rights; control over the use of medicinal plants; deratisation and disinfection outside urban areas owned by others; control over the deposit and distribution of printed works; registration of apiaries, and so forth. This leads to additional aggravation of the administration and spending of own financial resources, while relevant discretion is barely granted to municipalities, as local interlocutors have stressed.

89. Annually, by a decision of the Council of Ministers, the activities delegated by the State, financed from the State budget in the organisation and provision of public services are determined and standards are adopted for the activities delegated by the State with natural and value indicators in the respective year. Most of the new responsibilities transferred to the municipalities, primarily in the field of social assistance, education, and so on, are defined as State-delegated activities. The system for financing most of the State-delegated responsibilities through uniform expenditure standards currently applied, limits the powers of

33 Adopted by the Committee of Ministers on 31 January 2007 at the 985th meeting of the Ministers’ Deputies, https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805d6b5e

municipal councils to redistribute these resources according to local needs and priorities. The NAMRB upholds the position that the expansion of municipal powers should happen only if it goes hand in hand with relevant funding and discretion.

90. Therefore, the rapporteurs conclude that there is only partial compliance with Article 4, paragraph 5, in Bulgaria.

3.3.6 Article 4.6

91. Consultation is a key principle of the Charter and local authorities should be consulted by State (or regional) bodies in the discussion and approval of laws, regulations, plans, and programmes affecting the legal and operational framework of local democracy. This also increases democracy, in the sense that decision makers should listen to the voice of local authorities and of their associations. Moreover, this is demanded by the principles of transparency in the governmental action, and by the principle of subsidiarity.³⁴

92. The Congress has adopted several recommendations and resolutions on the right of local authorities to be consulted by other levels of government.³⁵ In its Recommendation 171 (2005) the Congress emphasised that the right of local authorities to be consulted is a fundamental principle of European legal and democratic practice, the aim of which is to contribute to good governance.³⁶ Recommendation 328 (2012)³⁷ emphasises that consultation should be organised in a manner and timing such that local authorities have a real opportunity to formulate and articulate their own views and proposals, in order to exercise influence.

93. According to information provided by the NAMRB, on issues that directly concern the municipalities, the following statutory consultation mechanisms apply.

- At the initiative of the NAMRB since 2016, through amendments to the Normative Acts Act, each draft normative act that affects the powers of municipalities should be consulted with the NAMRB before being submitted for adoption to the Council of Ministers.
- The draft normative acts are subject to obligatory public consultation and published on a special internet portal of the government. Within the deadlines for these consultations, both the NAMRB and individual municipalities can also send their opinions and actively do so.
- In the parliament, the NAMRB submits opinions to the competent parliamentary committees on all bills which affect the activities of municipalities. Representatives of the NAMRB are invited to participate in meetings of parliamentary committees and may express positions during the debates on submitted bills.
- In total, the NAMRB and the municipalities participate in 260 advisory bodies, councils, commissions and working groups at the various ministries and central departments with 640 representatives from 180 municipalities. This approach of preliminary joint work provides the municipalities with the opportunity already at the stage of initiative to reform particular sectors and be an active participant in the process.
- The representation of the NAMRB in the Monitoring Committees of the Partnership Agreement with the EU 2014-20, in the Monitoring Committees of the Operational Programmes and the Rural Development Programme is important for the activity of the municipalities. These powers are defined by a decree of the Council of Ministers.
- Municipalities are also represented in the new regional development councils, which according to the Regional Development Act co-ordinate the implementation of State policy for regional development in the

34 A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

35 Resolution 368 (2014) debated and adopted by the Congress on 27 March 2014, rapporteur: Anders Knape, Sweden (L, EPP/CCE). See, also: Resolution 437(2018) on the consultation of local authorities by higher levels of government, of 8 November 2018.

36 Debated and approved by the Chamber of Local Authorities on 1 June 2005 and adopted by the Standing Committee of the Congress on 2 June 2005 (see Document CPL (12) 5).

37 Debated and adopted on 18 October 2012 by the Congress (see Document CG(23)II, explanatory memorandum).

respective planning region at Nomenclature of Territorial Units for Statistics (NUTS) level 2. Representatives of municipalities (mayors and chairmen of municipal councils) have 70% of the votes in the regional councils. They were elected through a transparent procedure organised by the NAMRB, at the level of planning regions. Thus, the local government will have the opportunity to participate directly in the process of preparation and approval of the new Integrated Territorial Strategies (ITS) for Development at NUTS 2 level planning regions. The law provides for these strategies to be adopted by the Council of Ministers under the proposal of the Minister for Regional Development and Public Works after their approval by the relevant regional development councils.

94. Another important institution for consultation is the Council for Decentralisation of Public Administration (where also the NAMRB is represented) at the Council of Ministers. It has a decisive role for the implementation of the main objectives of the decentralisation strategy. This permanent advisory body was established by a government decree in 2006 to support the implementation of State policy in the field of decentralisation. With various normative changes in governmental acts regarding the functions of this council, its activity was interrupted twice – from 2011 to 2013, as well as from 2016 to 2020. After persistent efforts by the NAMRB in August 2020 after a four-year interruption a meeting of the Council was held. At this meeting it was decided to update the Decentralisation Strategy 2016-25, to elaborate a programme for its implementation for the period 2021-25, as well as to prepare a draft government decree, guaranteeing the sustainable and effective activity of the Council. For this purpose, a working group was established, which started its activities in January 2021.

95. The rapporteurs conclude that Bulgaria fully complies with Article 4.6 of the Charter.

3.4 Article 5 – Protection of local authority 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.

96. Territorial reforms have been implemented in several European countries, where the existence of very small and weak municipalities goes along with a shortage of capacities leading to inefficiency and non-compliance with Charter requirements. In this context, the Charter does not prohibit amalgamations, nor impose a closed pattern of territorial or institutional design. It introduces procedural rules for changes in local authority boundaries.

97. In this vein, it is a mandatory procedural requirement that no change of local boundaries may be adopted without consultation. This must take place at a timely stage before a final decision on this matter is made. This is required in order to promote the efficiency of consultation, in other words the real possibility of local communities to be heard and to express their views at a time where influence over amalgamation decisions and their different aspects can really be exercised and consultation is not only of formal or symbolic nature. If the amalgamations include a considerable part of the country or the whole country, then the national associations of local or/and regional authorities should also take part in the consultation procedures.³⁸

98. In its Recommendation (2004)12, the Committee of Ministers of the Council of Europe established some principles that should be followed by the parties when they engage in reforms of the boundaries or the structure of local authorities.³⁹ Moreover, the objectives, methods and results of a process of reform should be fully compatible with the provisions of the Charter. Furthermore, where appropriate, the parties should further ensure that the objectives, methods and results of the process of reform comply with their obligations under Article 7.1.b of the European Charter for Regional or Minority Languages, and Article 16 of the Framework Convention for the Protection of National Minorities.

99. According to Article 136(2) of the constitution, “the borders of a municipality shall be established following a referendum of the populace”. In the past 10 years, since the previous monitoring, there have

38 A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

39 Recommendation (2004)12 of the Committee of Ministers to member States on the processes of reform of boundaries and/or structure of local and regional authorities (adopted by the Committee of Ministers on 20 October 2004 at the 900th meeting of the Ministers' Deputies).

been no mergers of municipalities in Bulgaria. The NAMRB informed the delegation that there were two cases of establishing new municipalities by separating the respective territory from an existing municipality. Thus, from 1 January 2015, the municipality of Sarnitsa became an independent municipality after a referendum, separating itself from Velingrad municipality. With this act the municipalities in Bulgaria reached 265. At the end of February 2021, a referendum was held to separate the town of Obzor and several nearby settlements into an independent municipality, from Nessebar municipality. With its decision from 23.03.2021 the Council of Ministers confirmed the results of the referendum and announced the new municipality. The last stage of the procedure is forthcoming – issuing a presidential decree. The Administrative and Territorial Structure of the Republic of Bulgaria Act exhaustively determines the terms and conditions for the establishment, division or merger of municipalities. In the general case, the main requirement for all three hypotheses is to conduct and have a positive result from a referendum among the population from the affected settlements.

100. The rapporteurs conclude that Bulgaria fully complies with Article 5 of the Charter.

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

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.

3.5.1 Article 6.1

101. This paragraph states that local authorities have discretion to determine their own internal administrative structures or organisation. The power to organise themselves is then a part of the autonomy enjoyed by local entities (self-organisation power). This discretion is not absolute but has to respect the general statutory framework on governmental organisation. The goal of the paragraph is to safeguard local autonomy by allowing local authorities to create such an administrative internal structure and organisation that enable them to meet the various needs of the local residents and provide a full range of public services.

102. The self-organising power of local entities must be broad, and it should include not only the power to decide the internal local organisation, but also the power to establish independent bodies such as local companies or agencies for the better delivery of local services. Local authorities should also have discretion to establish territorial deconcentrated units and structures (such as municipal districts) to ensure the best delivery of their responsibilities.⁴⁰

103. Bulgarian municipalities do have the freedom to determine the internal organisation as well as their internal administrative structures. The LSGLA regulates in detail the powers of political elected bodies at the local level (municipal council, mayor, mayors of mayoralties and mayor deputies). Local authorities independently determine the organisation of the administrative structures, both internal (structuring of the administration) and external (creation of municipal units, public establishments, and municipal enterprises). The municipal administration is structured in directorates, departments, or sectors. Departments or sectors may also be organised as independent structural units, without being included in the composition of directorates or departments. The municipal council may establish services of the municipal administration in separate districts, mayoralties, settlements or in parts of them and determine their functions.

104. Therefore, the rapporteurs share the opinion that Article 6, paragraph 1, is respected in Bulgaria.

⁴⁰ Ibid.

3.5.2 Article 6.2

105. With due respect to the general laws and regulations on civil service, local authorities should have the autonomy to determine the conditions of service of their own employees and to establish a sound and efficient personnel policy, also offering sufficient training and career opportunities. Local authorities should have the possibility to attract, recruit and maintain their qualified administrative staff. Naturally, these possibilities will largely depend, however, on the size and resources of each local entity.⁴¹

106. The Congress has noted in its monitoring exercises that in many countries the national and/or regional authorities do regulate in a comprehensive way the status of local government staff, thus limiting discretion of local authorities. Also, in Bulgaria some local interlocutors complained about domestic laws and government regulations which restrict the activities of local governments in terms of selecting and evaluating staff, as well as in terms of offering an adequate remuneration.

107. The rapporteurs consider, however, that the most important issue in this context is not the legal restrictions but the lack of the necessary staff. Local government officials emphasised the weak professional skills of many staff members, especially in smaller municipalities. Apart from in the big cities, it is extremely difficult for local authorities to attract specialised quality staff. Another problematic aspect is the lack of an efficient, reliable and easily accessible system for training, mainly because relevant experience and necessary resources are still missing. During the consultation procedure, the NAMRB informed the delegation that it seeks to fill this gap by organising trainings on the implementation of the latest amendments in the legislative basis, important for the activities of the sectorial policies' experts in the municipalities. At the beginning of each new term of the local self-government NAMRB, organises trainings for newly elected local representatives - mayors and municipal councilors.

108. Therefore, the rapporteurs conclude that the requirements of Article 6, paragraph 2, are only partly satisfied in Bulgaria.

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

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.

3.6.1 Article 7.1

109. Local authorities are required to provide all elected representatives with the facilities, equipment and technical support needed to carry out their tasks. This has to be done irrespective of their political affiliation; moreover, elected local politicians should have access to training programmes on their role, status, duties and limitations.⁴²

110. Elected representatives should not be prevented by the action of a third party from carrying out their functions. For instance, they should be protected by law against threats from social media or against infringements of their privacy. Another example could be the laws that favour the “judicialisation” of local politics, or where local elected representatives are de facto threatened with the prospect of being prosecuted even on trivial charges. In this connection, the fight against corruption should be balanced against the need to ensure that local politicians are not unduly threatened by the prospect of arbitrary prosecutions.⁴³

41 Ibid.

42 A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

43 Ibid.

111. The status of the municipal councillors, determined according to the Bulgarian legislation, gives them the right to be elected in the standing and temporary commissions of the council, to propose the inclusion in the agenda of the municipal council meetings of issues within the competence of the council and to submit draft decisions, to participate in the discussion and resolution of all issues within the competence of the council, to address questions to the mayor. State bodies, economic and public organisations are obliged to provide assistance to municipal councillors, as well as to provide them with information and documents they need in connection with their activities as councillors, except when they compile classified information constituting a State or official secret.

112. According to information provided by the Ministry of Regional Development and Public Works (MRDPW), the existing norms for the premature termination of a term of office are applied precisely and there are no significant violations of the rights of local elected officials. The LSGLA exhaustively determines the cases in which a municipal council may be dismissed and new elections may be held (for instance, if it does not hold a meeting for three months: Article 27, paragraph 1). Likewise, the cases in which the powers of a municipal councillor and the mayor are terminated prematurely (respectively Article 30, paragraph 4 and Article 42, paragraph 1 of the LSGLA) are exhaustively determined. Temporary removal from office of a mayor is provided for as an option in the Criminal Procedure Code (Article 69) in the framework of pre-trial proceedings, when the person is charged with an intentional crime of a general nature, if there are grounds to believe that their official position will prevent the objective clarification of the circumstances of the case. A decision for the temporal removal can be taken only by the court at the request of a prosecutor.

113. It is worth mentioning that elected posts in Bulgarian local government still attract a remarkable number of candidatures. During the last elections, according to the CEC, a total of 66 parties and coalitions were registered to run in the local elections. Some 29 477 candidates for municipal councillors, 1 253 candidates for mayors of municipalities, 463 candidates for district mayors in 35 districts in the cities with district division Sofia, Plovdiv and Varna and 5 040 candidates for mayors of 1 966 mayoralties with populations over 350 were registered at the municipal election commissions.

114. Compared to the local elections held in 2015, however, there is a certain decrease in the number of registered candidates: there were 35 772 candidatures for municipal councillors; 1 600 for mayors of municipalities and 635 for district mayors in the cities with district division. The registered candidates for mayors of 3 190 mayoralties with a population at that time over 100 were 10 077 persons.

115. The results of the 2019 elections show that 5 134 municipal councillors were elected; 265 mayors of municipalities, of which 160 (60.38%) were elected in the first round and 105 (39.62%) in the second round; 35 mayors of districts, of which four (11.43%) were elected in the first round and 31 (88.57%) in the second round; 1 966 mayors of mayoralties, of which 1 525 (77.57%) were elected in the first round and 441 (22.43%) in the second round. The average turnout for the country in these elections was 49.76% in the first round and 42.10% in the second round.

116. The rapporteurs conclude that Bulgaria complies with Article 7.1 of the Charter.

3.6.2 Article 7.2

117. This paragraph again refers to the conditions of office of local elected representatives and focuses on the financial aspect of their work. The aim of the paragraph is to ensure that local elected representatives receive “appropriate financial compensation” and to avoid the conditions of office preventing, limiting, or even excluding potential local candidates from standing for office because of financial considerations.⁴⁴

118. Concerning elective office a distinction can be drawn between three degrees of commitment:

- elective duties considered as a full-time responsibility (engagement in another occupational activity at the same time is barely possible);
 - duties considered as a part-time responsibility (40%, half time, etc.);
 - political duties which constitute an ancillary activity (not generally affecting the main occupational activity).
- The elected representative can keep a full-time job.

44 A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

119. The distinction between these three categories does not reflect the practice in all countries. Some consider that any elected office, even if it involves only a few hours' work a month, is a part-time job. In many countries full-time engagement is often implied only for members of parliaments since engagements are usually not so demanding for local councillors. While a mayor (and in some cases one or several deputy mayors) can possibly be considered as a full-time responsibility, a substantial proportion of the local elected councillors hold part-time responsibilities, or their political duties constitute an ancillary activity.

120. In Bulgaria, despite numerous legal changes in the last 10 years, the issue of remuneration for municipal councillors is relatively stable in the LSGLA Act, as the country has lifted reservations under Article 7.2 of the Charter. Remuneration of municipal councillors is determined as a percentage of the remuneration of the chairman of the municipal council or of the average remuneration of the municipal administration for the municipalities of different scales. The remuneration of the chairman is determined by the municipal council as an amount of up to 90% of that of the mayor of the municipality.

121. Moreover, according to Article 34 of the Local Government and Local Administration (LGLA) Act, the municipal councillor shall use unpaid official leave for the time required for fulfillment of his or her obligations. Travel and other expenses used by the municipal councillor in connection with his or her work in the council, shall be taken from the municipal budget.

122. The rapporteurs conclude, therefore, that Bulgaria complies with Article 7.2 of the Charter.

3.6.3 Article 7.3

123. Restrictions on holding elected office should be as limited as possible and set out in national laws, which means they apply to all levels of government. The main restrictions on holding office should be related to potential conflicts of interest or involve a commitment that prevents the local representative from discharging his or her duties for the local authority in a professional way.⁴⁵

124. Over the past 10 years, several changes have been made to the legal framework regulating the election and activities of local authorities. The conditions for the election of local authorities were regulated in the Electoral Code adopted in 2014, regulating the conduct of all types of elections in the country, including those for members of European Parliament. It introduced a new requirement for candidates for municipal councillors and mayors: to have lived in the respective settlement at least in the last six months, which also applies to citizens of EU member States, when applying for positions as municipal councillors.

125. A significant change is the adoption of the new Counter-Corruption and Unlawfully Acquired Assets Forfeiture Act (CCUAFA, 2018). It regulates the procedures for prevention and establishment of corruption, as well as conditions for incompatibility of taking and holding posts in both elected offices and senior positions in municipal administrations. At the same time, through this law, changes were made in the LSGLA, which introduced new conditions for incompatibility of municipal councillors. Some of these changes led to limitations for some active and prominent citizens in local communities to run in the 2019 elections.

126. More precisely, according to Article 34(5) of the LSGLA, the municipal councillor cannot: 1. be a member of a managing, supervisory or a control body, board of directors, a controller, manager, procurator, commercial proxy, syndic or a liquidator of trade companies with municipal participation or a director of a municipal enterprise; 2. occupy a position of municipal councillor or similar position in another Member State of the European Union; 3. carry out activities, which lead to violation of a prohibition or restriction under Chapter Eight, Section II of the CCUAFA.

127. According to paragraph 6 of the same article of the LSGLA, within one month from taking the oath, a person, who, upon their election as a municipal councillor, holds a position under paragraph 5, items 1 and 2, shall apply for their dismissal from the position, and shall notify in writing the chairman of the municipal council and the municipal election committee. When a municipal councillor has a private interest, they shall be obliged to take action to prevent a conflict of interest under Chapter Eight, Section III of the CCUAFA.

⁴⁵ Ibid.

128. In view of the legal provisions and their discussions with stakeholders the rapporteurs conclude that the requirements of Article 7, paragraph 3, are satisfied in Bulgaria.

3.7 Article 8 – Administrative supervision of local authorities’ activities

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.

3.7.1 Article 8.1

129. In its Recommendation to member States on the supervision of local authorities’ activities CM/Rec(2019)3E,⁴⁶ the Committee of Ministers set out three different types of supervision: administrative, financial, and democratic, only the first of which falls within the ambit of Article 8 of the Charter. It does not apply to any form of supervision or control exercised by the Ombudsman, by criminal prosecutors or by the legislature. The existence of administrative supervision is justified by the need to comply “with the principles of the rule of law and with the defined roles of various public authorities, as well as the protection of citizens’ rights and the effective management of public property”.

130. The Explanatory Report to the Charter limits the subject matter of Article 8 to the supervision that is carried out “by other levels of government”, that is to say, by central authorities or bodies (line ministries, Ministry of the Interior, and so forth) or regional authorities. As for the matters that can be “supervised”, the Charter refers to the broad concept of activities, which covers all types of plans, projects, rules, decisions or strategies approved at local level.

131. The Charter establishes an important principle here in the area of intergovernmental supervision of local authorities: any form of such supervision must be provided for by the constitution or by statute, that is to say, the Charter introduces the legality principle into the supervision of a local authority. Supervision cannot be improvised or ordered by the higher level without a clear legal basis. At the same time, supervisory authorities must strictly comply with the procedures established by law for the exercise of such supervision (time, manner, competence, and so on).⁴⁷

132. According to Article 144 of the Constitution of the Republic of Bulgaria (CRB) the central bodies of State and their local representatives shall exercise control over the legality of the acts of the bodies of local government only when authorised to do so by law. Article 145 of the CRB provides that every municipal council shall be free to challenge before a court any act which encroaches on its rights.

133. The nature and scope of the administrative supervision of local authorities are specified in detail in the Local Government and Local Administration Act (LGLAAct. Article 45, paragraphs 1-12 of the LGLA Act provides the following mechanism for administrative supervision over the acts of local authorities.

- The acts of the mayor of a municipality can be appealed under administrative procedure before the regional governor, unless otherwise provided in a law.
- The municipal council can revoke administrative acts, issued by the mayor of a municipality, which disagree with acts, adopted by the council, within 14 days after their acceptance. Within the same term the council can dispute the unlawful administrative acts, issued by the mayor of a municipality, before the respective administrative court. The acts of the municipal council can be appealed before the respective administrative court.

⁴⁶ Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities (adopted by the Committee of Ministers on 4 April 2019 at the 1 343rd meeting of the Ministers’ Deputies). This recommendation includes an appendix with guidelines on the improvement of the systems of supervision of local authorities’ activities.

⁴⁶ Group of Independent Experts on the European Charter of Local Self-Government, Congress commentary on the explanatory report.

⁴⁷ A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

- The regional governor shall exercise control for the lawfulness of the acts and actions of the local governments and the local administration (Art. 31, para. 1, item 5 of the Administration Act), unless otherwise provided in a law. He or she can bring the unlawful acts back for new consideration by the municipal council or to dispute them before the respective administrative court. The appeal shall suspend the application of individual and general administrative acts and the application of sub-legislative legal acts, unless otherwise resolved by the court.
- To all matters concerning issuing, appealing and implementation of acts of municipal councils and mayors, not covered herein, the provisions of administrative procedure, set in a law, shall be applied.

134. Another important piece of legislation is the APC. The rules for the administrative procedure, established by law, shall be applied for the unsettled issues on the issuance, contestation and implementation of the acts of the municipal councils and the mayors. The APC provides for the possibility for any citizen of the municipality, including a mayor or municipal councillor, to contest an administrative act (according to Article 15, paragraph 1, of the APC, “parties in the administrative proceedings may be the administrative body, the prosecutor and any citizen or organisation, whose rights, freedoms or legitimate interests are or shall have been affected by the administrative act or by the court decision, or for whom they shall have raised rights or obligations”).

135. In view of the legal provisions and their discussions with stakeholders the rapporteurs conclude that the requirements of Article 8, paragraph 1, are satisfied in Bulgaria.

3.7.2 Article 8.2

136. The general rule of the Charter is that supervision will (“normally”) aim only at ensuring compliance with the law and with constitutional principles. It thus proclaims a general preference for checks on legality over checks on expediency, the former being the only checks that in general comply with the Charter. Checks on expediency are not prohibited by the Charter but are severely restricted, for they are held to be in contradiction with the very meaning of local self-government. Administrative supervision based on expediency should be limited to the tasks that higher-level authorities (the supervisory bodies) have delegated to local authorities. Therefore, the type of local power is highly relevant for determining the nature and scope of the administrative supervision that may be exercised by higher administrative bodies in conformity with the Charter.⁴⁸

137. According to the Administration Act and the LSGLA, the regional governor exercises control only on legality, over the acts of the municipal council and the mayor. He or she may return an act of the municipal council deemed illegal for new discussion, which must be considered within 14 days of its receipt. It may be re-adopted by a majority provided by law, but not less than half of the total number of councillors. The regional governor may subsequently (or directly, without returning it) challenge the council’s act in court. The challenge suspends the implementation of the act, unless the court decides otherwise.

138. According to information provided by the MRDPW, the acts of the mayor of the municipality are disputed before the regional governor in accordance with the general administrative order. Illegal acts of the mayor may be revoked by the regional governor within 14 days of their receipt or referral. Accordingly, the mayor of the municipality may appeal to the administrative court against the repeal of their act by the regional governor. The financial control is carried out by the National Audit Office and the State Financial Inspection Agency. Municipalities have established systems for the first level of financial control.

139. In view of the legal provisions and their discussions with stakeholders the rapporteurs conclude that the requirements of Article 8, paragraph 2, are satisfied in Bulgaria.

3.7.3 Article 8.3

140. This provision enshrines the principle of proportionality in the administrative supervision of local authorities’ activities by higher-tier bodies. This principle stands here for the premise that the intervention of the supervisory authority should be proportionate to the importance of the interests it intends to protect. In this connection, in 2019, the Committee of Ministers recommended that the governments of member States adopt appropriate measures to “put in place an appropriate legal, institutional and regulatory

⁴⁸ Ibid.

framework for supervision of local authorities' activities which is proportionate, in law and in practice, to the interests which it is intended to protect".⁴⁹

141. Apparently, this principle is applicable to any form of intergovernmental supervision, with either a priori or a posteriori checks on legality or expediency. It is a generally worded principle that can only be tested in the precise context of an actual dispute, but it could be explained in simple terms by pointing out that in ensuring compliance with the law, the regional/State body should not "use a sledgehammer to crack a nut".

142. Consequently, under the principle of proportionality, the regional or State body should intervene only to the extent necessary, considering the relevance of the public interest at stake, or the seriousness of the legal violation allegedly committed by the local authority. A system under which local authorities must obtain prior approval from regional or State bodies for minor or even trivial decisions would not comply with the principle of proportionality.

143. According to the National Delegation of Bulgaria to the Congress, there is no remarkable change in pertinent legislation, but the cases of unjustified, politicised interference in the mayor's powers are significantly reduced. Pursuant to the Administration Act, the regional governor ensures the observance of the legality on the territory of the region and carries out administrative control over the implementation of the administrative acts. In this capacity, she/he may revoke an administrative act of the mayor, but only on the grounds of illegality. Accordingly, the mayor of the municipality may appeal the repeal before the regional administrative court.

144. The National Delegation of Bulgaria to the Congress has stressed that the existing norms are applied precisely and there are no significant violations of the rights of local elected officials. The LSGLA exhaustively determines the cases in which a municipal council may be dismissed, and new elections may be held. Likewise, the cases in which the powers of a municipal councillor and the mayor are terminated prematurely are exhaustively determined and have not been changed in the period since the last monitoring. Temporary removal from office of a mayor is provided for as an option in the Criminal Procedure Code (Article 69) in the framework of pre-trial proceedings, when the person is charged with an intentional crime of a general nature, if there are grounds to believe that her/his official position will prevent the objective clarification of the circumstances of the case. A decision for the temporal removal can be taken only by the court at the request of a prosecutor.

145. In view of the legal provisions and pertinent information provided by the stakeholders the rapporteurs conclude that the requirements of Article 8, paragraph 3, are satisfied in Bulgaria.

3.8 Article 9 – Financial resources of local authorities

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.

⁴⁹ Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities (adopted by the Committee of Ministers on 4 April 2019 at the 1 343rd meeting of the Ministers' Deputies).

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.

3.8.1 Article 9.1

146. This paragraph establishes two basic principles in the area of finance: first, local authorities should have their own financial resources; second, they should be free to decide how to spend those resources.

147. As far as the first dimension is concerned, local authorities should be “entitled” to their own resources. This is not just an expectation but a genuine “right” that is not absolute but has to be exercised “within national economic policy”. The wording “adequate financial resources” incorporates the requirement to ensure proportionality between mandatory functions of local authorities and the funding available.

148. The second dimension is the freedom of local authorities to dispose of (at least) their “own resources” within the framework of their powers. Any limits and restrictions imposed by higher authorities on local authorities should be specified and justified and aim at ensuring macroeconomic stability and sound financial management.⁵⁰

149. Regarding the financial base of local self-government, the Constitution of Bulgaria makes the following statements:

- Article 140. A municipality shall be entitled to own municipal property, which it shall use in the interests of the territorial community.
- Art. 141icle (1) A municipality shall have its own budget.
- (2) A municipality’s permanent sources of revenue shall be established by law.
- (3) The municipal council shall determine the size of local taxes under conditions, by a procedure and within the frames, established by law.
- (4) The municipal council shall determine the size of local charges by a procedure, established by law.
- (5) The State shall ensure the normal work of the municipalities through budget appropriations and other means.

150. Paragraph 5 of Article 141 of the constitution introduces the obligation of the State to “ensure the normal work of the municipalities” without defining what is understood as “normal work” and whether it only includes the very basic municipal functions. In fact, local budgets are formed primarily from State transfers, whose share increased from 60% in 2010 to 64% in 2019. The lack of full powers of local authorities over the funds transferred from the budget for the State-delegated activities remains a tendency. Municipalities have full powers only over the general equalisation subsidy and partially over the targeted subsidy for capital expenditures. At the same time, the system for financing most of the State-delegated responsibilities through uniform expenditure standards currently applied, limits the powers of municipal councils to redistribute these resources according to local needs and priorities.

151. Since 2014, budgetary and fiscal rules in the Republic of Bulgaria have been consolidated in the PFA, which permanently regulates the procedure for preparing and adopting municipal budgets. The participation of the NAMRB as a representative of the municipalities in the budget procedure and in the negotiations on the State Budget Act for the upcoming year is also regulated in Article 77 of the PFA.

152. The deadlines for the preparation and submission of the draft State Budget Act to the National Assembly are clearly defined (to be submitted by 30 October). The amounts of all subsidies for municipalities and the applicable specific rules and conditions valid for the respective year are also determined by the State Budget Act of the Republic of Bulgaria. During the consultation procedure, the Ministry of Finance informed the Congress delegation that the State Budget of the Republic of Bulgaria Act provides information for the amount of each subsidy for a given municipality and for the relative part of general subsidy for each group of delegated activities (function), ex. art. 50 and 51 of 2021 SBRBA and that it issues guidelines for drawing up and execution of the municipal budgets and detailed information for the in-kind and value indicators used in the calculation of the subsidies for each municipality. The municipalities can independently adopt their budgets, while the PFA sets only the deadline for this (the

⁵⁰ A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

mayor submits the draft budget to the municipal council within 20 working days of the promulgation of the State Budget Act for the respective year, and the municipal council adopts it within 15 working days of its submission). However, the rapporteurs heard from the representatives of local authorities they met remotely that the municipalities lack clarity about the specific figures set in the State budget and cannot plan their expenditures in the relevant areas precisely enough as municipal budgets are mainly formed by State subsidies (64% on average).

153. The challenges related to the insufficient financial autonomy of municipalities influence not only their economic performance and competitiveness, but also a number of subsectors, notably education, human resources development and the provision of quality healthcare and social services. Many other political implications are related to the taxation policy, effective functioning of institutions, administrative capacity, and good governance at local level.

154. With the adoption of the PFA, mandatory fiscal rules and indicators were introduced that the mayor and the municipal council must comply with when elaborating, adopting, and implementing the municipal budget. At the planning stage, the average growth rate of expenditures for local activities in the municipal budget for the projected medium-term period is monitored not to exceed the average growth rate of reported expenditures for local activities for the last four years.

155. With the decision of the municipal council for adoption of the budget the following fiscal restrictions are also observed and approved:

- a maximum level for new liabilities for expenditures that can be accumulated during the year under the municipal budget - liabilities for expenditures at the end of the year may not exceed 15% of the average annual amount of reported expenditures for the last four years;
- a maximum amount of commitments for expenditures that can be made during the year within the municipal budget – the commitments for expenditures available at the end of the year may not exceed 50% of the average annual amount of reported expenditures for the last four years (the restriction does not apply to commitments for expenditure financed by grants and donations); According to the Ministry of Finance, from 2019, the restriction does not apply to the contracts concluded in 2019 for services provided by the municipality under Art. 62 of the Local Taxes and Fees Act and at the expense of the transfers from the central budget under Art. 52, para. 1, item 1, letter “d” of the PFA;
- a limit for assuming new municipal debt and the maximum amount of the municipal debt and municipal guarantees as at the end of the budget year - the maximum annual amount of payments on municipal debt should not exceed 15% of the average annual own revenue and the general equalization subsidy for the last three years and the nominal value of the issued municipal guarantees may not exceed 5% of the total amount of revenues and the general equalization subsidy in the latest annual report on the municipal budget implementation.

In the implementation of the budget, the municipalities are obliged not to allow:

- incurring expenditures, accumulating new commitments for expenditures and/or undertaking commitments for expenditures, as well as starting programmes or projects that are not foreseen in the annual budget of the municipality;
- undertaking commitments for expenditures, if the municipality has not adjusted its indicators for undertaken commitments and liabilities for expenditures in accordance with the restrictions of the limitations of Article 94, paragraph 3, sub-paragraphs 1 and 2 of the PFA;
- accumulating new financial liabilities for capital expenditures and/or undertaking commitments for capital expenditures at the expense of revenues, if the revenues planned under the municipal budget are not fulfilled;
- increasing the overdue liabilities already available under the municipal budget at the end of the year compared to the reported overdue liabilities at the end of the previous year if the overdue liabilities available at the end of the previous year exceed 5% of the reported expenditures.

156. Bulgarian municipalities are extremely dependent on financial transfers from the State budget that also restrict their space of discretion. In addition, restrictive rules constrain the budgeting autonomy of local self-government. Therefore, the rapporteurs conclude that Bulgaria does not comply with the first paragraph of Article 9.

3.8.2 Article 9.2

157. This paragraph enshrines the so-called “principle of commensurability” of local authorities’ financial resources. This means that the resources available to local authorities should be sufficient and commensurate with their functions and tasks. It does not mean that all these tasks should be financed with their own revenues. This paragraph states that the revenues and mandatory tasks of local authorities should be balanced to ensure that the financial resources available to those authorities are satisfactory in comparison to the tasks assigned to them by law.⁵¹

158. The new PFA retained the provision from the repealed Municipal Budgets Act, according to which the State compensates for the reduction in revenues from local taxes and fees when it arises from the conduct of State policy. According to art.19 of PFA no statutory acts that entail an expenditure increase, a revenue reduction and/or expenditure/payment pledges after the adoption of the state budget act for the relevant year shall be stipulated to enter into force not before the date of their amendment or entry into force for the following budget year. Article 53, par. 1 of PFA states that delegated activities are financed with general subsidy for those activities. Art. 51, par. 2 and Art. 55a of PFA stipulates the changes in the amount of the fiscal relations between municipal budgets and the central budget, where this derives from law, restructuring of activities delegated by the State, or changes in economic and/or value indicators for financing the activities concerned under municipal budgets, or when implementing policy areas, projects, programmes, and procurement activities. The regulation determining the obligation of the State to provide full financial compensation in the following cases was not transferred to the new act:

- updating the salaries of the employees engaged in the State-delegated activities, financed through the municipalities;
- other cases established by law.

159. However, there is no guarantee in practice that the powers delegated by the State, which are not subject to funding through a subsidy, will be ensured additionally. For this reason, the practice of transferring unsecured powers to local authorities from the central government or the adoption of acts regulating the procedure for spending own funds of municipalities continues with different dynamics in different years of the past period.

160. Preparation of a mandatory impact assessment is envisaged in the Normative Acts Act, which examines the impact of the respective draft normative act on certain areas of public life. In the methodology for preparing this assessment, municipalities and local budgets are not explicitly mentioned as stakeholders.

161. The rapporteurs conclude that commensurate financial resources are not secured, while in practice the municipalities carry a heavy burden of tasks without sufficient resources. Therefore, Bulgaria does not comply with Article 9.2 of the Charter.

3.8.3 Article 9.3

162. According to Article 141 of the Bulgarian Constitution, the municipal council shall determine the size of local taxes under conditions, by a procedure and within the frames, established by law (paragraph 3). The municipal council shall determine the size of local charges by a procedure, established by law (paragraph 4). Regarding local taxes, the legislation gives the municipal councils the power to determine their amounts, and the mayor and the administration the power to administer them. Municipal councils do not have the power to determine the type, basis, limits of rates and tax relief. Concerning the tourist tax, by law the municipalities are obliged to spend the revenues from this tax on certain activities and types of expenses.

163. In Decision No 4/2019 on Constitutional case No. 15/2018 the Constitutional Court notes that, as a rule, taxes are determined unilaterally by the State and only by law. The parliament cannot delegate this power to the executive branch. However, there is an exception to this rule in Article 141, paragraph 3, of the constitution, which states that municipal councils shall determine the amount of the local taxes under conditions, following a procedure and in the framework established by a law. Such an approach introduces a nuance of financial decentralisation in the legal framework of municipal public finances regarding the amount of local taxes but does not change the constitutional requirement for establishment of taxes by law.

⁵¹ Ibid.

164. In 2007, municipal councils were given the power to determine the size of local taxes and fees within a given range. This step was not sufficient and did not lead to a substantial change in the structure of municipal budgets, although several consequent measures have been taken to provide for the financial stability of municipalities. According to the Institute for Market Economics in Bulgaria, developments over the last decade – steps towards more tax powers for municipalities, an enhanced role for EU funds, State regional development programmes and the municipal financial rehabilitation process, are key to understanding the attitude towards the financial situation of municipalities and the challenges that financial decentralisation is facing. Nevertheless, the results achieved have a limited effect both on the financial independence and sustainability of the municipal budget and on the possibilities for influence of the municipal budget on the local and regional development outside the State transfers and the European funds. The problem is persistent and is a source of policy inefficiency, while the implementation of an effective decentralisation model may improve resource allocation, foster market development, and, in turn, promote economic growth.

165. The average share of local taxes in the total own revenues of municipalities for the past 10-year period is 15%, with a clear trend of increasing tax revenues in each subsequent year with growth rates between 5 and 7%. There were considerable changes in the tax powers of the local government.

- The powers of the municipal revenue units have been expanded.
- Gradual changes in the system of local taxes were introduced:
 - a new local tax on taxi transport for passengers was introduced;
 - the tourist fee was transformed into a local tax;
 - at the end of 2018, the formula for determining the vehicle tax was substantially changed, introducing an environmental component;
 - in 2011, the last partial increase of the real estate tax assessments was made, according to the growth of the market prices reported by national statistics; the legal obligation for updating the tax assessments according to NSI market price data was dropped.

166. Central government officials have stressed that in recent years, thanks to macroeconomic situation in the country, more funds are allocated to municipalities through budget transfers from the State budget, and the State Budget Act for 2021 provides significant additional funds, including to overcome the effects of the COVID-19 pandemic locally. According to local self-government representatives, met by the rapporteurs, however, the Bulgarian local authorities do not have sufficient in quantity, sustainable and with potential for development own sources of income. In this regard, during the consultation procedure, the Ministry of Finance argued that local authorities do not take advantage of the legal opportunity to determine higher rates of local taxes than the limits set out in the Local Taxes and Fees Act pointing that 73% of municipalities have adopted a rate below the average limits set by the Local Taxes and Fees Act as regards the real estate tax for 2020, and 265 municipalities have adopted a rate below the average limits allowed by law as regards the vehicle tax for the most popular cars for 2020 with almost half of them having adopted the minimum statutory rate. The rapporteurs are of the opinion that the difference of views on this point highlights the need to restructure the tax system in favour of local taxes related to economic activity.

167. The conclusion is that the part of municipal resources deriving from local taxes and charges remains extremely low, while the limits of tax rates are defined by central legislation. Therefore, Bulgaria only partially complies with Article 9.3 of the Charter.

3.8.4 Article 9.4

168. This paragraph refers to two important features of the financial systems on which local authorities' resources are based: they must be diversified, and they must be "buoyant". At first, the diversification of income sources is crucial if local authorities are to maintain their autonomy during fluctuation in economic cycles. Consequently, local authorities' finances should not be based solely on taxes or transfers and should be bolstered by all possible sources of local income: transfers, local taxes, charges, fees, profits under private law, interest on bank accounts and deposits, penalties and fines, sales of property or goods and services offered to the private sector, and so forth.

169. The second aspect mentioned in this paragraph is that the systems of local finance should be "buoyant". This means that they should allow local finances to rise to meet the costs of the delivery of services, that is to say local finances should be able to adapt to new circumstances, needs and macroeconomic scenarios and be sufficient to cover service delivery. Therefore, transfers from regional or national bodies should be updated and possibly increased over the years to take account of price increases,

or factors involved in the delivery of services. And local authorities should also be allowed to increase their tax rates where such a decision is necessary owing to inflation. Accordingly, any delegation of tasks that does not indicate the source of funding to meet the cost of the new responsibility is not compatible with the principle of buoyancy.⁵²

170. According to the NAMRB, periodic changes are made in the formulas and mechanisms for distribution of State transfers. Since 2016, the investment transfers from the State to the municipalities have been consolidated in one general target subsidy for capital expenditures. The target transfer for construction and general renovation of municipal roads existing until 2015 is included in the capital subsidy. Its distribution to the municipalities is determined by a formula, according to the annual State Budget Act. Finally, it is not the enlargement of the tax base, but measures for enhancing the collection and broader powers of local revenue authorities which remain the main driver behind the increase in own revenue.

171. In view of this situation the NAMRB has proposed the following measures:

- reorganisation/restructuring of the tax system to strengthen the role and diversify local taxes, which would also mean transforming some of the national taxes (PIT, VAT, fuel excise rates, and so forth) into local taxes, more related to the dynamics of economic development;
- updating the real estate tax assessments in view of the real market conditions, and creating a mechanism for periodic automatic updates;
- a fair approach to real estate ownership taxation (including agricultural land and forests);
- creation of legal guarantees against the transfer of financially unsecured responsibilities to the municipalities;
- a legally established mechanism for determining the total amount of the capital subsidy, and the creation of a methodology for assessment of municipal road maintenance needs;
- optimisation of the criteria for access of municipalities to the general equalisation subsidy (GES).

172. According to the analysis of local government finance already made in this report, local government finance seems to reach an acceptable level of diversification, but the system of local finance cannot be characterised as buoyant, especially concerning the revenue that should cover the costs of additional tasks that were delegated to local authorities (see comments in paragraph 2). Therefore, the rapporteurs conclude that Bulgaria partially complies with Article 9, paragraph 4.

3.8.5 Article 9.5

173. This provision addresses the question of the financial situation of municipalities that are financially disadvantaged due to their location in economically or geographically weak areas (transition, mountain or island regions), or simply because they are too small to obtain the amount of resources needed to perform their tasks.

174. Article 9.5 introduces a rule for the protection of financially weaker local authorities. The Charter refers to financial equalisation as the conventional method of assistance for weaker local authorities, as this is a well-known redistribution mechanism in the context of fiscal federalism. According to the OECD, “fiscal equalisation is a transfer of fiscal resources across jurisdictions with the aim of offsetting differences in revenue raising capacity or public service cost.”⁵³

175. In Bulgaria, the financial equalisation of municipalities is implemented through a GES mechanism. The GES is intended to ensure a minimum level of local services provision in the municipalities, and its total amount may not be less than 10% of the statement of own revenues of all municipalities in the last annual report. This subsidy should reduce financial inequalities between municipalities and for this reason according to the legislation the criteria for its distribution by municipalities are determined jointly by the Minister for Finance and the NAMRB. These criteria should consider differences caused by objective factors beyond the control of local authorities, to maintain the incentive of municipalities to increase collection and cost-effectiveness.

⁵² A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

⁵³ OECD Network on Fiscal Relations Across Levels of Government: Fiscal Equalisation in OECD countries, 2007.

176. The GES applied from 2008 to 2018, including its formula for allocation, was complex and further aggravated by the application of various correction coefficients and components that were not updated in a timely manner. The mechanism equalised in terms of expenditure and revenue capacity with full or limited access of different groups of municipalities. For this reason, there was a tendency to increase the number of municipalities without or with a minimal increase in the subsidy, mainly small and poor municipalities, and the growth was only in 16 to 20 municipalities in a good financial condition. During the consultation procedure, the Ministry of Finance pointed out that the 2019 budget has changed the mechanism for distribution of the general equalization subsidy, placing the focus on its main purpose – provision of a comparable level of fiscal opportunities for municipalities and reduction of the imbalances among them.

177. As of 2019, the GES allocation mechanism has changed significantly. A mandatory condition for access to it has been introduced, namely municipalities whose permanent tax revenues per capita are lower than 120% of the level for the country per capita have the right to participate in the distribution of this subsidy. For this reason, 18 municipalities no longer receive such a subsidy.

178. The new equalisation mechanism consists of five components.

- The first and second component equalise on the basis of tax revenue (73.1% share of the allocated amount) and expenditure capacity (20.2% share).
- The third component is for municipalities with very low revenue capacity (3.8% share of the amount).
- The fourth component does not allow a decrease compared to the previous year (2.7% of the total amount).⁵⁴
- The fifth component is to stimulate the municipalities in terms of tax effort above the national average (0.2% of the total amount).

Due to the impact of the crisis caused by Covid-19, additional transfers were introduced in 2021 for other targeted expenditures for some municipalities without access to the GES.

179. A consolidated and independent evaluation of this new equalisation system would be necessary in order to assess the efficiency of equalisation procedures and the fulfilment of relevant Charter requirements. Based on the legislation and information provided by their Bulgarian interlocutors, the rapporteurs share the opinion that Bulgaria complies with Article 9.5.

3.8.6 Article 9.6

180. This paragraph refers to a general principle of consultation, as enshrined at Article 4.6. In this case, consultation is required on the way in which redistributed resources are to be allocated to local authorities by other levels of government. No distinction is made between equalisation funds or other grants, or between general and earmarked grants. The legal form of the allocation decision is not specified. It may be an act of parliament, a decree, a ministerial order or a decision by another body belonging to a higher level of government (that is a regional or provincial assembly or executive committee).

181. The usual bodies covered by this consultation requirement are the State or regional authorities in countries where local authority finances partly or totally depend on the regions. The method of allocating redistributed resources includes temporal aspects (for instance, the timing of financial transfers) and substantive aspects such as the different types and degrees of importance of criteria for such allocations. Therefore, this consultation is not merely a compulsory procedure that has to take place in a timely manner before a final decision is made. It must also cover the manner in which a decision is made and the criteria for doing so, not only the decision itself.⁵⁵

182. On issues that directly concern the municipalities, the following statutory consultation mechanisms apply.

- The PFA stipulates the mandatory participation of the NAMRB in consultations on the budgetary procedure. The association has the right to make proposals for the total amount of the main budgetary relations of the municipal budgets with the central budget and other proposals on the draft State budget for the respective year in its part for the municipalities and submit them to the Ministry of Finance. Prior to the submission of the State Budget Act for the next year to the parliament, the

⁵⁴ Over the years, the amount of GES also included compensations for local taxes revoked (seized) by the State and for this reason there is a large group of municipalities that should be compensated.

⁵⁵ A contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government, adopted by the Statutory Forum on 7 December 2020, <https://rm.coe.int/contemporary-commentary-by-the-congress-on-the-explanatory-report-to-t/1680a06149>.

NAMRB and the Ministry of Finance sign a protocol for the consultations held, including the proposals made and reflected in the budget. This protocol is part of the package of documents to be submitted to the National Assembly, together with the draft act on the State budget for the following year.

- According to Article 54 of the PFA, the total balancing subsidy for local activities shall be intended to ensure a minimum level of local services in municipalities. The mechanism for distributing the total balancing subsidy per municipality shall be set out in the State Budget Act for the relevant year and the design of this mechanism shall be agreed upon by the NAMRB.
- According to Article 55 of the PFA, the amount of the targeted capital expenditure subsidy and the mechanism for distributing it per municipality is set out in the State Budget Act for the relevant year. The design of the relevant mechanism “shall be agreed upon by the NAMRB”.
- According to Article 71 of the PFA, within the budget procedure, the Council of Ministers shall, upon the proposal of the Minister for Finance, adopt standards for activities delegated by the State involving in-kind and value indicators. These standards shall be used to determine the total amount of resources for financing activities delegated by the State and for their allocation per budget authorised by delegation. The standards for activities delegated by the State shall be developed jointly by the minister concerned, the NAMRB and the Minister for Finance.

183. The rapporteurs got the impression that mechanisms for timely and substantial consultation of financial matters under the participation of local government associations are available in Bulgaria. They conclude that Bulgaria complies with the requirements of Article 9, paragraph 6, of the Charter.

3.8.7 Article 9.7

184. This paragraph is concerned with grants to local authorities from higher levels of government. Grants are a key tool for intergovernmental financial assistance. Local authorities receive centrally allocated grants for specific projects as well as general grants (transfers). The allocation of specific grants should be based on objective, transparent criteria justified by spending needs, and criteria for the allocation of general grants should be specified by law to enable local authorities to know in advance how much they are to receive in transfers.⁵⁶

185. Article 52 of the PFA states the following.

(1) The fiscal relations between the municipal budget and the State budget shall encompass:

1. transfers for:

- (a) global subsidy for financing activities delegated by the State;
- (b) local activities: a total balancing subsidy and for winter maintenance and snow removal of municipal roads;
- (c) targeted capital expenditure subsidy;
- (d) other target costs, including target costs for local activities;
- (e) financial compensation by the State;

2. temporary interest-free loans.

(2) The municipal budget shall also encompass fiscal relations with other budgets and accounts for European Union funds.

186. Moreover, Article 53 of the PFA states the following.

(1) The State shall fund public activities delegated to municipalities with a total subsidy for these activities at the expense of the central budget, as well as at the expense of the budget authorisers, by delegation under the State budget, who implement the relevant policy areas.

187. According to data provided by the NAMRB, municipal revenue in Bulgaria (7 billion euros in 2019) comprises the following:

- own revenues – a share of 34%:
 - local taxes 43%,
 - local fees 35%,
 - revenues from property and other revenues 22%;

⁵⁶ Ibid.

- State transfers – a share of 64%:
 - State-delegated activities 75%,
 - GES 8%,
 - capital expenses 4%,
 - targeted transfers and other compensations 11%,
 - other transfers 4%.

188. As previously mentioned, municipalities barely have any space of discretion on spending priorities when the relevant activities are financed through State transfers. The share of State transfers is close to 70% of municipal revenue and this system of municipal finance removes, in most cases, the freedom of local authorities to exercise policy discretion. Therefore, the rapporteurs conclude that Bulgaria does not comply with Article 9.7 of the Charter.

3.8.8 Article 9.8

189. Access to national capital markets is important for local authorities to finance investment projects necessary for the further development of the local area because in many cases the amount of their own “ordinary” resources is not enough. The law may establish requirements, procedures, criteria, limits, or ceilings concerning local authorities’ financial activities but in any event those standards should not deter them from borrowing on the national capital market or make it extremely difficult in practice.

190. According to Article 21, paragraph 10 of the LSGLA, the municipal council “shall pass resolutions on contracting of bank loans, on extending of interest-free loans, as well as resolutions on incurring of municipal debt through conclusion of loan contracts or issuance of municipal securities and on issuing of municipal guarantees under terms and according to a procedure established by statute”. Access to the national capital market is free and the terms and procedure for assuming municipal debt are set out in a special law – the Municipal Debt Act. Article 35 of the PFA stipulates that the Minister of Finance determines the procedure, manner and time limits for the provision of information by municipalities about their debt position and debt movement, the assets owned by them in the form of debt instruments, their intentions to assume debt, as well as the intention of municipalities to issue guarantees.

191. These provisions are in accordance with the Charter which refers to “access” to the national capital market within the limits of the law. Therefore, the rapporteurs conclude that Bulgaria complies with Article 9, paragraph 8, of the Charter.

3.9 Article 10 – Local authorities’ 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.

3.9.1 Article 10.1

192. Under Article 10.1 of the Charter, local authorities have a general right to co-operate with one another to deliver local services or discharge their responsibilities. Inter-municipal co-operation (or co-operation at other levels of local government) is a fundamental tool for local authorities in terms of delivering services, since many of them are too small or too weak (financially speaking) to deliver all the services they are supposed to or to carry out any meaningful local strategy or policy.⁵⁷

193. In 2017, a significant change was made in Chapter 8 of the LSGLA (Articles 59-61), setting the framework for inter-municipal co-operation.

⁵⁷ Ibid.

- The goals of the inter-municipal co-operation were defined: improving the quality of services provided; optimisation of service costs (economies of scale); optimisation of internal administrative processes and savings; implementation of projects at inter-municipal and regional level.
- The form of co-operation was regulated: concluding an agreement. Through the agreement a joint legal entity for commercial or non-profit purposes can also be established.
- The decision for co-operation is made by the municipal council with a two-thirds majority of the total number of councillors.

194. The Social Services Act also defines forms of such co-operation in the provision of certain services of a residential type for users in the respective region. Moreover, the potential of inter-municipal co-operation is expected to expand with the active implementation of the amendments to the Regional Development Act and the implementation of the integrated concepts for territorial development.

195. Mandatory inter-municipal co-operation is regulated by the specialised legislation in some sectoral policies, for example, the municipalities joined the water supply and sewerage associations at regional level (according to the Water Act), established regional associations for landfill management (according to the Waste Management Act). In a number of cases, municipalities associate for the implementation of projects with European funding, for example, for the construction of water supply and sewerage infrastructure on the so-called water cycles, as well as for the purchase of trolleybuses, electric buses and others.

196. The rapporteurs conclude that Bulgaria complies with Article 10, paragraph 1.

3.9.2 Article 10.2

197. In this paragraph the Charter sets out the right of local authorities to belong to: (a) a national association for the protection and promotion of their common interests; and (b) an international association of local authorities. At this point, the Charter is unusually categorical: that right “shall be recognised in each State”. This is the only provision in the Charter where this wording is used, which reinforces the directly enforceable nature of the paragraph.

198. The National Association of Municipalities in the Republic of Bulgaria (NAMRB) was established on 11 December 1996 by one third of all Bulgarian municipalities. By the middle of 1997, the number of municipalities-members reached two thirds, which entitles the association to be a legitimate representative of the local government and to represent and defend its interests. Since 1999, 264 municipalities have been members of the NAMRB, and the newest Bulgarian municipality, Sarnitsa, became a member of the NAMRB in 2015. The association is a legal non-profit entity created under Article 9 of the Law on Local Government and Local Administration and under the Non-Profit Legal Entities Act. It operates on a voluntary principle and on principles of equality of its members.

199. The rapporteurs conclude that Bulgaria complies with Article 10, paragraph 2.

3.9.3 Article 10.3

200. This paragraph reiterates the right of local authorities to co-operate, but it does so with a specific dimension: local authorities in one country are entitled to co-operate with local authorities in another country, so this paragraph sets out the right to engage in transnational, or transfrontier, co-operation, which is another form of inter-local co-operation.⁵⁸

201. Bulgarian municipalities co-operate with their partners from EU member States through the cross-border co-operation programmes Interreg VA, with municipalities from Romania and Greece. Under the cross-border co-operation programmes, funded by the European Instrument for Pre-Accession Assistance Interreg-IPA, Bulgarian municipalities are implementing joint projects with municipalities from Serbia, North Macedonia, and Turkey. Joint municipal projects are implemented with funding from other European programmes– Danube, Balkans-Mediterranean Sea, and others.

202. The rapporteurs conclude that Bulgaria complies with Article 10, paragraph 3.

⁵⁸ Ibid.

3.10 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.

203. This article stresses the requirement that local authorities should have the right to invoke and to defend in the courts the principles of local self-government, especially in the context of lawsuits in which their rights and powers are challenged or curtailed, or when those rights are endangered by the higher (central or regional) levels of government. “Recourse to a judicial remedy” means access by a local authority to either a properly constituted court of law or an equivalent, independent, statutory body.

204. According to Article 145 of the constitution, “a municipal council shall be free to challenge before a court any act which infringes its rights”. Since the Charter was ratified by law by the Bulgarian Parliament in 1995, it became part of the domestic legislation of the State. In this sense, any administrative act, as well as normative acts of a lower rank, can be challenged before an administrative court on the grounds of contradiction with the Charter. In addition, according to the Constitutional Court Act, it is in the competences of the Constitutional Court to rule on disputes over jurisdiction between local self-government bodies and central executive bodies. The Constitutional Court also rules on the conformity of laws with norms of international law and with international treaties to which Bulgaria is a party. It is worth mentioning that the question of the constitutionality of a law that violates the constitutional status of local self-government can be brought before ordinary judges (Supreme Court of Cassation or Supreme Administrative Court). If they consider the question important, they will suspend the procedure and apply to the Constitutional Court.

205. With the adoption of the Management of European Structural and Investment Funds Act (MESIFA), in 2016, an important possibility was given to challenge in court the imposition of financial corrections in the implementation of grant agreements for realising projects with European funding. The concept of “administrative contract” was introduced, through which grants for each European project are provided. Through its regulation also in the Administrative Procedure Code (APC) it became possible to appeal against decisions of the managing body for imposing a financial correction, in a similar way to appeals of other administrative acts. Municipalities use this opportunity for judicial protection in case of insufficiently substantiated decisions of the central administration.

206. Taking into consideration the legal framework and the practice that came to their knowledge, the rapporteurs concluded that Bulgaria complies with Article 11 of the Charter. However, they would strongly encourage the Bulgarian authorities to introduce the possibility of lodging a constitutional appeal for local authorities that would not be restricted only to jurisdiction disputes. This possibility would decisively strengthen the judicial protection offered to the institution of local self-government.

4. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL SELF-GOVERNMENT

4.1 Challenges faced by local authorities in their management of the Covid-19 pandemic and lessons learned from the health crisis

207. According to the NAMRB, the powers of the municipalities were not limited or revoked during the state of emergency and the subsequently introduced extraordinary epidemic situation. The legislator determined two possibilities for the municipal councils to use at their discretion. One is related to the reduction of the rents of municipal property, and the other to a one-off reduction of the due municipal waste fee during the state of emergency and extraordinary epidemic situation. Regarding the measure envisaged by the State to support taxi operators who will pay a local tax for taxi transport of passengers as a reduced amount in 2021, financial compensation is provided by the State.

208. In Bulgaria, municipalities do not have the powers to independently introduce restrictive measures on their territory, but the orders of the Ministry of Health provide for the possibility of mayors to regulate at the local level the implementation of anti-epidemic measures introduced at the national level. During the pandemic, the currently operational Crisis Headquarters which are chaired by the mayors were convened. They also included representatives of all institutions with responsibilities and powers on the territory of the municipality. This ensures, according to local interlocutors, good co-ordination between the responsible State institutions and the local government in the implementation of anti-epidemic measures.

209. According to the NAMRB, the dialogue between local authorities and central government during the crisis is systematic, active, and effective, despite the need for technological time to accept the proposals of municipalities on specific issues. Anticipating the problems of municipalities and putting them on the table is helpful to receiving adequate methodological and logistical support from central government. Among the examples are: the participation of the NAMRB in the distribution of centrally received donations, the opportunities for better programming of European support instruments, timely provision of information about the real situation on the ground, support to municipal hospitals, and secondment of medical professionals from one budgetary system to another.

210. As a result of the dialogue with the central government, including with its regional structures, a number of solutions proposed by the municipalities and the NAMRB have been adopted at national level, facilitating the work of local authorities in the implementation of anti-epidemic measures.

- A national information system for combating Covid-19 has been established, which provides municipalities with access to the register of persons under quarantine. This facilitates the municipalities in performing their control functions.
- A special information platform has been developed, which maintains a database of registered volunteers to be directed to activities in support of the National Operational Headquarters at the local level.
- The NAMRB maintains a list of contacts of each municipality for food and medicine delivery requests from adults, single living people and people with limited mobility, which is updated daily and is publicly available.
- The NAMRB together with the Ministry of Health is working on a programme for long-term secondment of medical specialists in regions where there is a shortage of staff. The municipalities provide municipal housing free of charge, and in some places cover part of the daily costs.

4.2. The regional development councils

211. In 2020, amendments to the Regional Development Act came into force, enhancing involvement of the regional level in the implementation of policies. These amendments introduced the institute of the Regional Development Council (RDC) as a key body in decision making for the development of planning regions and defined the important role of partnership between central institutions, regional executive bodies of central government, local government, business, academia, and the civil sector.

212. Within the framework of the Decentralisation Strategy 2016-25, distinctive progress is observed in the implementation of Strategic objective 4 “Increasing the influence of regional institutions for the implementation of a co-ordinated policy for regional development”. As a follow-up to the major amendments in the Regional Development Act, the powers, functions and responsibilities of the RDC were significantly increased. These changes made the RDC a key body in decision making for the development of planning regions.

213. Regarding the regional level, the new strategic documents for implementation of the policy for regional and spatial development are the Integrated Territorial Strategies (ITS) for development of the six NUTS 2 planning regions. The documents co-ordinate the projections and set out the main directions of sectoral strategies and documents at regional level in the fields of economic development, health, education, science, social services, transport, water, energy, broadband, tourism and the environment. At the end of 2020 and the beginning of 2021, the integrated strategies will be discussed and approved by the respective Regional Development Councils and then adopted by the Council of Ministers.

5. CONCLUSIONS AND RECOMMENDATIONS

214. There is no doubt that considerable progress has been made in Bulgaria through the implementation of a decentralisation strategy including the devolution of power and the transfer of responsibilities, especially in the fields of education, public health and social services; moreover, there was a considerable increase of municipal resources, mainly due to the improvement of the general economic situation in Bulgaria, since the municipal share in national GDP did not increase in this decade.

215. Another positive development has been the institutionalisation of several consultation procedures on issues directly affecting the local authorities and the relevant participation of the National Association of Municipalities of the Republic of Bulgaria.

216. It is important to welcome the establishment of Regional Development Councils where representatives of local authorities participate in decision making for regional development. Even though the establishment of a second tier of territorial self-government is not required by the Charter and the size of the country could be used as an argument against this option, experience with these councils and the obvious advantages of decision making that is politically accountable at the same territorial level could eventually initiate a process of territorial reform that would lead to the establishment of a fully-fledged second tier in Bulgaria.

217. Another positive step has been the ratification of the remaining non-ratified provision, which means that Bulgaria is bound by all articles of the Charter. Following this direction, Bulgaria has ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

218. However, the rapporteurs consider that improvement is needed or recommended in the following fields, as explained in the current opinion.

- The definition of local self-government in the constitution can be improved and brought closer to the one in the Charter, including the general responsibility for local affairs, the administration of a substantial share of public affairs by local authorities under their own responsibility and the assignment of taxation powers.
- The introduction of a constitutional appeal that would allow local authorities to address the Constitutional Court whenever a law is violating their constitutional status should be considered also.
- The principle of proportionality should be added in line with Article 8, paragraph 3, of the Charter.

219. There are also obvious concerns on the following issues.

- The clear allocation of integrated management and relevant responsibilities to the different levels in order to eliminate overlapping of competence and fragmentation of responsibility is still pending.
- Regarding delegated powers, discretion of local authorities and relevant possibilities for adaptation to local conditions are being restricted.
- Bulgarian municipalities are extremely dependent on financial transfers from the State budget that also restrict their space of discretion. In addition, strict rules constrain the budgeting autonomy of local self-government.
- Commensurate financial resources are not secured, while in practice the municipalities carry a heavy burden of tasks without sufficient resources.
- The part of municipal resources deriving from local taxes and charges remains low, while the limits of tax rates are defined by central legislation.
- The system of local finance cannot be characterised as buoyant, especially concerning the revenue that should cover the costs of additional tasks that were delegated to local authorities.
- Municipalities barely have any space of discretion on spending priorities when the relevant activities are financed through State transfers. The share of State transfers is close to 70% of municipal revenue and this system of municipal finance removes, in most cases, the freedom of local authorities to exercise policy discretion.

220. In light of the foregoing, the rapporteurs invite the authorities of Bulgaria to:

- improve the definition of local self-government in the constitution and bring it closer to the one in the Charter, including the general responsibility for local affairs and the administration of a substantial share of public affairs by local authorities under their own responsibility;
- revise the legislation to assign more taxation powers to local authorities.

- introduce a constitutional appeal that would allow local authorities to address the Constitutional Court whenever a law is violating their constitutional status or/and the Charter;
- drastically enlarge discretion of local authorities and possibilities of adaptation to local conditions, regarding delegated powers;
- add the principle of proportionality, in line with Article 8, paragraph 3, of the Charter;
- reduce dependency on financial transfers stemming from State budget and drastically increase the share of revenue from local taxes (or local shares of taxes) and charges;
- introduce an objective, adaptive, reliable, and accurate system to calculate commensurate resources covering the costs of municipal task fulfilment.

APPENDIX

**MONITORING OF THE APPLICATION OF THE EUROPEAN CHARTER OF LOCAL
SELF-GOVERNMENT:
BULGARIA
14-15 December 2020**

FINAL PROGRAMME FOR REMOTE MEETINGS

Congress delegation:

Rapporteurs:

Ms Bryony RUDKIN

Rapporteur on local democracy
Chamber of Local Authorities, SOC/G/PD⁵⁹
Councillor, Ipswich Borough Council
United Kingdom

Ms Randi MONDORF

Rapporteur on regional democracy
Chamber of Regions, ILDG⁵⁸
Member of the Regional Council of Copenhagen Denmark

Congress Secretariat:

Ms Svitlana PEREVERTEN

Co-Secretary to the Monitoring Committee

Expert:

Mr Nikolaos-Komninos CHLEPAS

Member of the Group of Independent Experts on
the European Charter of Local Self-Government

Interpreters:

The working language of the meetings will be Bulgarian. Interpretation from and into English will be provided.

59. EPP/CCE: European People's Party Group in the Congress;
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats;
ILDG: Independent and Liberal Democrat Group;
ECR: European Conservatives and Reformists Group;
NR: Members not belonging to a political group of the Congress.

Monday, 14 December 2020

JOINT MEETING WITH MEMBERS OF THE BULGARIAN DELEGATION TO THE CONGRESS AND NATIONAL ASSOCIATIONS:

- **NATIONAL DELEGATION OF BULGARIA TO THE CONGRESS**

Mr Dilyan MLAZEV, Mayor of Elena Municipality, Head of Delegation

Mr Arben MIMENOV, Mayor, Municipality of Satovcha

Mr Nikolay GROZEV, Mayor of Nova Zagora Municipality

Mr Dimitar ZDRAVKOV, Mayor of Sadova Municipality

- **NATIONAL ASSOCIATION OF MUNICIPALITIES IN THE REPUBLIC OF BULGARIA (NAMRB)**

Mr Daniel PANOV, Chair of NAMRB Management Board, Mayor of Veliko Tarnovo Municipality

Mr Ivo DIMOV, Mayor of Dimitrovgrad

Mr Hasan AZIS, Mayor of Karzhdali

Mr Vladimir GEORGIEV, Mayor of Samokov

Ms Silvia GEORGIEVA, NAMRB Executive Director

- **NATIONAL ASSOCIATION OF CHAIRS OF MUNICIPAL COUNCILS (NACMC)**

Mr Ventsislav SPIRDONOV, Chair of the Management Board of the National Association of Chairs of Municipal Councils

CITY OF SOFIA

Ms Yordanka ASENOVA FANDAKOVA, Mayor

CONSTITUTIONAL COURT

Mr Boris VELCHEV, President

Tuesday, 15 December 2020

MINISTRY OF REGIONAL DEVELOPMENT AND PUBLIC WORKS

Mr Nikolay NANKOV, Deputy Minister

MINISTRY OF FINANCE

Ms Nadezhda GENOVA, Director

Ms Evgenia PETKOVA, Head of State Mandated Activities Division

Ms Julia TSOLOVA, Head of Consolidated Budget Forecasts and Relations between Municipalities and the Central Budget Division

Ms Gergana TONOVA, Head of Financial Recovery of Municipalities Division

Ms Tihomira TSEKOVA, State expert

Ms Pertanka KEDIKOVA, State expert

Mr Hristo ECHEV, State expert

OMBUDSPERSON

Assoc. Prof. Dr. Diana KOVACHEVA, Ombudsperson

NATIONAL AUDIT OFFICE

Mr Toma DONCHEV, Director, Audit Activity Development Directorate

Ms Kremena TSACHEVA, Director, Legal Services Directorate

Ms Dimitrinka DAMYANOVA, Head of Department, Section "Local Authorities"

SILISTRA MUNICIPALITY

Dr. Julian Naidenov NAIDENOV, Mayor

Ms Maria Dimitrova DIMITROVA, Chair of the Municipal Council

BOLYAROVO MUNICIPALITY

Ms Nina TERZIEVA, Deputy Mayor