

The Congress of Local and Regional Authorities



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Local and regional democracy in Bulgaria

Monitoring Committee

Rapporteurs: Artur TORRES PEREIRA, Portugal (L, EPP/CD) and
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Summary

This second report on the situation of local and regional democracy in Bulgaria follows upon the first one adopted in 1998. Local democracy has improved noticeably in Bulgaria and consideration is being given to the development of a regional level. The report takes note, however, of the budgetary restrictions on local authority autonomy and the persistent lack of clarity in the division between delegated powers and authorities' own powers. The rapporteurs express concern over the procedure for the direct annulment of administrative activities by governors which runs contrary to the provisions of the Charter.

The report recommends, among others, that the Bulgarian Government give local authorities budgetary autonomy and sufficient financial resources as well as effective judicial protection and a proper right of appeal to ordinary courts. It encourages continuing dialogue between all actors in order to reach a consensus on the most appropriate form to implement decentralisation. The Congress invites the Bulgarian authorities to withdraw its reservation in respect of Article 7, para. 2, since its local government law is already in accordance with the Charter. Finally, it recommends them to ratify the Additional Protocol to the Charter on the right to participate in the affairs of a local authority and Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs).

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



DRAFT RECOMMENDATION²

[\(See Recommendation 310 \(2011\) adopted on 18 October 2011\)](#)

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

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

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

c. Congress Resolution 299 (2010)³, which states that the Congress will use the Council of Europe Reference Framework for Regional Democracy (MCL-16 (2009) 11) in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010)⁴ (CM/CONG(2011)Rec282final) encouraging the governments of Member States to take account of the aforementioned Reference Framework in their policies and reforms;

d. the explanatory memorandum on local and regional democracy in Bulgaria.

2. The Congress recalls that:

a. Bulgaria joined the Council of Europe on 7 May 1992. It signed the European Charter of Local Self-Government (ETS No. 122) on 3 October 1994 and ratified it on 10 May 1995, declaring itself bound by all the provisions of the Charter with the exception of Article 7, paragraph 2. The Treaty came into force in respect of Bulgaria on 1 October 1995.

b. The situation of local and regional self-government in the Republic of Bulgaria was the subject of a monitoring report and the Congress Recommendation 45 (1998)⁵.

² Preliminary draft recommendation approved by the Monitoring Committee on 4 July 2011.

Members of the Committee:

L. O. Molin (President), *M. Abuladze* (alternate: *P. Zambakhidze, U. Aldegren, K. Andersen, L. Avetyan* (alternate: *E. Yeritsyan*), *A. Babayev* (alternate: *G. Salamova*), *M. Barcina Angulo, V. Belikov* (alternate: *A. Krupin*), *G. Bende, G. Bergemann, M. Bespalova, P. Bosch I Codola, Z. Broz, A. Buchmann, X. Cadoret, M. Capdevila Allares, S. Carugo, D. Chichinadze, I. Ciontolo, B. Collin-Langen, M. Cools, J. Costa, D. Çukur, L. Dellai, M. De Lamotte, G. Doğanoglu, M. Fabbri* (alternate: *V. Broccoli*), *M. Gaju, V. Gebel, G. Geguzinskas, S. Glavak, S. Guckian, M. Guegan, M. Gulevskiy* (alternate: *V. Novikov*), *H. Halldorsson, M. Heatley, J. Hepburn, B. Hirs, J. Hlinka, C. Hughes, A. Ibrahimov, L. Iliescu, J. Jalinska* (alternate: *M. Juzupa*), *S. James, A. Jaunsleinis* (alternate: *N. Stepanovs*), *M. Jegeni Yıldız, M. Juhkami, J-P Klein* (alternate: *P. Weidig*), *A. Kriza, I. Kulichenko* (alternate: *Z. Chepey*), *O. Arild Kvaløy, F. Lec, J-P Liouville, I. Loizidou, M. Magomedov, P. Mangin, T. Margaryan, G. Marsan, H. Marva, V. Mc Hugh, M. Merrild, I. Micallef, I. Michas, T. Mikus, K. Miskiniene, G. Mosler-Törnström, A. Muzio* (alternate: *B. Toce*), *A. Ocana Rabadan, Z. Ozegovic, V. Oluiko, R. Paita* (alternate: *A. Miele*), *G. Pieper, H. Pihlajasaari, G. Pinto, C. Radulescu* (alternate: *L. Sfirloaga*), *R. Rautava* (alternate: *S. Ruponen*), *H. Richtermocova, A. Rokofillou, D. Ruseva, S. Sallaku, V. Salygin, V. Sau, J. Sauvrens, P. Schowtka, W. Schuster, D. Shakespeare, P. Shatri, M. Simonovic, G. Spartanski, M. Tamiros, A. Torres Pereira, V. Udovychenko, A. Ugues, G. Ugulava* (alternate: *E. Beruashvili*), *A. Uss, V. Varnavskiy* (alternate: *A. Borisov*), *O. Van Veldhuizen, L. Vennesland, L. Verbeek, H. Weninger, K. Whitmore, J. Wiene, U. Wüthrich-Pelloli, N. Zeybekçi, J. Zimola, D. Zmegac*.

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

Secretariat of the Committee : S. Poirel and S. Cankoçak.

³ Resolution 299 (2010) 1 on follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009).

⁴ Recommendation 282 (2010) of the Congress of Local and Regional Authorities of the Council of Europe on “Follow-up by the Congress of the Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009)”.

⁵ Recommendation 45 (1998) on the situation of local and regional self-government in the Republic of Bulgaria, adopted by the Congress on 28 May 1998, rapporteurs: Giorgio DE SABBATA (Italy) and Libert CUATRECASAS (Spain).

c. A delegation from the Congress⁶ made a monitoring visit to Bulgaria from 24 to 26 November 2010. Meetings were held in Sofia, Veliko Tarnovo and Pernik with representatives of State institutions (government, parliament), judicial institutions (Constitutional Court, ombudsmen) and local authorities and their associations.

3. The rapporteurs wish to thank the Permanent Delegation of Bulgaria to the Council of Europe, as well as the central and local government authorities in Bulgaria, the National Association of Municipalities of the Republic of Bulgaria (NAMRB) and the various personalities whom they met for their valuable assistance during all the stages of the monitoring procedure and for all the information provided.

4. The Congress notes with satisfaction that:

a. Bulgaria generally complies with the provisions set out in the European Charter of Local Self-Government, and local democracy has improved noticeably since the Congress' monitoring visit of 1998;

b. The level of reception of the Charter in Bulgaria's domestic legal system is satisfactory;

c. the National Association of Municipalities of the Republic of Bulgaria is well established and enjoys the support of all local authorities. Its role in the decision-making process at national level is increasingly marked;

d. *although* Bulgaria has expressed a reservation to Article 7, paragraph 2, the law on local self-government and local administration provides for the mayor and municipal councillors to receive remuneration;

e. consideration is being given in Bulgaria to the development of a regional level. A regional development programme was set up for 2007-2013, partly financed by funds granted by the European Union;

5. The Congress nevertheless observes that a number of points, some of which were dealt with in Recommendation 45 (1998) on the situation of local and regional self-government in the Republic of Bulgaria, deserve particular attention:

a. the budgetary regulations, and particularly the "consolidated budget" procedure 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, relative to authorities' own powers;

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 may have similarities to the supervision of expediency, is not in accordance with the provisions of the Charter, namely Article 4 paragraph 4 taken in conjunction with Article 8;

⁶ Artur TORRES PEREIRA, Portugal (L, EPP/CD), and Johan SAUWENS, Belgium (R, EPP/CD), were appointed rapporteurs and entrusted with the presentation of a new report to the Congress on local and regional democracy in the Republic of Bulgaria. They were assisted in their work by a consultant, Francesco MERLONI (Italy), Chairman of the Group of Independent Experts on the European Charter of Local Self-Government.

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 ombudsman remains an optional institution in Bulgarian municipalities due to lack of financial resources of local authorities;

j. the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) has not been signed by Bulgaria.

6. In the light of the above, *the Congress requests 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 on the financing of municipalities in force;

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. revise the legislation on the supervision of administrative activities related to 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;

f. 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;

g. give effective judicial protection to local authorities and grant them a proper right of appeal to ordinary courts;

h. encourage continuing dialogue between all actors in order to find the most appropriate form to implement decentralisation in the interests of Bulgaria and take into account the principles laid down in the Reference Framework for Regional Democracy;

i. withdraw the reservation in respect of Article 7, paragraph 2 expressed when the Charter was ratified, in so far as the Local Self-Government and Local Administration Act is in accordance with this provision of the Charter;

j. consider signing and then ratifying, in the near future, the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207), and signing and ratifying, in the near future, Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) (CETS No. 206).

7. The Congress invites the Parliamentary Assembly of the Council of Europe to take into account the above recommendations during their next monitoring visit.

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1. INTRODUCTION: AIM AND SCOPE OF THE VISIT AND MANDATE

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

2. The Republic of Bulgaria joined the Council of Europe on 7 May 1992. It signed and ratified the European Charter of Local Self-Government (ETS no. 122, hereinafter “the Charter”) on 10 May 1995. The Charter came into force in Bulgaria on 1 September 1995. Pursuant to Article 12, paragraph 1 of the Charter, Bulgaria declared itself not bound by Article 7, paragraph 2 of the Charter.

3. The situation as regards local and regional autonomy in the Republic of Bulgaria has already been the subject of a previous Congress monitoring report. The Institutional Committee⁷ decided to review Bulgaria's progress in relation to Council of Europe principles and standards, in particular the European Charter of Local Self-Government and the Reference Framework for Regional Democracy, and to examine the points raised in this regard since the adoption of Recommendation 45 (1998)⁸ by the Congress on 28 May 1998.

4. The Institutional Committee appointed Artur Torres Pereira, Portugal (L, EPP/CD) and Johan Sauwens, Belgium (R, EPP/CD) as Rapporteurs, respectively, for local and regional democracy in Bulgaria, and entrusted them with the presentation of a new report to the Congress.

5. A monitoring mission was conducted in Bulgaria from 24 to 26 November 2010. The Rapporteurs were assisted by Francesco Merloni, consultant and Chairman of the Group of Independent Experts on the European Charter of Local Self-Government, and Marité MORAS from the Secretariat of the Congress.

6. The Congress delegation travelled to Sofia, Veliko Tarnovo and Pernik, where they met representatives of the State institutions (Government, Parliament) and judicial bodies (Constitutional Court, ombudsmen), and of the local authorities and their associations (see the detailed programme in Appendix I).

7. This report is based on the information gathered during the delegation's visit, as well as on a study of the relevant legislation and of the information and documents produced by various experts and international organisations.

8. The Rapporteurs wish to thank the Permanent Representation of the Republic of Bulgaria to the Council of Europe and the Bulgarian delegation to the Congress and their secretariat who largely contributed to the smooth running of the visit. They also thank all the people they met during their stay for their kind welcome and their availability, and for the valuable information they provided.

2. SITUATION AND POLITICAL DEVELOPMENT

(Since Recommendation 45 (1998) on local and regional autonomy in the Republic of Bulgaria)

2.1. International context and relations with neighbouring countries

9. The external relations of Bulgaria are governed by Chapter no.5, Art. 105 (1) of the Constitution of 1991.

10. Bulgaria has been a member of the Council of Europe since 7 May 1992. It joined the European Union (hereafter "EU") on 1 January 2007. Membership in the Euro zone and the Schengen area remain the principle objectives of Bulgaria's European policy.

11. The accession of Bulgaria to the EU was accompanied by the setting up of a mechanism for "cooperation and verification" ensuring that Bulgaria continues the effort to improve its justice system and fight efficiently against corruption and organised crime. It gives rise to the drafting of regular reports by the European Commission. While the 2008 report criticised Bulgaria and led to the freezing of European funds, the report published in July 2010 was more lenient. The Commission acknowledged that noteworthy progress had been made and welcomed, in particular, the entry into force of the new penal code.

12. Owing to its geographical situation, the country plays a key role in the relations of the European Union with the countries of the western Balkans, the Black Sea region including Russia and Turkey, and the Middle East.

⁷ Following the reform of the Congress, that Committee's monitoring activities were transferred to the Monitoring Committee created on 1 December 2010.

⁸ Recommendation 45 (1998) on local and regional self-government in the Republic of Bulgaria adopted by the Congress on 28 May 1998, Rapporteurs: Giorgio DE SABBATA (Italy) and Llibert CUATRECASAS (Spain).

13. Bulgaria strongly supports the development of European Defense. It participates in different surveillance missions, for instance in Georgia. NATO constitutes another priority in Bulgarian foreign policy. Bulgaria became a full member of NATO in April 2004 and has sided with the United States on several occasions.

2.2. Internal political context

14. The Constitution of 1991 instituted a Parliamentary Republic in Bulgaria. The President of the Republic is elected by direct universal suffrage but has limited powers in comparison to those of the Prime Minister. The Government is accountable to the Parliament, which elects the Prime Minister and the Council of Ministers.

15. Presidential elections are planned for 23 October 2011 to elect the President and the Vice-President for 5 years. The outgoing president, Gueorgui Parvanov, cannot stand for election again, having already served out two mandates from 2001 to 2011.

16. The Parliament of the Republic of Bulgaria is unicameral, consisting only of the National Assembly (*Narodno Sabranie*), with 240 deputies elected by direct universal suffrage for four years.

17. The most recent parliamentary elections took place on 5 July 2009, a month after the elections at the European Parliament. The *ad hoc* Committee of the Bureau of the Parliamentary Assembly of the Council of Europe observed these elections and concluded in its report that they, "were generally in accordance with OSCE commitments and Council of Europe standards; however, further efforts are necessary to ensure the integrity of the election process and increased public confidence".

18. Today Bulgaria has a system of three-tier government composed of the central government, district (regional) authorities and local governments. According to Bulgarian legislation, municipalities (*obshini*) constitute the only level of local self-government.

19. Local elections will be held on the same day as the presidential elections. These elections were the subject of much discussion during the Congress monitoring visit because the adoption of a unified electoral code was under way at the time. The President of the Congress, at the suggestion of the rapporteurs upon their return from Bulgaria, asked the European Commission for Democracy through Law (Venice Commission) to give an opinion on this new legislation, and in particular, on the provisions related to local elections.

20. The Electoral Code was adopted on 19 January 2011 by the National Assembly of Bulgaria and entered into force in February 2011. This new law provides a single regulatory framework for all types of election and also provides for election by direct suffrage of the members of the National Assembly, the President and the Vice-President, the Bulgarian members of the European Parliament and for municipal councillors and mayors.

21. The Venice Commission delivered a joint opinion with the OSCE Office for Democratic Institutions and Human Rights on 17 June 2011⁹ and suggested that certain recommendations which do not require a modification of the Constitution be taken into account before the elections in October 2011.

2.3. Previous reports and recommendations

22. In Recommendation 45 (1998), adopted following the monitoring visits of 1997 and 1998, the Congress welcomed the developments in Bulgarian legislation leading to a strengthening of local self-government and expressed the wish that the reforms would continue, including in the area of regional self-government.

23. The Congress recommendations were related to a series of specific points, such as the supervision of local government institutions and action, the local authorities' right of recourse, the free exercise of the mandate of local elected representatives and issues pertaining to local competences and finances.

⁹ CDL-AD(2011)013.

24. During its visit in November 2010, the Congress delegation assessed the implementation of those recommendations and compliance with the different provisions of the Charter. During its numerous meetings with the political and administrative authorities at all levels of government and with various independent bodies and impartial observers of the local government system in Bulgaria, the delegation clearly sensed a marked improvement in the area of local democracy.

25. The Bulgarian municipalities, some 20 years on from the adoption of the new democratic Constitution, are well-established and provide a growing share of basic public services.

26. A Bulgarian municipality includes on average 26 settlements and has a population of around 30 000 people that live on a territory of approximately 422 sq. km and this provides a good basis for the establishment of a sound system of local self-government.

27. The central government appears to have launched a comprehensive strategy in favour of new democratic governance founded on the principles of decentralisation.

28. Nevertheless, Bulgaria remains a highly centralised state. The desire to maintain a central “management system” to lead the country as a whole towards the goals linked with membership of the European Union, the Euro zone and the Schengen area is understandable and may explain the reluctance to conduct a genuine “regional reform” and the slow pace at which the powers of the municipalities are being strengthened.

29. The Congress delegation realises that Bulgaria is still in a period of transition, which means that the country is open to new possibilities for the development and expansion of its democratic institutions. The major risk is the recentralisation of power.

30. The National Association of Municipalities of the Republic of Bulgaria (NARBM) is well established and its role has been significantly strengthened. It has the power to intervene in the processes of legislation and government decision-making concerning local government affairs. It is supported by all local authorities and is widely recognized for its positive role. Since 1999, all Bulgarian municipalities have been its active members and contribute to its activities.

3. COMPLIANCE WITH OBLIGATIONS AND COMMITMENTS

3.1. The Constitution: recent developments

Territorial issues

31. There are numerous provisions in the Bulgarian Constitution designed to protect local self-government:

- Bulgaria’s territory is divided into 264 municipalities and 28 regions (*oblast*);
- The municipality (*obshin*)¹⁰ is the main administrative and territorial unit in charge of local self-government;
- The municipality is an independent legal entity with ownership rights and its own budget;
- Citizens may participate in municipal governance in two ways: indirectly, during local elections, and directly, through referendums and meetings.

32. Article 2 (1) of the Bulgarian Constitution states that “The Republic of Bulgaria shall be a unitary State with local self-government. No autonomous territorial formations shall be allowed to exist therein”.

33. The basic framework for democratic local self-government in Bulgaria is provided by Chapter 7 of the Constitution, which defines the municipality¹¹ as the basic unit for local self-government

¹⁰ Under the Law on the Administrative-Territorial Structure of the Republic of Bulgaria (Prom. SG. 63/14 Jul. 1995, last amend. SG. 9 of 28 January 2011), the municipality consists of one or more settlements which are divided into towns and villages (*naseleno mesto*). Constituent administrative territorial units in municipalities are mayoralties (*kmetsvo*) and districts (*rayon*). The condition for creation of a new municipality is to have a population over 6,000 inhabitants in all the settlements included in the municipality. The condition for creating a mayoralty is to have a population of over 350 inhabitants in total. The districts are created in the capital city and in cities with a population of over 300,000 inhabitants. (Plovdiv and Varna).

(Article 136[1]). It makes provision for the democratic election of municipal councils and mayors with a four-year term of office (Articles 138 and 139[1]) and the right of municipalities to own property (Article 140) and to manage a budget (Article 141[1]). The municipalities are defined as legal entities (Article 136[3]). Local democracy may also be directly expressed through referendums and citizens' meetings.

34. In February 2007, Parliament amended the Constitution to give local authorities the right to freely determine local taxes within certain limits laid down by the law (Article 141[3]).

35. The above-mentioned 28 *oblasti* are not autonomous regions. In the English version of the legal texts provided by the Bulgarian authorities, the word *oblasti* is translated as "regions". In this report the terms "region" and "regional government" refer, respectively, to the *oblast* and the authority of an *oblast*. The regional authorities are located at an intermediate level between central government and the local authorities. The Constitution defines the region as an administrative territorial unit responsible for the conduct of regional policies and the implementation of state governance at local level, and for harmonising national and local interests (Article 143 [3]). In charge of each region is a regional governor who is appointed by the Council of Ministers and assisted by a regional administration (Articles 142 and 143).

36. The regional governor scrutinises the legality of the acts of local authorities.

37. Bulgaria is also divided into six planning regions (NUTS level 2) created in 2004 by the Law for Regional Development for the purpose of regional planning and statistics and for coordinating the EU accession instruments. These six planning regions have no administrative structures or financial resources. In charge of each is a Commission for Economic and Social Cohesion composed of representatives of the region's local authorities and administration and of the economic and social partners.

Status of the Capital City

38. The city of Sofia is established by the Constitution as the formal capital of the Republic of Bulgaria. It is one of 28 *oblasti* in Bulgaria. The agglomeration of Sofia includes 3 satellite cities and 34 villages. It has 24 districts (*rayona*).

39. The legal status of the city of Sofia is specific as compared to other municipalities and is founded not on its attributes as a capital city as defined in the Recommendation 219 (2007), but on its being a metropolitan city. The specificity of the legal status concerns in fact only the internal territorial division of the municipality of Sofia. It is governed by the same law that governs the internal division of the other large cities in Bulgaria such as Plovdiv and Varna.

40. Neither the Constitution, nor the law on local self-government attributes 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.

Transfrontier Cooperation

41. According to the Constitution, cross-border relations are the responsibility of the central government. The European Framework Agreement on cross-border cooperation among local or territorial authorities (CETS no. 106) came into force in Bulgaria on 8 August 1999.

¹¹ According to the Local Self-Government and Local Administration Act, the municipalities have specific competences in the following fields: municipal property, municipal enterprises, municipal finances, taxes and fees, municipal administration; structure and development of the territory of the municipality and of the settlements therein; education; health care; culture; public works and communal activities; social support; protection of the environment and rational use of natural resources; the maintenance and preservation of cultural, historic and architectural monuments; development of sports, recreation and tourism.

Legislation and regulations governing the issues of local and regional democracy

42. Democratic local governance in Bulgaria is regulated in more detail by an array of legislative texts, most of which were adopted or amended in recent years, in particular at the time of Bulgaria's accession to the European Union¹².

43. Almost all aspects of public administration are covered by legislation that is of good quality in terms of its clarity and of guaranteeing the fundamental rights of citizens and local authorities. The Constitution has been amended in order to strengthen the principles of local self-government.

44. A comparison of the provisions of the numerous laws adopted by the Bulgarian Parliament with the principles of the Charter gives a clearly positive overall impression.

45. However, the rapporteurs note that the formal recognition of democratic values and principles must be underpinned by their practical application and by effective action at administrative level. From that standpoint, the delegation observed that there is still a marked tendency towards a centralisation of power. On the other hand, the applicable legal provisions are scattered, in the sense that the rules governing municipalities are dispersed among too many legislative texts. There are nine laws in force that apply specifically to the municipalities. There are more than 16 laws regulating the various aspects of the workings of public administration and which therefore also concern the municipalities.

46. The efforts to align domestic legislation with European standards run the risk of producing legislation that is too detailed. Indeed, while the quality of legislation has improved, its sheer volume renders it more difficult for local authorities and citizens to know the applicable laws in force.

47. Generally speaking, a system of local self-government should be based on a more compact body of legislation, composed of principles rather than of detailed provisions. It would perhaps be appropriate to consider adopting a more concise "code" of local self-government, in order to guarantee the consolidation of the legislation and better coordination and coherence of legislation, while leaving more room for the local authorities to adopt their own autonomous regulations.

48. That being said, considerable legislative improvements have been made in the recent years. The Constitution has been modified in order to strengthen local self-government principles.

49. The numerous constitutional and legislative changes are part and parcel of a systematic "decentralisation strategy", indicating a full awareness on the part of the successive central governments of the need to have an effective strategy and the means to implement it.

50. The latest document in that regard is the new Decentralisation Strategy 2010-2015, which sets out the basic elements of the strategy, the challenges posed by its implementation and its updated objectives. In particular, it lays down guidelines for the sharing of competences and financial resources among the central, regional and local levels. It states as its overall objective to strengthen democracy and citizens' participation.

51. Implementation of the strategy is planned over the long term (2010-2015), so that it coincides with the different plans and programmes in process in the area of regional policy and with Bulgaria's National Regional Development Strategy, which is due to run until 2015.

52. The delegation warmly welcomes the strategic approach adopted by Bulgaria in order to ensure an effective decentralisation policy. Nevertheless, while the choice of objectives is judicious, there seems to be no detailed roadmap indicating, for example, the nature of the competences to be transferred to the municipalities and the financial resources that will be required.

3.2. Mode of reception of the European Charter of Local Self-Government

53. As regards the Charter's state of adoption, Bulgaria is among the countries giving it direct application¹³, meaning that the Charter has been ratified and incorporated into its domestic legal

¹² See Appendix II.

system. The Charter, as an international treaty, inevitably implies the transposition of its provisions in national law. As well as being binding, the Charter has the status of a source of law whose provisions are directly applicable. It has the status of ordinary law. In the event of a conflict between the Charter and an ordinary law, it is the provisions of the Charter that prevail.

54. 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.

55. The Charter's direct application in domestic law at this stage means that all the administrative authorities in charge of enforcing the law must apply the Charter in accordance with the abovementioned rules and restrictions. This constitutes a real legal obligation, above all for the higher (national and regional) authorities, which are bound to respect the local authorities' autonomy.

56. The state of reception of the Charter, then, is broadly satisfactory. The Congress delegation encourages 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.

57. The delegation took note that the 2009 Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS no. 207) has not yet been signed by Bulgaria.

3.3. Analysis of the state of local democracy article by article

Articles 2 and 3: the principle and concept of local self-government

58. Formally speaking, Articles 2 and 3 of the Charter are fully complied with by Bulgaria, both at constitutional level (cf. the provisions of Chapter VII of the Bulgarian Constitution) and at the level of the country's ordinary legislation (cf. the laws on local authorities).

59. Nonetheless, the delegation has certain reserves regarding two major points, namely the principle of universal direct suffrage at all levels of local administration and the application of the principle of subsidiarity.

60. Regarding the first point, the new Electoral Code seems to be encountering numerous problems. The delegation was informed during its visit that the draft of a new Electoral Code was being examined by the Bulgarian Parliament. The aim of this draft code is to harmonise the current electoral laws of all levels of government: it entails changes to the democratic structure at local level.

61. In the meantime, the draft law has been adopted by the Parliament on 19 January 2011 and the new law was examined by the Constitutional Court, which declared certain provisions thereof contrary to the Constitution of Bulgaria. The Venice Commission, together with the OSCE, has carried out a visit to Bulgaria following the Congress' application and adopted an opinion on 17 June 2011, which has been taken into consideration in the drafting of this report by the delegation.

62. At municipal level, a significant reduction of the number of municipal councillors was envisaged in the electoral law. This measure could have reduced the representation of the political parties within the municipal councils, resulting in a weakened democracy. Power tends to become even more concentrated in the hands of a mayor when the council is not very representative of the population. The Constitutional Court of Bulgaria has declared this amendment to Article 19 of the electoral law unconstitutional and the enacted law retained the existing number of municipal council members. The delegation is of the opinion that this eliminates all contradiction with the Charter, in particular with its Article 3, i.e. the general concept of local government and the specific principle of the responsibility of executive organs before assemblies.

¹³ See draft report CPL(21)2 approved by the Governance Committee of the Congress regarding The European Charter of Local Self-Government in domestic law.

63. At the level of the mayoralties, the Code raises the threshold for the election of a mayor from 150 to 350 inhabitants. Rather than establishing a municipal council alongside the mayor, it seems to have opted to do away with all forms of direct election in mayoralties with less than 350 inhabitants. As a result a deputy mayor will be appointed by the mayor of the municipality.

64. The Venice Commission has examined the issue of the annulment of the universal direct election of the mayor of a mayorality and has underlined that no international standards exist which impose direct election of mayors.

65. In the opinion of the rapporteurs, mayoralties are forms of decentralisation of a municipality and constitute instruments of democratic participation. The Charter does not impose the creation of these forms of participation. Nonetheless, their creation implies the establishment of representative structures based on direct election.

66. The situation is worrisome in the districts (entities created in large cities in order to decentralise the administration and increase the democratic involvement of citizens). Currently the sole authority in the districts is the mayor elected by direct suffrage. That system will be done away with, and a deputy district mayor will therefore be appointed by the mayor of the municipality. Similarly, instead of having an elected council next to the mayor, another system of election of the mayor by the municipal council was adopted. The rapporteurs think that a switch from direct election to indirect election will result in centralisation of the democratic representation at the level of large city councils.

67. In both cases (mayoralties and districts), the situation as regards this type of mayor – already heavily dependent on the municipal mayors and with no elected council to provide assistance or administrative support – will probably further deteriorate, weakening the democratic process.

68. The Congress delegation therefore wishes to express reservations with regard to the provisions concerning the electoral system at local level of this new legislation.

69. The second point concerns the application of the principle of subsidiarity laid down in Articles 3, paragraph 1¹⁴ and Article 4, paragraph 3¹⁵ of the Charter. It is addressed below.

Article 4: Scope of local self-government

70. According to the principle of subsidiarity laid down in the Charter, responsibilities must be allocated in accordance with the specific tasks of local authorities, not those that are delegated to them. The recognition of competences must be seen not in terms of transferring responsibility away from the centre towards the territorial entities, but in terms of verifying that each public function, from the lowest level of governance (that closest to citizens) upwards, is allocated judiciously.

71. Under the Bulgarian system, the large majority of functions performed by the local authorities, relating to areas of great importance for citizens (education, public health and welfare), are delegated tasks, while in most European countries the relevant tasks are specifically attributed to the local authorities.

72. The imbalance between specific and delegated functions has negative repercussions for certain key aspects of local self-government.

73. The first aspect concerns the financing of the municipalities. A delegation of tasks implies that the funding is based on a transfer of resources from the central government. The strengthening of the power to determine local taxes and fees – which is to be welcomed – will only concern the funding of “local functions”.

¹⁴ The explanatory report explains that it is ultimately up to each member state to define the responsibilities of the local authorities, but nonetheless stresses that “local authorities should have a broad range of responsibilities which are capable of being carried out at local level”.

¹⁵ “Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy”.

74. A second aspect concerns supervision. For delegated functions, more in-depth monitoring, including that of expediency, remains valid. As long as the municipalities are accustomed to most of their activities being subjected to extensive oversight, the system generates an unacceptable degree of subordination to the State which is not in conformity with the provisions of the Charter in this regard.

75. As to local authorities' right to consultation, in Bulgaria there is no legislation which generally sets out the process of consultation with local authorities during the legislative process on issues that concern them. The rapporteurs were informed following their visit that "With Decree of the Council of Ministers No. 282 of 27.11.2009, the Council on decentralization of state government /SDDU/ was created as a permanent body of the Council of Ministers in implementing the state policy on decentralization of government. The Chair of its Board is the Minister of Regional Development and Public Works, its members are deputy ministers, governors, representatives of local authorities appointed by the Governing Council of the National Association of Municipalities in Bulgaria (NAMB). Equality between central and local government has been ensured by including an equal number of members of both. One of the main functions of SDDU is to discuss draft legislation that would have a significant impact on regional and municipal administrations, and to make proposals to government bodies.¹⁶ Informal procedures of consultation, however, exist¹⁷, directly or through the National Association".

76. The role played by the National Association of Municipalities in this domain should be taken into consideration. Indeed, the delegation was informed about certain improvements incurred by the Law on Municipal Budgets, adopted in 2003 such as the recognition of more ample consultation in financial matters, obtained once again through the efforts of the National Association (see also the paragraphs pertaining to the application of Articles 9 and 10 of the Charter).

77. Even if the right to consultation seems to be improving in practice, the fact remains that the rule of law in Bulgaria is still insufficient for compliance with Article 4, paragraph 6 of the Charter. The general law on local self-government needs to include the right of consultation of local governments by central authorities, individually or through the associations, in due time and in an appropriate manner during the process of planning and decision making as regards all matters directly concerning them.

Article 5: Protection of local authority boundaries

78. The Bulgarian Constitution¹⁸ calls for a referendum on this issue. The Law on the territorial administrative structure of the Republic of Bulgaria describes in detail the procedure to be followed¹⁹. Consequently, this principle of the Charter is respected.

Article 6 : Administrative structures

79. The principle contained in Article 6, paragraph 1 of the Charter on the freedom to determine the internal organisation of municipalities is respected. The law regulates, often in detail, the political bodies at municipal level (the council, the mayor) but broadly leaves it up to them to determine the organisation of the administrative structures, both internal and external (the creation of public establishments and enterprises).

Article 7 : Exercice of responsibilities

80. As regards the principle of the freedom to exercise the office of local elected representative laid down in Article 7, paragraph 1 of the Charter, the rapporteurs have noted that since 1999 a government minister can no longer directly suspend local officials; she/he can only ask a court to order their suspension. In this area there has been a marked improvement in the legislation and there is full compliance with the Charter.

¹⁶ Information given by the Ministry of Regional Development and Public Works.

¹⁷ Consultation with local authorities can take place, for example, within the Parliament. Municipal council representatives are invited to participate in meetings of parliamentary committees and can express opinions during the debates on projects or proposed laws.

¹⁸ See Article 136, paragraph 2: "The borders of a municipality shall be established following a referendum of the populace".

¹⁹ See section II (Municipality, Articles 7, 8 and 9) of the law.

Article 8 : Administrative supervision

81. As far as supervision is concerned three cases of possible conflict between the current Bulgarian legislation and the Charter merit highlighting, namely the excessive scope of delegated competences; the power of regional governors to directly annul a municipal act; and the lack of clarity on the grounds for the removal or dissolution of local elected bodies.

82. Concerning delegated competences, the power to verify their expediency is consistent with Article 8, paragraph 2, in principle. This may not be the case when delegated competences constitute the lion's share of local authorities' responsibilities, as is the case in Bulgaria.

83. As regards the state of the legislation on supervision by the regional governor over the acts and activities of the municipalities and in spite of Recommendation 45 (1998), there still seems to be a contradiction between, on the one hand, the amendment to Article 71 of the Local Self-Government and Local Administration Act (hereinafter the LSGLAA), which did away with the governor's power to suspend or directly annul an unlawful act, and, on the other hand, the provision contained in Article 7, paragraph 4, sub-paragraph b) of the Structural Regulation of the Regional Administrations, which gives the regional governor the power to revoke "unlawful acts of mayors of municipalities".

84. That change brings Bulgarian legislation closer to the Charter. Hence local autonomy is properly guaranteed with respect to the acts of municipal councils, while that is not the case for the acts of mayors, which are considerably more numerous than those of councils.

85. That contradiction needs to be resolved. Indeed, there can be no justification for treating the acts of municipalities differently from those of mayors. The mayor acts on behalf of the municipality and adopts most of its administrative acts. That power on the part of governors needs to be revised, even when it applies to acts adopted in the area of state-delegated functions. For delegated areas, supervision may be based not only on legal provisions but also on central government instructions. Either way, the regional governor should have the same power: to demand a fresh examination of the unlawful acts by the municipal council (or the mayor) or to contest them before the competent administrative tribunal.

86. The ordinary powers to revoke, suspend or annul the acts of a municipality far exceed the principle set out in Article 8 of the Charter.

87. Regarding the state of the legislation governing the supervision of the behaviour of local government bodies (mayors, councils and individual councillors) the recommendation made in 1998 aiming especially to do away with the direct power of prosecutors to adopt acts removing or dissolving those bodies has been complied with. The delegation welcomes that improvement to the applicable legislation in this regard.

88. As regards the second part of the 1998 recommendation, the delegation welcomes the improvements in the current legislation for clearly defining the cases in which an administrative body of a municipality may be revoked or dissolved but would like to see further improvement in order to avoid any possibility of a supervision based on political evaluation - a situation that would have to be assessed as non-compliant with Article 7, paragraph 1 of the Charter, which stipulates that "The conditions of office of local elected representatives shall provide for free exercise of their functions".

Article 9 : Financial resources

89. The delegation is particularly concerned about the legislative provisions relating to this article which have not undergone any significant amendment since Recommendation 45 (1998).

90. The Congress recommended more clarity regarding the distribution of competences, notably the delegated competences. It also asked for a better match between financial resources and delegated responsibilities. The rapporteurs note that there is still need for more clarity. They remind the authorities that the financial resources for taking over these competences need to be sufficient, whether they are financed by government transfers or depend on local taxes and fees (of which the local authorities can fix the rates in accordance with Article 9 paragraph 3 of the Charter).

91. A contradiction remains between the principle set out in Article 141, paragraph 2 of the Bulgarian Constitution ("A municipality's permanent sources of revenue shall be established by law) and the current funding system based on government transfers.

92. The improvements observed these past few years are due primarily to the new, more objective system for sharing government transfers among municipalities (adoption of the standard cost method to calculate the level of funds to be transferred to each municipality, and secondly to the growing share of municipalities' own revenues as compared to that of government transfers (down from 96.1% in 1991 to 54.8% in 2008)²⁰, but which are nonetheless not sufficient to generate genuine autonomy. Although the municipalities have greater fiscal autonomy²¹, given that financial autonomy is linked to local functions that account for only small share of municipal responsibilities, the expected improvements in the area of local taxation will have only a limited impact.

93. In the opinion of the rapporteurs, as long as that imbalance persists, the financial autonomy of municipalities will be reduced.

94. Article 9, paragraph 1 of the Charter²² comprises the obligation not only to guarantee local authorities adequate financial resources, but also to allow them to freely allocate those resources. The first consequence of that principle is the right of local authorities to have their own budget. The second is the relative independence of the local authorities when it comes to the allocation of their budgetary resources. Independent approval of the budget is the highest expression of local autonomy.

95. This principle is enshrined in Article 141, paragraph 1 of the Bulgarian Constitution stating that "A municipality shall have its own budget" and in LSGLAA Article 52, paragraph 1, which stipulates that "The municipal council shall adopt independent budget of the municipality, out of the republican one, on the basis of own income sources and subsidies from the state, distributed among the municipalities according to criteria, determined with a law".

96. The Congress delegation is concerned about numerous aspects of the current legislation governing the budgetary procedure for Bulgarian municipalities²³, which appears to contradict this important legal provision. Before the municipalities are authorised to adopt their budget, the government must prepare and approve the "State-consolidated budget".

97. In the 2009 State budget there were specific provisions defining the exact amount of the supplemental subsidy, the general equalisation subsidy and the capital investment subsidy. The State Budget Act specifies (Article 11): "While developing the municipal budgets and their adoption by the Municipal councils, the funds for financing the delegated by the state activities shall be determined in functions, groups, activities and items, according to the Single budget qualification". The State budget therefore imposes specific limits on the spending policy of the municipalities, which is not acceptable.

98. The municipal council is supposed to adopt the municipal budget only after the adoption of the State budget and in accordance with its instructions. In light of the power to monitor the legality of municipal acts (and the more specific supervisory powers of the Finance Ministry), any provision in the municipal budget that does not respect the limits set by the State budget will be deemed unlawful. The State-consolidated budget therefore strongly compromises the "independence of the municipal budgets".

99. The consolidated-budget method is not specific to Bulgaria, but elsewhere in Europe it gives the State a better overview of global public finances, in order for example, to avoid counting the same resources twice, and to better coordinate the practices of the different administrative bodies. The main difference as far as the Bulgarian system is concerned is that the State-consolidated budget, in addition to being a source of information, also has binding legal effects, inasmuch as the municipal budgets have to be adopted after the decisions have been taken at State level on the allocation of resources.

²⁰ See Desislava STOIOLOVA, *Financial decentralisation in Bulgaria: which are the most important achievements of the transition period and how to move forward?*

²¹ The Constitution was amended in 2007 and new Article 141, paragraphs 3, 4 and 5, reads: "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." After the Constitution, the Law on local taxes and fees was also amended in order to broaden the competences of municipalities as regards the determination of taxes and fees and the management of tax collection.

²² Article 9, paragraph 1 of the Charter: "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".

²³ State Budget of the Republic of Bulgaria Act, No. 99/15.12.2009, effective 1.01.2010.

100. In times of severe financial crisis it is understandable that the State should accord itself certain extraordinary powers to control the spending policy of all entities, including local entities. Restrictions (a cap on taxes and expenditure) must be proportional and temporary without compromising the principle of local autonomy. The rapporteurs take the view, however, that for an ordinary system to so limit the autonomy of the municipalities with respect to the adoption of their budget is contrary to Article 9 of the Charter and to the spirit of the Charter as a whole.

101. The principles of adequate resources (Article 9, paragraph 1) and of resources commensurate with responsibilities (Article 9, paragraph 2) were seriously challenged by the difficulties recorded in connection with the current financial crisis. The Congress delegation noted numerous problems in relation to the financial situation of the municipalities. Many of them are in huge difficulties and are no longer able to fund their policies. The largest – and the ones that attract the tourists most – are coping thanks to the process of privatisation²⁴. Yet a long-term strategy seems to be lacking. For the moment, the central government does not foresee any structural solution for the funding of the municipalities.

102. The rapporteurs have received information after the visit to the effect that specific solutions have been developed for municipalities, including a special Fund for Local Self-Government Authorities (FLAG EAD), “with Order No. 4 of the Council of Ministers of the Republic of Bulgaria of March 7, 2007, as an instrument of state policy in regional development. The mission of the Fund is to support the efforts of Bulgarian municipalities and municipal companies in the preparation and successful implementation of projects under Operational Programmes (OP)/Rural Development Programme (RDP), for the modernisation and expansion of municipal infrastructure and for the creation of modern and sustainable local communities. The Fund grants loans to municipalities and municipal companies implementing projects approved by the Managing Authorities of OP/RDP, and to municipalities for the preparation of project proposals.”²⁵ In addition to the above, information received from the Regional Policy and Local Self-Government Committee underlined that the Government had “granted to the municipalities, free of charge, a considerable number of state owned real estate items” and that a series of amendments to legislation had given the municipalities “the opportunity to manage and realise income from both properties granted to them and from properties still owned by the State”.²⁶

103. After the visit of the delegation, the National Association of Municipalities of the Republic of Bulgaria²⁷ drew attention to the gradual diminution of municipalities’ financial resources, both in terms of their own revenues and government transfers. It would appear that there is a net decrease in public spending capacity at local level (down from 18% to 14% of total public spending).

104. The situation appears to be particularly difficult for almost all small municipalities, which are in dire financial straits; they do not even have the financial resources to participate in the European co-financing programme. This situation could lead to disparities in the financing of the 264 municipalities, and Bulgaria could be contravening the principle laid down in Article 9, paragraph 5 of the Charter.

105. Recommendation 45 (1998) referred to the need to “ensure that municipal authorities have sufficient buildings, in both qualitative and quantitative terms, to be able to carry out their financial and administrative functions”. Major improvements have been made in that area: the law on municipal property has been broadly amended, in compliance with Article 140 of the Constitution, and the municipalities have been given numerous properties and the necessary powers to manage them.

106. Nonetheless, the Bulgarian local authorities deplore²⁸ the restrictions imposed by ordinary legislation which obliges them to permit the use of such assets, free of charge, by private enterprises.

Article 10: The right of association

107. Local authorities’ right to associate is recognised in a satisfactory manner both by the Constitution²⁹ and the legislation³⁰. Provision is made both for the right of association as such, i.e. the

²⁴ Information sent by the Ministry of Regional Development and Public Works.

²⁵ See above footnote.

²⁶ Information sent by the Chairman of the Regional Policy and Local Self-Government Committee.

²⁷ See the Declaration of 1 March 2011, sent to the Presidents of the EU Committee of the Regions and the Congress.

²⁸ See the Declaration of the National Association of Municipalities of the Republic of Bulgaria of 1 March 2011.

²⁹ See Article 137 of the Constitution.

right to participate in national and regional associations³¹, and for the right of association and cooperation among municipalities.

108. The National Association of Municipalities of the Republic of Bulgaria is well-established. It is supported by all local authorities and plays an increasingly important role in the decision-making process at national level. Its role, in particular as regards the financing of local authorities, has been considerably strengthened: It has the power to intervene in the legislation and in central government decisions.

109. As regards cooperation the positive experience of the so-called regional associations, which are forms of cooperation among municipalities over larger areas, should be noted. The delegation has met with representatives of the Central Stara Planina and Yantra regional associations; it welcomes the development of such initiatives, which increase the administrative and public intervention capacity of the municipalities.

Article 11: Legal protection of local self-government

110. 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.

111. The right of direct access is restricted to litigations on competences between local authorities and central executive organs. However, access is not granted in order 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.

112. 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 unconstitutional.

113. As for access to ordinary judges, Article 145 of the Constitution provides that municipal councils can take acts which undermine their rights to court. The problem of a better recognition of these rights in ordinary legislation remains.

Article 12: Undertakings – possible “reservations” expressed by the country

114. The only “reservation” expressed by Bulgaria when it ratified the Charter refers to Article 7, paragraph 2, which calls for “appropriate financial compensation” for local elected representatives. The delegation was unable to obtain any direct information as to whether the reasons for that reservation still apply. It wishes to point out, however, that the question has now been settled by the LSGLAA, both as regards the remuneration of the mayor³² and that of municipal councillors³³. The situation now being in conformity with a provision of the Charter as yet unratified, the delegation proposes that Bulgaria be able to withdraw its reservation, in accordance with Article 12, paragraph 3 of the Charter, and declare itself bound by all the provisions of the Charter. After the visit, the Ministry of Regional Development and Public Works informed the delegation that the “possibility for Bulgaria to withdraw its reservations and for the Charter to be ratified in accordance with changes made to the Law on Local Government and Local Administration will be further discussed and coordinated”³⁴.

³⁰ See Articles 59, 60 and 61 of the Local Self-Government and Local Administration Act.

³¹ See Article 9 of the Local Self-Government and Local Administration Act.

³² See Article 21, paragraph 1, item 5.

³³ See Article 34, paragraphs 1, 2, 3 and 4.

³⁴ See footnote 24.

3.4. Regional democracy

115. The issue of creating genuine regional self-government bodies or a second tier of local authorities was one of the subjects investigated by the delegation. It should be noted here that the current “regional government” is simply a form of devolved organisation of the central government that has nothing in common with real decentralisation.

116. As recalled earlier, both in the applicable legislation and in the policies of the various bodies and organs of central government, the term “region” has two different meanings.

117. On the one hand there are the 28 *oblasti* which have an administrative structure and “regional” governors with specific responsibilities: coordination of the decentralised bodies of central government, coordination between central government action in the *oblast* and that of the local authorities (municipalities), and supervising the legality of municipalities’ actions.

118. On the other hand, there are six regional zones that serve as reference territories for the adoption and implementation of a “regional development” strategy. These six regions were delimited by the Ministry for Regional Development and Public Works for statistical and analytical purposes. No real government structure exists at this level.

119. Recommendation 45 (1998) expressed interest in the second level of government at the time, in other words the nine *okrag* that covered a sufficient area to enable their development into a real regional tier of self-government.

120. There have been major new developments since 1998 in this area. A new law on regional development, adopted in February 2008 to replace the law that had been in force since 1999, defines the current planning and programming framework for regional development in Bulgaria. In 2007, the Council of Ministers and the European Commission adopted seven operational programmes including the “Regional Development 2007-2013” operational programme. The European Union is the main source of funding for the action taken under this plan. Questions pertaining to the use of EU funds are addressed in more detail under sections 3.5 and 3.6 of this report.

121. The implementation of these types of policy may at first sight be interpreted as a form of application of the 1998 Congress recommendation. The Congress proposal viewed development plans as a means of creating the future conditions for effective regional self-government. In actual fact, the current policy does not reflect that perspective. Regional development plans are implemented entirely by the central government on the basis of the territorial division into six regional entities that have nothing to do with the current “regional governments” of the 28 *oblasti*.

122. One must therefore consider that the implementation of the recommendation has been partial and incomplete. Moreover, the abolition of these *okrag* and the return to the more traditional territorial units of the 28 *oblasti* have radically altered the facts. Indeed, in terms of surface area the *oblasti* in many ways correspond more closely to an intermediate tier of self-government (between the municipal and regional levels, like the Italian and Spanish provinces, the French *départements*, the German *Kreise*, and so on) than to a regional level as such.

123. This “provincial” level of self-government in Bulgaria is not reflected in the establishment of a local authority with a governing body elected directly by the people. This level has a “governor” whose attributions (coordination and supervision) are very similar to those of the French prefect. In other words, this is a high-ranking civil servant appointed by the central government and placed under the broad authority of the State, not a civil servant with neutral status in charge of implementing national policies in the territory under his/her responsibility in the interests of the State.

124. There is one point that weighs heavily on the relations established with the municipalities: the governor endeavours to “guide” the activities of the local authorities according to national interest (a perfectly legitimate objective) rather than to assist the municipalities in the exercise of their functions. The large proportion of responsibilities that are “shared” and “delegated by the State” does not make it any easier to draw a clearer distinction.

125. The new Decentralisation Strategy 2006-2015, a discussion document, merits to be mentioned in this context. Together with the regionalisation policy, it has the strategic goal of “Streamlining the

functional competence of the regional governor for coordination of sector policies at regional level” and the three following priorities:

- *Priority 1:* Enhancing the capacity and responsibility of the regional administration for conducting regional policy, for carrying out state governance on site and for ensuring compliance between the national and local interests ;
- *Priority 2:* Strengthening the coordinating role of the regional governor as regards the acts and actions of the heads of territorial units of the central executive power in the territory of the region;
- *Priority 3:* Increasing the powers of the regional councils for development.”

126. The implementation of priorities 1 and 2 is particularly important in the context of the Council of Europe November 2009 Reference Framework³⁵. They entail giving real powers to the regional governor with a view, at regional level, to establishing effective state governance, improving cooperation among the representatives of central government bodies and coordinating sectoral policies.

127. Priority 3 aims to increase the powers of the regional councils for development. It is an important prerequisite for ensuring the good use of funds under the operational programmes and the coordination of EU structural instruments.

128. In parallel, as we have seen, above the intermediate or “provincial” tier represented by the *oblasti*, there is a weak and not yet structured “regional” level of government covering a wide territory (there are six such regions) that is useful for the adoption of strategic and general “regional development” policies.

129. The Congress delegation finds the use of the term “regionalisation” in connection with the intermediate level existing in Bulgaria between the central government and the local authorities, incorrect and considers that the clarification of the Bulgarian Government’s regional strategies should result in the establishment of a model compatible with the Reference Framework.

130. The Ministry of Regional Development and Public Works have informed the rapporteurs after the visit that all issues related to regional development are administered through the Law on Regional Development. Articles 8 and 9 of this Law set out the legal instruments relevant to the strategic planning of sustainable transborder, transnational and interregional development (National Development Plan, National Strategic Reference Framework, Operational programmes co-financed by EU funds, National Strategy for Regional Development, Regional Development Plans, District Development Strategies and Municipal Development Plans). The Regional Development Plans concern NUTS level 2 regions; they define medium term objectives and priorities for the development of a particular region over a certain period of time as well as indicators for monitoring and evaluation, and the actions required to implement partnership or to provide information. The Regional Development Councils (authorities created to implement state policy on regional development in a particular region, and which include municipal representatives) play an important role in coordinating these efforts (see Appendix III).

3.5. Alternatives for the development of regionalisation in Bulgaria

131. Regarding the possible development of this system in the future, the rapporteurs took note of the existence of a broad range of views and proposed alternative solutions.

132. Various hypotheses are formulated below in order to clarify the objective consequences in terms of compliance with the European Charter of Local Self-Government and the Council of Europe Reference Framework for regional democracy.

First solution: creation of a genuine regional tier of governance

133. This solution would entail creating regional entities with a legal personality distinct from the State, with government bodies elected democratically (either directly by citizens, or indirectly by elected representatives).

³⁵ This document was approved during the 16th Session of the Council of Europe Conference of European Ministers responsible for local and regional government (Utrecht, Netherlands). It is not yet an international treaty that is legally binding on the signatory states (unlike the Charter). It proposes a series of principles which may be a source of inspiration for Council of Europe member states for their territorial reforms.

134. The project observed by the Congress delegation during its meetings with the Bulgarian authorities involving the creation of “regions” for purely strategic and statistical purposes, possessing only devolved State structures with the tasks of defining and implementing “regional development strategies”, could be considered as a useful precursor to genuine regional self-government, but does not constitute effective regionalisation.

135. Indeed the Council of Europe Reference Framework for Regional Democracy stipulates that, “Regional self-government denotes the legal competence and the ability of regional authorities, within the limits of the constitution and the law, to regulate and manage a share of public affairs under their own responsibility, in the interests of the regional population and in accordance with the principle of subsidiarity”.

136. Thus defined, that solution may take two forms:

- The creation of an intermediary extra tier of regional government between the two levels of local authorities and the State, in addition to the existing levels (municipalities and *oblasti*).
- The creation of a single tier of authority that would come between the municipalities (which would then become the sole tier of local authority) and the State. That regional tier would then replace the current “regional/provincial” level formed by the *oblasti*. That solution would entail a specific interpretation of the Bulgarian Constitution, in particular Articles 142 and 143: The “regions” mentioned in the Constitution would not be the *oblasti* (which would disappear) but the six considerably larger regions which currently only exist for statistical and analytical purposes.

137. In terms of compliance with Article 13 of the Charter³⁶, that solution would allow Article 143 of the Constitution to be maintained. Indeed, that article makes express provision for the establishment of a “regional governor” appointed by the Council of Ministers and hence not democratically elected. That person is the representative at regional level of the central government rather than of the population of the region. Such a “regional governor” could not be considered to constitute a proper “regional authority” in the sense of the Reference Framework.

Second solution: creation of a second level of local self-government

138. Given that the *oblasti* currently cover an area closer in size to that of second-tier local self-government entities (such as the provinces, *départements*, etc.), this solution would entail transforming “existing” regional administrations (the regional government with its services) into a proper second level of local self-government with democratically elected bodies. This would make it necessary to amend Article 143 of the Bulgarian Constitution, to the extent that the regional governor would have to be replaced by elected bodies.

139. Here again there are two possible variants:

- The simple replacement of the current *oblast* governor by a democratically elected body; the *oblast*, as a local authority, would be covered by all the guarantees of independence that the Constitution and Charter offer to municipalities, starting with the right to self-government: direct election of an assembly, plus a head of the executive (the former “governor”) elected by that assembly or directly by citizens. That solution, in addition to making it necessary to amend the Constitution, appears to diverge in numerous ways from the Bulgarian tradition of having a representative of the central government at territorial level with major powers of coordination and supervision of the local authorities.
- Adding a second level of local self-government in addition to the current “regional” governors. This solution is widespread in Europe, in countries where the central government representative (such as the French prefect) still exercises powers of coordination between the local offices of the central government and the local authorities, and powers of supervision over the local authorities, while a second level of local self-government also operates in the same territory.

³⁶ Article 13 of the Charter aims to extend the guarantee of protection for local self-government contained in the Charter to other authorities, including at regional level: “The principles of local self-government contained in the present Charter apply to all the categories of local authorities existing within the territory of the Party”.

140. These local authorities, in application of the principle of subsidiarity, perform tasks which cannot be allocated to the first tier of local self-government (the municipalities) and which, although considered to be “local” functions, can usefully be attributed to a second tier of local authorities. Such a solution would be a real innovation for Bulgaria, but with the continued existence of the “regional” governors, would also guarantee a degree of continuity and stability.

141. It would mean having to amend the Constitution to take on board the creation of a second level of local authority and extend to it all the relevant guarantees of self-government

Third solution: “partial democratisation” of the current system of governance

142. In this scenario, Bulgaria would maintain a two-tier system composed of the central government and the municipalities. On the one hand, the central government and its decentralised bodies (at “regional” and/or “provincial” level) would be responsible for the national interests and for coordinating the activities of the local authorities, while, on the other hand, municipalities would enjoy greater autonomy and protection against an excessive or overly centralised exercise of State powers.

143. On that last point, one solution proposed by some local authorities was to improve relations between the current “regional” governors and the municipalities on the territory of an *oblast* by creating, in addition to the regional governor, an elected assembly that would represent: a) the local population (assembly directly elected by citizens); b) the local authorities (assembly indirectly elected by the local councils).

144. In this case the *oblast* authority would not be transformed into a genuine tier of local self-government, but the creation of democratically elected local assembly, notwithstanding the parallel existence of a regional government, could be considered as a useful precursor for a future regional self-government entity.

3.6. The role of the local authorities in implementing EU-funded projects

145. European Union resources for the implementation of specific programmes constitute one of the main sources of funding for Bulgaria’s efforts to modernise its infrastructure and promote development in general.

146. Bulgaria shows a very low level of capacity for spending EU funds. Its lagging behind in this area is due to “bad project planning, slow absorption of funds, dubious project outcomes, and low administrative capacity”³⁷.

147. It got the general impression that up until now the management of EU funds has been markedly centralised, with a large number of projects of national interest having been managed directly at central government level, without much success.

148. During its meetings in Sofia, in particular with Mr. Tomislav Dontchev, the Minister in charge of managing EU funds, the Congress delegation tried to get a better understanding of the current role of the Bulgarian municipalities and the role they could potentially play in improving Bulgaria’s administrative capacity to manage European funds, not only in terms of the presentation and financing procedures but also the implementation phase.

149. The new Minister, as a former mayor of a municipality (Gabrovo, in the centre of the country), having been successful in his management of EU-funded projects at municipal level, seems to be strongly in favour of establishing a system of direct relations between the central government and the municipalities (with the assistance of the National Association of Municipalities of the Republic of Bulgaria) that could totally exclude any role for other territorial entities. Technical support would be provided by the decentralised central government bodies.

150. The delegation supports that policy and stresses that there is no contradiction between local self-government and the need to make efficient use of EU funds. Only strong municipalities, with specific

³⁷ See the “Mid-term review of cohesion policy implementation in Bulgaria” by the Civic Coalition for sustainable use of EU funds. 2010.

competences and a degree of fiscal autonomy, will provide a viable basis for administrative support and the efficient use of EU funds.

151. Local democracy not only guarantees a responsive and decentralised administration, but also the participation of civil society (citizens, associations, enterprises) that is necessary for improving the State's administrative capacity and ensuring democratic scrutiny of the action by public bodies, in order to prevent any misuse of funds and corruption. From that point of view, a better utilisation of EU funds and a decentralisation of responsibilities and resources towards the local authorities are perfectly complementary.

152. As regards the idea of doing away with any role at all for the regional governors, the delegation takes the view that it might be preferable for the State authorities to consider the governors as a purely administrative tier of government. Conversely, a good alternative might be to renovate the *oblast* level of government, ensuring extensive and democratically organised participation by the municipalities in the EU-funded programmes and proper support from an efficient governor's administration.

4. HUMAN RIGHTS AT LOCAL AND REGIONAL LEVEL

4.1. Legally guaranteed principles concerning relations between citizens and local government

153. It is not easy to identify specific principles in the adopted legislation governing the way in which municipalities function. However, Bulgaria's Administrative Procedure Code defines numerous general principles³⁸ that apply to all the country's public administrations, including the local authorities, in particular:

- 1) Commensurability³⁹;
- 2) Truthfulness⁴⁰;
- 3) Equality⁴¹;
- 4) *Ex officio* principle⁴²;
- 5) Independence and objectivity⁴³;
- 6) Promptness and procedural economy⁴⁴;
- 7) Accessibility, publicity and transparency⁴⁵;

³⁸ A very similar set of general principles has been laid down in the Law for the administration. See Art. 2: "(1) The administration shall carry out its activity, observing the following principles: 1. legality; 2. openness and accessibility; 3. responsibility and accountancy; 4. efficiency; 5. subordination and co-ordination; 6. foreseeability; 7. objectiveness and impartiality."

³⁹ According to Art. 6 of the Code. "(1) The administrative bodies shall exercise their powers in a reasonable way, in good faith and fairly. (2) The administrative act and its enforcement may not affect rights and legitimate interests in a bigger degree than the most necessarily for the purpose, which the act is issued. (3) When by an administrative act rights are affected or obligations established for citizens or for organisations, it shall be applied these measures, which are more favourable for them, if and in this way shall be achieved the goal of the law too. (4) From two or more legal opportunities the body shall be obliged, observing para 1, 2 and 3, to chose this opportunity, which is practicable the most economically and is the most favourable for the state and the society. (5) The administrative bodies shall restrain themselves from acts and actions, which may cause damages, obviously incommensurated to the pursued aim".

⁴⁰ Art. 7: "(1) The administrative acts shall be grounded to the real facts which are significant for the case. (2) All the facts and arguments, significant for the case, shall be subject to assessment. (3) The truth about the facts shall be established by the order and by the means, provided for by this code".

⁴¹ Art. 8: "(1) All the persons, who are interested in the decision of the proceedings under this code, shall have equal procedural possibilities to participate in them for protection of their rights and legitimate interests. (2) Within the bounds of the operative independence, under same conditions, the similar cases shall be threatened equally".

⁴² Art. 9: "(1) Under the conditions, set out in the law, the administrative body shall be obliged to begin, to conduct and to finish the administrative proceedings, unless the issue of the act has been entitled to his/her free assessment. (2) The administrative body shall collect all the necessary evidence and when there is no claim by the interested persons. (3) The court shall point out to the parties, that for some circumstances, significant for the decision of the case, they have not given evidence. (4) The administrative body and the court shall give procedural cooperation to the parties for the lawful and fair decision of the issue – subject to the proceedings, including by an agreement".

⁴³ Art. 10: "(1) The administrative body shall carry out the proceedings independently. The higher body may not take over for decision an issue which falls with his/her competence, unless this has been provided for by a law. (2) May not participate in the proceedings an official, who is interested in their decision or has relations with some of the interested persons, which raise grounded doubts in his/her objectivity. In these cases on his/her own initiative or at request of some of the interested persons, he/she may be challenged».

⁴⁴ Art. 11: "The procedural actions shall be carried out within the terms, determined by the law, and in the shortest time, which is necessary according to the concrete circumstances and the purpose of the action or the administrative act".

8) Sequence and foreseeability⁴⁶.

154. A comparison of the principles recently introduced into Bulgarian legislation with the Additional Protocol to the European Charter of Local Self-Government on the right participate in the affairs of a local authority shows that an effective application of those principles would bring Bulgarian democracy fully into line with the provisions of the Protocol, in particular Articles 1 and 2.

155. The legal technique that consists in laying down general principles applicable to all the administrations is not new. On the one hand it has the advantage of enabling the different administrations to adapt their own organisation to the objectives set out in the principles. But on the other hand, it means that there is no data on the degree to which those principles are effectively complied with in administrative practice, at local level in particular.

4.2. The ombudsman at national and local level

156. The institution of the Ombudsman is enshrined in both the Constitution (Article 91a) as a national independent authority and in the Ombudsman Act, adopted in 2004 (Article 3(1)). An amendment to the Constitution made in 2006 allows the Ombudsman to take cases to the Constitutional Court. Elected by the Parliament, the Ombudsman manages his/her own budget autonomously within the limits approved in the annual state budget (Article 7 of the Ombudsman Act) and has an important role as the guarantor of new types of relations between citizens and the public administration, in particular as regards improving fairness in administrative procedures.

157. In Bulgaria there are two types of ombudsman: the National Ombudsman, as explained above, and Municipal Ombudsmen. The former is a compulsory State body, while the latter are optional municipal bodies⁴⁷.

158. If a municipality opts for an ombudsman, it adopts the rules governing the functioning of the Office of Ombudsman and provides the necessary financial resources. At the moment only 22 out of 264 municipalities have their own ombudsman.

159. The National Ombudsman has competence to deal with complaints lodged by citizens against all forms of public administration, including municipalities that have their own ombudsman.

160. The Congress delegation met with both the National Ombudsman and the Ombudsman of the City of Sofia. It got the general impression that the role and the independence of these important players for the defence of human rights for the moment remain limited. The rapporteurs were later informed by the Ombudsman's Office however, that there is a growing trend, as measured by the number of incoming complaints, which indicates that the public is becoming more and more aware of the Ombudsman's role (3,687 complaints in 2010, with a 37% increase as compared to 2005). The Ombudsman is in communication with the public and NGOs on a structured basis: Reception desk opened for regular meetings with the public in different cities, meetings with NGO representatives and experts, internship programmes for higher school students, and promotion of activities via the media (see appendix IV for more detailed information on the role and activities of the national Ombudsman).

161. As concerns local mediators, which are not institutionally related to the national Ombudsman, the question of lack of resources but also the optionality of the institution may explain why only a small minority of municipalities have instituted the Office of Ombudsman. The Local Self-Government and Local Administration Act (Article 21) does not confer an obligation but provides for the "possibility" of a

⁴⁵ Art. 12: "(1) The bodies shall be obliged to ensure transparency, authenticity and thoroughness of the information in the administrative proceedings. (2) The parties shall carry out their right of access to the information in the proceedings by the order of this code, and the other persons – by the order of the Law for access to public information. (3) Shall not be collected state fees and shall not be paid costs for the proceedings under this code, unless this has been provided for by it or by another law, as well as in the cases of appeal of administrative acts by judicial order and at lodging a claim under this code".

⁴⁶ Art. 13: "The administrative bodies shall timely make public the criteria, the interior rules and the established practice while exercising their operative independence at the application of the law and achieving its goal".

⁴⁷ Art. 21a. of the LSGLAA (as amended in 2003): "(1) The municipal council may elect an ombudsman. (2) The ombudsman shall contribute to the observance of the rights and legal interests of the citizens before the bodies of local government and local administration. (3) The organisation and activity of the ombudsman shall be settled by regulations adopted by the municipal council. (4) "The ombudsman shall be elected and released by a majority of 2/3 of the total number of the municipal councilors".

local ombudsman's election by the municipal council; so far, only 22 municipalities have taken the initiative to elect one.

4.3. The status of minority groups

162. In Bulgaria there are two different ethnic and linguistic groups with very different levels of integration into Bulgarian society: the Turkish and Roma minorities

163. The Turkish community, accounting for 9% of the Bulgarian population, although subjected to very heavy-handed policies ranging from forced integration during the communist period to forced expulsions in 1989⁴⁸, has nonetheless managed to be fairly widely represented in the country's institutions (38 members of Parliament out of a total of 240; 35 municipal mayors out of a total of 264) thanks to the MRF (Movement for Rights and Freedoms) political party which directly represents the Turkish community.

164. Conversely, the Roma community, accounting for 4.7% of the population, still faces major problems of integration in spite of the commitments entered into by the Bulgarian Government when the country joined the European Union in 2007). The delegation is of the opinion that there is a gap between the formal instruments of Bulgaria's strategic integration policy and their effective application.

165. The two main instruments adopted – administrative rather than legislative – are the “Framework Programme for the integration of Roma into Bulgaria” and the “National Action Plan for the Decade of Roma Inclusion”. These have been amended several times but have produced little by way of practical results.

166. Planning measures have also been adopted in the areas most directly concerned by any integration policy, such as education, health, improvement of the standard of living (especially the provision of low-cost housing).

167. In all these policy areas the structures for discussion and cooperation between the NGOs representing the Roma community and the State have run into serious difficulty due to resistance on the part of the central government institutions and internal divisions within the Roma community.

168. The rapporteurs underline the importance of continuous effort for a broader decentralisation of integration policies, for it is at local, municipal and regional level that the way towards genuinely effective integration policies can be found.

169. The Rapporteurs have learned on 3 October 2011 of the recent events in Bulgaria which led to - sometimes violent - demonstrations and to anti-Roma sentiment. They welcome the President of Bulgaria's call for "an end to language of hatred". However, the rapporteurs also take note of the seriousness of the situation and encourage the political leaders of Bulgaria to continue their efforts to provide concrete steps for Roma integration.

5. CONCLUSIONS AND FOLLOW-UP TO THE MONITORING PROCEDURE

5.1. General conclusions

170. The rapporteurs clearly sensed a marked improvement in the area of local democracy. The Bulgarian municipalities, some 20 years after the adoption of a new, democratic Constitution, are soundly established and provide a growing share of the basic public services.

171. Almost all aspects of public administration are covered by legislation of high quality in terms of its clarity and of guaranteeing the fundamental rights of citizens and local authorities. A comparison of the provisions of the numerous laws adopted by the Bulgarian Parliament with the principles of the Charter gives a positive overall impression.

⁴⁸ The parliamentary Committee on Human Rights and Religious Freedom in Bulgaria adopted a declaration in February 2010 condemning the attempts of the communist regime to assimilate the country's ethnic Turks by force. It classified the forced expulsion of 360 000 Turks in 1989 as “ethnic cleansing”.

172. The formal recognition of democratic values and principles must be underpinned by their practical application and by effective action at administrative level. From that standpoint the delegation notes that there is still a strong tendency toward a centralisation of power in Bulgaria.

173. The applicable legal provisions are scattered, in the sense that the rules governing municipalities are dispersed among too many legislative texts. The efforts to align the legislation on the highest European democratic standards run the risk of producing legislation that is too detailed.

174. Generally speaking, a system of local self-government should be based on a more compact body of legislation, composed of principles rather than of detailed provisions, or on a more concise "code" of local self-government, which would guarantee better coordination and coherence of legislation, while leaving room for the adoption of autonomous regulations by the local authorities.

175. The delegation warmly welcomes the strategic approach adopted by Bulgaria in order to ensure an effective decentralisation policy. Nevertheless, while the choice of objectives is judicious, there seems to be no detailed roadmap indicating, for example, the nature of the competences to be transferred to the municipalities and the financial resources that will be required.

176. The Congress delegation finds the use of the term "regionalisation" in connection with an intermediate level existing between the central government and the local authorities, incorrect and would propose a clarification regarding the Bulgarian Government's regional strategies. For that purpose the delegation provides a series of alternatives, with the aim of developing genuinely democratic intermediate levels of regional administration, the choice of which is left to the discretion of the Bulgarian institutions themselves.

177. Regarding the use of EU structural funds, the delegation noted a new policy founded on a system of direct relations between the central government and the municipalities (with the indispensable assistance of the National Association of Municipalities of the Republic of Bulgaria) and based on a system of co-financing (EU, State and municipalities). The delegation strongly supports that policy and stresses that there is no contradiction between local self-government and the need to make efficient use of EU funds. Only strong municipalities, with specific competences and a degree of fiscal autonomy, will provide a viable basis for administrative support and the efficient use of EU funds.

5.2. Matters of concern in the light of the Charter

178. The delegation wishes to express reservations about several provisions in the new Electoral Code which seem to tend towards reducing the number of directly-elected councils. That policy would have the result of creating an imbalance between a strong mayor, whose position would be further reinforced by direct election, and the absence of broad forms of representation of citizens, political parties and society.

179. The constant confusion between own competences and shared responsibilities must be eliminated. It is not in conformity with the principle of subsidiarity set out in Articles 3, paragraph 1 and Article 4, paragraph 3 of the Charter and has negative consequences for the autonomy of municipalities in terms of both funding and supervision.

180. The participation of local authorities would be considered healthy if it took place either through the National Association of Municipalities.

181. The delegation wishes to see a revision of the legislation governing the supervision of the activities of local authorities in order to eliminate the contradiction between, on the one hand, the power of the regional governors to directly annul the acts of mayors and, on the other, the better guarantee of autonomy that is foreseen for the acts of municipal councils, which can only be annulled by a judge at the request of the regional governor. The direct administrative power to annul the acts of mayors could be considered to be in accordance with the Charter, and according to certain terms if it only concerned the acts undertaken within the framework of delegated competences, although a uniform system of control for all local authority competences would be more welcome.

182. The delegation recommends a revision of the legislation concerning the supervision of municipal bodies in order to do away with the random – and unacceptable – character of the removal or dissolution of local elected bodies.

183. It appears necessary to review the existing system of local budget and finances in order to ensure decentralisation and financial autonomy in compliance with the spirit of the Charter, notably in the light of its Article 9. The delegation recommends, in particular, the revision of the legislation concerning the financing of municipalities in order to substantially reduce the imbalance between own revenues and government transfers. The Congress considers that for an ordinary system to so limit the autonomy of the municipalities with respect to the adoption of their budget is contrary to Article 9 of the Charter and to the spirit of the Charter as a whole.

184. The Congress delegation is concerned about numerous aspects of the current legislation governing the budgetary procedure for Bulgarian municipalities, which contradicts this important legal provision. Before the municipalities are authorised to adopt their budget, the government must prepare and approve the “State-consolidated budget”. The delegation considers that, for an ordinary system to limit the autonomy of the municipalities in such a way with respect to the adoption of their budget, is contrary to Article 9 of the Charter.

185. The principles of adequate resources (Article 9, paragraph 1) and of resources commensurate with responsibilities (Article 9, paragraph 2) are seriously challenged by the gradual decrease in available financial resources, in terms both of own revenues and government transfers. The delegation takes the view that even in periods of severe crisis; the best solution remains to allow the local authorities to respond to the crisis.

186. As regards the only “reservation” expressed by Bulgaria when it ratified the Charter refers to Article 7, paragraph 2, calling for “appropriate financial compensation” for local elected representatives, the delegation was unable to obtain any direct information as to whether the reasons for that reservation still apply. It wishes to point out, however, that the question has now been settled by the LSGLAA, both as regards the remuneration of the mayor⁴⁹ and that of municipal councillors⁵⁰. It therefore hopes that Bulgaria will be able to withdraw its reservation, in accordance with Article 12, paragraph 3 of the Charter, and declare itself bound by all the provisions of the Charter.

187. The institution of ombudsman would merit to be consolidated in all local authorities. The delegation would therefore like to recommend the adoption of legislative measures, which appear necessary in order to legally guarantee the independence of the local ombudsman and financial independence in particular.

⁴⁹ See Article 21, paragraph 5.

⁵⁰ See Article 34, paragraphs 1, 2, 3 and 4.

Appendix I**Programme of the monitoring visit of the Congress of Local and Regional Authorities delegation to Bulgaria****Meetings in Sofia, Veliko Tarnovo and Pernik
(24-26 November 2010)****Congress delegation**

Mr Artur TORRES PEREIRA, Rapporteur for local democracy, member of the Monitoring Committee of the Congress, Chair of the Municipal Assembly of Sousel, Portugal

Mr Johan SAUWENS, Rapporteur for regional democracy, member of the Monitoring Committee of the Congress, Member of the Flemish Parliament, Mayor of Bilzen, Belgium
Professor Francesco MERLONI, Consultant, Italy

Wednesday, 24 November 2010**Meetings in Sofia:**

Bulgarian Delegation to the Congress and Mayors representatives of the National Association of Municipalities in the Republic of Bulgaria (NARBM):

Ms Dora YANKOVA, President of the Board of Directors, Mayor of Smolyan
Ms Rositsa YANAKIEVA, Head of the Bulgarian Delegation to the Congress, Mayor of Pernik
Mr Evgeni Petrov TANCHEV, President of the Constitutional Court

National Assembly of the Republic of Bulgaria: Budget and Finance Committee and Regional Policy and Local Self Government Committee

Chairs: Ms Menda Kirilova STOYANOVA and Mr Lyuben Petrov TATARSKI

Ms Tsetska TSACHEVA DANGOVSKA, Speaker of the National Assembly
Mr Konstantin PENCHEV, Ombudsman of the Republic of Bulgaria

Meeting with Professor Dr. Hristina BALABANOVA, Dean of the Law Faculty, University of National and World Economy, Professor Dr. Alexandre VODENITCHAROV, member of the Group of Independent Experts on the European Charter of Local Self-Government, Professor Dr. Milena STEFANOVA, Associate Professor, Department of Public administration, Sofia University

Konstantin PENCHEV, Ombudsman of the Republic of Bulgaria

Thursday, 25 November 2010**Meetings in Sofia:**

Mr Tomislav DONCHEV, Minister responsible for EU funds management

Ms Yordanka FANDUKOVA, Mayor of Sofia

Meeting at the National Audit Office

Ms Ekaterina ZAHARIEVA, Deputy Minister of Regional Development and Public Works

Ms Boryana PENCHEVA, Deputy Minister of Finance

Friday, 26 November 2010**Meetings in Veliko Tarnovo:**

Center for Interethnic Dialogue and Tolerance "Amalipe"

Mr Rumen RASHEV, Mayor of Veliko Tarnovo

Representatives of the Regional Association of Municipalities "Central Stara Planina" and the Regional Association of Municipalities "Yantra"

Meetings in Sofia:

Dr. Angel Stefanov, Sofia Public Mediator

Mayors from the District of Vratsa

Meeting in Pernik:

Mrs Rositsa YANAKIEVA, Mayor of Pernik, Head of the Bulgarian Delegation to the Congress

Appendix II

Main texts governing the questions of local and regional democracy

- Law on Local Self-Government and Local Administration (Prom. SG. 77/17 Sep. 1991, last amend. SG. 15/23 Feb. 2010).
- Law on Local Elections (Prom. SG. 66/25 Jul. 1995, corr. SG. 68/1 Aug. 1995, last amend. SG. 82/16 Oct. 2009).
- Law on Local Taxes and Fees (Prom. SG. 117/10 Dec. 1997, last amend. SG. 95/1 Dec. 2009).
- Law on the Municipal Debt (In force from 01.06.2005; Prom. SG. 34/19 Apr. 2005, last amend. SG. 110/30 Dec. 2008).
- Law on Municipal Budgets (Prom. SG. 33/24 Mar. 1998, last amend. SG. 108/19 Dec. 2007).
- Law on Municipal Property (Prom. SG. 44/21 May 1996, last amend. SG. 41/2 Jun. 2009).
- Law on the Administrative Territorial Structure of the Republic of Bulgaria (Prom. SG. 63/14 Jul. 1995, last amend. SG. 36/4 Apr. 2008).
- Law on the Territorial Division of the Capital Municipality and of the Big Cities (Prom. SG. 66/25 Jul. 1995, amend. SG. 80/8 Sep. 1995, last amend. SG. 90/15 Oct. 1999).

And also the:

- Law on Administration (Prom. SG. 130/5 Nov. 1998, last amend. SG. 24/26 Mar. 2010).
- Law on the Civil Servant (Prom. SG. 67/27 Jul. 1999, last amend. SG. 58/30 Jul. 2010).
- Administrative Procedure Code (in force from 12.07.2006, Prom. SG. 30/11 Apr. 2006, last amend. SG. 35/12 May 2009).
- Law on Administrative Offences and Sanctions (Prom. SG. 92/28 Nov. 1969, last amend. SG. 32/28 Apr. 2009).
- Penal Procedure Code (Article 69 - Removal of defendant from office) (in force from 29.04.2006, Prom. SG. 83/18 Oct. 2005, last amend. SG. 32/27 Apr. 2010).
- Law on the Liability of the State and the Municipalities for Damages (Prom. SG. 60/5 Aug. 1988, last amend. SG. 17/6 Mar. 2009).
- Law on the State Budget of the Republic of Bulgaria for 2009 (In force from 01.01.2009, Prom. SG. 110/30 Dec 2008, last amend. SG. 102/22 Dec 2009).
- Law on Corporate Income Taxation (Effective from 01.01.2007, Prom. SG. 105/22 Dec. 2006, last amend. SG. 95/1 Dec. 2009).
- Law on Ownership (Prom. SG. 92/16 Nov 1951, last amend. SG. 6/23 Jan. 2009).
- Law on the Prevention and Disclosure of Conflict of Interests (In force from 01.01.2009, Prom. SG. 94/31 Oct. 2008, last amend. SG. 62/10 Aug 2010).
- Law on Public Procurement (in force from 1 Oct. 2004, Prom. SG. 28/6 Apr. 2004, last amend. SG. 54/16 Jul. 2010).
- Law on Concessions (Prom. SG. 36/2 May 2006, amend. SG. 53/30 Jun. 2006, last amend. SG. 54/16 Jul. 2010).
- Law on the Audit Office (Prom. SG. 109/18 Dec. 2001, last amend. SG. 42/5 Jun 2009).
- Law on the State Financial Inspection (Prom. SG. 33/21 Apr 2006, last amend. SG. 42/5 Jun.2009).
- Law on the Internal Audit in the Public Sector (Prom. SG. 27/31 Mar 2006, last amend. SG. 99/15 Dec 2009).
- Law on Spatial Planning (Prom. SG. 1/2 Jan. 2001, last amend. SG. 50/2 Jul. 2010).
- Law on Limiting of the Administrative Regulation and the Administrative Control over the Economic Activity (in force from 18.12.2003, Prom. SG. 55/17 Jun. 2003, corr. SG. 59/1 Jul. 2003, last amend. SG. 59/31 Jul. 2010).

Regional development and decentralisation documents:

- Law on Regional Development (in force from 31.08.2008, Prom. SG. 50/30 May 2008, last amend. SG. 93/24 Nov. 2009).
- Structural Regulation of the Regional Administrations (Prom. SG. 57/14 Jul. 2000, last amend. SG. 48/23 May 2008).
- Operational Programme "Regional Development" 2007-2013.
- Decentralisation Strategy 2006-2015 (adopted 2006).
- Programme for the Implementation of the Decentralisation Strategy 2006-2009.
- Updated Strategy for Decentralisation 2006-2015 (adopted 2010).
- Programme for the implementation of the Strategy for Decentralisation 2010-2013.
- Rural Development Programme (2007-2013).

Appendix III

Comments of the Ministry of Regional Development and Public Works on paragraph 127

“Opinion: The planning, programming, management, resource provision, monitoring, control and implementation of strategies, plans and programs to implement the state policy for regional development are all governed by the Law on Regional Development. Pursuant to Article 8, paragraph 1 of this Law, strategic planning of regional development includes developing and maintaining systems of documents for the achievement of sustainable integrated regional and local development, including development of crossborder, transnational and interregional cooperation. Pursuant to paragraph 2, the programming of regional development includes the development and updating of programming documents for regional development, based on a system of documents for strategic planning of regional development.

The system of documents for strategic planning and programming of regional development includes: National Development Plan, National Strategic Reference Framework, Operational Programmes co-financed by EU funds, National Strategy for Regional Development, Regional Development Plans, District Development Strategies and Municipal Development Plans, which are described in detail in Article 9 of the LRD.

Pursuant to Article 16, paragraph 1, the Council of Ministers adopts: National Development Plan, National Strategic Reference Framework proposed by the Minister of Finance, National Strategy for Regional Development and Regional Development Plans proposed by the Minister of Regional Development and Public Works. Pursuant to Article 11, paragraph 1, Regional Development Plans are developed for regions of NUTS level 2. They define medium-term objectives and priorities for sustainable integrated regional and local development within the respective region, in accordance with the provisions of the National Strategy on Regional Development and other structural policies. The Regional Development Plan contains: objectives and priorities for development of the particular region over a certain period, indicators for monitoring and plan evaluation, the necessary actions to monitor and evaluate the plan update, a description of the necessary actions to implement the principle of partnership and provide information and publicity, etc.

Regional Development Councils (RDC) play an important role in the development and coordination of documents. A Regional Development Council is an authority created to implement state policy on regional development in a particular region. Municipalities in the region are represented in RDC and participate in decision making.”

Appendix IV

Information submitted by the National Ombudsman on the role, scope and activities of the Ombudsman in Bulgaria

“In relation to section 159 [now 158] of the report where you point to the limited role and restricted independence of the **National Ombudsman** in defending human rights and low public awareness of the existence of the National Ombudsman institution, I would like to express my disagreement over your findings and to inform you as follows.

1) independence of the National Ombudsman

- The institution of the Ombudsman is enshrined in the Constitution (Article 91a) as a national independent authority. The Ombudsman Act further reiterates the Ombudsman’s independence (Article 3(1)), stating that s/he ‘shall be independent in his/her activities and shall obey only to the Constitution, the laws, and the ratified international treaties to which the Republic of Bulgaria is a party’;
- The Ombudsman is elected by Parliament acting on a proposal of MPs (Article 10 Ombudsman Act). The eligibility requirements for the Ombudsman are identical as those for MPs. The Ombudsman furthermore avails of MP immunity (Articles 9 and 16 respectively Ombudsman Act);
- The Ombudsman is a first-level budget-spending unit (i.e. he manages autonomously and independently his budget within the limits approved in the annual republican budget) (Article 7 Ombudsman Act).

2) awareness of the existence of National Ombudsman

- Complaints and meetings with citizens

A total of 3,687 complaints were lodged with the Ombudsman in 2010, which is a 37 pct increase in the number of complaints and the highest number since the establishment of the institution in 2005. The number continues steadily to grow – 537 complaints in January, 619 in February, etc. This persistent trend reflects the priority of the incumbent Ombudsman to ‘open up’ the institution of the Ombudsman. A reception desk has been opened where once a week the Ombudsman meets people in person. Ad hoc reception desks are organised in the country on a regular basis: Vratsa (December 2010), Kardzhali (December 2010), Troyan (March 2011), Bourgas (April 2011), Nova Zagora (June 2011).

- Public discussions, round tables, promotional activity

The Ombudsman holds meetings with NGO representatives, experts and relevant stakeholders to discuss various problems and intermediate for finding a lasting solution, for example:

- Urban planning in Sofia and how to keep Sofia green – public discussions in 11 regions in Sofia, with more than 2,000 participants;
- Promoting good governance and good administrative service – public discussions in 12 cities in the country;
- Public discussion on the (then) newly adopted Condominium Act;
- determining garbage collection fees;
- adequate animal protection;
- problems in health care and conflicts between doctors and patients;
- round table on problems experienced by forensic doctors.

The Ombudsman is involved in various promotional activities, for example:

- TV series ‘TV Ombudsman’ on a national TV, where the Ombudsman informed on progress on particular cases; a similar series runs on the Bulgarian National Radio;
- explaining the rights of the child to children; donating a booklet on the rights of the child to 15 kindergartens;
- explaining the responsibilities of pet owners to students;
- publishing and distributing guides on patients’ rights, consumer rights, ‘Different yet Equal’ (together with the Commission for the Protection against Discrimination).

The internship programme introduces the institution of the Ombudsman to higher school students in law, public administration, European studies, political studies, etc. In addition the Ombudsman holds public lectures in higher schools on human rights protection, integration of Roma, prevention of police violence, etc.

3) role of the Ombudsman

- Ad hoc working groups on particular issues of high public interest

The Ombudsman may set up ad hoc working groups involving NGOs, external experts and relevant stakeholders in response to particular acute problems (Articles 14 and 15 of the Rules of Procedure of the Ombudsman). Here are some examples:

- the public council on the right of the child involves more than 20 NGOs and focuses on the decentralization of children's institutions, foster care and tailor-made education for children with disabilities;
- the ad hoc working group on places of detention for juvenile delinquents carried out an inspection and made specific recommendations;
- the ad hoc working group on the provision of medication for children with onco-haematological and rare diseases involved representatives of civil society and external experts; it made specific recommendations where the problems with the provision of medication found a lasting solution.

- *Propriu motu* inspections

The Ombudsman conducts inspections on his own initiative following publications in the media or signals. Here are some examples:

- in relation to the detention of a juvenile delinquent and the high public and media interest in the case, the Ombudsman inspected the media coverage vis-à-vis the rights of the child; following his intervention, the Child Protection Agency found a violation of the child's rights;
- following the intervention of the Ombudsman, eviction of Roma in Petrich was suspended;
- following a statement of the Ombudsman that the prohibition contained in a mayor's regulation to demonstrate sexual orientation in public places is violating human rights, the regulation was repealed by the local administrative court;
- following the Ombudsman's intervention, a planned 'protest against the gypsy terror' was not granted permission by the municipality in Sofia.

- Work pertaining to legislation in force

An amendment of 2006 in the Constitution grants the Ombudsman the right to approach the Constitutional Court requesting that certain legal provisions, which in his opinion are violating human rights, be declared unconstitutional. Fifteen such requests have been lodged with the Constitutional Court by the Ombudsman since 2006, the last one resulting in the Constitutional Court repealing certain provisions in the Bulgarian ID Act that were violating the freedom of movement of the Bulgarian citizens.

In addition, the Ombudsman can make proposals and recommendations for legislative amendments to the speaker of the National Assembly and to the Council of Ministers if he establishes that a particular legal provision creates prerequisites for violating citizens' rights and freedoms. The Ombudsman made eight such proposals in 2010 regarding various laws and bylaws, which were all endorsed by parliament, the Council of Ministers or municipal councils respectively.

- National body on human rights protection under international treaties

In April 2011 the National Assembly ratified the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act and decided to designate the Ombudsman National Preventive Mechanism under the Protocol. The respective amendments in the Ombudsman Act are forthcoming.

The Ombudsman took part in public events promoting ratification by Bulgaria of other international treaties extending human rights protection, e.g. UN Convention on the Rights of Persons with Disabilities and the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.

Section 159 of the draft report reads a.o. that 'at national level the Ombudsman's field of competence is too wide in relation to the available resources'. I assume that you refer not to too wide competences of the Ombudsman in principle, but to the proper balance between competences and resources. Should my assumption be correct, I would like to point out that as all public institutions, the National Ombudsman too has to operate within certain frameworks, be it in relation to funds or human resources. Nevertheless, I am of the opinion that within the available resources the National Ombudsman is doing well his job in defending citizens' rights and freedoms, reviewing their complaints, acting proactively upon signals or legislative proposals, initiating public events and promoting human rights compliance on both national and local level. By all means there is room for improvement, but the steady increase in complaints lodged with the Ombudsman and the positive public response to the Ombudsman's initiatives and opinions already indicate a growing confidence in the institution of the National Ombudsman.

For good order sake I provide below some data on the budget and staff resources of the institution of the National Ombudsman.

4) available resources

- budget and staff

The work of the Ombudsman is funded by the national budget – BGN 2,278,000 for 2011. A total of 44 persons work at the Ombudsman, which is 75 pct of the staff capacity. The specialised administration has the following departments:

- Reception
- International standards and regulations
- Rights of children, persons with disabilities and discrimination
- Social rights
- Right to education, healthcare and environment
- Right to property
- Rights of consumers to administrative and public services
- Fundamental rights and freedom of citizens.

This structure, introduced in the beginning of 2011, has improved the work of the institution. In their relations with the citizens, the employees in the administration of the Ombudsman follow the principles set forth in the European Code of Good Administrative Behaviour.

- premises

The institution is accommodated in a five-floor administrative building in the centre of Sofia at 22, George Washington. There are two reception offices and a waiting room for citizens, a meeting room for 20 persons, a conference hall for 70 persons, library, archive, 34 offices and 114 working places, offices for the Ombudsman, deputy Ombudsman, secretary general and chief of the Ombudsman's office. The building is accessible for persons with disabilities (including toilet and parking lot). All employees have the necessary office equipment (computer, printer, telephone) and consumables, as well as unlimited Internet access.

A reception was set up with the Ombudsman's administration where every day from 9.00 a.m. to 5.00 p.m. citizens can submit complaints and meet experts.

- A) As far as the **local ombudsmen** (a.k.a. local public intermediaries), these are not institutionally related to the National Ombudsman. The Local Self-Government and Local Administration Act (Article 21) provides for the *possibility* to have a local ombudsman elected by the municipal council. Currently 22 local ombudsmen are working in the local government. They enhance compliance with human rights and principles of good governance in the everyday work of the local administrations. The way they are elected may indeed raise some concerns regarding their independence, including financial.

The National Ombudsman has established good co-operation with the local ombudsmen. Joint meetings on a regular basis allow for exchange of good practices, discussions of particular cases and problems. A protocol signed by the local ombudsmen and the National Ombudsman defines the priority areas of co-operation. “