

28th SESSION
Strasbourg, 24-26 March 2015

CG/2015(28)5FINAL
26 March 2015

Local and regional democracy in Norway

Monitoring Committee

Rapporteurs¹: Xavier CADORET, France (L, SOC)
Guilherme PINTO, Portugal (R, SOC)

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Summary

The level of local democracy in Norway remains very high. The manner in which the provisions of the Charter are incorporated and implemented is generally satisfactory. Municipalities (and counties) have wide powers and adequate financial resources for implementing them. However, the supervision exercised over the municipalities and counties by the central government and its representatives in the counties (governors) is such that it limits the freedom of local and regional authorities to take decisions, especially since they have no judicial remedy against central government decisions affecting them, which is contrary to the requirements of Article 11 of the Charter, as indicated in Recommendation 203 (2006). The ongoing territorial reform instituted by the new government, which includes plans to merge municipalities and give them and counties more powers, looks set to further bolster local and regional self-government in Norway.

1. L: Chamber of Local Authorities / R: Chamber of Regions
EPP/CCE: European People's Party Group in the Congress
SOC: Socialist Group of the Congress
ILDG: Independent and Liberal Democrat Group of the Congress
ECR: European Conservatives and Reformists Group
NR: Not registered

RECOMMENDATION 374 (2015)²

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

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

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

c. Congress Resolution 299 (2010), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010) [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 present explanatory memorandum on local democracy in Norway drawn up by the rapporteurs, Xavier Cadoret, (France, L, SOC) and Guilherme Pinto (Portugal, R, SOC) following an official visit to Norway from 9-11 September 2014.

e. Recommendation 141 (2003) on regional democracy in Norway and Recommendation 203 (2006) on the compliance of Norwegian legislation with Article 11 of the European Charter of Local Self-Government.

2. The Congress recalls that:

a. Norway signed and ratified the European Charter of Local Self-Government on 26 May 1989. The Charter entered into force in respect of Norway on 1 September 1989. No declaration or reservation was made;

b. Norway ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority on 16 December 2009;

c. the Monitoring Committee instructed Xavier Cadoret, (France, L, SOC) and Guilherme Pinto (Portugal, R, SOC) to prepare and submit to the Congress, as rapporteurs, the report on local democracy in Norway³.

d. The Congress delegation carried out a monitoring visit to Norway from 9 September 2014 to 11 September 2014 visiting Oslo, Skien, Nome, and Bergen.

3. Wishes to thank the Permanent Representation of Norway to the Council of Europe and the Norwegian authorities at central, regional and local levels, the Norwegian Association of Local and Regional Authorities, the Eastern Norway County Network and the Regional Council of Western Norway, experts as well as other interlocutors for their valuable co-operation at different stages of the monitoring procedure and the information conveyed to the delegation.

2. Debated and adopted by the Congress on 26 March 2015, 3rd sitting (see Document [CG/2015\(28\)5FINAL](#) explanatory memorandum) rapporteurs: Xavier CADORET, France (L, SOC) and Guilherme PINTO, Portugal (R, SOC).

3. In their work, the rapporteurs were assisted by Mr André Roux, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress secretariat.

4. The Congress notes with satisfaction that:

a. the level of local and regional democracy is globally satisfactory in Norway, as demonstrated by the extensive powers and financial resources of counties and municipalities that enables them to exercise these powers in a satisfactory manner;

b. the initiated reform process, including the current review of the Local Government Act, constitutes a promising opportunity to effectively improve the quality of public services and strengthen local democracy;

c. the central government actively promotes and largely consults different co-operation structures and associations bringing together local and regional authorities;

d. a wide range of opportunities for participatory democracy at local and regional level, such as citizen's initiatives and consultative referenda are available throughout the country.

5. The Congress expresses its concerns that:

a. the principle of local self-government is still neither expressly recognised in the legislation, as already emphasised in Recommendation 141 (2003), nor in the Constitution;

b. there is no judicial remedy for municipalities to challenge respective decisions of the central government, as required by Recommendation 203 (2006);

c. the governor and other supervising bodies may *de facto* exercise their supervision in a manner that exceeds the spirit of the law and which lacks a clear specification of competences in statutory law;

d. local authorities have mentioned the risk of an increase of delegated tasks without complementary funding, as part of the current reform process in Norway;

e. The control exercised by the government through a too dense and specific sectoral legislation may lead to a considerable degree of supervision.

6. In the light of this, the Congress requests that the Committee of Ministers invite the Norwegian authorities to:

a. further reinforce local self-government [and local democracy] by incorporating those principles into specific legislation and, if practicable, into the constitution;

b. bring their legislation and judicial practice into compliance with Article 11 of the European Charter of Local Self-Government by guaranteeing, in their domestic legal system, local authorities the full exercise of their right to judicial remedies against decisions taken by the state administration;

c. re-assess the current situation of administrative supervision carried out by governors and other supervising bodies on the own competences of local authorities so that this control does not exceed the spirit of the law;

d. implement the reform in a way to ensure that concomitant finances are provided for any new tasks delegated to local and regional authorities;

e. limit the control over local authorities solely to one of legality so as to avoid a recentralisation of transferred powers.

EXPLANATORY MEMORANDUM

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1. Introduction: aim and scope of the visit, terms of reference

1. In accordance with Article 2 of Statutory Resolution CM/Res (2011)2 of the Committee of Ministers, the Congress of Local and Regional Authorities of Europe (hereafter “the Congress”) regularly prepares reports on the state of local and regional democracy in Council of Europe member states and candidate countries. This report on local and regional democracy in Norway is a follow-up to Recommendation 203 (2006) adopted in November 2006. This new report also forms part of a series of Congress activities focusing on the development of the local and regional level in Norway.

2. Norway joined the Council of Europe on 5 May 1949, making it one of the founder members of the Organisation, and signed and ratified the European Charter of Local Self-Government (ETS No. 122, hereafter “the Charter”) on 26 May 1989. The Charter entered into force in respect of Norway on 1 September 1989. No declaration or reservation was made.

3. Norway ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) on 12 August 1980. The Outline Convention entered into force on 22 December 1981. On 18 October 2010, Norway ratified the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159), which entered into force on 19 January 2011. On 16 December 2009 it ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207) with entry into force on 1 June 2012.

4. The previous recommendation on local and regional democracy in Norway was adopted by the Congress in 2006 (Recommendation 203 (2006)).

5. One visit was made by a Congress delegation to Norway from 9 to 11 September 2014, to examine the situation of local and regional democracy in that country in the light of the Charter. The Monitoring Committee appointed Mr Guilherme Pinto, Portugal (R, SOC) and Mr M. Xavier Cadoret France (L, SOC) as co-rapporteurs for local and regional democracy. The rapporteurs were assisted by Professor André Roux, consultant and member of the Group of Independent Experts on the European Charter of Local Self-Government, and by a member of the Congress secretariat.

6. During this visit, the Congress delegation met representatives of the associations of local and regional authorities, mayors and municipal and regional councillors. They attended meetings with representatives of the Norwegian Parliament, the government, ministries and other government representatives and relevant institutions. The detailed programmes of the visits are appended to the present report.

7. The rapporteurs wish to thank the permanent representation of Norway to the Council of Europe as well as all the talking partners met during these visits for making themselves available and for the information they kindly provided to the delegation. They also wish to thank the Norwegian delegation to the Congress and the Norwegian Association of Local and Regional Authorities (KS), which contributed to the organisation and smooth running of the visits.

2. Historical, political and constitutional context

2.1. *International context and relations with neighbours*

8. Norway has close ties with the European Union (EU) through its membership of the European Free Trade Association (EFTA, set up in 1960), and its co-operation within the European Economic Area (EEA). Norway is not a member of the EU (the Norwegian people having twice rejected membership in referendums, one in 1972 and the other in 1994). Along with Iceland and Liechtenstein, Norway and the EU are partners in the European Economic Area which brings together the 28 EU member states and the three EEA EFTA states in an internal market governed by the same basic rules, with the aim of promoting trade and economic relations between the 31 EEA states.

9. Norway and the EU share the same basic values and Norway's co-operation with the EU is important for Norwegian companies and for Norwegian society at large. The EEA Agreement gives Norwegian citizens the right to study, work and settle in any country in the EEA and it also ensures equal treatment and predictability for Norwegian companies. Three quarters of Norway's exports are to EU and EFTA countries, which also supply three quarters of Norway's imports.

10. The EEA Agreement does not cover the common agriculture and fisheries policies, customs union, the common trade policy, the common foreign and security policy, justice and home affairs or monetary union. Norway does, however, co-operate closely with the EU in several of these areas. Norway has contributed financially to reducing economic and social disparities through various mechanisms since the setting-up of the EEA in 1994. From 2009 to 2014, Norway has committed almost 1.79 billion euros for this purpose, in areas such as the environment, conservation of cultural heritage, decent working conditions, justice and the strengthening of civil society.

11. The Norwegian Parliament and government are in constant communication with the other Scandinavian countries through the Nordic Council, an interparliamentary forum for co-operation set up in 1952. Norway is a founding member of the United Nations, NATO, the Council of Europe, EFTA, the OECD and the OSCE. It also belongs to several other international organisations. Norway has taken part in, or facilitated, various international peace negotiations, including notably the Oslo Accords between the Israelis and the Palestinians.

12. Norway is one of the few countries in Europe to have weathered the global financial and economic crisis that hit the continent in 2008, in spite of a large public sector and a high level of spending on social welfare.

2.2. Internal political context and elections

Government structures

13. The Kingdom of Norway is both a constitutional monarchy and a parliamentary democracy. The Norwegian Constitution of 17 May 1814 is one of the oldest surviving written constitutions in Europe. During the last 200 years, two thirds of all provisions have been revised. The latest amendment dated 18 June 2010 did, however, bring major changes to the legislative procedure as it abolished the two chambers (the *Lagting* and the *Odelsting*) of the *Storting*.

14. The threshold for constitutional amendments is relatively low in Norway. The majority of proposals however, are rejected, as they do not gain the necessary two-thirds majority. The amendments which have been adopted in recent years are in many cases the result of a long process. Often a broadly based commission has presented a lengthy report, which then has been publicly debated.⁴ All subsequent constitutional amendments were formulated in this language form. On 13 May 2014 a series of articles on human rights were enshrined in the Constitution, such as the right to non-discrimination, right to life, right to education etc. The amendments were based on the thorough work of a Parliamentary commission.

15. **Executive power** is vested in the King (Harald V, crowned on 23 January 1991) whose duties are mainly honorary, and in the government, which is politically accountable to Parliament. Ema Solberg, leader of the Conservative Party since May 2004, has held the post of Prime Minister since 16 October 2013, after winning the elections on 9 September 2013. She is the second woman to become Prime Minister in Norway, after Gro Harlem Brundtland (Labour Party) who was elected for the first time in 1981.

16. The centre-right coalition led by the Conservative Party won 96 of the 169 seats in Parliament in the last general elections in September 2013, beating the red-green coalition led by the Prime Minister, Jens Stoltenberg. The new cabinet now consists of nine men and nine women. Its ministerial cabinet is known as the "Blue Blue Cabinet" because it consists of the Conservative Party and the Progress Party.

4. On 6 May 2014, a full language revision of the Constitution was adopted without making changes to the meaning of the paragraphs. Based on prevailing spelling rules, this gave Norway equal language versions of the Constitution in the two official language forms of Norway – one in "*bokmål*" and one in "*nynorsk*". Previously the language and spelling in the Constitution were based on a relatively conservative normalization of the language that was carried out in 1903.

17. Ever since the constitutional reform of 2010, Norway has had a unicameral **parliament** (the *Storting* or *Stortinget*) with 169 members. It is elected every four years based on party-list proportional representation in nineteen constituencies. In order to strengthen the regions, the latter are proportionally better represented than the centre of Oslo. The Storting cannot be dissolved and there can be no new elections before the end of the four year term.

18. The Norwegian **judicial system** consists of the Supreme Court (*Høyesterett*), the Appeals Selection Committee of the Supreme Court (*Høyesteretts kjæremålsutvalg*), courts of appeal (*lagmannsrettene*), district courts (*tingrett*) and conciliation boards (*forliksråd*), plus special courts. Norway is divided into six territorial jurisdictions (*lagdømmer*) and 15 judicial districts (*lagsogn*).

The parliamentary elections on 9 September 2013:

19. The last elections were the parliamentary elections on 9 September 2013. The four centre-right parties, namely the Conservative Party (H), the Liberal Party (V), the Christian Democrat Party (KrF) and the Progress Party (FrP), now form the new majority, with 96 seats between them (out of a total of 169). The election was won by the Erna Solberg's Conservative Party (H), after 8 years during which Labour (A) had governed in coalition with the Socialist Party (SV) and the Centre Party (SP), under Jens Stoltenberg. The new ruling coalition, consisting of the Conservative Party and the Progress Party, was formed on 7 October 2013. Erna Solberg is the second woman to hold the office of Prime Minister, after Gro Harlem Brundtland.

20. The Greens (OMD) are represented in Parliament for the first time, with 1 seat.

21. In the last elections, the Conservatives won 48 seats, 18 more than in the previous elections. The Progress Party won 29, 12 less than the previous time. The Christian Democrats won ten seats, the same number as before, whereas the Liberal Party went from 2 to 9 seats. The Labour Party won 55 seats, down from 64, the Centre Party lost one seat and the Socialist Party won 7 seats, down from 11.

22. The proportion of women in the Storting remains unchanged (39.6%), with 67 women as compared with 102 men. At 78%, turnout was 2% higher in the 2013 elections than in 2009. In the 2013 parliamentary elections, online voting was trialled in 12 municipalities. 70,000 voters chose to use this method, which is currently under review.

Local and regional elections

Electoral system

23. The municipal councils (*kommunestyrene*) and county councils (*fylkestingene*), which are the highest organs of local and regional government, are elected by direct universal suffrage (since 1975 in the case of the county councils). Local and regional elections are held every four years, mid-way through the parliamentary term. The government decides the date of the elections, which are always held on a Monday in September. As well as Norwegian citizens, nationals of other countries can vote if, on Election Day, they have been resident in Norway for the past three years. The elections are held according to the party-list proportional representation system, except when only one approved list exists. The lists can represent the local branch of a national political party as well as independent groups which have demonstrated a sufficient degree of representativeness at local level (by collecting a certain number of signatures). The requirements relating to the composition of the lists are very specific: all lists must have at least seven candidates and may contain a maximum number of candidates corresponding to the number of representatives to be elected to the municipal or county council, with no more than six additional names. Voters can amend the lists presented by the parties or local groups and may vote for particular candidates or for the full list.

24. Section 7 of the Local Government Act stipulates the minimum number of representatives to be elected at local level. Municipalities with fewer than 5,000 inhabitants must have at least 11 members on their municipal council. Where the population of the municipality is between 5,000 and 10,000 inhabitants, the minimum number of representatives is 19, and between 50,000 and 100,000, 35. Municipalities with more than 100,000 inhabitants are required to have at least 43 municipal councillors. A similar system is used to determine the size of county councils. In counties with more than 150,000 inhabitants, there must be at least 19 representatives. In counties with 150,000 to

200,000 inhabitants, the minimum number is 27, in counties with 200,000 to 300,000, it is 35 and, lastly, in counties with more than 300,000 inhabitants, 43. It is for the municipal council and the county council to decide whether they wish to increase the number of representatives beyond the statutory minimum.

The elections on Monday 12 September 2011:

25. In the municipal and regional elections in September 2011, turnout was 64,2% as against 61.2% in the same elections in 2007. 530,000 people opted to cast their votes early, 166,000 more than in 2007. The Conservatives and Labour emerged as the winners in these elections. *Arbeiderpartiet* (Labour) secured 33% of the vote, 2% more than in 2007. *Høyre* (Conservatives) also performed strongly, winning 27.8% of the vote, 8,7% up on the previous elections. By contrast, the Progress Party (FrP), a right-wing party, did badly, managing to secure just 11.4% of the vote (down 6% on 2007) in an election that was widely seen as an endorsement of far-right ideas. The Sosialistisk Venstreparti (SV or Socialist Left Party) also fared quite badly with just 4.1% of the vote.

26. With regard to the distribution of seats between men and women, the proportion of women candidates in *fylkestinget* (county council) remained stable: 44.6% in 2007 against 44.2% in 2011. In *kommunestyret* (councils), 41.7% of the candidates were women against 41.8% in 2011. With regard to the gender distribution of the elected *kommunestyret*, in 2007 women accounted for 37.5% against 38.2% in 2011. In 2011, out of a total of 10,785 elected councillors, 4,115 were women and 6,670 were men. As regards the gender distribution of mayors, women remain under-represented. Indeed, after the 2011 elections, out of a total of 429 mayors, only 96 were women (22.4%) against 333 men (77.6%) - a figure that has remained stable since the election of 2007. The next elections are scheduled for September 2015.⁵

2.3. Previous reports and recommendations (main issues/concerns raised in the previous recommendation)

Recommendation 203 (2006) on the compliance of Norwegian legislation with Article 11 of the European Charter of Local Self-Government

27. Further to a proposal from its Institutional Committee, the Congress, referring to the reasoned opinion of the Group of Independent Experts on the European Charter of Local Self-Government adopted on 5 October 2006 in Perugia (Italy) and endorsed by the Institutional Committee in Strasbourg on 16 October 2006, recommended that the Norwegian authorities bring their legislation and judicial practice into compliance with Article 11 of the European Charter of Local Self-Government by guaranteeing, in their domestic legal system, local authorities the right, and the full exercise of that right, to judicial remedies against decisions taken by the state administration in the situations covered in appendix 2 to the explanatory memorandum in order to ensure the free exercise of their powers and respect for such principles of local self-government as are enshrined in domestic legislation.

Recommendation 141 (2003) on regional democracy in Norway

28. Further to a proposal from the Chamber of Regions, the Congress, in 2003, noted with satisfaction the high level of local democracy in Norway, but also observed that neither the Norwegian Constitution nor the Local Government Act of 25 September 1992 (Law No. 107) contained binding general provisions on the legal protection of local and regional self-government in Norway.

29. The Congress expressed regret that upon ratification of the European Charter of Local Self-Government, Norway had not officially notified the Council of Europe of its intention to be bound by the Charter in its relations with the county authorities.

30. The Congress therefore invited the Norwegian authorities to take account of its report in national discussions on the future of local and regional government; to seek solutions for the future structures of territorial administration in liaison with the representatives of local and regional authorities, and not to focus, in their reforms, on the single criterion of reducing territorial management structures, but to take account of the will of the citizens to see their elected representatives play a genuine role in managing their local environment.

5. Statistics given by the Norwegian authorities.

3. Compliance with obligations and commitments

3.1. Level at which the Charter is incorporated

31. Norway possesses a long-standing tradition of local democracy dating from the Alderman Act of 1837, which set out the rights and responsibilities of local authorities for the first time. The level of local democracy remains high and the manner in which the provisions of the Charter are incorporated into the domestic legal system and implemented is generally satisfactory, even though the Charter itself seems to play only a minor role in discussions about the legal aspects of devolution in Norway. Reference to the Charter has, however, been made, notably by the Norwegian Association of Local and Regional Authorities (KS) in the debate about enshrining local self-government in the Constitution. The municipalities and counties have wide powers and in general the financial resources to exercise them (although the delegation of new tasks is feared by local authorities to present a risk of less than 100 per cent concomitant financing). However, the supervision exercised over the municipalities and counties by the central government, its directorates and other agencies, and its representatives in the counties (governors) is such that it limits the freedom of local and regional authorities to take decisions. This is particularly contrary to the requirements of Article 11 of the Charter, and reiterated in Recommendation 203 (2006), as they have no judicial remedy against central government decisions affecting them. The territorial reform instituted by the new government includes plans to merge municipalities giving them more powers, and looks set to further bolster local and regional self-government.

3.2. Constitutional and legislative developments

3.2.1 Constitution

32. The Norwegian Constitution of 1814 makes no reference to local self-government or local democracy. There are, however, a number of draft constitutional amendments which, if adopted, would secure recognition for these principles (see below).

3.2.2 Legislation

33. The Local Government Act of 25 September 1992 establishes the basic legal framework for local and regional government. It supersedes the 1954 Act relating to municipal and county authorities. Section 1 of the 1992 Act clearly states that the role of local democracy bodies is more administrative than legislative and that the activities of local government must remain within the framework of the national community. The provisions of the Act deal *inter alia* with the conditions of office of local elected representatives, their rights and duties, the status and functioning of local government bodies, the rules governing intermunicipal co-operation, financial planning, budgetary rules and state supervision of local and regional authorities.

34. The Representation of the People Act of 28 June 2002 lays down the rules governing the organisation of general and local elections.

35. The Freedom of Information Act of 19 May 2006 enshrining the public's right of access to official information applies not only to the state but also to county and municipal authorities.

36. The Act of 15 June 2001 concerns the setting and alteration of local government boundaries.

37. The Intermunicipal Companies Act of 29 January 1999 deals with intermunicipal co-operation. Under the territorial reform of 2010, new powers were transferred to the county level.

38. Because of the number and variety of laws, it is not possible to list every piece of legislation that deals with the powers of local or regional authorities (legislation on planning and construction, education, municipal health services, child welfare, social services, etc.).

3.2.3. Access to the Supreme Court

39. At present, local and regional authorities have no right of appeal that would enable them to challenge in court decisions of state authorities (ministers, governors, etc.) relating to the exercise of their own competences.

3.3. Local authorities: territorial structures and powers

3.3.1. Territorial structure

40. Norway is a decentralised unitary state with just over 5 million inhabitants (it is the least densely populated country in Europe after Iceland). Norwegian territory is divided into 428 municipalities (*kommuner*) and 19 counties (*fylker*). The geographic and demographic differences between municipalities and between counties are very wide. More than half of all municipalities, for example, have fewer than 5,000 inhabitants while 14 have more than 50,000. The biggest municipality is Oslo (which is also a county) with approximately 620,000 inhabitants and the smallest in Utsira with a population of 209. Despite these disparities, all municipalities possess the same rights and responsibilities. The same is true of the counties.

41. Under the Local Government Act of 25 September 1992, there are two systems of municipal (and indeed county) government. Under the “traditional” system that operates in most municipalities, the municipal council is the highest municipal body. It elects the executive board which comprises at least five members, all of whom sit on the council. The election takes place on the basis of proportional representation of the political parties in the council. The executive board is responsible for preparing economic and spatial four-yearly development plans, and for making proposals concerning the budget and other related financial and economic topics.. Other tasks may also be assigned to the executive board by the municipal council. A chief executive officer appointed by the municipality is responsible for implementing the decisions of the municipal council. Under the alternative “parliamentary” system of local government, which can be adopted if the majority of municipal council members so decide, an executive board, elected at the first meeting after the municipal council has been elected, acts like a cabinet as in the case of the central government. This cabinet is the highest local government body and may be entrusted by the municipal council with any matters of relevance to the municipality. Members of the executive board report to the council and can be forced to resign if the council passes a resolution to that effect. In 1986, the city of Oslo opted for the parliamentary system of governance after Norway’s central government approved the arrangement.

42. The local government reform currently under way has four aims: firstly, to improve the quality of public services while maintaining equality for all and, secondly, to strengthen local democracy by granting municipalities wider powers and encouraging them to merge, on the principle that a smaller number of more powerful municipalities would have greater autonomy from central government. Until the end of 2016, any mergers must be done on a voluntary basis, with extra funding available from central government for the enlarged municipalities thus created. In the spring of 2017, the issue of municipal reform will be referred to Parliament so that it can assess the situation and enact legislation if necessary. A reflection and consultation on the reform of counties have been initiated in parallel (see *infra*). In addition to that, the local government reform also aims at co-ordinated community development, and economically sustainable municipalities,

3.3.2. Powers and responsibilities of local authorities

43. The division of powers and responsibilities between the various tiers of government in Norway is based on what is commonly termed a generalist local authority system. That means that all municipal and county authorities are required to fulfil the same functions and have the same responsibilities in, *inter alia*, the creation and management of public services, planning and local development. But they are free to organise the tasks the way they want, to buy external services and to cooperate with neighbouring municipalities under the public administration reforms that began a few years ago, the process of devolution has gathered pace. In 2006, the government presented a white paper on the division of powers and responsibilities between the various levels of authority, with the result that a reform was introduced in 2010 which handed more competences to county councils.

44. Central government is currently responsible for:

- higher education/universities
- hospitals and specialist health services
- child welfare institutions
- protecting national interests
- national transport
- the judiciary and the police
- armed forces
- foreign policy
- immigration policy and refugees
- national agriculture and environmental issues

45. Municipalities are responsible for:

- access to and facilities in primary schools
- kindergarten and other child care services
- primary and lower secondary education
- outpatient health care
- prevention and care for the elderly and people with disabilities
- maintaining churches and cultural facilities
- fire protection and other tasks of mitigation of catastrophic situations
- maintaining municipal roads
- recycling waste water and water supply
- waste collection and removal
- local town planning and environmental issues

46. Financially speaking, the biggest items of municipal expenditure are care for the disabled and health care (33%), primary schools (21%), child care (13%), social services and child welfare (8%) and water supply and treatment (5%).

3.3.3. *Territorial issues*

47. The government which emerged after the 2013 general elections has embarked on a new local government reform in Norway. The background of this reform is to provide the country with bigger municipalities, either through inter-municipal cooperation (without increasing the size) or through mergers. In both cases the intention is to give local authorities extended power and competences.

48. The government is due to present its proposals on the new municipal responsibilities in May 2015, in the light of the findings of a committee of experts. This report will be examined by Parliament. The final decisions concerning the reform are expected to be taken before the next general election (autumn 2017).

49. According to the Norwegian Association of Local and Regional Authorities (KS), while there is near-unanimous support for reconsidering the municipal structure, it is necessary to take into account the diverse range of municipalities and their different interests as well as the geographic constraints.

3.3.4. *Relations between central government and local authorities*

50. In Norway, relations between central government and local and regional authorities are characterised by a combination of partnership and supervision. The title of the White Paper published by the Ministry of Local Government and Regional Development in February 2012, on the principles governing relations between central government and the municipalities, neatly encapsulates this relationship, referring both to supervision and to co-operation (*styring og samspill*).

51. In common with other Scandinavian countries, Norway combines a centralised welfare state with a robust tradition of devolution and local self-government (*desentralisering*).

52. All the main functions performed by local authorities, including in the field of social welfare, health and education, are closely scrutinised by central government, one of whose tasks is to ensure that all members of the public have equal access to benefits and public services, whichever local or regional authority they come under. Central government has a duty, therefore, to ensure not only equal treatment, but also legal certainty and effective and co-ordinated use of resources, as well as performing general administration tasks. Due consideration must likewise be given to the needs of minorities, the environment and sustainable development.

53. It accordingly appears that municipalities and, to a lesser extent, counties form an integral part of Norway's welfare state system. Central government and local and regional authorities are closely entwined in a so-called "integration" model (*integrasjonsmodell*), so much so, indeed, that it can be difficult to distinguish between their various respective functions and responsibilities.

54. Municipalities and counties can therefore be seen as instruments for implementing policy decisions taken at national level. Where central government and local authorities share responsibility for specific areas, such as child welfare, the relationship between the two tiers is more akin to a partnership. In general, municipalities do however quite often take responsibilities for tasks not falling under any specific competence by law.

55. For the purpose of executing their tasks, local and regional authorities are placed under the supervision of various ministries (*fagdepartementer*), central government directorates (*direktorater*), and county governors (*fylkesmenn*). As pointed out in the draft resolution submitted by the government to Parliament in May 2013, the Norwegian system of local and regional government accordingly rests on a balance between local self-government and the need to meet the objectives set by the state.

56. The Ministry of Local Government and Modernisation has full authority to supervise local and regional authorities. Central government is directly represented at local level by the office of the county governor (*fylkesmann*). The county governor is appointed by and acts as representative of the state, and has the job of ensuring that the decisions of Parliament and the government are properly executed at local level. The governor thus has a key role in advising and overseeing local authorities in the implementation of state policy at local level. More specifically, the county governor supervises the municipalities on behalf of the ministries and according to separate laws. Whereas the counties are supervised mainly by the state ministries according to their respective competences and also within the legal basis.

3.3.5. *Financial resources of local authorities*

57. In 2013, municipal and county revenues amounted to NOK 400.7 billion, representing roughly 18% of GDP.

58. Local taxes and levies account for roughly 40% of local and regional government resources. 36% comes from general grants awarded by central government, 15% from fees and charges levied by authorities on users of public services, and 4% from earmarked grants.

59. Municipalities derive the bulk of their tax revenues from income tax but they also receive revenue from a wealth tax, a property tax, which they can decide to levy (in 2009, 299 municipalities chose to tax property while 131 opted not to impose property tax) and a tax on natural resources. A further 5% of their income is derived from the VAT compensation fund.

60. Municipalities collect tax for central government as well as for themselves and for the counties. In 2013, the municipalities levied income tax at 11.60 %, the counties at 2.65% and central government at 13.75 %.

61. The Norwegian Parliament decides every year the maximum (percentage) level of municipal income tax. Municipalities have the right to set a lower rate but no municipality has chosen to exercise this option since 1979.

62. There are significant differences between municipalities and between counties in terms of tax revenues. Since the aim of central government is to provide citizens with a high level of public services throughout the country, income tax is redistributed between municipalities and between counties (partial equalisation of tax income).

63. That is the purpose of the General Grant Scheme which aims to ensure that resources are redistributed between local and regional authorities in a fair manner. Basically, revenues are redistributed according to the number of inhabitants in the municipality, with due consideration being given to a whole series of objective criteria (characteristics of the population, population density, etc.). Any additional costs incurred by a local authority on account of the specific features of its population are thus offset in full.

3.3.6. *Autonomy and freedom of association*

64. Municipalities and counties have complete freedom of association. The Norwegian Association of Local and Regional Authorities (KS) encompass all municipalities and counties as well as 500 state-owned enterprises and is the government's preferred contact for all matters of relevance to local and regional authorities. The association meets with the government three to four times a year to discuss general issues and in particular financial matters, and there are frequent meetings with ministries on specific matters (transport, health, occupational safety, refugees, etc.). There are also some intermunicipal associations which deal with matters of common interest for the region such as regional planning and economic development, it being understood that intermunicipal co-operation is often initiated by the government. Upon consultation, the KS clarified that such associations are notably of a different nature from the KS, the latter describing itself as a "national interest and employer association".

3.3.7. *Status of the capital city*

65. The city of Oslo, which is home to some 600,000 people, is both a county and a municipality. It has its own specific modus operandi, with a status different from that of other municipalities and counties in Norway. The responsibility for governing the city has been based on the parliamentary model since 1986 and falls to the executive mayor and up to 7 deputy mayors appointed as a cabinet by the municipal council. The council is made up of 59 members elected by local residents for a period of four years. It has five standing committees in charge of health and social affairs, education and cultural affairs, urban development, transport and environmental affairs and finance, respectively.

66. Following the elections in 2007, the Conservative candidate, Richard Fabian Stang, was elected mayor of Oslo, then re-elected in 2011. He still holds the post today. The executive branch (Cabinet) of the city government is headed by Stian Berger Røsland (Conservative Party).

67. Since the last reform which came into effect on 1 January 2004, the city has been divided into 15 districts (*bydeler*), which enjoy a large measure of autonomy. Since 2007, all district councils have been elected directly by the people. Their responsibilities include social services, basic health care and kindergartens.

4. Analysis of the situation of local democracy in light of the European Charter of Local Self-Government on an article by article basis. (This analysis is based on the previous recommendation).

4.1. Articles 2 and 3 – Principle and concept of local self-government

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

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

68. In Recommendation 141 (2003) on regional democracy in Norway, the Congress noted that the Norwegian Constitution of 1814 contained no provision relating to either local or regional self-

government. Likewise, the Local Government Act of 25 September 1992 contains no binding general provisions on the legal protection of local self-government.

69. No constitutional or legislative reform aimed at recognising local self-government has succeeded to date.

70. Various proposals for constitutional reform have been tabled by MPs with a view to expressly enshrining the principle of local self-government or local democracy in the Constitution (there were 12 proposals during the previous parliament) but none has ever been adopted by the Norwegian Parliament. These proposals tend to come from individual MPs rather than entire parties. One such proposal was rejected in 2012. Three further alternative proposals for constitutional amendments were then submitted to Parliament and must now be examined by the Standing Committee on Scrutiny and Constitutional Affairs. They are expected to be voted on in 2015. If adopted, they would have the effect of enshrining in the Constitution people's right to manage local affairs through bodies elected by direct universal suffrage within the framework prescribed by national law. During the consultation process, the government pointed out, that a public committee to propose a new Local Government Act was appointed in June 2013. By means of the comments received following the visit, the delegation noted that the government considers the formation of the public committee as an effective measure to comprehensively review the Local Government Act and therewith strengthen municipal self-government (see also: *infra*. para.132).

71. The procedure for amending the Norwegian Constitution provides that the amendments must be considered by two successive parliaments and approved by a two-thirds majority. The Standing Committee on Scrutiny and Constitutional Affairs reviews and makes recommendations to the *Storting* on constitutional bills. A bill to amend the Constitution may be put forward by a member of the *Storting* or a member of the Government. The proposed amendments to the Constitution must be submitted during the first three *Stortings* of an electoral term. There will therefore always be a general election between submission of a proposed amendment and the decision whether or not to adopt it. This allows the electorate to make its opinions known. A two-third majority is required to adopt an amendment to the Constitution and at least two-thirds of the members must be present in the Chamber to vote on any constitutional matter. One pragmatic way of protecting local self-government would be to incorporate the principle of local self-government in specific legislation, as a first step to constitutional recognition. The local government association KS, supports the idea of incorporating the principle of local self-government into the local government act. Still, the KS insists that the principle should nevertheless be incorporated in the Constitution.

72. The rapporteurs are on the opinion that the situation is not in compliance with the Charter on this point.

Article 3 – Concept of local self-government

1 Local self-government denotes the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.

2 This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

73. The Norwegian system of local and regional government fits the definition of local self-government given in Article 3 of the Charter. Municipalities are responsible for a substantial share of public affairs which are managed under the direct responsibility of councils freely elected by secret ballot on the basis of equal, universal suffrage. The Local Government Act of 25 September 1992 envisages two systems for governing municipalities (and indeed counties). Under the "parliamentary" system of local government which may be adopted if the majority of municipal council members so decide, the executive board ("cabinet") is the highest organ of local government. Members of the executive board report to the council and can be forced to resign if the council passes a resolution to that effect.

74. Norway also offers a wide range of opportunities for participatory democracy. The Local Government Act allows municipal councils (and county councils) to hold local (or regional) consultative

referendums. Since 1970, there have been 721 local referendums in Norway. There is also an arrangement known as a “citizen’s initiative” whereby petitions can be submitted to the municipal council if they have been signed by at least 2% of the local population. All municipalities, furthermore, are required to set up councils for the elderly and councils or similar arrangements for the disabled. The councils have a consultative role in all matters relating to this share of the population. In addition, specific consultation and participation procedures have been introduced in a number of municipalities.

75. In the rapporteurs’ view, Norway is in compliance with this provision of the Charter.

4.2. Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.

2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.

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

4 Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.

5 Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

6 Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

76. Norwegian local authorities have extensive basic powers but they are not prescribed by the Constitution or any general statute. Instead, the extent of the powers enjoyed by local authorities in a given subject area is determined by specific laws. The division of powers and responsibilities between central government and local authorities may vary, according to the level of social development and what is required for the proper functioning of the welfare state.

77. There is no general competence clause in Norwegian legislation. Unless the responsibility is explicitly by law designated to others, local authorities can go beyond the powers expressly assigned to them by law if local interests warrant it (economic development, culture, tourism, industrial activities, etc.). A number of municipalities even own power stations.

78. Norwegian legislation contains no specific reference to the principle of subsidiarity but in practice, local councils have authority in matters which concern citizens directly (health, primary and lower secondary education, waste removal, etc.). Parliament allocates competences and responsibilities between the various tiers of government, while endeavouring to take account of the size and nature of the tasks and the need for efficiency and economy.

79. Although the government continuously reaffirmed the *de jure* autonomy of local and regional authorities the actual scope of local self-government seems however to be limited, insofar as central government guides the exercise of local powers and responsibilities. Central government departments can also object to decisions taken by municipal authorities, e.g. with regard to the content of urban plans. The county governor, who represents the central government in the counties, acts as supervisor and adviser to local authorities. Besides reviewing local authority decisions to ensure they comply with the law, he or she can also make judgments about the expediency of local policy (approval of major capital investments, etc. on certain conditions according to the Local Government Act). The number of laws, bylaws, guidelines and recommendations and as a result the influence of central government on local government has increased. It appears, however, that the new government, through the minister for local government and modernisation, has instructed governors to show more respect for local self-government. Furthermore the government emphasized, that any interventions from the part of the central government or county governors are strictly limited to the

competences referred to them by law.. Municipal decisions regarding the inhabitants' rights and duties can be appealed against, by the individual concerned to a central government institution. This institution may then, in addition to overruling the municipalities' interpretation of the law, also overrule the purely discretionary elements of the decisions.

80. Norwegian local authorities are regularly consulted by the government through their association (KS, the Norwegian Association of Local and Regional Authorities). An agreement was concluded in February 2000 between local authorities and central government on the meetings and regular consultations that must be held, whether plenary meetings or bilateral meetings between KS and the ministries. Such meetings provide an opportunity to discuss the general framework for the distribution of resources in connection with the tasks assigned to local government, the financial position of local authorities, the cost of reforms, etc. Of special interest is the agreement between KS and the government about calculation of costs related to new reforms. Accordingly, KS is also invited to take part in the preparations of new laws, to establish balance between local and national interests. The current reform of municipal structures and powers has accordingly given rise to numerous meetings between KS and the government.

81. With regard to paragraphs 1, 2 and 4, and in view of the above, the delegation considers that the situation is partly compliant with the Charter.

4.3. Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

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

82. Local communities are in fact consulted prior to any change in local authority boundaries. The territorial reform currently under way, and which is expected to produce mergers between municipalities, has given rise to extensive consultations with local authorities and their association (KS). According to the legislation, municipalities should consult their inhabitants about changes in the boundaries of local authorities. This can be done by a local referendum, opinion polls, questionnaires, meetings or by other means.

83. The rapporteurs accordingly conclude that Norway is in compliance with Article 5 of the Charter.

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

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

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

84. Norwegian local authorities have considerable freedom to determine their own internal administrative structures, in accordance with existing law, in particular the Local Government Act. When it comes to political structures, they can choose between the traditional system of government and the parliamentary system (see above). They can also set up specialised committees to deal with particular sectors and have a fair amount of leeway in organising local public services.

85. Local authorities are free to recruit their own staff. They are currently having some difficulties finding high-quality staff owing to the extent of the responsibilities which they are required to discharge.

86. The rapporteurs conclude that as regards the appropriateness of administrative structures and resources for the tasks of local authorities, Norway is in compliance with Article 6 of the Charter.

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

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

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

87. The conditions of office of local elected representatives are such as to enable them to exercise their functions freely and efficiently, with a satisfactory system of financial compensation. Within municipal councils, safeguards exist to protect the rights of the opposition (distribution of posts according to election results, right to ask written or oral questions, access to information, provision of documents, etc.). It is not customary for officials in Norway to hold more than one elective office at a time.

88. The situation is in conformity with Article 7 of the Charter.

4.6. **Article 8 – Administrative supervision of local authorities' activities**

Article 8 – Administrative supervision of local authorities' activities

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

89. Administrative supervision of local authorities' activities is exercised by the governor (*fylkesman*) who acts as the representative of central government in the counties. Under Section 59 of the Local Government Act, the governor exercises supervision to ensure that acts and decisions adopted by local authorities comply with the law. Section 59 of the Local Government Act limits the supervision applied to acts of local authorities to a simple verification of compliance with the law. This can concern the inherent lawfulness of the act (the act must be lawful in terms of content), the empowerment of the authority issuing the decision (made by a person or persons empowered to make such a decision) or the lawfulness of the procedure which resulted in the decision (came into being in a lawful manner). A decision deemed unlawful will be annulled.

90. There is no requirement to submit local authorities' acts and decisions to the governor, who exercises supervision by monitoring local authorities' decisions on-line. The governor may carry out reviews on his or her own initiative, or if asked to do so by at least three members of the municipal council. The governor has the authority to revise any acts or decisions which he or she considers unlawful. He or she may also issue directives to local authorities, drawing their attention to the need to comply with the law.

91. In this regard, the Ministry of Local Government and Modernisation clarified, that it is responsible for rules on the framework, procedures and instruments for government supervision of municipalities and county authorities in the Local Government Act Chapter 10 A. The Local Government Act stipulates amongst others that the audit should provide legality supervision, i.e. supervision of the municipality's compliance with the duties imposed on it by the ministry, which by law is given the authority to supervise. Which parts of the municipality's activities are to be supervised, has to be specified in each separate law. Ministries themselves are responsible for special statute authorizations for audits and that these are in accordance with the general supervision rules of the Local Government

Act. Through the allocation letter to the supervisory bodies each ministry sets financial limits for supervisory activities, provides possible guidelines for methodology, volume etc. The role of the governor and other supervising bodies is in actual fact much wider, as he or she likewise has the power to oversee the running of local public services. Consultations with the KS supported the delegation's observation that by overseeing the municipalities, the supervising bodies actually deviate to a substantial amount from existing legislation related to procedures, documentations while showing a lack of administrative routines. This appears to be the case at least from the perspective of governmental institutions and the way those bodies interpret the legal framework. The governor may also be asked to examine appeals from members of the public who consider that their individual rights in relation to health, social welfare, education or construction and planning have been infringed by local authority decisions. These decisions can thus be reversed in favour of the individuals concerned.

92. Besides supervising compliance with the law, it appears that governors can also exercise a form of supervision with regard to expediency and issue recommendations or even instructions to local authorities and raise objections, e.g. in matters relating to town planning. Some local elected representatives, notably those from the municipality of Bergen as well as the representatives of the local government association KS, expressed the wish that the supervision competences of governors should be strictly limited to legality control. KS has expressed its view that supervision should neither be based on an increasing number of guidelines nor recommendations by the central government, but solely on statutory law. The current Norwegian government seems willing to better regulate the powers of governors. The principle of subsidiarity, meanwhile, is not specifically mentioned in the texts relating to supervision and its application is not systematic in practice.

93. Norwegian legislation and particularly section 59 of the Local Government Act appears compliant with the requirements of the Charter in so far as it limits state supervision of the acts of local authorities to a simple verification of lawfulness. It nevertheless appears in practice that certain governors exercise supervision over local authorities exceeding simple verification of lawfulness and akin to a review of expediency (merit). The rapporteurs have reservations regarding a certain amount of administrative supervision carried out by governors on the own competences of local authorities. This practice remains variable, but the delegation wishes to draw the attention of Norwegian authorities to the issue.

4.7. Article 9 – Financial resources of local authorities

Article 9 – Financial resources of local authorities

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

94. Norwegian local authorities have their own resources thanks to local taxes, central government transfers and charges levied on users of public services (water supply, waste collection, child care, etc.). The central government transfers are made up partly of general grants (36% of total revenues) and partly of earmarked grants (5% of total revenue in 2014). Resources derived from taxation and general grants awarded by central government may be disposed of freely. Municipalities (and counties) may spend these funds as they see fit provided that they duly perform the tasks assigned to them by law. In total, it appears that some 75% of all local authority resources may be freely disposed of.

95. It appears from the information received from Norwegian local authorities that the resources available to them are generally sufficient to enable them to carry out their tasks. Central government transfers can be increased if municipalities have to meet particular needs. The four biggest municipalities (Oslo, Bergen, Trondheim and Stavanger) receive a special "urban grant" to offset the costs entailed in being an urban centre.

96. Local taxes and levies account for approximately 40% of local authorities' total resources. Fees and charges levied on users of public services make up roughly 15% of this amount. Local authorities are free to set the rate of local tax, within the limits of a statutory ceiling, but it seems that, because of financial needs, it has been nearly 35 years that any local authority has set the local tax rate lower than the highest level permitted by law. As a result, all municipalities apply the same level of taxation.

97. Local authorities' main source of tax revenue is income tax, of which they receive a share. The amount of income yielded by this source does in fact evolve, therefore, depending on economic growth. There is also a wealth tax which is levied at both municipal and central government level. Municipalities can also choose to levy a property tax under the Property Tax Act. Between 2005 and 2013, local authority revenues rose by 2.5% per year, 0.3% up on the previous 15 years, due to regulations of property tax creating a larger base for taxation.

98. One of the main aims of the system of funding local authorities is to equalise their resources so that they can offer the same standard of service anywhere in the country. There is therefore a significant degree of redistribution of resources by central government, based on several criteria. When distributing general grants, which are allocated in the first instance according to the number of inhabitants in the municipality (a *per capita* grant totalling NOK 218,00), central government takes account of both structural cost differences between municipalities (expenditure equalisation) and differences in tax revenues (income equalisation). The expenditure equalisation component is based on a set of objective criteria designed to equalise resources across the country. They include the age structure of the population, the number of married, single and divorced people, the number of jobless, the number of immigrants and the number of people with disabilities. The income equalisation component, on the other hand, is based on the income tax and wealth tax paid by individuals and the natural resources tax paid by companies operating in the energy sector. Local authority resources also include central government transfers to enable authorities to pursue regional policy goals (e.g.: Northern Norway and Namdalen grants, district grants to Southern Norway). A special grant is available, furthermore, for small municipalities (fewer than 3,200 inhabitants) whose tax revenues have been below 120% of the national average over the past three years. Municipalities which are experiencing unusually rapid population growth receive a special grant. In addition, "discretionary" grants can be awarded to local authorities to compensate for specific circumstances which are not compensated by the general grant scheme. All in all, it appears that the system of distributing resources between Norwegian local authorities fully satisfies the requirements of the Charter.

99. Norwegian local authorities represented by their association (KS) are regularly consulted by the Norwegian government about the distribution of resources between local authorities. In the course of these meetings, the cost of reforms and the compensation payable by central government to local authorities are also discussed, due to the general principle that new tasks for local government should be fully compensated by the central government – while full compensation may often be a matter of negotiation.

100. The share of earmarked grants in total central government transfers to local authorities is significantly smaller than that of general grants and has tended to diminish in recent decades. In 2014, (unconditional) general grants accounted for 36% of local governments' total resources, whereas (specialised) earmarked grants made up only 5%. In this context, KS remarked that there is continuous pressure from interest groups and their political spokesmen to introduce and increase earmarked grants.

101. Since 2001, Norwegian local authorities have been able to borrow without the prior approval of central government, but only for the purpose of financing capital investment. While there is no limit on the amount that may be borrowed, restrictions apply to municipalities whose budget is found, in the course of the governor's review of local government budgets, to be in deficit, and also to municipalities which have failed to eliminate their deficits within two years after the deficit has been presented. These municipalities are then entered in a register (the ROBEK, *Register for Governmental Approval of Financial Obligations*) and may borrow only with the prior approval of central government. As of 1st September 2014, 54 municipalities were listed in this register (roughly 12% of the total number). After rising sharply in 2005 (to approximately 120), the number of municipalities listed in the Register has levelled off since 2007.

102. In the light of the above, the rapporteurs conclude that Norway is in conformity with Article 9 of the Charter.

4.8. Article 10

Article 10 – Local authorities' right to associate

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

103. The right of local authorities to associate is guaranteed in Norway. There is a Norwegian association of local and regional authorities (KS), to which all municipalities and counties belong, and which is the government's preferred contact point in all matters concerning local and regional authorities. Local authorities can also set up co-operation structures to carry out tasks of common interest. These intermunicipal co-operation structures may take various legal forms: public bodies, bodies governed by private law or even municipal foundations. Most Norwegian municipalities are involved in a number of co-operation structures that can range from 8 to 15.

104. There are also associations which bring together counties and which are active on the international front. For instance, the Eastern Norway County Network association, which gathers eight counties, developed a "European Strategy" for the period 2013-2017, resulting in cross-border cooperation, in particular with regions from Nordic countries, the regions of the Baltic Sea and the North Sea. A cooperation agreement has also been signed with the German Land of Schleswig-Holstein.

105. The situation is in conformity with article 10 of the Charter.

4.9. Article 11

Article 11 – Legal protection of local self-government

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

106. In its Recommendation 203 (2006), the Congress of Local and Regional Authorities recommended that the Norwegian authorities bring their legislation and judicial practice into compliance with Article 11 of the European Charter of Local Self-Government by guaranteeing, in their domestic legal system, local authorities the right, and the full exercise of that right, to judicial remedies against decisions taken by the state administration. In a reasoned opinion, the Group of Independent Experts on the European Charter of Local Self-Government expressed regret that there was no independent judicial body for settling disputes between central government and local authorities or even between two local authorities. For the text of Article 11 implies that a local authority must have the right to a judicial remedy against any legal entity that violates its powers or autonomy, whether central government, another local authority, a regional authority or even a private individual. The right

to a judicial remedy further presupposes that the procedure is fair and offers guarantees such as adversarial proceedings, a public hearing, equality of arms, the rights of the defence and reasoned grounds given for the solution. In the Norwegian system, it appears that where a dispute arises between central government and local authorities, whether it concerns the interpretation of legislation, the division of powers or the apportionment of costs, central government is usually both judge and jury. Accordingly, any decisions by the governor which adversely affect local authorities may be challenged by lodging an administrative appeal with the relevant minister.

107. Although local authorities are fully fledged legal entities governed by public law, they have no legal right to a judicial remedy in disputes between central government and local authorities regarding their public authority and competences, and Norwegian courts have issued rulings refusing to grant such a remedy. The Appeals Selection Committee of Norway's Supreme Court accordingly found in Case No. 1993-445 that "the position of the local authority as a public authority under the Concession Act (Norway) cannot of itself provide grounds for a right of action for the local authority". Likewise, in the Kongsberg-Nes case of 2007 (No. 2007-234), the Supreme Court confirmed that decisions taken by the governor (fylkesmann) could not be challenged through the courts.

108. There have, however, been a number of positive changes as regards the settlement of disputes between central government and local authorities since Recommendation 203 (2006).

109. For example, under an agreement between the Ministry of Child Welfare and Equality and KS, an independent body to settle child welfare disputes was set up on 1 January 2010. The new body's remit is confined to resolving disputes over expenditure and the division of responsibility between central government and municipalities in matters relating to child welfare. It is chaired by a judge, assisted in each case by two members. These members are selected on a case-by-case basis from a list, drawn up in advance based on area of expertise, of six members, three of whom are freely chosen by central government and three on a recommendation from KS. The proceedings are mainly written but the parties may be called upon to appear where deemed appropriate. Although the decisions taken are purely in the nature of recommendations and are not binding on the parties, the latter are nevertheless expected to comply with them.

110. The ministry of health and KS also signed an agreement in February 2012 to set up another independent national advisory body to settle certain local disputes between central government and local authorities in the health sphere. The body in question consists of a chairperson, who must be a lawyer, and a vice-chair, also a lawyer.

111. In January 2011, KS suggested that the government set up independent semi-judicial bodies, or even an administrative court, where central government and local authorities would be represented but where decisions would be taken by the judge or a body with no connection to either party to the dispute. In the white paper dated 10 February 2012, the government refers to this proposal from KS, while emphasising that it would prefer to observe the operation of the existing bodies for a time, before considering extending this arrangement to other sectors.

112. The setting-up of independent bodies with the authority to resolve disputes between local government and local authorities in certain sectors does not seem to meet the requirements of Article 11 of the Charter as the bodies in question are of a non-judicial nature, and have a purely advisory role. This is nevertheless an improvement on the previous situation where local authorities were in a very weak position vis-à-vis central government in the event of a dispute.

113. Lastly, it is important to note that in January 2014, the government set up an inter-ministerial working party to consider and propose setting up a dispute resolution body that would have the authority to deal with disputes between central government and local authorities. This working party has also been asked to consider what restrictions might be placed on the power of central government to reverse decisions taken by municipalities. It is expected to produce a report recommending a number of legislative changes by the end of 2014. According to the Norwegian government, the setting-up of this independent dispute resolution body would enable Norway to meet the requirements of the European Charter of Local Self-Government.

114. The rapporteurs conclude that the situation is not in conformity in law with Article 11 of the Charter.

5. Regional self-government

5.1. Legal aspects

115. The principle of regional self-government is not specifically enshrined either in the Norwegian Constitution or in legislation. Counties are subject to the same legislation as municipalities. The Local Government Act of 25 September 1992 establishes the basic legal principles for local and regional government. It supersedes the 1954 Act relating to municipal and county authorities.

5.2. Political and economic aspects

116. Norway's political parties are divided over the place and role of the regional tier in the country's system of government. Some are in favour of expanding regional authorities and giving them greater powers or even creating large regions. Others take the view that the regional tier should be abolished, and the powers currently exercised by counties transferred to the municipalities, which should be merged (see below: Issues at stake).

117. It further appears that the role of the counties is not always sufficiently visible to members of the public who are sometimes confused as to which matters are the responsibility of the county and which the responsibility of the governor, as the state's representative in the county. People's sense of allegiance is expressed primarily in relation to their municipality, and to a much lesser degree to their county.

118. The role of the counties as a driving force in regional development was boosted by the 2010 reform and the counties now act as leaders and co-ordinators in regional partnerships which include municipalities, regional offices of national authorities, universities, private companies, etc.

119. Central government has a 51% stake and the counties a 49% stake in Norway's Innovation Fund. The counties can thus influence regional innovation policy and set goals and strategies in this area. Seven regional research foundations have also been set up in which counties play a prominent role. The counties are also involved in spatial planning.

6. Regional democracy: development of regionalisation in Norway and Reference Framework for Regional Democracy

6.1. Legal basis

120. In the absence of a specific constitutional basis, the framework for regional democracy is provided by the legislator (Local Government Act of 25 September 1992).

6.2. Regional structures and powers

121. Norway is divided into 428 municipalities (*kommuner*) and 19 counties (*fylker*). Depending on the county, the population varies enormously, from 75,207 inhabitants to 634,463 in the case of Oslo. The average population per county is approximately 239,000 people.

122. Like municipalities, counties can choose between a "traditional" system of local government and a parliamentary one (see above).

123. There is a network of county councils which is actually an amalgam of two different associations: the Eastern Norway County Network (ENCN) which covers eight counties and the Western Norway Alliance of Counties (WNAC) which covers four.

124. Under the 2010 reform, greater powers were given to regional government (in matters relating to roads and car ferries).

125. Counties' main responsibilities are currently as follows:

- upper secondary schools and adult education
- county roads, public transport, ferries

- regional planning
- regional development (co-ordination of regional partnerships, regional research foundations, etc.)
- culture (museums, libraries, cultural heritage, etc.)
- environmental issues (e.g. water management and implementation of the EU directive on water)
- dental care

126. It should be noted that intermunicipal matters are dealt with by intermunicipal co-operation bodies rather than at county level.

6.3. Financial resources

127. In common with municipalities, counties derive their income from local taxes (which make up roughly 40% of the total) and, in particular, income tax of which they receive a share and which is levied at 2.65%. Counties' main items of expenditure are secondary education (48%), roads and transport (30%) and dental care (5%). In 2014, the system whereby income tax revenues are allocated to counties underwent various changes in order to make it fairer and take greater account of actual expenditure. The government is planning to reform the current arrangements for municipalities.

6.4. Issues at stake

128. A discussion on the future of the counties is currently under way, as part of the planned territorial reform which primarily concerns the municipalities. Some parties are in favour of giving more powers to the regional level (Labour Party, Centre Party, Socialist Left Party, Liberal Party, Christian Democratic Party, while others (the ruling Conservative and Progress parties) want to do away with the regional level and give the municipalities wider powers and responsibilities. Under the compromise arrangement that has emerged, the regional level will be maintained and evaluated in parallel with the reform on local government.

Conclusions and further steps in the monitoring procedure

129. The level of local and regional democracy is clearly very high in Norway. Local and regional authorities (municipalities and counties) have extensive powers and financial resources such as to enable them to exercise these powers in a satisfactory manner. Emphasis should also be placed on the high level of consultation and co-operation between the state and local and regional authorities on all questions concerning them.

130. Despite a number of improvements, highlighted above, the situation in Norway with regard to the European Charter of Local Self-Government remains problematic, mainly on two counts:

- the fact that the principle of local self-government is not expressly recognised in the Constitution and legislation, in violation of Article 2 and Article 4, §§ 1, 2 and 4 of the Charter and
- the fact that local authorities have no judicial remedy against the decisions of central government, in violation of Article 11 of the Charter.

The situation is fluid, however, and it is possible that both constitutional and legislative changes will be introduced in the not too distant future.

131. The local and regional government reform currently under way in Norway should lead to a reduction in the number of local authorities, and increase their autonomy and powers. It is also possible that this reform will affect the regional level, although it is too early to say what arrangements might be adopted. The persisting debate on the scope of the reform was most recently reflected by the fact that the majority of the Parliament requested the government to equally include a consideration of the tasks belonging to the regional level in the territorial reform.

132. The reform is scheduled to proceed as followed:

- i. Regional processes 2014-2016
 - a. County authorities responsible for starting processes and cooperate with the Norwegian Association of Local and Regional Authorities (KS)
- ii. Proposition to the *Storting* spring 2015 on new tasks to larger municipalities
- iii. Municipalities who decide to amalgamate at the latest in autumn 2015: Royal decree

- iv. Proposition on new structure to the *Storting* spring 2017
- v. Amalgamations carry into effect at the latest from January 1st 2020

133. It is to be hoped, therefore, that the Monitoring Committee will have an opportunity to assess the scope of this reform, throughout the process, with an interim assessment at the end of 2016.

Appendix 1 – Human rights at local and regional level – Information received by the Delegation during the visit

This section will need to be revised in the light of Resolution 296 (2010) (revised).

- *Participation*: civic involvement in decision making and elections

The decision-making assemblies of municipalities and counties are elected by direct universal suffrage. There are also numerous mechanisms whereby citizens can become involved in local governance. Citizen participation can come about through the implementation of statutory mechanisms such as local consultative referendums (of which there have been 721 since 1970), or citizen's initiatives in the form of a petition that allows citizens to bring a specific issue before the municipal council (the petition must be signed by at least 2% of the population or 300 individuals in municipalities with more than 15 000 inhabitants). In addition, all municipalities are required to set up a senior citizens board to advise them in all matters concerning the older generation. They must also arrange for people with disabilities to be represented (most municipalities have set up a board specifically for this purpose).

The municipalities have also implemented a whole series of initiatives designed to involve the local population in matters which affect them: public meetings and hearings in connection with planning, satisfaction surveys for users of public services, meetings with citizens and groups prior to taking decisions, youth councils, business co-operation councils, procedures for involving citizens in the budgetary process, etc. Most municipalities (around 94%) use the internet to stay in touch with citizens, who are thus able to contact municipal authorities directly by email. A third of municipalities also allow citizens to communicate directly with municipal councillors (e-dialog).

- *Non-discrimination*:
 - equal opportunities policy (gender equality; disability, ageing)
 - action against racism, intolerance and violence against women and children
 - rights of ethnic minorities and enforcement of legal instruments concerning minorities (ethnicity, minority status, religion)
 - relevant case-law of the European Convention on Human Rights (political participation, access to justice, freedom of expression, freedom of assembly and association, etc.) and the revised European Social Charter (employment, housing, health, education, social welfare and public services, etc.).

In the exercise of their powers in the field of health and education, Norwegian local authorities have developed equal opportunities policies. Issues of specific relevance to people with disabilities and the elderly receive special attention in local policies.

Norwegian local authorities have an active policy of welcoming immigrants. The municipality of Nome, for example, which has a population of 6,700 people, has taken in some 200 refugees (from Chechnya, Pakistan and central and eastern European countries).

- *Accountability*: freedom of expression and freedom of assembly and association

Freedom of expression, assembly and association are fully guaranteed in Norway.

Role of the Norwegian Parliamentary Ombudsman

The competences of the Parliamentary Ombudsman, established in 1963, have been extended in 1968 to local and regional authorities. The access to the ombudsman is now open to natural and legal persons, after exhaustion of administrative remedies.

The Ombudsman receives complaints from citizens about the public administration. However, local and regional authorities cannot complain to the Ombudsman. Moreover, the Ombudsman has no power to alter decisions of municipal and county councils. In general, it emits only opinions which however have

a real impact and can generate administrative reforms. Its opinions which concern local authorities are generally followed.

The Norwegian association of local and regional authorities (KS) wish that local authorities could lodge a complaint to the ombudsman for the state decisions that affect them. But this reform hardly seems likely, given the position of the Ombudsman as he is a representative of the Parliament, independent of political parties. It is therefore not possible for him/her to be involved in the resolution of conflicts between state and local government, which often are political matters.

The ombudsman receives about 3.000 complaints per year. About half are declared inadmissible for formal reasons. According to the annual report of 2013, most of the complaints (75.5%) concerned the state administrative bodies. About a quarter of these complaints concerned county governors. Complaints against municipal bodies constituted 18.8% of the total while complaints against county administrative bodies accounted for only 1.4% of the total.

The Ombudsman applies the same procedures for handling complaints against local or regional authorities, as for other complaints. However, to secure the prudent and timely handling of the Ombudsman's correspondence with the municipalities, the letter is addressed to the head of the municipal administration (the "*Rådmann*").

In 2013, social welfare cases and planning and building cases dominated. Relatively high compliant numbers were also recorded in areas such as: appointments of civil servants, family matters, taxation and the justice sector (the criminal correctional services, immigration and the police).

Consultations of the Ombudsman revealed that the latter is constantly working to improve the knowledge on the municipal level of key terms and procedures in the Public Administration Act and the Local Government Act. The Ombudsman's experience indicates that challenges remain in the municipal sector with respect to breaches of key case-processing rules under administrative law. There is a general need for more legal expertise in a number of the municipalities in Norway, particularly in the smaller ones.

Appendix 2 – Programme for the visit by a Congress delegation to Norway

CONGRESS MONITORING VISIT TO NORWAY Oslo, Skien, Nome and Bergen (9 - 11 September 2014)

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Xavier CADORET
Rapporteur on local democracy
Chamber of Local Authorities, SOC⁶
Member of the Monitoring Committee of the Congress
Mayor of Saint Gerand le Puy (France)

Mr Guilherme PINTO
Rapporteur on regional democracy
Chamber of Regions, SOC
Member of the Monitoring Committee of the Congress
Member of the Metropolitan Area of Porto (Portugal)

Congress Secretariat:

Ms Sedef CANKOÇAK
Co-Secretary to the Monitoring Committee of the Congress

Consultant:

Professor André ROUX
Member of the Group of Independent Experts on the European Charter of Local Self-Government (France)

Interpreters:

Ms Bente RISMO

Ms Karin Eriksen ANDERSGAARD

The working languages, for which interpretation is provided during the visit, will be Norwegian and French.

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

**Tuesday, 9 September 2014
Oslo**

Meeting with the Norwegian National Delegation to the Congress

- **Ms Gunn Marit HELGESEN**, President
- **Ms Jenny FØLLING**, Vice-President
- **Mr Øystein HAUGEN**, Secretary of the delegation
- **Mr Knut HJORTH-JOHANSEN**, Secretary of the delegation
- **Ms Lise SPIKKELAND**, Advisor
- **Mr Kjell Torgeir SKJETNE**, Director
- **Mr Øyvind RENSLO**, Lawyer

Meeting with the Norwegian Association of Local and Regional Authorities (KS)

- **Ms Gunn Marit HELGESEN**, President
- **Mr Øystein HAUGEN**, KS Senior Adviser
- **Mr Knut HJORTH-JOHANSEN**, KS Co-ordinator for Europe

Meeting with the Municipality of Oslo

- **Mr Stian BERGER RØSLAND**, Governing Mayor of Oslo (executive branch)
- **Ms Helene SOLBAKKEN**, Special Adviser, Office of the Governing Mayor
- **Mr Bjarne HASLUND**, Chief Adviser, Office of the Governing Mayor
- **Mr Pål HERNÆS**, Chief Adviser, Department of Finance
- **Ms Siv SONGEDAL**, Special Adviser, City Council Administration

Meeting with the Ministry of Local Government and Modernisation

- **Mr Jan TORE SANNER**, Minister

Meeting with the Ministry of Finance

- **Ms Siv JENSEN**, Minister
- **Mr Per Mathis KONSGRUD**, Deputy Director, Head of Division for Public Finances
- **Ms Helga Birgitte AASDALEN**, Senior Advisor

**Wednesday, 10 September 2014
Oslo, Skien and Nome**

Joint meeting with the Parliamentary Standing Committees on Local Government and Public Administration and on Finance and Economic Affairs

- **Mr Helge-André NJÅSTAD**, Chair of the Committee on Local Government
- **Mr Hans Olav SYVERSEN**, Chair of the Committee on Finance

Meeting with the Parliamentary Ombudsman for Public Administration

- **Mr Aage Thor FALKANGER**, the Norwegian Parliamentary Ombudsman
- **Mr Bjørn DÆHLIN**, Head of Division at the Parliamentary Ombudsman for Public Administration
- **Ms Ingvild L. BARTELS**, Senior Adviser for Human Rights and International Relations

Meeting with the Follo District Auditing Office

- **Steinar NEBY**, Head of Office
- **Mr Bjørn Tore NEDREGÅRD**, Head of Performance Auditing Department

Meeting with the County Governor of Telemark

- **Ms Kari NORDHEIM-LARSEN**, Governor
- **Mr Steinar AASE**, Director of the department for health and social care
- **Mr Helge NYMOEN**, Director of department for agriculture and land planning
- **Mrs Kristin VINVAD**, Senior advisor

Meeting with the Municipality of Nome

- **Ms Bjorg LUNDEFARET**, Mayor of Nome
- **Mr Hans Gunnerud JØRGENSEN**, Vice-Mayor of Nome
- **Mr Bjørn G. ANDERSEN**, Chief Executive of the Municipality of Nome

**Thursday, 11 September 2014
Oslo and Bergen**

The County Council Networks**The Eastern Norway County Network (ENCN)**

(interregional cooperation between the counties of Akershus, Buskerud, Hedmark, Oppland, Oslo, Telemark, Vestfold and Östfold)

- **Ms Anette SOLLI**, Regional Cooperation Board
- **Mr Roger RYBERG**, Regional Cooperation Board
- **Mr Inge BRÖRS**, Head of Secretariat
- **Ms Ann Irene SÆTERNES**, Deputy Head of Secretariat

The Regional Council of Western Norway

(interregional cooperation between the counties of Møre og Romsdal, Sogn og Fjordane, Hordaland and Rogaland)

- **Mr Jon AASEN**, Chairman
- **Mr Odd Erik HANSGAARD**, Head of the Secretariat
- **Ms Birgit AARONAS**, International Coordinator in Møre and Romsdal County

Meeting with the Municipality of Bergen

- **Ms Trude H. DREVLAND**, Mayor
- **Councillors**

Meeting with the Council of the County of Hordaland

- **Ms Mona HAUGLAND**, Vice-Mayor of the County of Hordaland
- **Ms Beate LINDGÅRD**, Legal Advisor
- **Ms Rune HAUGSDAL**, Member of County Council