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Local and regional democracy in Poland

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

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Summary

This report follows the third monitoring visit carried out in Poland since this country ratified the European Charter of Local Self-Government in 1993.

Overall, the report underlines the relatively alarming trends in local and regional democracy in Poland. It notes that the principle of local self-government is recognised both by the Constitution and the domestic legislation. However, it highlights that this principle has been undermined since the last monitoring visit in 2014 and that the situation has changed in a worrying way in just a few years.

The report states that the recentralisation of certain competences has taken place in a context of conflict between the central power and local authorities, in particular those represented by political parties from the opposition. The rapporteurs also express their concerns about interferences by central authorities in local functions, shortcomings in the consultation process, deterioration of the status of elected representatives and loss of confidence of local authorities in the judiciary.

National authorities are called to return to the path of decentralisation and genuine local and regional democracy by ensuring that the subsidiarity principle is applied in practice and that the supervision over the activity of local authorities is proportional or by reinstating a fair consultation process with local authorities. They also invite the Polish authorities to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

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

RECOMMENDATION 431 (2019)²

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

a. Article 2, paragraph 1.b, of the Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3, of the Statutory Resolution CM/Res(2015)9 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. Chapter XVII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

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

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

f. the appended explanatory memorandum on local and regional democracy in Poland.

2. The Congress points out that:

a. Poland joined the Council of Europe on 26 November 1991, signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 19 February 1993 and ratified it in full on 22 November 1993. The Charter entered into force on 1 March 1994;

b. The Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local and regional democracy in Poland. It instructed Mr David BARO RIBA, Andorra (L, NI-NR) and Mr Pascal MANGIN, France (R, EPP/CCE), with the task of preparing and submitting to the Congress a report on local and regional democracy in Poland. The delegation was assisted by Prof. Tania GROPPi, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

c. The monitoring visit took place from 5 to 7 of June 2018. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to this document;

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

3. The Congress notes with satisfaction that in Poland:

a. the principle of local self-government is expressly recognised by the Constitution;

b. the Charter benefits from a quasi-constitutional status;

c. local authorities enjoy freedom of association to defend their interests;

d. the capital city has a special status.

² Debated and adopted by the Congress on 2 April 2019, 1st sitting (see Document CG36(2019)13, explanatory memorandum), corapporteurs: David BARO RIBA, Andorra (L, NR) and Pascal MANGIN, France (R, EPP/CCE).

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

- a. the level of autonomy of local authorities is being eroded by the re-centralisation of several competences previously transferred to them (Articles 3.1, 4.2-4.5);
- b. the numerous interferences by State authorities within the local independent functions undermine the assignment to local authorities of full and exclusive powers (Article 4.4);
- c. local authorities do not have discretion in the exercise of delegated functions, as a consequence of the detailed State regulation of delegated tasks (Article 4.5);
- d. although the Joint Committee represents an adequate legal framework for consultation, the recent tendency is to bypass this mechanism, making it ineffective (Article 4.6, 9.6);
- e. the supervision on local authorities, carried out by government representatives, is increasingly overused and cannot be considered proportional to the relevance of the interests that it is intended to protect (Article 8.3);
- f. in spite of remarkable economic growth, the financial resources that local authorities can freely dispose of are neither adequate nor commensurate with their responsibilities and the tendency towards transferring the responsibilities to local authorities without transferring adequate financial resources is increasing (Article 9.1,9.2);
- g. local authorities lack sufficient financial resources from local taxes and charges of which they have the possibility to determine the rate (Article 9.3, 9.4);
- h. lowering the scale of financial compensation to local elected representatives worsens the conditions under which responsibilities at local level are exercised;
- i. an increasing number of acts of the State imposes a rigid internal organisational structure on local authorities thus limiting their ability to take account of local circumstances and administrative efficiency in organising their own administrative services;
- j. local authorities' level of trust in courts for the legal protection of their autonomy is declining, thus restricting genuine enjoyment by local authorities of the right to recourse to a judicial remedy.

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

- a. get back on the path to decentralisation and reverse the trend towards the re-allocation to the State of local and regional competences which limits the local authority's scope of action and runs contrary to the Polish constitutional democratic tradition;
- b. ensure that the subsidiarity principle is applied in practice, by recognising to the local authorities full and exclusive powers and by reducing the level of interference by State authorities with municipal independent functions;
- c. avoid overregulation of delegated tasks and thus allow local authorities to have more discretion in adapting their exercise to local conditions;
- d. reinstate a fair consultation process with local authorities, especially by submitting all the draft bills and draft regulation to the Joint Committee and taking into consideration the remarks of the component representing local governments within the Joint Committee;
- e. make sure that the supervision over the acts of local authorities is proportional to the importance of the interests that it is intended to protect;
- f. allocate sufficient financial resources to local authorities, thereby respecting the principle that the resources should match the functions and ensure that the transfer of delegated competences to subnational level is accompanied by concomitant finances;

- g.* enable local authorities to establish local taxes and to determine their rate to increase fiscal capacity of local authorities;
- h.* ensure that the adoption of any measures impacting upon the conditions of office of local elected representatives, including their financial remuneration, does not negatively affect their ability to freely exercise their functions;
- i.* refrain from adopting numerous regulations at the central level that would unnecessarily rigidify local internal administrative structures and make them less adjustable to local conditions;
- j.* in order to guarantee to local authorities the right of recourse to an effective remedy and to restore their trust in the national judicial system, follow the recommendations of the Venice Commission, contained in its opinions on the judiciary in Poland;
- k.* consider signing and ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No 207).

EXPLANATORY MEMORANDUM

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

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2015) 9 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter referred to as “the Congress”) regularly prepares reports on the State of local and regional democracy in all Council of Europe member States.

2. Poland is one of the parties to the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”). Concretely, Poland joined the Council of Europe on 26 November 1991, signed the Charter on 19 February 1993 and ratified it on 22 November 1993. The Charter entered into force on 1 March 1994 with no reservations, which, according to Article 13 of the Charter, means that it applies to all levels of self-government in Poland, including regional authorities.³

3. In the domain of local and regional democracy, Poland has also signed and ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.106) on 19 March 1993, with entry into force on 20 June 1993.

4. However, Poland has not yet signed the following Council of Europe Conventions:

- The Convention on the Participation of Foreigners in Public Life at Local Level, of 5 February 1992 (ETS No. 144);
- The Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities, of 9 November 1995 (ETS No.159);
- Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation, of 5 May 1998 (ETS No. 169);
- The Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, of 16 November 2009 (ETS No. 207);
- Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs), of 16 November 2009 (ETS No. 206).

5. The Chair of the Monitoring Committee of the Congress appointed Mr David BARO RIBA, Andorra (L, NR) and Mr Pascal MANGIN, France (R, EPP/CCE), as rapporteurs, and instructed them to prepare and submit to the Congress such a report. An official monitoring visit in Poland was carried out by the aforementioned rapporteurs. The delegation was accompanied by a representative of the Congress secretariat and was assisted by Prof. Tania GROPPPI (expert). The rapporteurs wish to express their thanks to the expert for her assistance in the preparation of this report. This group of persons will be hereinafter referred to as “the delegation”.

6. The monitoring visit took place from 5 to 7 June 2018. During the visit, the Congress delegation met representatives of local and regional authorities, representatives of the government and other institutions. The rapporteurs regret that at the Constitutional Court they could meet neither the President nor a judge, but they only were received by members of the staff. The detailed program of the visit is appended to the present report.

7. The delegation would like to thank the Permanent Representation of Poland to the Council of Europe as well as all the interlocutors for the information they provided to the delegation during the visit.

³ See the Explanatory Report to the European Charter of Local Self-Government, on Article 13: “In principle, the requirements set forth in Part I of the Charter relate to all categories or levels of local authority in each member state. They potentially apply also to regional authorities where these exist. However, the special legal form or constitutional status of certain regions (in particular the member states of federations) may preclude their being made subject to the same requirements as local authorities. Furthermore, in one or two member states there exists a category of local authorities which, because of their small size, have only minor or consultative functions. To take account of such exceptional cases, Article 13 permits the Parties to exclude certain categories of authorities from the scope of the Charter”.

2. HISTORICAL AND POLITICAL BACKGROUND

8. Poland is a unitary republic, with three tiers of subnational self-government authorities: municipalities (*gmina*, pl. *gminy*), districts (*powiat*, pl. *powiaty*) and regions or voivodeships (*województwo*, pl. *województwa*).

9. The process of decentralisation is one of the most successful aspects of the successful history surrounding the Polish transition from the authoritarian communist regime to democracy.⁴ The principle of local self-government represented one of the pillars of the democratic transition and consolidation since the immediate aftermath of 1989, when the first law on the autonomy of municipalities was enacted (1990). The principle has been then expressly entrenched in the 1997 Constitution and implemented by subsequent legislative reforms in the late 1990s.

10. At the time of the previous monitoring visit, in 2014, Poland was ranked amongst the “top ten” countries within the EU Member States for its level of local autonomy, according to the multi-dimensional “local autonomy index” developed by the European Commission.⁵

11. According to a survey from March 2016, most Poles have a positive opinion of local government performance. Seventy-two percent of respondents assessed the work of local offices positively - the highest level of support for local governance in Poland since 1997.⁶

12. During the local elections held in Poland in November 2014 the *sejmiki* (regional councils), the *rady powiatow* (district councils), the *rady gmin* (municipal councils), as well as the mayors (*wojtowie*, named *burmistrzowie* or *prezydenci miast*, depending on the type of municipality, as we will see *infra*) were elected for four years. The elections were marred by the failure of the electronic tabulation system, which resulted in a considerable delay in the announcement of the final results.⁷

13. The party Civic Platform (Platforma Obywatelska, PO), at the time the ruling party at national level,⁸ resulted in the most successful party. It was the first party in 7 regions, obtaining 179 seats in regional councils. The party Law and Justice (Prawo i Sprawiedliwość, PiS) was the first party in 5 regions (171 seats), whereas the Polish People's Party (Polskie Stronnictwo Ludowe, PSL) was first in 4 regions (157 seats). As a result, PiS ruled only one region (Podkarpackie), whereas in the remaining 15 regions coalition governments led by PO were established.

14. At districts and municipalities level, local lists and independent candidates had the best scores,⁹ also facilitated by the electoral system, mostly based on single-member constituencies.¹⁰ No important cities were, when the 2018 monitoring visit took place, governed by PiS.¹¹

15. After the monitoring visit, the local elections took place in Poland on 21 October 2018 with municipal run-offs on 4 November 2018. The turnout in the first round was 54.9% and in the second - 48.8%.

4 See M. KULESZA, D. SZEŚCIŁO, *Local Government in Poland*, in A. MORENO MOLINA (ed.) *Local government in the Member States of the European Union: a comparative legal perspective*, Madrid, INAP, 2012, p. 485 ss.

5 A. LADNER, N. KEUFFER, H. BALDERSHEIM, (2015), *Local Autonomy Index for European countries (1990-2014)*, Release 1.0. Brussels: European Commission. http://ec.europa.eu/regional_policy/sources/docgener/studies/pdf/self_rule_index_en.pdf

6 Ponad połowa Polaków pozytywnie ocenia działania prezydenta Andrzeja Dudy” [More than half of Poles positively assess President Andrzej Duda], wGospodarce.pl, 18 March 2016, <http://wgospodarce.pl/informacje/23966-ponad-polowa-polakow-pozytywnie-ocenia-dzialania-prezydenta-andrzejadudy>, quoted by FREEDOM HOUSE, *Nations in Transit 2017*, <https://freedomhouse.org/report/nations-transit/2017/poland>

7 <https://www.osce.org/odihr/elections/poland/217961?download=true>

8 In the 2011 parliamentary elections, Civic Platform obtained 207 seats at the Sejm and 63 at the Senate, against the 157 and 31 of the PiS. Civic Platform incumbent coalition government with the smaller Polish People's Party was confirmed.

9 <http://samorząd2014.pkw.gov.pl/>

10 B. SŁOBODZIAN SLOVAK, *Polish electoral system to self-local government: changes and effects*, in *Journal of Political Sciences*, Volume 16, 2016, No. 3.

11 “PiS controls only 10 out of 107 local governments in large towns”: see “PO i PSL rozdają karty. Partie dogadały się w sprawie marszałków” [PO and PSL gain the upper hand. The parties have come to an understanding on marshals], TVN24.pl, 26 November 2016, <https://www.tvn24.pl/wiadomosci-z-kraju,3/gdzie-marszalek-z-po-gdzie-z-pis-po-i-pis-wybraly-wojewodztwa,492700.html>, quoted by FREEDOM HOUSE, *Nations in Transit 2018*, <https://freedomhouse.org/report/nations-transit/2018/poland>

16. The ruling Law and Justice party emerged as the winner in regional vote, gaining 254 mandates in regional assemblies nationwide. It was followed by the opposition coalition Civic Coalition, composed of the main opposition party Civic Platform and its partner Nowoczesna, with 194 mandates. The Polish People's Party came third with 70 mandates. In total, PiS won in nine regions and the opposition coalition in seven.

17. While the ruling party appears to have made some gains compared to the previous 2014 elections, its victory was overshadowed by the loss of mayoral elections in most of the largest cities, including Wrocław, Poznań, Łódź. In particular, PiS dealt with a blow in the capital city Warsaw, where the Civic Coalition candidate Rafał Trzaskowski won outright in the first round. When it comes to the 16 voivodeship cities (capital cities of each voivodeship), 11 mayors were elected already in the first round. In the municipal runoffs held in 649 cities and municipalities the ruling party lost the largest part of the mayoral races, including in all big cities (such as Kraków, Gdańsk, Szczecin and Kielce).

18. In the period following the 2014 monitoring visit, the economic situation remained relatively stable. As it is well known, in comparison with other EU countries, Poland was not particularly affected by the global economic and financial crisis after 2008. In the last few years, the country has actually experienced an important growth of the GDP (4.6% in 2017)¹² and an unemployment rate at a record low level (3.4% in August 2018).¹³

19. The presidential and parliamentary elections of 2015 were an important turning point in political life of the country.

20. Poland has a form of government that is considered by scholars as semi-presidential, because the government must have the confidence of the parliament (as in the parliamentary form of government) while the president is directly elected by the people to serve for five years (he can be re-elected only once). The president must be elected by an absolute majority of valid votes; if no candidate succeeds in passing this threshold, a second round of voting is held on the two candidates who received the highest and second highest number of votes, respectively. The president coexists with a prime minister, appointed by the president, which must receive the parliament's support through a confidence vote. The president, besides being the Head of State, participates in development of policy making activities, especially in foreign policy. The president has the right to veto legislation, although such veto may be overridden by the legislative assembly with a three-fifths majority vote. In fact, as in the parliamentary forms of government, Prime Minister is a much more powerful influential political figure.

21. In the May 2015 presidential elections, incumbent president Bronisław KOMOROWSKI, who ran as an independent with the endorsement of the Civic Platform (PO), was second (with 33.77%) in the first round of voting, while opposition Law and Justice (PiS) candidate Andrzej DUDA received the highest number of votes with a 34.76% share. In the second round, DUDA won with 51.5% of the votes, to Komorowski's 48.5%.

22. Later in October 2015, the parliamentary elections for the two Chambers of the Polish parliament were won by a coalition led by the PiS, which obtained 235 of 460 seats of the Sejm and 61 out of 100 seats in the Senate. It was the first time in Poland since democracy had been restored that a party won an absolute majority in the Sejm elections. Consequently, the PiS, Jarosław GOWIN's Poland Together (*Polska Razem*) and Zbigniew ZIOBRO's United Poland (*Solidarna Polska*) formed a coalition government, with PiS vice chairwoman Beata SZYDŁO as prime minister (she resigned in December 2017 and her deputy Mateusz MORAWIECKI was then designated as prime minister).

23. The delegation tends to share the opinion expressed by some non-governmental organisations that after the 2015 parliamentary elections and the appointment of the Szydło cabinet, Poland experienced a fast and intensive process of democratic backsliding, which is reflected by the deterioration of the indicators of the standards for rule of law and freedom protection.¹⁴ As it is well known, the main issues are related to the "systematic threat" posed to the rule of law by the judiciary reform undertaken by the Government¹⁵. Those events, highly criticized by constitutional law scholars worldwide, ultimately led to the launch of the Article 7 TUE procedure by the EU.¹⁶

12 <https://www.worldbank.org/en/country/poland/overview>

13 <http://ec.europa.eu/eurostat/web/lfs/visualisations>

14 FREEDOM HOUSE, *Nations in Transit 2018*, <https://freedomhouse.org/report/nations-transit/2018/poland>

15 See, among others, VENICE COMMISSION, CDL-AD(2016)001-eOpinion on amendments to the Act of 25 June 2015 on the Constitutional Tribunal of Poland, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016); Venice Commission, CDL-AD(2017)031-ePoland - Opinion on the Draft Act amending the

24. The 2015 political change led to a bitter confrontation between the central government and the majority of the local governments. It has been pointed out that since the PiS government has perceived local governments as a bastion of the opposition, it has tried to restrict their role.¹⁷

25. Law of 11 January 2018,¹⁸ which amended some parts of the electoral code and was enacted with the forthcoming local elections of 2018 in mind, and the reactions it generated, have to be seen against this background. The ruling party justified the new provisions as necessary to restore public confidence in the integrity of the electoral process, to introduce mechanisms to evaluate it and to enhance transparency of the elections, after the alleged electoral frauds occurred in the 2014 local elections. Critical voices pointed out that these provisions are but another step in the process of centralisation of power and subordination of independent public institutions to the executive and legislative branches.¹⁹

26. The most controversial issues are the changes to two institutions responsible for the control and oversight of the electoral process:²⁰ the National Election Commission (PKW), which is responsible for registering political parties and independent candidates, monitoring their finances, maintaining the electoral rolls, appointing and dissolving local and regional election commissions, supervising elections and announcing the final results, and responding to complaints about the conduct of elections; and the National Election Bureau (KBW), which provides administrative support to the PKW and election agents, coordinating the financial, technical and organizational aspects of elections and referendums.

27. The new amendments provide a mechanism for the establishment of political control of the PKW and KBW.²¹ The current head of the PKW indicated that he and his colleagues were considering collective resignation in protest at the changes.²² During the consultation procedure, the rapporteurs received a different assessment from some representatives of the Sejm, arguing that the amended method of establishing the PKW complies with the provisions of the Code of Good Practice in Election Matters.

28. Other relevant profiles included in the package of amendments also introduced changes suitable to affect the conduct and outcomes of elections. Although the reform bill was presented as increasing the transparency and oversight of the electoral process, many electoral experts have reacted with concern to the introduction of a new definition of a valid mark on the ballot: where previously this was "two lines which cross", it is now "at least two lines which cross". According to the PKW, this will enhance the possibility of manipulation through the addition of marks to the ballot paper that previously would have resulted in it being deemed invalid.

29. Some provisions of the Law are directly related to the 2018 local elections scheduled for 21 October 2018 with a run-off on 4 November 2018.

30. The mandate of the local and regional councils has been changed from four to five years. A two-term limit for mayors has been introduced, to be applied only to offices held from the 2018 elections onward. Initially, the introduction of a two-term limit for mayors was designed as having retroactive force. It was criticised as a measure that would have allowed the PiS to prevent several popular incumbents from opposition parties from standing again, thereby increasing the party's chances of securing the mayoralties of major cities in November's local elections.

Act on the National Council of the Judiciary; on the Draft Act amending the Act on the Supreme Court, proposed by the President of Poland, and on the Act on the Organisation of Ordinary Courts, adopted by the Commission at its 113th Plenary Session (Venice, 8-9 December 2017).

16 Reasoned Proposal in Accordance with Article 7(1) of the Treaty on European Union regarding the Rule of Law in Poland, 20 December 2017, COM(2017) 835 final https://ec.europa.eu/info/policies/justice-and-fundamental-rights/effective-justice/rule-law/rule-law-framework_en#latest

17 http://www.sgi-network.org/docs/2017/country/SGI2017_Poland.pdf

18 Ustawa z dnia 11 stycznia 2018 r. o zmianie niektórych ustaw w celu zwiększenia udziału obywateli w procesie wybierania, funkcjonowania i kontrolowania niektórych organów publicznych (Dziennik Ustaw 2018, poz.130)

[Law of 11 January 2018 on Amending Certain Acts In Order To Increase the Participation of Citizens In the Process of Selecting, Operating And Controlling Certain Public Bodies (Journal of Laws 2018, item 130)].

19 https://www.lemonde.fr/europe/article/2018/01/13/pologne-un-code-electoral-sur-mesure-pour-les-ultraconservateurs_5241240_3214.html

20 *Poland politics: President signs amendments to electoral law*, EIU ViewsWire; New York [New York] 26 Jan 2018.

21 A. Rakowska-Trela, *Next Stop on the Way to Constitutional Disarray in Poland: Electoral Law Reform*, *VerfBlog*, 2017/12/18, <https://verfassungsblog.de/next-stop-on-the-way-to-constitutional-disarray-in-poland-electoral-law-reform/>

22 <https://www.ft.com/content/f3e1a81a-e19c-11e7-8f9f-de1c2175f5ce>

31.The proportional electoral system, until now limited to the 66 *miasto na prawach powiatu* (lit. *city with powiat rights*), has been extended to all the municipalities with more than 20,000 inhabitants.

32.Other changes affected the organization of local elections, which has always been within the purview of local authorities. The responsibility in local electoral districts falls upon 100 “commissioners” who will be appointed by PKW, from amongst candidates proposed by the Minister of Interior (with the additional provision that if the PKW fails to appoint them within 100 days after the entry into force of the law, they will be appointed directly by the Minister, without consulting with the PKW).

33.An additional power conferred upon the public administration is the competence to redraw the boundaries of electoral districts. According to the new Law, within 60 days of its entry in force, the local self-governments (municipalities) are expected to redraw the boundaries. Failure to do so will result in such competence being assigned to the commissioners; conversely, should the municipalities proceed to do so, the head of the State administration at the level of “voivodeship” will in any case have the right to review and change these boundaries. Either way, the final decision about electoral boundaries will be taken by officials who are subordinated to the government – a circumstance that, of course, raises concerns of gerrymandering. Furthermore, after the next round of elections, the commissioners will maintain a right to change the boundaries.²³

34.During the monitoring visit, the delegation was told by elected representatives at local and regional level that they have felt under pressure since the change in national government. Beyond the recentralisation of competences or other specific legal changes, they feel that the actions of the supervisory authorities or the so-called “independent” authorities - which have fallen under the influence of the government and are no longer truly independent - have been characterised by an intimidating attitude. The use of (anti)corruption charges against local elected officials as a political tool to foster a negative image of the local authorities among the public opinion has been mentioned several times. In addition, local and regional elected representatives showed their distrust in judicial remedies against those acts or conducts of the government, as they no longer consider courts and the judiciary independent.

35.The rapporteurs found it extremely challenging to monitor compliance with the Charter, that is, with a treaty entrenching international standards on local self-government, due to a context that can be labelled as domestic democratic “retrogression”.²⁴ Scholars have pointed out that “retrogression” is the result of an incremental process of degradation of the structures and substance of democracy, through an accumulation of piecemeal changes, each one possibly harmless or even justified if considered in isolation.²⁵ Retrogression is more difficult to be detected than traditional authoritarian threats. It requires a systemic approach that combines several specific elements of weakness, in order to capture the aggregate and dynamic effects of seemingly harmless changes.²⁶

36.For this reason, although this report is focused on monitoring compliance with the Charter, the rapporteurs cannot avoid to draw attention on the impact that the democratic retrogression at national level is having on local and regional democracy.²⁷

23 W. Sadurski, *Who will Count the Votes in Poland?*, *VerfBlog*, 2018/2/26, <https://verfassungsblog.de/who-will-count-the-votes-in-poland/>

24 We use here the word “retrogression” as introduced by A.Huq and T. Ginsburg. Other scholars refer to “constitutional capture” [Müller], “democratic decay” [Daly], “democratic recession” [Diamond], “democratic regression” [Geiselberger], “constitutional rot” [Balkin], “democratic deconsolidation” and “democratic disconnect” [Foa and Mounk], “democratic backsliding” [Bermeo], “abusive constitutionalism” [Landau], “constitutional crisis” [von Bogdandy and Sonneved], “democratic crisis” [Kanterian], and “democracy in retreat” [Kurlantzick].

25 A. Huq, T. Ginsburg, *How to Lose a Constitutional Democracy*, 65 *UCLA Law Review* 78 (2018).

26 K. Lane Scheppelle, *The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work*, in *Governance: An International Journal of Policy, Administration, and Institutions*, Vol. 26, Nb 4, Oct 2013 (pp. 559-562).

27 A good example could be the provision of a judicial remedy according to Article 11 of the Charter: what if the courts are not independent and such a remedy is not effective? on the independence of Polish Courts see recently the decision of ECJ, C-216/18 PPU (Minister for Justice and Equality/LM) <http://curia.europa.eu/juris/document/document.jsf?text=&docid=204384&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=775657>

3. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

3.1 The Constitutional framework on local government system

37. The Constitution of Poland, adopted in 1997, entrenches the local self-government principle at constitutional level, beginning from the Preamble, which contains a reference to the subsidiarity principle.²⁸ The constitutional text, as well as the previous Law on Municipal Self-Government, was strongly influenced by the European Charter.²⁹

38. In Chapter I, on fundamental principles, Articles 15 and 16 refer to the decentralisation of power. According to Article 15, “1. The territorial system of the Republic of Poland shall ensure the decentralisation of public power. 2. The basic territorial division of the State shall be determined by statute, allowing for the social, economic and cultural ties which ensure to the territorial units the capacity to perform their public duties”.

39. Article 16 states: “1. The inhabitants of the units of basic territorial division shall form a self-governing community in accordance with law. 2. Local government shall participate in the exercise of public power. The substantial part of public duties which local government is empowered to discharge by statute shall be done in its own name and under its own responsibility”.

40. Chapter VII is devoted to local self-government. It contains a complete set of principles, beginning from Article 163: “Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities”.

41. A key provision is contained in Article 165, according to which “1. Units of local government shall possess legal personality. They shall have rights of ownership and other property rights. 2. The self-governing nature of units of local government shall be protected by the courts”.

42. Municipalities are the only local authorities directly mentioned by the Constitution. The other local authorities, districts and regions have only a legislative, not constitutional guarantee. According to Article 164, “1. The commune (*gmina*) shall be the basic unit of local government. 2. Other units of regional and/or local government shall be specified by statute. 3. The commune shall perform all tasks of local government not reserved to other units of local government”.

43. According to Article 166, “1. Public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local government as their direct responsibility. 2. If the fundamental needs of the State shall so require, a statute may instruct units of local government to perform other public duties. The mode of transfer and manner of performance of the duties so allocated shall be specified by statute. 3. The administrative courts shall settle jurisdictional disputes between units of local government and units of government administration”.

44. Articles 167 and 168 are dedicated to the financial resources of the local government. According to Article 167, « 1. Units of local government shall be assured public funds adequate for the performance of the duties assigned to them. 2. The revenues of units of local government shall consist of their own revenues as well as general subsidies and specific grants from the State Budget. 3. The sources of revenues for units of local government shall be specified by statute. 4 Alterations to the scope of duties and authorities of units of local government shall be made in conjunction with appropriate alterations to their share of public revenues». According to Article 168, “To the extent established by statute, units of local government shall have the right to set the level of local taxes and charges”.

45. The organisation and the system of government of the local authorities are defined in Article 169: “1. Units of local government shall perform their duties through constitutive and executive organs. 2. Elections to constitutive organs shall be universal, direct, equal and shall be conducted by secret ballot.

²⁸ According to the preamble, the Constitution shall be based on “on the principle of subsidiarity in the strengthening the powers of citizens and their communities”. We rely on the English translation published in the webpage of the Polish Parliament (<http://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm> lastly accessed on August 6t, 2018).

²⁹ B. SASSI, *The influence of international law on shaping local government law in Poland*, Mazowsze Studia Regionalne 2018, n. 24, pp. 107-114, available at [http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.mhp-be9e83c3-2ae6-45a3-b4f2-669fe4402b84?q=69e203a0-0607-4209-92c4-eea8df084406\\$1&qt=IN_PAGE](http://cejsh.icm.edu.pl/cejsh/element/bwmeta1.element.mhp-be9e83c3-2ae6-45a3-b4f2-669fe4402b84?q=69e203a0-0607-4209-92c4-eea8df084406$1&qt=IN_PAGE)

The principles and procedures for submitting candidates and for the conduct of elections, as well as the requirements for the validity of elections, shall be specified by statute. 3. The principles and procedures for the election and dismissal of executive organs of units of local government shall be specified by statute. 4. The internal organisational structure of units of local government shall be specified, within statutory limits, by their constitutive organs”.

46. Article 170 introduces the possibility of recall referendum: “Members of a self-governing community may decide, by means of a referendum, matters concerning their community, including the dismissal of an organ of local government established by direct election. The principles of and procedures for conducting a local referendum shall be specified by statute”.

47. Article 171 refers to supervision on local authorities: “1. The legality of actions by a local government shall be subject to review. 2. The organs exercising review over the activity of units of local government shall be: the Prime Minister and voivods and regarding financial matters - regional audit chambers. 3. On a motion of the Prime Minister, the Sejm may dissolve a constitutive organ of local government if it has flagrantly violated the Constitution or a statute”.

48. Article 172 provides for the right of local authorities to associate: “1. Units of local government shall have the right to associate. 2. A unit of local government shall have the right to join international associations of local and regional communities as well as cooperate with local and regional communities of other States. 3. The principles governing the exercise of the rights referred to in paras. 1 and 2 above by units of local government shall be specified by statute”.

49. Therefore, the local self-government is recognised by the Polish Constitution in a transparent and explicit way.

3.2. The local government system

a. *Municipalities and districts: an overview*

50. The sub-State levels of government in Poland are formed by the regions (voivodeships), the districts (*powiaty*) and the municipalities (*gminy*).³⁰ This three-tiered system of territorial organisation resulted from two major reforms, cornerstones of the political transformation of Poland after the dismantling of the communist regime (1989). In the first reform of March 1990, the current status of the municipalities was enshrined in the Law on Municipal Self-Government.³¹ In May 1990, the first fully democratic local elections took place.

51. In the second reform, a legislative package passed in 1998 and in force from 1 January 1999, re-established the districts (*powiaty*) dissolved in 1975 and created 16 regions (voivodeships) based upon pre-existing similar territorial demarcations.³² Each territorial sub-State authority is governed by distinct national legislation: the regional authorities (voivodeships) are regulated by the Law on Voivodeship Self-Government; the districts (*powiaty*), by the Law on *Powiat* Self-Government; and the municipalities, by the Law on Municipal Self-Government. Warsaw, the capital city is specifically regulated by another ad hoc statute: the Law on the System of the Capital City of Warsaw. Other legal rules regulate different aspects of local and regional democracy and they will be mentioned at different points of this report.³³

52. At the moment, there are in Poland 16 voivodeships,³⁴ 380 districts (*powiaty*) (including 66 cities with *powiat* status), and 2,478 *gminy*.³⁵

30 English translations of Polish documents sometimes use the word “commune”.

31 Ustawa z dnia 8 marca 1990 r. o samorządzie gminnym [Law of 8 March 1990 on Municipal Self-Government (Journal of Laws of 2017, item 1875 and 2232)].

32 Ustawa z dnia 5 czerwca 1998 r. o samorządzie powiatowym (Dz.U. z 2018 r. poz. 995+1000) [Law of 5 June 1998 on *Powiat* Self-Government (Journal of Laws of 2017, item 1868)] and Ustawa z dnia 5 czerwca 1998 r. o samorządzie województwa (Dz.U. z 2018 r. poz. 913 oraz 1000) [Law of 5 June 1998 on Voivodeship Self-Government (Journal of Laws of 2017, item 2096)].

33 See “Local and regional democracy in Poland” CG/2015(28)12FINAL, para. 21 ss.

34 The report will present the legal framework of Polish regions especially in Part 5, *infra*.

35

https://stat.gov.pl/download/gfx/portalinformacyjny/en/defaultaktualnosci/3286/3/23/1/population_size_and_structure_and_vital_statistics_in_poland_31-12-2017.pdf

53. Municipalities do not constitute a uniform category as they vary according to their size, population and pattern of spatial distribution of the human settlements in the municipal territory. This classification does not derive from the Constitution itself, but from ordinary legislation:

a. The municipality in the strict sense, also called “urban municipality” (*gmina miejska*). Their populations differ greatly - from 1,300 to more than 1.7 million (in the case of Warsaw). In 2017, there are 302 urban municipalities. Some of these municipalities (66) may also have the status or “rights” of a district (*powiat*) - for instance, the capital of each region.

b. The rural municipality (*gmina wiejska*), a type of municipality that includes only the non-urban areas. In 2017, there are 1,555 rural municipalities. Within this type of municipality, village (*sołectwo*) represent the basic form of settlement. Although there are over 40,000 villages, they are not considered to be units of local self-government, although their bodies exercise selected competencies both statutory and delegated by the *gmina* authorities.

c. The urban-rural municipalities (*gmina miejsko-wiejska*). This type of municipality includes towns or townships and the area of villages adjacent to them, which in the past were separate rural municipalities.³⁶ In 2017, there are 621 urban-rural municipalities.

54. As for the *powiat* level, at present there are 314 regular *powiaty*. An average district has about 85,000 inhabitants and includes the territory of several municipalities. In addition to those “genuine” *powiaty*, since 1999 the 66 largest cities (including the capital of the 16 voivodeships (*województwa*), enjoy and discharge simultaneously the status and role of a *powiat* (“cities with *powiaty* rights”). Therefore, the total number of districts (*powiaty*) is 380. The *powiat* is the second-tier form of local government unit in Poland, and therefore is called to discharge the services and duties falling beyond the scope of the *gminy*.

55. In the “cities with *powiat* rights” there is not a separate organisation for the *powiat*. The tasks, duties and competences of the *powiat* are discharged by the regular organs of the municipality having the status of a *powiat*: the council, the mayor and the administrative units. In simple words, one single organisation plays both roles, that of the municipality and that of the *powiat*.

56. In September 2015, a law on metropolitan districts (*związki metropolitalne*) was adopted.³⁷ The law was anticipated by local governments in the Silesian conurbation and the Tri-city metropolitan area in Pomerania and other areas. A metropolitan district can be established through a decree from the Council of Ministers in areas inhabited by at least a half a million people. Establishing a metropolitan district will require the consent of the councils of at least 50 percent of the municipalities and districts and 70 percent of the city districts that would enter it. The districts would be responsible for urban planning, public transport, and waste management, among other things, and would be financed through 9 percent of personal income tax paid by their inhabitants (split between the central budget and local municipalities). However, the law has been repealed on April 7, 2017, after being applied only to the Silesian conurbation.³⁸

b. The organisation of municipalities and districts

57. As regards the organisation of *gminy*, the legislation provides a legal framework, within which municipalities may decide to set up specific structures.

58. The representative governing body at municipal level is the municipal council (*rada miasta*), while the municipality’s executive organ is the mayor (*wójt, burmistrz*, or “*prezydent miasta*” in cities of more than 100,000 inhabitants).

59. Municipal councils are composed of members directly elected by the local residents. The duration of the municipal councils was four years (five from the 2018 elections). The number of municipal councillors depends on the city’s population. The electoral system differs according to the type of municipality. After

³⁶ See M. KULESZA, D. SZEŚCIŁO, *Local Government in Poland*, cit., p. 488.

³⁷ Ustawa z dnia 9 października 2015 r. o związkach metropolitalnych (Dz.U. z 2015 r. poz. 1890). See R. Pyka, *Le tournant métropolitain en Pologne*, in *MetroPolitiques.eu*, 16.02.2016.

³⁸ Ustawa z dnia 9 marca 2017 r. o związku metropolitalnym w województwie śląskim (Dz.U. z 2017 r. poz. 730); Rozporządzenia Rady Ministrów z dnia 26 czerwca 2017 r. w sprawie utworzenia w województwie śląskim związku metropolitalnego pod nazwą „Górnośląsko-Zagłębiowska Metropolia” (Dz.U. z 2017 r. poz. 1290)

the 2018 reform, the majority system has been limited to municipalities with less than 20,000 inhabitants.³⁹ The proportional system has been extended to all the municipalities with more than 20,000 inhabitants. In general, towns and cities with up to 20,000 inhabitants elect 15 councillors; up to 50,000 inhabitants, 21 councillors; up to 100,000 inhabitants, 23 councillors, twenty-five in *municipalities* up to 200,000 inhabitants and three for each further 100,000 inhabitants, no more than forty-five councillors.⁴⁰

60. According to Article 15 of the Law on Municipal Self-Government, “Municipal council is the controlling body in the municipalities”. The council is the body for political negotiation, planning and the adoption of the strategic decisions and guidelines (e.g. the budget or the local spatial plan). According to Article 18.1, presumption of competence for municipal council applies. The key responsibilities of the council include adoption of the municipal statute and other resolutions, including the municipal budget. The body also appoints and dismisses the municipal treasurer, determines the scope of responsibilities and funds of the auxiliary units, as well as decides about the level of municipal taxes and levies. Moreover, the council appoints municipal committees, among which the audit committee enjoys the highest importance. The body also scrutinises financial policy conducted by mayor, including performance of the budget.⁴¹

61. At municipal level, the foremost executive organ is the mayor. In Poland, mayors have been elected directly by the citizens since 2002. Compared to the previous system, the “new” one has resulted in a reinforcement of the mayor’s position and in strengthening their leadership (the “strong mayors” model), but at the same time it has reduced significantly the council’s influence on the executive. Nevertheless, the council sets goals and priorities for the mayor, and can block some of the mayor’s actions, for example by refusing to approve the draft budget proposed by the mayor.⁴² A special role is played by the revision commission (Art. 18a), which gives its opinion on the implementation of the *municipality’s* budget and submit a motion to the *municipal council* regarding the granting or not granting discharge to the mayor. The motion regarding the discharge is subject to the opinion of the regional audit chamber. New tools to enhance the control powers of the council have been introduced in 2018 (they will be examined *infra*). However, the council cannot remove the mayor, since a municipal referendum is necessary to dismiss the mayor before the end of his/her term.

62. The mayor is vested with a large number of executive competences: (s)he has the duty to implement the policies, plans and guidelines approved by the council; (s)he adopts the individual decisions and adjudications on the different sectors of municipal activity, etc. (S)he also manages the different municipal administration offices or units (*urząd miasta*).

63. In the case of districts (*powiaty*), the basic institutional organisation includes the council (*rada powiatu*) and the executive board, whose president is called *starosta*. The council is also elected every five years (as from 2018) in direct and universal elections by the citizens of the municipalities included in the *powiat’s* territory. The electoral system is proportional. More than in the case of *gminy*, the council is the main policy-making body. Contrary to the municipal level, the executive board is not elected by the citizens, but chosen or appointed by the council, and the council has the power to dismiss the district board. The executive board of the *powiat* enjoys powers and responsibilities similar to that of the mayor in the *gminy*: implementation and execution of the council policies, rules, strategies and plans; running the day-to-day activities of the *powiat* administrative units, etc.

39 The majority (single-member constituency) system was introduced by the Electoral Code of 2011 for all the municipalities without the status of *powiat*. Before, all the local councils were elected according to a proportional system (multiple-members constituency).

40 Article 17 of the Law on Municipal Self-Government. In the case of Warsaw, the most populated city, there is a statutory limitation of 60 seats in the municipal council.

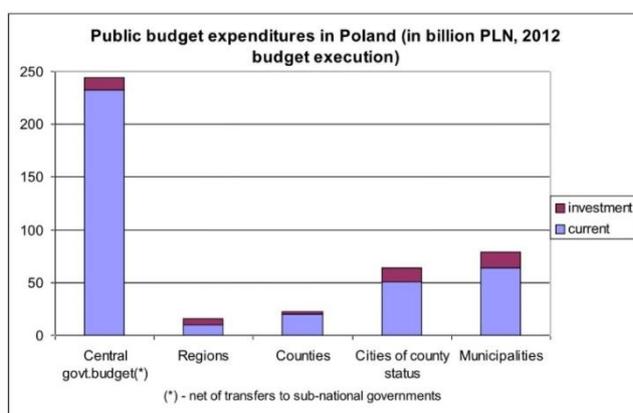
41 K. RADZIK-MARUSZAK, *Roles of Municipal Councils in Poland and in the Czech Republic: Factors Shaping the Roles and the Dynamic of Change*, in *Journal of Universal Excellence*, March 2016, year 5, number 1, pp. 47–64.

42 See M. KULESZA, D. SZĘCŁO, *Local Government in Poland*, *cit*, p. 496.

c. Competences of municipalities and districts (powiaty)

64. In comparative perspective, Poland is a rather decentralised State. In 2016 the self-government authorities managed 31,3% of the total public expenditures.⁴³

Table 1: Public budget expenditures in Poland



Source: European Commission⁴⁴

65. The powers and competences of municipalities and districts are based on the principle of uniformity; according to which each local authority enjoys the same level of competence, independently from its size.

66. As for *gminy*, the Constitution establishes the principle of subsidiary and it recognizes the inherent or residual powers in favour of *gminy*, thus they are responsible for all public matters of local importance which are not assigned to other levels of government.

67. According to the Law on Municipal Self-Government, Article 6, “1. The scope of the *municipality's* operation includes all public matters of local significance, not reserved by laws for other entities. 2. If the law does not provide otherwise, the settlement in matters referred to in paragraph 1, belongs to the municipality”.

68. Own tasks include in particular the following matters (Article 7):

- 1) spatial management, property management, environmental protection and nature conservation and water management;
- 2) municipal roads, streets, bridges, squares and traffic organizations;
- 3) water supply and water supply, sewage system, municipal sewage disposal and treatment, cleanliness and order as well as sanitary facilities, landfills and disposal of municipal waste, electricity and heat supply as well as gas;
- 3a) telecommunications activities;
- 4) local public transport;
- 5) health protection;
- 6) social welfare, including centers and care facilities;
- 6a) supporting the family and foster care system;
- 7) municipal housing construction;
- 8) public education;
- 9) culture, including municipal libraries and other cultural institutions, and protection of monuments and care of monuments;
- 10) physical culture and tourism, including recreational areas and sports equipment;
- 11) marketplaces and market halls;
- 12) municipal greenery and tree stands;
- 13) municipal cemeteries;

43 OECD *Subnational Governments in OECD Countries Key Data 2018*, <https://www.oecd.org/regional/regional-policy/Subnational-governments-in-OECD-Countries-Key-Data-2018.pdf>

44 http://ec.europa.eu/regional_policy/en/information/publications/studies/2015/self-rule-index-for-local-authorities-release-1-0

- 14) public order and security of citizens as well as fire and flood protection, including equipment and maintenance of the municipal flood protection warehouse;
- 15) maintenance of municipal facilities and public facilities as well as administrative facilities;
- 16) pro-family policy, including providing social, medical and legal care for pregnant women;
- 17) support and dissemination of the local self-government idea, including creation of conditions for the operation and development of auxiliary units and implementation of programs to stimulate civic activity;
- 18) promotion of the *municipality*;
- 19) cooperation and activities for non-governmental organisations;
- 20) cooperation with local and regional communities of other countries.

69. Apart from their “own” or autonomous competences, municipalities also discharge delegated tasks. According to Article 8, «The Law may impose on the municipality the obligation to perform tasks delegated in the field of national government administration, as well as in the organization of preparations and holding of general elections and referendums. 2. The municipality may perform tasks in the field of national government administration also on the basis of an agreement with the authorities of this administration. 2a. The municipality can perform tasks in the area of district properties and tasks in the field of region’s jurisdiction based on agreements with these territorial self-government units».

70. Tasks delegated to the municipalities by law include, for example.⁴⁵

- tasks related to civil status (such as civil registration status, issuing a decision on the first and last names);
- tasks in the field of civil registration (including registration events);
- tasks of national defense (including keeping a register of pre-recruits, conduct defense exercises and trainings, planning and preparation of medical cover for defense needs, keeping control of subordinate units in this area, etc.);
- tasks of the civil defense (including the preparation and updating of civil defense plans, the plan for protection of monuments, evacuation plans, the creation of civil defense formations and supply them with equipment, technical means, uniforms, conducting exercises, training of civil defense formations and population of common self-defense, etc.);
- receiving applications and distribution of identity cards;
- assistance for veterans and other entitled persons who are in the difficult material conditions;
- selection of lay judges for district courts;
- keeping records of economic activities;
- to authorize the sale of alcoholic beverages;
- to provide services for people with mental disorders;
- to conduct proceedings in matters of public assemblies;
- the tasks assigned to the municipality for the organization and conduct of agricultural censuses;
- the licensing of road transport by taxi, the issuance of permits to transport people (collectively) within the municipality;
- to prepare and update the voter registers, administration and execution of tasks related to the organisation and conduct of elections or referendums.

71. As for *powiaty*, compared to the *gmina* the *powiat* has a much smaller scope of competences, and its institutional relevance and political visibility in the Polish landscape is less important than either the *gmina* or the voivodeship. Furthermore, *powiaty* can only act in those areas and may discharge only those competences that are expressly attributed to them by law, as they do not benefit from inclusion in the Constitution.

72. Therefore, the main legal source of competences is the Law on *Powiat Self-Government*, which provides a comprehensive list of responsibilities and competences (Article 4). Own tasks of districts include in particular the following matters:

- 1) public education (secondary education i.e. post-elementary schools, vocational and special schools),
- 2) the promotion and protection of health (incl. management of district hospitals, supervision and organization of sanitary services etc.),
- 3) social assistance (incl. e.g. care for homeless people, running orphanages etc.),
- 4) pro-family policy,

45 See A. SAUER, *The System of the Local Self-Governments in Poland*, December 2013, in <https://www.amo.cz/wp-content/uploads/2015/11/amocz-RP-2013-6.pdf>

- 5) support for people with disabilities,
- 6) public transport and public roads (on district importance),
- 7) culture and cultural heritage protection,
- 8) physical culture and tourism,
- 9) geodesy, cartography and cadastre,
- 10) real estate management,
- 11) architectural and building administration,
- 12) water management,
- 13) environmental protection and nature conservation,
- 14) agriculture, forestry and inland fisheries,
- 15) public order and security of citizens,
- 16) flood protection, fire prevention and other extraordinary threats to life and human health and the environment,
- 17) counteracting unemployment and activation of local labour market,
- 18) consumer protection,
- 19) to maintain district administrative and public utility buildings,
- 20) defense (civil defense),
- 21) promotion of the district,
- 22) cooperation with NGOs,
- 23) perform the tasks of district services, inspections and guards.

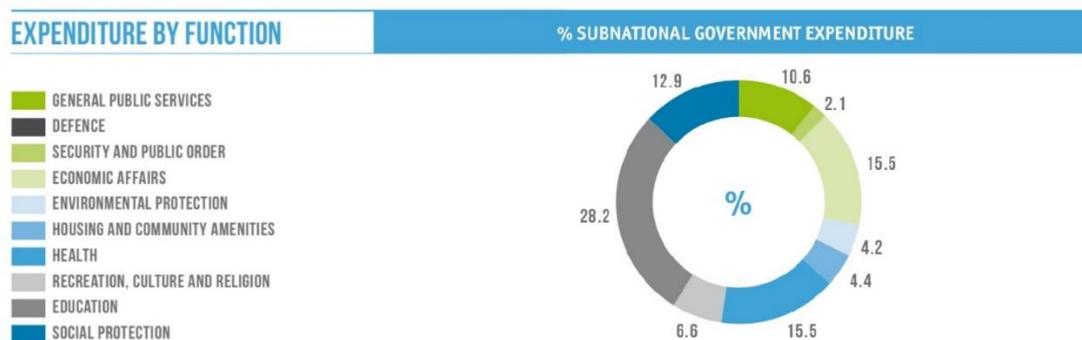
73. Some of these tasks coincide with those of the municipalities, but this does not mean the lack of a separation between the areas of responsibility assigned to municipalities and those assigned to the districts. The *powiat* performs only those tasks that have a supra-municipal significance and that would be impossible or ineffective to fulfil by other means.⁴⁶

74. Also *powiaty* may have delegated tasks. Tasks delegated to the district by law include, for example:⁴⁷

- the State Treasury property management, compensation for property taken for public roads and railways;
- regulation of the legal status of real estates;
- the collection, handling, updating and sharing of district and district's geodetic and cartographic repertories;
- tasks of environmental protection and agriculture (including the conduct of the land merging procedures and land exchange, reclamation and protection of agricultural land, issuing a decision declaring the forest to be protective or depriving it of this character, issuing a decision on conversion of forest to agricultural land, approval of projects of geological operation, decisions within water law);
- tasks of national defense;
- tasks of civil defense;
- tasks assigned to the field of economy and transport (including keeping a register of enterprises conducting drivers training centres, keeping a register of entrepreneurs engaged in vehicle inspection station and the implementation of supervision of vehicle inspection stations, issuing licenses for road transport operations, etc.).

46 M. KULESZA, D. SZEŚCІŁO, *Local Government in Poland*, cit., p. 494.

47 See A. SAUER, *The System of the Local Self-Governments in Poland*, cit.

Table 2: Expenditures of subnational governments by function

Source: OECD,⁴⁸ 2016

d. Financial resources

75. The Polish Constitution establishes a rather favourable framework for local finances, in Articles 167 and 168. In addition, two key pieces of legislation address this issue: the Law on Local Government Revenues of 13 November 2003⁴⁹ and the Law on Public Finance of 27 August 2009⁵⁰ (both of them amended several times).

Table 3: Revenue of local government sector, by type

REVENUE BY TYPE	% GDP	% GENERAL GOVERNMENT (same revenue category)	% SUBNATIONAL GOVERNMENT
TOTAL REVENUE (2013)	13.0%	34.0%	100%
TAX REVENUE	4.1%	21.1%	31.8%
GRANTS AND SUBSIDIES	7.5%	-	57.9%
OTHER REVENUES	1.3%	-	10.3%

Source: OECD,⁵¹ 2016

76. As a result, the present situation of local finances (for both municipalities and *powiaty*) in Poland may be summarised as follows:

Gminy

77. *Gminy* are the only level of sub-national government with powers to impose taxes and these are framed by the Constitution. Their revenues are composed of:

1) Municipal own income (*dochody własne*)

This includes several sources, such as property tax,⁵² Agricultural tax, Forest tax, Tax on transports, inheritance and donation tax, tax on civil law transactions and administrative fees and charges; benefits from municipal assets (sale or rent of municipal real estate), income from municipal companies and public

48 <http://www.oecd.org/cfe/regional-policy/sngs-around-the-world.htm>

49 Ustawa z dnia 13 listopada 2003 r. o dochodach jednostek samorządu terytorialnego.

50 Ustawa z dnia 27 sierpnia 2009 r. o finansach publicznych.

51 <http://www.oecd.org/cfe/regional-policy/sngs-around-the-world.htm>

52 Property tax is the most important "own revenue" for municipalities. Local councils may determine the tax rate, within the limits of the national legislation. This power is protected by the Constitution, which provides that "to the extent established by statute, units of local government shall have the right to set the level of local taxes and charges" (Article 168). Municipalities may also introduce exemptions and tax reliefs, in order to attract investment. A local community can also introduce other taxes by means of a referendum, but as yet this has never happened.

utilities; loans, etc. Apart from these sources, municipalities have a share in certain State taxes: the Corporate Income Tax (CIT) and Personal Income Tax (PIT). According to the 2017 data of the Ministry of Finance, the share in CIT is 6.71%, whereas the share in PIT is 37.89%⁵³.

2) General subsidy (*subwencja ogólna*), consisting of three parts:

- a. an “educational” part calculated on the basis of the number of students in schools and educational institutions under the competence of the *gminy*;
- b. a “compensation” or equalising part (vertical equalisation), in which grant flows from central to municipal budgets, which is assigned to *gminy* with per capita own and shared revenues below (92% of national average);
- c. a “balancing” part, coming from a horizontal equalisation mechanism: *gminy* obtaining the highest tax income per inhabitant make contributions to the mechanism, and the funds are re-distributed on the basis of an algorithm including different criteria.

3) Special grants (*dotacje celowe*):

These are a more flexible form of support for specific tasks performed by *gminy* such as those assigned to them by national legislation.

78. Apart from these “typical” sources of funding, municipalities may earn additional funding for individual investment projects and infrastructures if they are eligible and successful in applying for EU funds, which are managed by the voivodeships and by national agencies.

79. In the field of budgeting, municipalities enjoy much autonomy and discretion in setting their spending priorities. Each municipality approves its own budget, without the need to obtain the approval of the “voivode” (governor or *wojewoda*) or of the Regional Audit Chamber. Municipalities (and *powiaty*) are also responsible for setting up the appropriate organisation and mechanisms to discharge the “*ex ante*” control of expenditures (internal auditors, local treasury officers, etc.).

Districts (powiaty)

80. The structure of the districts’ sources of income is defined by the Law on Local Government Revenues. According to that Law, district incomes are as follows:

1) Own income, including:

- a. a share of the Personal Income Tax from private persons residing within the territory of the district (10.25%);
- b. a share of the Corporate Income Tax from legal entities with registered office within the territory of the district (1.40%);
- c. profits from real estate and property of the *powiat*;
- d. other incomes, for instance: fees, fines and penalties paid on the basis of administrative regulations; revenues obtained by autonomous district units, inheritances and donations received from residents.

2) A general subsidy, consisting of three parts:

- a. an “educational” part, calculated on the basis of the number of students in schools and educational institutions under the competence of the *powiat*;
- b. a “compensation” or equalizing part, which is assigned to *powiaty* having the lowest tax income index per inhabitant, and to those with the highest unemployment rate;
- c. a “balancing” part, coming from an equalisation mechanism: districts obtaining the highest tax income per inhabitant make contributions to the mechanism, and the funds are re-distributed on the basis of an algorithm including different criteria.

3) Special grants and subsidies, including European funds.

81. It must be pointed out that the function of equalising the revenues of local self-government units is performed by the general subsidy.⁵⁴ This equalising function of the general subsidy consists in

⁵³ According to the data provided by the Ministry of Finance after the visit.

complementing the own revenues of local self-government units with funds from the State budget (vertical equalisation) or from the budgets of other local self-government units (horizontal equalisation), in order to help all units accomplish their own tasks to a degree that meets at least the minimum standards in conditions of differing potential for self-government entities across the country to generate own revenue. Except of regional tier, the vertical equalisation is dominating.

82. According to the Law on Local Government Revenue, as amended after a judgment of the Constitutional Court in 2014, the decision on the distribution of the balancing component of the general subsidy depends primarily on selected expenditures and (less frequently) on selected revenues of those units.

83. In respect of municipalities, as much as 75% of the balancing component of the general subsidy is transferred on the basis of a selectively applied expenditures criterion, such as expenditures on housing subsidies. The remaining 25% is divided up according to a selectively applied revenue criterion, i.e. revenues from participation in receipts from personal income tax, agriculture tax and forest tax.

84. In the case of districts, disbursement of 76% of the balancing component in the general subsidy is determined by selected district expenditures, primarily (60%) expenses on road network maintenance, and 24% is transferred on the basis of the amount of revenues generated by a given district.

e. *The relationship between the State authorities and local self-government: the Joint Committee*

85. As for institutional dialogue between central and local authorities, the 2015 Report pointed out that Poland presents an interesting and positive situation, as there is a formal channel and organisational setting for discussion between the local/regional authorities and State authorities: the Joint Committee between central government and territorial governments.

86. The Joint Committee is a bilateral body, with equal representation of associations of the territorial self-government units and central government. It was established in 1993 by a decree of the Prime Minister, and in 2005 it was regulated by a specific statute (Law on the Joint Committee of Government and Local Self-Government and on the Representatives of Polish Republic in the Committee of Region of the European Union of 6 May 2005).⁵⁵

87. The government is represented by the Minister competent for public administration and 11 representatives appointed and dismissed by the Prime Minister at the request of the Minister competent for public administration. The local government side is represented by appointed representatives of national organisations of local government units, including 2 persons each representing: gminy with more than 300,000 inhabitants, municipalities with the status of a city and rural municipalities; 2 persons appointed by a national organization representing *powiaty*; 2 persons appointed by a national organization representing voivodeships (Article 5).

88. The work of the Joint Committee is directed by the co-chairmen: 1) minister competent for public administration as a representative of the central government; 2) a representative of the local government, elected by the members of the local government side from among them (Article 11).

89. The Joint Committee meets once a month and holds plenary sessions and working groups. According to Article 3 of the Law, the main tasks of the Joint Committee are:

1) developing a common position of the Government and local self-government on the establishment of economic and social priorities in matters concerning:

a) municipal economy and the functioning of the municipal and *powiat* self-government;

b) regional development and the functioning of the voivodship self-government;

54 See P. PEST, *The system for equalization of local self-government units' revenue in Poland*, in *Wroclaw Review of Law, Administration & Economics*, 2017, p. 97 ss. He quotes the *Justification to the government draft bill of Local Self-Government Revenue Act*, Sejm Print No 1732/IV term.

55 Ustawa z dnia 6 maja 2005 r. o Komisji Wspólnej Rządu i Samorządu Terytorialnego oraz o przedstawicielach Rzeczypospolitej Polskiej w Komitecie Regionów Unii Europejskiej.

2) reviewing and assessing legal and financial conditions of the functioning of local government, including *powiat* services, inspections and guards as well as supervisory and control bodies over the local government;

3) assessment of the functioning of the territorial self-government in relation to the integration process within the European Union, including the use by local government units of financial resources;

4) analysing information on draft legal projects, government documents and programmes on the issue of territorial self-government, in particular on expected financial consequences;

5) expressing opinions on draft normative acts, programs and others government documents regarding the issues of local government, including those defining the relations between the local government and other public administration bodies.

90. The Committee expresses its opinion by agreement by both parties. The Committee's opinion may include separate opinions on specific issues. In case of absence of agreement, each party adopts its own opinion. Each of the Committee's party may take a stance on a matter concerning local self-government. In cases where separate provisions provide for the obligation to consult the Joint Committee or local government party opinion of the Committee on the draft normative act, or any other document, the term of expressing an opinion on the project is 30 days from the date of notification of the project. Failure to submit an opinion within the deadline means resignation from the right to express it (Article 7).

Supervision on local government

91. In Polish constitutional and political tradition, the supervision of municipal activities by State administration bodies is seen as an integral part of the system of self-government. This supervision is strictly regulated by the law, and can only be enforced under the law.

92. As stated *supra*, the Polish Constitution itself provides for such supervision at Article 171.1 "The legality of actions by a local government shall be subject to review". Article 171.2 lists the organs exercising review over the activity of units of local government. They "shall be: the Prime Minister and voivods (*sic*) and regarding financial matters - regional audit chambers". In extreme cases the Polish Constitution also foresees the possibility for the legislative branch to dissolve a local government unit: "On a motion of the Prime Minister, the *Sejm* may dissolve a constitutive organ of local government if it has flagrantly violated the Constitution or a statute" (Article 171.3).

93. Regular or day-to-day administrative supervision of *gminy* and *powiaty* is carried out mainly by three types of bodies: the *voivodes* (regional public officials/governors); the 16 Regional Audit Chambers (RIO) and the Supreme Audit Office (NIK); the self-government boards of appeal.

94. The "*voivode*" is a public official established at regional level (one per voivodeship), assisted by their own offices and civil servants. These bodies have nothing to do with the regional bureaucracy, despite their similar name. Instead, "*voivodes*" are representatives of the central government in the voivodeship, appointed by the Prime minister. The *voivode*'s office is a territorially de-concentrated organ of the national administration. The main task is to control the legality of the decisions of the three levels of sub-State government present within each voivodeship's territory (the various *gminy* and *powiaty* and the voivodeship itself).

95. Municipalities and districts (as well as voivodeships) have the duty to refer all resolutions of their councils to the *voivode*, within 7 days from the date of their adoption. In the meantime, the *voivode* may suspend the execution. If the *voivode* finds that a resolution goes against the law, s/he may declare it null and void, partially or in full within 30 days. It is important to underline that *voivodes* can do that on their own authority, without the need to ask the permission or approval of any law court (unlike the practice in other European countries). After the deadline of 30 days is expired, the *voivodes* may not annul the local resolution on their own, but may appeal against a resolution to administrative courts.

96. Local government units, to which a supervisory measure has been applied, may lodge a complaint with the administrative court, who shall appoint a hearing no later than within 30 days. Supervisory decisions become final when the time limit for lodging a complaint expires or the date of dismissal or rejection of a complaint by a court.

97. The Regional Audit Chambers are specialised State bodies, performing control and supervisory functions of the financial management of local government units and other entities associated with local self-government, as well as conducting consultative, information, instructional and training activities.

98. There are 16 regional chambers of audit, one in each voivodeship.

Their basic tasks are:

- supervision over the activities of local government units and self-government associations in the scope of: procedures for adopting the budget and its changes, budget, incurring liabilities affecting the public debt of local government units and granting loans, principles and scope of granting subsidies from local government units budgets, taxes and fees, discharge;
- conducting control (comprehensive, problematic, ad hoc and verifying financial management and public procurement of entities in the public finance sector);
- issuing opinions (including: on the possibility of repaying a loan, the possibility of financing a budget deficit, submitted budget projects and reports on the implementation of budgets, conclusions of audit committees of bodies responsible for the discharge, regarding a resolution of the board not granting discharge);
- conducting information and training activities (within the scope covered by supervision and control).

99. In 2017, the Ministry of Interior and Administration prepared a draft amendment to the Act on Regional Audit Chambers, aimed at strengthening the control and supporting function of regional accounting chambers vis-à-vis local self-government. Draft of the act (agreed with the self-government side of the Joint Committee) and adopted by the Council of Ministers was substantially amended in the Parliament. Among other issues, the change would have increased the powers of the prime minister and government in selecting the chambers' management and would have made it easier to dismiss local politicians under investigation.⁵⁶

100. The President of the Republic refused to sign the act and submitted it to the Sejm for reconsideration, indicating that significant changes introduced during parliamentary work resulted in going beyond the objective initially declared by the project, causing excessive interference in the activities of local government and undermining the essence of its independence.⁵⁷

101. The self-government boards of appeal (*Samorządowe Kolegia Odwoławcze*) are special administrative bodies, which act under the supervision of the Prime minister.⁵⁸ There are 49 of them at territorial level and there is a National Representation of Local Self-government Boards of Appeal, composed of the chairpersons of the Local Self-government Boards of Appeal meeting jointly. They decide in the second instance appeals on the basis of individual complaints, or complaints by the public prosecutor or the Ombudsman, against local and regional individual decisions, that have been examined in the first instance by a mayor of a municipality, or a *starosta* of a district, or a marshal or an executive board of the voivodeship. Control over their decisions is exercised by administrative courts.

3.2 Status of the capital city

102. According to Article 20 of the Constitution, "Warsaw shall be the capital of the Republic of Poland". With a population of 1,764,615,⁵⁹ it is also the biggest city in Poland. The city of Warsaw is the object of specific regulations embodied in the Law on the System of the Capital City of Warsaw of 15 March 2002.⁶⁰ Under this legal scheme, Warsaw is city with district rights. Currently, there are eighteen city-boroughs (*dzielnica*), the largest city-borough has a population of 220,000 (Mokotow), the smallest one has 20,000 inhabitants. Each city-boroughs has its own administrative organisation with councils – which are consultative bodies – elected by citizens directly. The council nominates the executive board. The Law

56 FREEDOM HOUSE, *Nations in Transit 2018*, <https://freedomhouse.org/report/nations-transit/2018/poland>

57 <https://www.ft.com/content/d6513ae6-6725-11e7-8526-7b38dcaef614>

58 Ustawa z dnia 12 października 1994 r. o samorządowych kolegiach odwoławczych (Dziennik Ustaw z 2018 r. poz. 570) [Law of October 12, 1994 on Local Self-Government Boards of Appeal (Journal of Laws of 2018, item 570)]. The rules of procedure are established by the Administrative Procedure Code and by the Law of 29 August 1997 - Tax Ordinance.

59 <http://warszawa.stat.gov.pl/en/>

60 Ustawa z dnia 15 marca 2002 r. o ustroju miasta stołecznego Warszawy [Law of 15 March 2002 on the System of the Capital City of Warsaw (Journal of Laws of 2015, item 1438)].

regulates the relations between the “central” City council and the various de-concentrated city-boroughs with their respective competences.

103. As a result of the 2002 Law, the City of Warsaw does enjoy a specific legal status as a capital city in matters of internal organisation, but not in other domains such as taxation, local finances, control and oversight from State administration.

104. During the monitoring visit, the delegation was informed that, also due to this legal situation, the City of Warsaw has to support, by its own resources, expenditures related to its status as capital, as for national celebrations.

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

105. In Poland, the Charter, as a ratified international treaty, ranks in importance somewhere between the Constitution and the statutory acts of Parliament (laws).⁶¹ This is the prevalent interpretation of Article 9⁶² and Article 91⁶³ of the Constitution.

106. Therefore, in accordance with constitutional principles, the Charter has precedence over statutory law, if the law cannot be reconciled with the Charter.

107. The primacy of the Charter over parliamentary statutes provides a basis for checking the conformity of Polish law with the provisions of the Charter, before the Constitutional Court. According to Article 188, the Constitutional Court “shall adjudicate regarding the following matters: 2. the conformity of a statute to ratified international agreements whose ratification required prior consent granted by statute; 3. the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes”.

108. Up until the 2015 Report, there were about twenty judgments in which the Constitutional Court cited the Charter.⁶⁴ On three occasions the Court declared the non-compliance of the provisions of Polish law in relation to the provisions of the Charter. In each case, the Charter was considered subsidiary as a basis for jurisdiction, and the provisions of the law were repealed primarily on the basis of the Polish Constitution.

109. After this date, the Charter has been invoked as a standard only in three cases, all of them dismissed by the Constitutional Court on inadmissibility grounds.⁶⁵

3.4 Previous Congress reports and recommendations

110. The Congress previously reported on Poland in 2000, in 2002 and in 2015. This resulted in Recommendation 83 (2000) on the situation of regionalisation in central Europe, especially in Poland. In 2002 a report on the situation of local and regional democracy in Poland was drawn up which resulted in Recommendation 120 (2002).

111. The 2015 report resulted in Recommendation 373 (2015). It positively evaluated local and regional reforms carried out in Poland since 1990 and the guiding role played by the Charter in this process. The good practice in consultation and dialogue, exemplified by the Joint Committee, was also pointed out.

112. At the same time, the Congress noted the progressive erosion of the autonomy enjoyed by local government, as a consequence of central government regulation; the increase of the delegated

61 M. KULESZA, D. SZEŚCIŁO, *Local Government in Poland*, p. 489. See also B. Banaszak, S. Jarosz Żukowska, Ł. Żukowski, *International and European Law in the Polish Legal Order*, in L. Mezzetti (ed) *International Constitutional Law*, Giappichelli, Torino, 2014, p. 229 ss.

62 Article 9: “The Republic of Poland shall respect international law binding upon it”.

63 Article 91: “ 1. After promulgation thereof in the Journal of Laws of the Republic of Poland (*Dziennik Ustaw*), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute. 2. An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes. 3. If an agreement, ratified by the Republic of Poland, establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws”.

64 “Local and regional democracy in Poland” CG/2015(28)12FINAL, para. 99.

65 K 24/14, 11 April 2017; K 33/14, 19 July 2016; K 54/12, 15 October 2015. These decisions are available only in Polish.

competences, without the transfer of adequate financial resources, for example in the field of education; the lack of clarity and co-ordination in the division of competences between local and regional authorities with regard to spatial planning; the problems raised by the equalisation system in time of economic stagnation, as contributions are calculated on revenues earned in an earlier growth period.

113. It was recommended that Polish authorities legislate to reinforce local authorities' autonomy through funding from own resources and thereby reduce the dependency of local and regional authorities on State transfers; fully implement Recommendation 120 (2002) so that the devolution of powers is accompanied by the transfer of adequate financial resources and find a new compromise for concomitant financing; adjust the equalisation system so as to be more reactive to changes in the economic climate, for example by reviewing the scale of donations; sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

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

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

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

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

114. As the 2015 Report pointed out, in Poland, the principle of local self-government is expressly recognised in the Constitution and in applicable domestic legislation.

115. Chapter VII of the Constitution is devoted to “*Samorząd terytorialny*” (Territorial self-government). The key provision is Article 165, according to which: “1. Units of local government shall possess legal personality. They shall have rights of ownership and other property rights. 2. The self-governing nature of units of local government shall be protected by the courts”.

116. The Polish Constitution expressly uses the word “self-government” (*samorząd*) or “self-governing nature” of the local government units. The same expression is used to translate in Polish the title of the Charter (*Europejska Karta Samorządu Terytorialnego*)⁶⁶.

117. Moreover, the word “self-governing” or “autonomous” is also used in the legislation as an adjective to refer to local “self-governing authorities” (*samorząd lokalny*, in the case of *gminy* and *powiaty*) and “self-governing region” (*samorząd regionalny* or *województwo*).

118. Local self-government is thus recognised at the domestic level, both in the Constitution and in legislation, in an “open” and “express” manner. Consequently, it is possible to initiate legal challenges against statutes or regulations approved by parliament or the national government, that could potentially infringe upon local autonomy (see *infra*, under Article 11).

119. Therefore, the rapporteurs consider that the requirements of Article 2 of the Charter are fully satisfied in Poland.

4.2 Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

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

66 Dz.U. 1994 Nr 124 poz. 607.

Article 3.1 Concept of local self-government

120. The main question that must be addressed under this heading is whether, in the present situation, Polish municipalities and districts regulate and manage a “substantial share of public affairs under their own responsibility and in the interests of the local population”. This provision requires an assessment which takes into account the rather “subjective” and relative nature of such concepts as “ability”, “a substantial share of public affairs”, “under their own responsibility” and “in the interests of the local population” since no official or universal method of measuring such substantial character has yet been developed. The question must be addressed considering the historical evolution, the culture and the constitutional traditions of the country under analysis. It is also closely linked to the assessment of the compliance with other parts of the Charter, such as Articles 4, 8 and 9.

121. In order to assess compliance with this provision, both legislative and factual aspects should be taken into consideration.

122. In Poland, Article 166.1 of the Constitution states that «Public duties aimed at satisfying the needs of a self-governing community shall be performed by units of local government as their direct responsibility». This principle is echoed by the Article 2 of the Law on Municipal Self-Government, according to which “1. The *municipality* performs public tasks on its own behalf and on its own responsibility”. And Article 2 of the Law on *Powiat* Self-Government: “The county performs public tasks specified by law on its own behalf and on its own responsibility”. The functions of the municipalities and *powiaty* are divided into own (autonomous) functions and delegated functions, in accordance with the principle of freed decision-making.

123. Another indicator of the “importance” or the political and social role of local government in a country is the local government expenditure in the national general government consolidated budget, especially in comparison with other EU countries. In Poland, as previously indicated, the self-government authorities manage 31.3% of the total public expenditures.

124. Nevertheless, during the monitoring visit, the delegation was informed of a recent process of re-centralisation that affected several competences already transferred to local and regional authorities. Very often, it takes the form of the creation of State authorities, with the justification of the implementation of EU directives. The local representatives’ concerns are twofold. On one hand, they complain about the fact that those acts have been passed without being reviewed within the Joint Committee (see *infra*, sub Article 4). On the other hand, they consider the re-centralisation process unjustified and in violation of the principle of local self-government.

125. Among the previously local and regional competences that have gradually been re-allocated to the State, they especially mentioned:

- Centralisation of the agricultural advisory centres (dealing with farmers' support);
- Centralisation of the environmental protection funds (distributing EU funds);
- Centralisation of water management, including the authorities against flood;
- Centralisation of sport installation financed by the Lotto;
- Centralisation of competences on veterans;
- Centralisation of competences on management of schools;
- Centralisation of competences in the field of family benefits, parental benefits and a one-off childbirth benefit.

126. In its written replies to the rapporteurs’ questionnaire, the Ministry of the Interior and Administration pointed out some of the reasons for the centralization of the competences, focusing on the need to implement EU directives and rationalize public services to equalize standards of living. It concluded that the proposed legal solutions have been in the end adopted by Parliament in a vote. The same line of reasoning to justify the centralisation of certain competences was followed by the government during the consultation procedure. It negated the recentralisation as such and referred to it as building uniform standards of access to services and benefits of the welfare state or minor corrections in relation to the scale of self-government activities.

127. The rapporteurs are aware that it is not possible to define precisely, in Article 3.1, “what affairs local authorities should be entitled to regulate and manage” and that “the traditions of member states as to the

affairs which are regarded as belonging to the preserve of local authorities differ greatly".⁶⁷ Consequently, they consider that the article must be read in light of the tradition of each Member State.

128. They also took note of the justifications provided for the takeover of competences by the Polish government, although the fact that the amendments have been adopted by the Parliament cannot be considered as a valid justification for violating the Charter.

129. However, considering the historical and successful decentralization process put in place in Poland since the 1990s and, consequently, the high level of autonomy enjoyed by Polish local authorities, taking into account also the interferences of central government within local competences as pointed out under Article 4.4 and Article 8.3, the rapporteurs express their concern vis-à-vis the process of re-centralization of competence that is ultimately undoing some of the achievements of Poland's well-functioning and decentralised local and regional governance.

130. For these reasons, the rapporteurs conclude that Article 3.1 of the Charter is only partially respected in Poland.

Article 3.2 Local form of government

131. As for Article 3, paragraph 2, the right to self-government is exercised in Poland by elected bodies. According to Article 169 of the Constitution, "1. Units of local government shall perform their duties through constitutive and executive organs. 2. Elections to constitutive organs shall be universal, direct, equal and shall be conducted by secret ballot. The principles and procedures for submitting candidates and for the conduct of elections, as well as the requirements for the validity of elections, shall be specified by statute".

132. As previously indicated, the representative governing body at municipal level is the municipal council, while the municipality's executive organ is the mayor. Both of them are directly elected by citizens, for a term of five years (since 2018).

133. Although the council cannot remove the mayor, since a municipal referendum is necessary, especially after the passing of the 2018 amendments to the Law on Municipal Self-Government it exerts a control over the mayor.

134. The 2018 law has strengthened the council's control powers over the mayor, as well as the direct popular participation. Among the new provisions, we could mention the duty of the mayor to present to the council every year, before the 31 of May, a report on the state of the municipality (Article 28aa). The report must include a summary of the municipality's activities in the previous year, and especially the implementation of policies, programs and strategies, resolutions of the municipal council and the civic budget. In the debate on the report on the state of the municipality, councilors take the floor without time limits.

135. After the debate on the report on the state of the municipality is over, the municipal council, in a resolution, decides whether to grant or withhold a vote of confidence in this respect (Article 18.2, 4a). A successful resolution granting a vote of confidence to the mayor of a municipal council must be supported by the absolute majority of votes of the statutory composition of the municipal council. Failure to adopt a resolution granting a vote of confidence to the mayor of a municipality is tantamount to passing a resolution withholding the confidence to the mayor of a municipality. As already provided by the previous legislation, if a vote of confidence is not granted to the mayor of a municipality for two subsequent years, the municipal council may adopt a resolution to hold a referendum for the recall of the mayor.

136. Another new provision entrusts the council with the role of addressing citizens' complaints. According to Article 18b, "The municipal council examines complaints about actions of the mayor of a municipality and municipality organizational units; applications and petitions from citizens; to this end, it sets up a committee of complaints, applications and petitions".

137. In the case of *powiaty*, the basic institutional organisation includes the council and the executive board. According to Article 9 of the Law on *powiaty*, "The district council is the district's governing and controlling body". According to Article 27, "1. The district council elects a district executive board in the number of 3 to 5 persons, including the *starosta* and deputy *starosta*". The executive body is accountable

⁶⁷ To use the wording of the Explanatory Report to the Charter.

to the council, which can dismiss it by voting a no-confidence motion, by a 3/5 majority, at the request of at least 1/4 of the statutory members of the council (Article 31).

138. In addition, it should be mentioned that Poland constitutes also an example of a country where a number of institutions allowing citizens a more direct involvement in decision-making processes exists and that the number of such institutions has been significantly increased in recent times. Therefore, to a certain degree, a shift from representative democracy to participative and deliberative democracy can be observed, especially in large, urban municipalities.

139. In conclusion, the rapporteurs consider that the requirements of Article 3.2 are satisfied in Poland.

4.3 Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

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

Article 4, paragraph 1-5: Local competences and powers

140. Article 4, paragraph 1 of the Charter requires that the basic powers and responsibilities of local authorities are prescribed by the constitution or by statute.

141. Although the Constitution contains only some basic principles (in Articles 163 and 164.3), the general laws on municipalities and *powiaty* contain a detailed and substantive list of autonomous competences of local authorities (as previously indicated).

142. Therefore, Article 4, paragraph 1, is fully respected in Poland.

143. As for Article 4, paragraph 2 of the Charter, according to which “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”, the Polish Constitution establishes a general residual clause of competence.

144. According to Article 163 of the Constitution, “Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities”; according to Article 164.3, “The commune shall perform all tasks of local government not reserved to other units of local government”. In the legislation, a general residual competence clause does exist for municipalities (Article 6.1 of the Law on Municipal Self-Government), whereas *powiaty* only have enumerated competences.

145. It should also be mentioned that Article 87.2 of the Constitution states that «Enactments of local law issued by the operation of organs shall be a source of universally binding law of the Republic of Poland in the territory of the organ issuing such enactments».

146. Despite this ambitious constitutional and legislative framework, the actual practice is significantly different. The delegation was informed that, absent an express assignment of competence by the law, it is possible for acts of municipalities to be challenged by the voivodes.

147. An example was presented by the Capital City of Warsaw, concerning the issue of the sterilisation of cats and dogs. The City started a free program of sterilisation not limited to stray cats and dogs, but also

open to owners of house pets. The voivode stopped this program, with the argument that according to the law, free sterilization and castration should be limited to homeless animals⁶⁸. Warsaw authorities challenged the decision of the voivode in court but lost in the first instance. They then appealed to the Supreme Administrative Court, which overruled the judgment of the court of first instance and the supervisory decision of the voivode, stating that “It can be [...] considered that the commune should undertake any measures preventing the homelessness of animals as part of the implementation of the obligatory task of maintaining cleanliness and order in communes”.⁶⁹ However, in the meantime, the Law on the Protection of the Animals was amended.⁷⁰ A new provision was introduced in Article 11.1, according to which “Preventing the homelessness of animals and providing care to homeless animals and catching them falls within the municipality’s own tasks”. It was also specified that this task may include a plan for the sterilisation or castration of animals in the municipality, in full respect of the rights of the owners of the animals or other persons entrusted with the care of the animals.⁷¹

148. In fact, the example from the Capital City of Warsaw exemplifies a wider issue: notwithstanding the general residual clause, municipalities cannot exercise competences that are not expressly assigned by law. Therefore, the rapporteurs consider that Article 4, paragraph 2 of the Charter is not satisfied in practice in Poland.

149. Article 4, paragraph 3 of the Charter articulates the general principle of subsidiarity. It establishes that “Public responsibilities shall generally be exercised, in preference, by those authorities which are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy”.

150. In Poland, the principle of subsidiarity is entrenched at constitutional level in the Preamble to the Constitution, according to which the Constitution shall be based on “on the principle of subsidiarity in the strengthening the powers of citizens and their communities”.

151. However, in practice, this principle is not fully implemented. Local authorities’ representatives at all levels of territorial government complained that more and more competences have been re-centralised, without the centralisation being justified for reasons of efficiency and economy (see *supra*, *sub* Article 3.1).

152. This is especially the case of the reform of education, which affected the competences of municipalities and districts. The reform strengthened the role of the school superintendent, who is now in charge of approving the school network plan, giving opinions on work plans, issuing binding opinions on the possible liquidation of schools by the local government, and participating in the process of selecting the school head.

153. During the consultation process, the government opposed the expressed views, in particular as regards the focus on recentralisation of certain competences related to the reform of education. It reiterated, once more, its position that the reported re-centralisation should be considered as building uniform standards of access to services and benefits of the welfare state or as introducing minor corrections taking into account the scale of self-government activities in Poland.

154. The rapporteurs do not share this attitude in general and the reference to minor corrections specifically, taking into account the significance of the educational part in the local self-government share of responsibilities.

155. Therefore, the rapporteurs consider that Article 4, paragraph 3 of the Charter is not fully respected in Poland.

156. Article 4, paragraph 4, provides that “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”.

68 http://edziennik.mazowieckie.pl/WDU_W/2016/3102/akt.pdf

69 <https://tvnwarszawa.tvn24.pl/informacje.news.wojewoda-przegral-w-sprawie-bezplatnej-sterylizacji-musi-zaplacic-300-zlotych,238700.html>

70 Ustawa z dnia 15 listopada 2016 r. o zmianie ustawy o ochronie zwierząt [Law of November 15, 2016 about amending the animal protection act]

71 <http://www.um.warszawa.pl/en/aktualnosci/nsa-przyzna-racj-warszawskim-urz-dnikom>

157. During the monitoring visit, all the local representatives met by the delegation complained about the violation of the principle of Article 4.4, as in several matters the powers given to local authorities are not full and exclusive. Legislation, government and ministerial regulations contain very detailed provisions that do not leave to the local authorities the possibility to adapt them to local conditions. The Association of Polish Cities underlined that the issue is not new, as it was also mentioned in the 2015 Report, but over the last few years the problem has worsened. Education, social assistance, spatial planning are the fields in which the national regulation is so detailed that local authorities are left without any discretion.

158. During the consultation procedure, the government agreed that the issue of reducing freedom of task implementation system is not new in the Polish local self-government system, but the State must ensure some minimum access to public services and benefits. It further contested the reported limitation of the freedom of local self-government in adaptation of standards resulting from laws and government regulations to local conditions.

159. However, two very special cases were mentioned to the rapporteurs by local interlocutors which hold significant symbolic value: they are concerned with the competences of the municipal councils on monuments and streets' names.⁷²

160. The representatives of the Capital City of Warsaw informed the delegation of the decision taken by the government allegedly in name of national security to localize the monument to commemorate the 2010 Smolensk air crash (in which the then President of the Republic, his wife and several other Polish high level officials died) in the main central square of Warsaw, in spite of a different previous decision of the municipality. The municipality considered this decision as intruding upon its competences on land use and planning and management of public places. The complaints that have been filed by the municipality have not been examined yet by the prosecutor and by the administrative courts.

161. The delegation was also informed of the dispute opposing several municipalities to the government as a consequence of the application of Law of 1 April 2016 on "de-communisation" of names.⁷³ Applicable from 2 September 2016, the Law requires the competent authorities of local government units to change such names within 12 months from the date of its entry into force. In the event of failure to fulfill this obligation by the appropriate bodies of the territorial self-government units, in accordance with Article 6.2 of the Law, the *voivode* issues a replacement order, in which (s)he assigns the name pursuant to Article 1 of the Law.⁷⁴

162. Since there are currently political disputes about which of the names of historical figures amount to propagation of communism in practice, the delegation was told that *voivodes* abused the right to issue replacement orders. The orders were then challenged by the municipalities before the administrative courts, which, in some cases ruled the acts of the *voivodes* to be invalid.⁷⁵

163. To conclude, the rapporteurs would like to underline that notwithstanding the governments' legitimate interest in ensuring the basic service standards in the areas which have a major impact on the lives on citizens, the overall matter of improvement and development should be a responsibility for local self-government and for partnership between the local and central level, and not one-way top-down relations.

164. Therefore, the rapporteurs consider that Article 4, paragraph 4 of the Charter is not fully respected in Poland.

72 Article 18.2, n.13) of the Law on Municipal Self-Government, according to which it is the exclusive competence of the municipal council: "adopting resolutions on the coat of arms of the *municipality*, names of streets and squares being public roads or names of internal roads within the meaning of the Act of 21 March 1985 on public roads (Journal of Laws of 2017, item 2222 and 2018 item 12, 138, 159 and 317), as well as the erection of monuments".

73 Law of 1 April 2016 on the prohibition of promoting communism or other totalitarian regimes by the names of organizational units, auxiliary units of the commune, buildings, public facilities and facilities, and monuments (Journal of Laws of 2016, item 744 with amendments). Article 1.1 establishes that the names of organizational units, auxiliary units of a commune, buildings, facilities and public utility facilities, including roads, streets, bridges and squares, broadcast by local government units cannot commemorate people, organizations, events or dates symbolizing communism or a different totalitarian system, or otherwise propagate such a system.

74 According to Article 6.3, issuing a replacement order requires the opinion of the Institute of National Remembrance - the Commission for the Prosecution of Crimes against the Polish Nation, confirming the incompatibility of the name in force on the day of entry into force of the Act.

75 See e.g. the decision of the Provincial Administrative Court in Gdańsk stated (judgments of 29 March 2018, case No. III SA / Gd 121, 124, 126, 127/18) and the 13 judgments, all dated 29 May 2018, of the Provincial Administrative Court of Warsaw.

165. Article 4, paragraph 5, refers to delegated responsibilities, establishing that local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.

166. During the monitoring visit, the delegation heard many complaints of local authorities, which claimed to have been left without any discretion in the exercise of those competences. They pointed out that they are becoming only paying agencies for the central government. This situation also has negative consequences at the financial level, since, as we shall see *further infra* (sub Article 9), the financial resources transferred for the exercise of those competences are not adequate. Furthermore, the Supreme Audit Office (NIK) criticized this system, pointing out that local authorities in the exercise of delegated competences only act as spending agencies for the central government. The NIK proposal was to change them into own competences of local authorities.

167. Therefore, and notwithstanding the government's view to the contrary, the rapporteurs consider that Article 4, paragraph 5 of the Charter is not fully respected in Poland.

Article 4.6: Consultation and participation of local government in decision-making

168. Finally, Article 4 paragraph 6 of the Charter provides that "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".

169. On this matter, as pointed out by the 2015 Report, the Polish Joint Committee represented a positive example of inter-governmental consultation, also in comparative perspective.

170. The legal framework has remained unchanged in the last few years, but in practice, the mechanism does not seem to provide any more for an appropriate consultation process. During the monitoring visit, the delegation heard recurrent complaints on the fact that an increasing number of decisions concerning local interests are taken at the central level without appropriate consultation of local authorities.

171. Especially emphasized was the practice to submit governmental proposals in the form of private bills lodged by members of the parliamentary majority, in order to avoid the obligation to consult with the Joint Committee. The delegation was informed that this procedure has become the "normal procedure". Several examples of this practice were presented, including the Law on the protection of the environment, liberalising the logging of forests, and the Law that affected agricultural advisory centres.

172. Furthermore, several pieces of secondary legislation have been adopted by the government without any prior consultation of the Committee. One example that was mentioned by the Association of Polish Cities is the Regulation of the Council of Ministers of 15 May 2018, establishing the minimum and maximum remuneration for elected local representatives. In other cases, the delegation was informed that governmental projects have been submitted to the Committee, but the remarks of local authorities have not been taken into consideration by the government and the reasons for rejecting some comments were not communicated to local authorities.

173. During the consultation process, the government presented a different assessment of the situation, pointing out that during the current term of the government the Joint Committee has met 34 times, around 1209 legislative proposals were submitted for opinion to the Joint Committee, and only 3% of them have not been discussed with self-governments. The government maintains that the Joint Committee and its particular Task Forces have considered a wide range of issues. The government also pointed out that Joint Committee's self-government representatives can participate in consultations held within the Sejm parliamentary committees when proposals are submitted by MPs.

174. Given that consultation and participation of local self-government authorities has become a matter of contention between the central and subnational authorities, the rapporteurs are especially concerned with this negative change in central-local relationships in Poland, which represents a significant regression compared to the previous *acquis* (achievements). Consequently, they encourage Polish authorities to restore those good practices based on collaboration and dialogue that used to characterise Poland's experience in the past.

175. Therefore, the rapporteurs consider the requirements of Article 4, paragraph 6, are not respected in Poland.

176. In conclusion, the rapporteurs consider that the requirements of Article 4, paragraph 1 are satisfied in Poland, whereas the requirements of Article 4, paragraphs 3, 4 and 5 are not fully met and those of paragraphs 2 and 6 are not satisfied by the present legal and factual situation in Poland.

4.4 Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

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

177. This Article requires that local communities should be consulted in case of changes of local authorities' boundaries.

178. Article 15.2 of the Constitution states that «The basic territorial division of the State shall be determined by statute» but does not specifically refer to the right of consultation of local communities when changes in local boundaries are decided. The requirement of the prior consultation of local communities was also absent from the original text of the Law on Municipal Self-Government and of the Law on Powiat Self-Government. It was introduced in the legislation after Recommendation 120 (2002).

179. According to the existing legislation, the Council of Ministers may create, merge and dissolve *gminy/powiaty*.⁷⁶ It also defines the boundaries of municipalities and districts by way of regulations. Revisions and changes in local government units are made by the Council of Ministers upon its own initiative, or on a motion by the local bodies themselves. In either case, the changes require an opinion of the organs of local self-government units and are subject to the public consultation of the residents of the area affected by the change.

180. Alternatively, the creation, merger, or division of municipalities as well as the re-definition of their boundaries may also be initiated by residents in a referendum, the results of which can form the basis for a motion by the local council.

181. Determination and change of municipal boundaries is made in a way that ensures that the territory of the resulting local body: (a) is as uniform as possible in terms of the settlement pattern and spatial arrangement; (b) takes into account social, economic and cultural ties; and (c) ensures that the local body is able to carry out its tasks.

182. Therefore, although the legislation requires consultation of the residents, in Poland the change of the boundaries may also happen against the residents' will.

183. Changes in municipal boundaries have generated in the last few years a significant volume of controversies. The delegation was informed that a prospected change in the area of the Capital City of Warsaw, which would have affected several neighbouring municipalities, was abandoned. A change of the borders of the City of Opole, that were enlarged to include parts of the territory of neighbouring municipalities, against the will of the councils of the affected municipalities and against the will the residents as expressed in public consultations, was implemented by the Council of Ministers, and generated a conflict that ended up – although without an answer – before the Constitutional Court.⁷⁷

⁷⁶ See Article 4 of the Law on Municipal Self-Government (Article 4a for the consultation) and Article 3 of the Law on *Powiat* Self-Government (Article 3 a for the consultation).

⁷⁷ See Constitutional Court (U 2/16), 8 February 2017, that dismissed the complaint of the Opole District Council, the Komprachcice Commune Council, the Dobrzeń Wielki Commune Council, the Dąbrowa Commune Council, the City Council of Prószków, considering that «Regulations making changes to the boundaries of local self-government units challenged in the present case have a special character. In relation to these regulations, the assessment of constitutionality is connected to a larger scale to the assessment of facts rather than to the assessment of existing norm». The Constitutional Court follows its doctrine established in the judgment (K 37/06) 8 April 2009. See also Constitutional Court (U 3/2017), 1 June 2017 deciding a complaint filed by a group of Sejm Deputies concerning the regulation making legally ineffective the establishment of the communes of Szczawa and Grabówka. The Court considered that the Regulation of 28 December 2015 issued by the Council of Ministers to revoke the regulation establishing the communes of Szczawa and Grabówka was inconsistent with a) Article 7 and Article 92(1) of the Constitution; b) Article 4a(1) of the Law on Municipal Self-Government, as no consultation had been carried out with the residents of the units of local self-government to which the latter regulation pertained. In the Tribunal's view, the carrying out of previous consultation that was concerned with the enactment of the regulation establishing the communes of Szczawa and Grabówka did not justify the fact that the Council of Ministers did not consult the residents on the issue of the subsequent revocation of said regulation. The consultation

184. A very special case is the abolition of the Ostrowice municipality.⁷⁸ On 5 July 2018, the Sejm adopted the Law on special solutions for the Ostrowice municipality in the West Pomeranian Voivodeship, establishing that the Council of Ministers, by regulation, would abolish the municipality of Ostrowice. According to the explanatory statement to the bill,⁷⁹ the municipality of Ostrowice is one of the most indebted municipalities in Poland, with no financial prospects to carry out investments for many years and no financial means to repay the debt. The abolition of the Ostrowice municipality and the inclusion of its area to the neighboring municipalities will take place through the regulation of the Council of Ministers issued after consultations with residents (as provided by Article 1 of the Law). The consultations will be carried out by the authorities of the concerned municipalities.

185. According to the explanatory statement of the bill, “the advice of the councils is not required, in accordance with the European Charter of Local Self-government, which only provides for consultation with residents (Article 5)”. Changes in the territorial division related to the abolition of the Ostrowice municipality will take place on 1st January 2019.

186. The rapporteurs would like to point out that changes in boundaries and mergers of local authorities are very often a source of tensions and political conflicts. Although a more detailed procedure, with a more substantive consideration of the will of the residents could help in smoothing conflicts and tensions, the rapporteurs consider that the requirements of Article 5 are globally met in Poland.

4.5 Article 6 – Appropriate administrative structures and resources

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.

187. Article 6, paragraph 1 of the Charter provides that local authorities shall be able to determine their own internal administrative structure.

188. Polish local authorities are endowed by the Constitution and the law with a fair degree of autonomy in the field of internal organisation. According to Article 169.4 of the Polish Constitution, «the internal organizational structure of units of local government shall be specified, within statutory limits, by their constitutive organs».

189. Each local authority adopts its own charter (“*statut gminy*”, Article 3 Law on Municipal Self-Government; “*statut powiatu*”, Article 2 Law on *Powiat* Self-Government), which, within the limits of State legislation, defines the internal organization and the mode of operation of the local authority (Article 22 Law on Municipal Self-Government, Article 19 Law on *Powiat* Self-Government).

190. However, during the monitoring visit, the representatives of local authorities claimed that internal administrative structures are increasingly determined by the central government, which imposes overly rigid organisational structures on municipalities and *powiaty*. Paradigmatic examples of this approach that were mentioned include the centres for social assistance that each municipality is required to establish, without the possibility to associate with other municipalities. A concern was also expressed by some local authorities about the impact on the functioning of local government of the recent reform aimed at strengthening participative democracy (especially the obligation to set up a committee of complaints, applications and petitions: Article 18b Law on Municipal Self-Government; Article 16a Law on *Powiat* Self-Government). A similar claim was presented also during the 2014 monitoring visit.

concerning the establishment of the communes was held for a different purpose than the one underlying the enactment of the revocation regulation.

78 USTAWA Z dnia 5 lipca 2018 r. o szczególnych rozwiązaniach dotyczących gminy Ostrowice w województwie zachodniopomorskim [Law of July 5, 2018 on Special Solutions for the Ostrowice Commune in the West Pomeranian Voivodeship].

79 <http://www.sejm.gov.pl/sejm8.nsf/druk.xsp?nr=2650>

191. The rapporteurs, underlying once again the importance of self-organisation autonomy, consider that, notwithstanding some difficulties, Polish local authorities are able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management. Therefore, the requirements of Article 6.1 are complied with in Poland.

192. Article 6, paragraph 2 of the Charter refers to the conditions of service of local government employees: they shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence. In Poland, there is no centralised system for recruitment, in the sense of a nationwide, French-style territorial civil service. Therefore, every *gmina* and *powiat* has the power to recruit its own human resources, with due respect to public and competitive procedures. A specific statute regulates employment within local government units: Law on Self-Government Employees of 21 November 2008.⁸⁰

193. It is worth mentioning that according to that Law, the category of “self-government employees” includes in Poland elected representatives, appointed representatives and contracted employees.⁸¹ In this report we will deal with elected and appointed representatives further *infra*, sub Article 7 of the Charter.

194. As for employees with a contract of employment, the Law (Article 37) assigns to the Council of Minister the power to determine: the list of positions, the minimum qualification requirements, the conditions and manner of remuneration for local government employees, the conditions for granting and paying an allowance for long-term work; the conditions for determining the right to the jubilee award and its payment. The Council of Minister must take into account: 1) the type of tasks carried out and the nature of the activities performed with regard to individual positions; 2) the need for a local government employee to have professional skills and necessary experience; 3) the number of inhabitants of a local government unit.

195. The Congress delegation was not made aware of any complaint from Polish local authorities on this matter. The claim presented by the Association of Polish Cities refers to the remuneration of elected and appointed representatives and will be dealt with *further infra*, sub Article 7. Therefore, the rapporteurs consider that requirements of Article 6.2 are satisfied in Poland.

196. In conclusion, the rapporteurs consider that the current Polish system meets the requirements enshrined in Article 6 of the Charter.

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

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

- 1 The conditions of office of local elected representatives shall provide for the 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.

197. The purpose of Article 7, paragraph 1, is to guarantee the free exercise of their functions by elected representatives. This was not an issue during the 2014 monitoring visit, which pointed out that “Poland is an advanced, democratic country”. Unfortunately, during the 2018 monitoring visit, the delegation heard many concerns and received many complaints by local authorities’ representatives about a change in the

⁸⁰ Ustawa z dnia 21 listopada 2008 r. o pracownikach samorządowych.

⁸¹ Article 4 of the Law on Self-Government Employees of 21 November 2008: «Self-government employees are employed based on:

1) election:

a) at the marshal office: voivodship marshal, deputy marshal and other members of the regional board,
 b) in the powiat: staroste, deputy staroste and other district board members,
 c) at the commune office: commune head (mayor, president of the city),
 d) in associations of local government units: chairman of the board of the union and other board members,
 e) at the office of the Capital City of Warsaw: the mayor of the Capital City of Warsaw, deputy mayor of the Capital City of Warsaw and other members of the board of Capital City of Warsaw;

2) appointment - deputy mayor (mayor, president of the city), treasurer of the commune, treasurer of the powiat, treasurer of the region;

3) contracts of employment - other self-government employees».

factual situation. Many mayors mentioned the excesses in prosecutions and anticorruption investigations, with the purpose to instil in the citizenship a feeling of distrust in local authorities.

As the free exercise of the functions requires both legal and factual accommodations, the rapporteurs would like to point out the importance of stability in office and the need for a judicial decision to suspend or remove mayors from office.

198. Having said that, the rapporteurs consider that, for now, Article 7.1 is not violated in Poland.

199. Article 7, paragraph 2, refers to an appropriate financial compensation for elected representatives.

200. As for the financial compensation of local representatives, council members receive no salary but an allowance for their work, which is on a part-time basis and considered to be an “additional” position. The extent of the allowance depends on the number of residents of the *gmina* or *powiat*. The council sets the remuneration of its members by means of a resolution, within the framework of national regulation. The remuneration of the mayor and the *starosta* (which legally are considered in Poland local government employees)⁸² follows similar rules, since the council decides on their salary, which is also capped by the national regulation and depends on the population. They receive a special duty allowance, which is also dependent on the population of the community.

201. The delegation was informed that on 15 May 2018 a new Regulation of the Council of Ministers was adopted⁸³ (according to Article 37 of the Law on Self-Government Employees of 21 November 2008), establishing the minimum and maximum of the remuneration and of the special duty allowance. The new Regulation reduced the maximum and minimum by 20%. The Association of Polish Cities submitted to the delegation a legal opinion supporting the claim which points out, among other elements, that the reduction is not supported by a transparent justification and that there was a lack of consultation, as the draft was not submitted to the Joint Committee. The written reply of the Ministry of the Interior and Administration to the questionnaire underlines that there is a social expectation by the public opinion that remunerations must be reduced since the general perception is that politicians’ salaries are too high. In its reply, the Ministry also emphasised that the adopted solution is based on the amendment to the Law on the exercise of the mandate of Deputy or Senator, adopted by the Sejm on 10 May 2018 which provides for a 20% reduction in the salaries of members of parliament.

202. The rapporteurs would like to express their concerns regarding this trend, especially as the 20% reduction does not happen as a consequence of a financial crisis, and is actually implemented at a time of economic growth. For now, the rapporteurs do not consider the reduction as a measure sufficient to determine a violation of Article 7.2, but they maintain that the situation must be closely monitored in the future.

203. As for Article 7, paragraph 3, according to which “Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles”, in Poland the incompatibilities are determined by several legal provisions. In addition to the Law on Municipal Self-Government and the Law on *Powiat* Self-Government, the Law of 21 August 1997 on Restricting Business Activity by Persons Performing Public Functions⁸⁴ is aimed at limiting the plurality of functions performed by, among others, heads of *gminy* (mayors, city presidents) and their deputies, members of *powiat* boards, members of voivodeship boards, treasurers, secretaries.

204. Recently, the amendments introduced by Law of 11 January 2018 are aimed at adding more and more functions or activities that cannot be combined with the office of an elected representative at local level. The Association of Polish Cities claimed that this tendency, combined with the lowering of remuneration for elected representatives, could exclude entire categories of people from the access to elective mandates.

82 As well as the other elected or appointed officials mentioned in Article 4 of the Law on Self-Government Employees of 21 November 2008, at nn. 2 and 3.

83 Rozporządzenie Rady Ministrów z 15 maja 2018 r. w sprawie wynagradzania pracowników samorządowych (DzU z 2018 r., poz. 936) [Regulation of the Council of Ministers of 15 May 2018 on the remuneration of local government employees]. The previous one was *Rozporządzenie Rady Ministrów z dnia 18 marca 2009 r. w tej samej sprawie* (Dz. U. z 2014 r. poz. 1786 ze zm.).

84 Ustawa z dnia 21 sierpnia 1997 r. o ograniczeniu prowadzenia działalności gospodarczej przez osoby pełniące funkcje publiczne - Dz. U. z 2017 r. poz. 1393.

205. The rapporteurs share these concerns and believe that the issue has to be closely monitored, as it can severely harm pluralism and local democracy. However, for now, they do not consider Article 7.3 to be infringed in Poland.

206. In conclusion, the requirements of Article 7 are, at present, complied with in Poland. Nevertheless, the rapporteurs consider that the situation requires a closer monitoring in the future.

4.7 Article 8 – Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities' activities

- 1 Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
- 2 Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks whose execution 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.

207. Article 8 of the Charter deals with supervision of local authorities.

208. According to Article 8, paragraphs 1 and 2, any administrative supervision of the activities of local authorities can only aim at ensuring compliance with the law and constitutional principles. Administrative supervision may, however, be exercised by higher-level authorities with regard to expediency in respect of the tasks delegated to local authorities. Another important requirement that can be inferred from the Charter provisions is that the law should precisely define the administrative authorities empowered to exercise legal supervision over municipalities.

209. In line with the requirements of the Charter, in Poland the rules governing central control over local authorities and the powers of the central authorities concerned are determined by the Constitution and by the law.

210. According to Article 171 of the Polish Constitution, "1. The legality of actions by a local government shall be subject to review. 2. The organs exercising review over the activity of units of local government shall be: the Prime Minister and *voivods* and regarding financial matters - regional audit chambers. 3. On a motion by the Prime Minister, the Sejm (Parliament) may dissolve a constitutive organ of local government if it has clearly violated the Constitution or a statute".

211. The legislation, as previously indicated, carefully defines the authorities, procedures, and cases in which the supervision, that is limited to the control of the legality of the acts, is exercised. If the *voivode* eventually overrules a local body decision, then both the local authority and the citizens may challenge the *voivode*'s decision, by lodging a complaint with the Regional Administrative Court, where a public hearing will then take place. The judgment may be appealed to the Supreme Administrative Court. Therefore, the judiciary is responsible for ensuring that the administrative supervision of State authorities is carried out with due respect to the grounds and procedures established by the law.

212. Article 8, paragraph 3, deals with the way in which the supervision is exercised in practice, and requires compliance with the principle of proportionality.

213. During the visit, the Congress delegation was informed of several interferences carried out by the supervisory bodies. Whereas in the past most of the cases of disagreement between the local body and the *voivode* were resolved by informal cooperation, in the last 3 or 4 years the *voivodes* have shown the tendency to overuse their supervisory power well beyond the relevance of the interest to be protected.

214. Another aspect of the aforementioned confrontational attitude of the supervisory authorities is the misuse of the *voivodal* power to ensure the publication of the local decisions and regulations in the best delay, which led in some cases to the unjustified postponement of the publication.

215. During the consultation process, the government provided some statistics data from the Ministry of Home Affairs and Administration, according to which the percentage of local self –government resolutions found invalid by *voivodes* and those appealed against to the administrative courts has been maintained at a

stable low level in relation to all the resolutions examined by the *voivodes* and even a certain downward trend could be observed in 2016-2017.

216. The rapporteurs do not consider those data could invalidate the findings of the monitoring visit.

217. Therefore, they consider that the requirements of Article 8, paragraphs 1 and 2, are complied with in Poland, whereas those of Article 8, paragraph 3, are not met.

4.8 Article 9 – Financial resources

Article 9 – Financial resources of local authorities

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate to the responsibilities provided for by the constitution and the law.
- 3 At least part 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 that local authorities may exercise within their own area 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.

218. According to Article 9, paragraph 1 of the Charter, local authorities should have adequate financial resources of their own, of which they may dispose freely within the framework of their powers. Financial autonomy is an essential component of the principle of local self-government and an important condition for the exercise of a wide range of responsibilities in the field of local public affairs. These elements are cumulative and not alternative, which means that all the conditions laid down in Article 9, paragraph 1 of the Charter are mandatory. Another basic principle, established in Article 9, paragraph 2, requires that local authorities should have sufficient financial resources in proportion to the responsibilities assigned to them by law.

219. In Poland, local authorities manage a substantial part of financial resources, which account for up to 31.3% of public expenditures. Their revenues correspond to 13% of the GDP (4.1% of the tax revenues, 7.5% of grants and subsidies; 1.3% of other revenues).⁸⁵ The true question, however, is whether they are allowed to dispose freely of those resources and whether these are proportional to the level of local responsibilities.

220. The issue was already raised during the 2014 monitoring visit. Recommendation 373 (2015), which reiterated the previous Recommendation 120 (2002), invited Polish authorities to assist the devolution of powers with the transfer of adequate financial resources and to find a new compromise for concomitant financing.

221. It should also be mentioned that according to the OECD,⁸⁶ in 2016 only 35.7% of total public investment was carried out by subnational governments in Poland compared to an OECD average of 56.9%. The share of public investment carried out by subnational governments in Poland is among the lowest among OECD countries.

85 Based on OECD Data: <http://www.oecd.org/regional/regional-policy/profile-Poland.pdf>

86 <http://www.oecd.org/cfe/POLAND-Regions-and-Cities-2018.pdf>

222. Notwithstanding the fact that Poland has experienced in the last few years a remarkable economic growth, the issue concerning the availability of adequate financial resources, that are commensurate with the responsibilities of local authorities, remains unchanged. During the visit, the delegation heard complaints raised by the Association of Polish Cities and by many local authorities' representatives.

223. The Ministry of Finance pointed out that the financial resources of local authorities experienced a steady growth over the last years, including their own income.

Table 4: Revenues of Local Authorities (all levels) in 2007 - 2017

	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
	<i>mln zł</i>										
Total income	131 380	142 569	154 842	162 797	171 309	177 413	183 458	194 337	199 019	213 669	229 879
own income	74 134	78 345	75 297	78 588	83 644	87 091	91 800	98 593	103 441	106 683	113 245
grants	20 492	23 766	34 250	37 037	39 317	39 665	40 401	44 541	44 235	53 949	62 353
general subsidies	36 754	40 458	45 295	47 171	48 348	50 658	51 257	51 204	51 343	53 036	54 281

Source: Ministry of Finance (2018)

224. The local authorities' representatives raised three main complaints. Firstly, the resources are considered to be insufficient. Since the amendments to the Law on the Personal Income Tax of 2005-2006, the financial soundness of municipalities have been weakened without any compensation and without any decrease in the scope of local tasks. Secondly, the State is establishing higher standards for local services without transferring extra resources, thereby asking local authorities to make up for the difference in expenditures. Thirdly, the State is transferring new competences to local authorities, without adequate financial resources.

225. The *powiat* seems to be the weakest level of government. The *powiaty*' representatives pointed out the financial difficulties that they are experiencing, which, in turn, generate an excessive debt. The improvement in standards in social assistance, retirement homes, orphanages, centres for troubled youth, safe houses for disadvantages people generate additional expenses that are not covered by the State through transfers of resources and must therefore be paid for with their own resources.

226. Education is a problem for both municipalities and *powiaty*. The negotiation on teachers' salaries is carried out at national level, but the salaries must be paid by the local authorities. Subsidies for education increased by 1%, compared to a 5% of increase in education expenditures.

Table 5: Expenses for education, City of Łódź



Source: City of Łódź (2018)

227. During the consultation procedure, the government expressed totally opposite views and underlined that the local self-government incomes had been growing, in particular as a result of the recently adopted legislation and recovery actions. The government presented the detailed data from the Ministry of Finance

on the financial situation of self-governments in the period 2014-2017 to further underline a generally positive financial standing of local self-government, despite a small deficit in 2017. It also argued that the financial resources available to subnational government are adequate since, according to the data it presented, the level of asset-related expenditure of local self-government units is high and the high number of self-governments has operational surplus in the period of 2014-2017. The government also argued that the subsidies for education have always constituted one of the sources of financing the education and that there were no significant changes from 2014 to 2016 in the ratio between the local government current expenditures on education and the state budget current transfers (educational part of general subsidy and special grants for education tasks).

228. Notwithstanding the growth in financial resources of local authorities pointed out by the government, the rapporteurs are especially concerned by the fact that the cost of the improvement in the quality of services and salaries - that is part of a policy carried out at national level - is de facto charged to local authorities. In addition, data elaborated by independent academic research teams suggests that the growth in 2016-2017 is misleading, in the sense that it is to a huge extent a result of the new social protection programme (so called 500+ programme) which is implemented by local governments, acting as agent of central government, whereas there was a slight decrease of powiat revenues and sharp drop of regional revenues.⁸⁷

229. Therefore, the rapporteurs consider that the requirements of Article 9, paragraphs 1 and 2, are only partially respected in Poland.

230. Article 9, paragraph 3, requires that at least part of the financial resources of local authorities must derive from local taxes of which, within the limits of statute, they have the power to determine the rate.

231. In Poland, the financial resources deriving from "local taxes" represent a significant part of the municipal income (43,3% according to the 2017 data of the Ministry of Finance), whereas they are limited for *powiat* (35,8%).

232. However, the main issue is not represented by the proportion of those taxes on the total revenues of local authorities. The main concern is that the so-called "local taxes" are set by law or by regulation enacted by the Minister of Finance. Local authorities can only introduce tax exemptions and reliefs, with the only exception of the possibility for municipalities to determine the tax rate of the property tax, within the limits set by national legislation. *Powiaty* do not have any real "local tax".

233. Therefore, the rapporteurs consider that Article 9, paragraph 3, is not respected in Poland.

234. Article 9, paragraph 4, refers to the need for the resources available to local authorities to be of a sufficiently diversified and buoyant nature to enable them to keep up as far as practically possible with the actual changes (increases) in the costs for carrying out their tasks.

235. In Poland, the main revenues for municipalities are the shared Corporate Income Tax and Personal Income Tax, together with grants and subsidies from the State budget, whose purpose is to support some tasks (especially education) and to equalise socio-economic inequalities. However, the limited possibility of establishing local taxes makes it difficult to consider local resources as having a sufficiently diversified and expanding nature to enable them to keep up as far as practically possible with the actual changes (increases) in the costs for carrying out their tasks.

236. Therefore, the rapporteurs consider that Article 9, paragraph 4 of the Charter is not respected in Poland.

237. Article 9, paragraph 5, refers to the protection of financially weaker local authorities through equalisation procedures. Recommendation 373 (2015) recommended Polish authorities to "adjust the equalisation system so as to be more reactive to changes in the economic climate, for example by reviewing the scale of donations". As previously indicated, the general subsidy includes an "equalisation component", which has been revised after the decision of the Constitutional Court of 2014 (see *further infra*).

⁸⁷ See data and tables presented in P. Swianiewicz, J. Łukomska, J. (2018) Najzamożniejsze samorzady w 2017 roku, *Wspólnota* no. 14, p. 32-34

238. During the monitoring visit, the delegation did not hear specific complaints on the equalisation mechanism. The only issue raised by the Association of Polish Cities refers to the fact that the equalisation system does not take into account the differences in the financial burdens falling on urban local authorities; instead, it takes into account, twice, the specific nature of rural municipalities. Considering the complex equalisation formula, the rapporteurs do not believe this issue to determine an infringement of the Charter. The needs of urban local authorities could be better satisfied by a greater capacity of establishing and managing their own local taxes.

239. Therefore, the rapporteurs consider that the requirements of Article 9, paragraph 5, are respected in Poland.

240. As for Article 9, paragraph 6, of the Charter, on consultation of local authorities on the way in which redistributed resources are allocated, the delegation was informed that the issues emerged with regard to the consultation process in the last few years in Poland have affected also the consultation on the redistribution of resources.

241. During the consultation procedure, the government, did not share this assessment and claimed that there are many positive examples of cooperation between local self-government and central authorities. It mentioned in particular the dialogue of the Ministry of Finance with self-government representatives on financial matters held within Joint Committee's various Task Forces.

242. However, in view of the rapporteurs, the malfunctioning of the Joint Committee is coupled with the lack of compliance for the provision of the Law on Public Finance (Article 50.2 and 3) according to which "2. A draft law resulting in a change in the level of income or expenditure of local government units requires the determination of the impact of these changes, an indication of the sources of their financing and an opinion of the Joint Commission of the Government and the Local Self-government. 3. The Council of Ministers, by submitting to the Sejm a bill referred to in para. 2, attach the opinion of the Joint Government Committee and the Local Self-government". The Association of Polish Cities pointed out that laws have been passed by the parliament without any assessment of the effects of the new legislation, despite the fact that such assessment is mandatory.

243. Therefore, the rapporteurs consider that Article 9, paragraph 6, is not respected in Poland.

244. As for Article 9, paragraph 7 of the Charter, grants for specific projects do exist in Poland. Part of local investment projects are also financed through EU structural funds and other financial instruments, based on the legal instruments. In general, they do not represent a significant part of the financial resources of local autonomies and do not seem to constitute a problem for their autonomy. In this regard, the delegation did not receive any complaint, and therefore the rapporteurs consider that Article 9, paragraph 7 is respected in Poland.

245. Article 9, paragraph 8, on the access to the national capital market for the purpose of borrowing for capital investment, is not especially problematic in Poland. Local authorities have access to the national capital market, within the limits established by law, which indicates that borrowing is possible only for investments. As the Ministry of Interior in its written replies to the questionnaire pointed out, in extreme cases this may result in the inability of local authorities to repay the debt; a circumstance that can even lead to the abolition of the municipality, as it has happened in the case of Ostrowice (see *supra*, *sub* Article 5). Therefore, the rapporteurs consider that Article 9, paragraph 8, is respected in Poland.

246. In conclusion, the rapporteurs consider that the requirement of Article 9, paragraphs 5, 7 and 8 are satisfied in Poland, whereas the requirements of Article 9, paragraphs 1, 2 are not fully met and those of Article 9, paragraphs 3, 4 and 6 are not satisfied by the present legal and factual situation in Poland.

4.9 Article 10 – Local authorities' right to associate

Article 10 – Local authorities' right to associate

- 1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortiums 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.

247. Article 10 of the Charter covers the possibility of co-operation between local authorities and their right to associate, at both national and international level.

248. Article 10, paragraph 1, refers to types of cooperation aimed at carrying out tasks of common interest. Polish legislation provides for up to three main forms of inter-municipal co-operation: (a) the inter-municipal association created by municipalities for the joint performance of common tasks; (b) inter-municipal agreements, which do not involve the establishment of a separate legal entity, and (c) the consortium of local authorities, which also admits *powiaty* and voivodeships as members. The delegation did not hear any remark or complaint and the rapporteurs consider that this principle is fully respected in Poland.

249. The second paragraph of Article 10 of the Charter is also respected in Poland. Article 172.1 of the Constitution provides that «Units of local government shall have the right to associate». Local and regional authorities of Poland have made active use of the right to form domestic associations for the promotion and protection of their common interests. Currently, there are six well-structured and active associations of local and regional authorities in Poland: the Association of Rural Communes of the Republic of Poland (ZGWRP),⁸⁸ the Association of Polish Cities (ZMP),⁸⁹ the Association of Polish Powiaty (ZPP),⁹⁰ the Association of Polish Metropolises (UMP),⁹¹ the Union of Polish Towns (UMP)⁹² and the Association of Polish Voivodeships (ZWRP)⁹³.

250. These associations (all of them having a national dimension) are inclusive and representative of local authorities (at municipal, district or regional level). They play an active role in the representation, defence and advancement of local interests, and they negotiate on a regular basis with the central government on major developments affecting local interests, essentially within the Joint Committee (see *supra*, *sub* Article 4).

251. As for the possibility to join international associations of local authorities, Article 172.2 of the Constitution establishes that “A unit of local government shall have the right to join international associations of local and regional communities as well as cooperate with local and regional communities of other States”. The Law of 15 September 2000⁹⁴ states that the decision to join an international association must be approved by the Minister competent for foreign affairs (Article 4).

252. Article 10, paragraph 3, addresses the cooperation of local authorities with their counterparts in other States. The right to engage in cross-border cooperation is also protected by Article 172.2 of the Constitution. Furthermore, the Law on Municipal Self-government (Article 18.2, no. 12), assigned to the council the exclusive competence to adopt resolutions on cooperation with local authorities of other countries. Analogous provisions are included in the Law on *Powiaty* Self-Government (Article. 75a and Article 12.9a).

253. Therefore, Polish local authorities are entitled to co-operate with their counterparts in other States. This cooperation is well developed also in practice.⁹⁵ It is also worth mentioning that Poland has signed and ratified the European Outline Convention on Cross-border Co-operation between Territorial Communities or Authorities (CETS No.106).

254. In conclusion, the rapporteurs believe that Article 10 of the Charter is fully respected in Poland.

88 See: www.zgwrp.pl

89 See: <http://www.zmp.poznan.pl/>

90 See: www.zpp.pl

91 See: www.metropolie.pl

92 See: <http://ump.home.pl/ump/index.php>

93 See: <https://zwrp.pl/pl/>

94 Ustawa z dnia 15 września 2000 r.o zasadach przystępowania jednostek samorządu terytorialnego do międzynarodowych zrzeszeń społeczności lokalnych i regionalnych [Law of September 15, 2000 on the rules for access to local government units international associations of local and regional communities].

95 Kancelaria Senatu Biuro analiz, Dokumentacji i Korespondencji, *Międzynarodowa współpraca samorządów* [International cooperation of local governments], 2017, https://www.senat.gov.pl/gfx/senat/pl/senatekspertyzy/4057/plik/oe261_internet.pdf

4.10 Article 11 – Legal protection of local self-government

Article 11 – Legal protection of local self-government

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

255. Article 11 of the Charter refers to an effective judicial remedy to ensure respect for local self-government.

256. In Poland, legal protection of local self-government is expressly guaranteed by the Constitution, namely in Article 165.2 which stipulates: «The self-governing nature of units of local government shall be protected by the courts». Moreover, Article 166, paragraph 3 stipulates that «The administrative courts shall settle jurisdictional disputes between units of local government and units of government administration».

257. In addition, each local government unit that is allegedly affected by a piece of legislation is allowed to file a complaint with the Constitutional Court. Article 191.1. 3) of the Constitution establishes that “the constitutive organs of units of local government” may lodge a complaint with the Constitutional Court, against a normative act that relates to matters relevant to the scope of their activity. Article 188 specifies the jurisdiction of the Court: “1. the conformity of statutes and international agreements with the Constitution; 2. the conformity of a statute with ratified international agreements whose ratification required prior consent granted by statute; 3. the conformity of legal provisions issued by central State organs with the Constitution, ratified international agreements and statutes; 4. the conformity with the Constitution of the purposes or activities of political parties; 5. complaints concerning constitutional infringements of rights and freedoms, as specified in Article 79, para. 1”.

258. Therefore, the local authorities (considered as individual entities) and the principle of self-government (as a principle) generate a wide range of recourses in Poland. On this basis, in the past the Constitutional Court played an active role in implementing the Charter in several constitutional proceedings dealing with local government issues, as it was underlined by the 2015 Report.

259. During the monitoring visit, the delegation was informed of several complaints submitted in the past few years by local authorities to the Constitutional Court, and that all of them have been rejected. Many of the local representatives met by the delegation showed their reservations with regard to the possibility to have their local autonomy upheld by the Constitutional Court, to the point that they are not submitting any new applications and complaints. During the meeting at the Constitutional Court, the delegation could not address this issue further, since no judge of the Court participated in the meeting⁹⁶ and the delegation could only meet with members of the Court’s administrative staff. The case-law of the administrative courts mentioned by the interlocutors during the monitoring visit seems presently more open to the principles of local self-government.

260. In light of the preceding considerations, it can be said that the requirements of Article 11 of the Charter are complied with in Poland; however, considering the general situation of the judiciary and of the rule of law in Poland, the issue will require closer monitoring in the future.

5. ANALYSIS OF THE SITUATION OF REGIONAL DEMOCRACY IN THE LIGHT OF THE REFERENCE FRAMEWORK FOR REGIONAL DEMOCRACY

Main developments concerning regional democracy

261. There are sixteen *voivodeships* (*województwa*, in Polish) or regions in Poland. The largest is the Masovian voivodeship (over 30 000 km²), while the smallest is the Opole voivodeship (under 10 000 km²). The most populated region is Masovia (more than five million inhabitants) while Opole voivodeship is the least populated with one million inhabitants.

96 The materials made available to the delegation during the meeting are in Polish only.

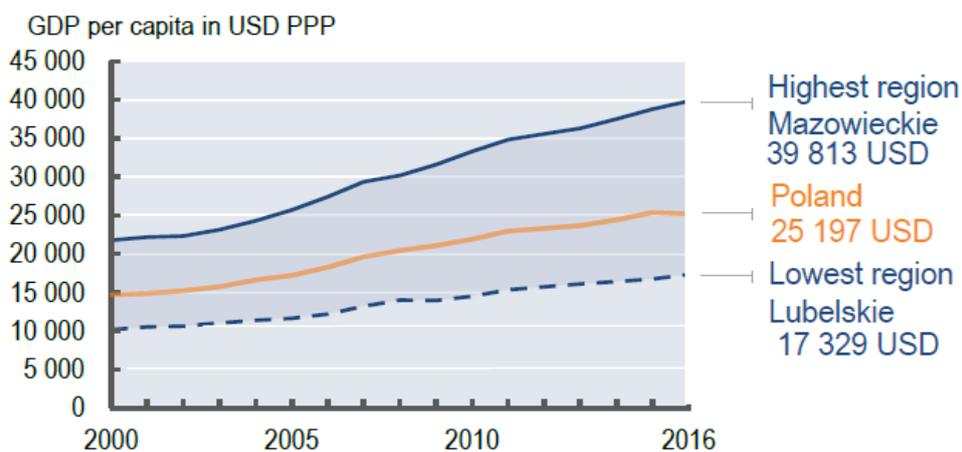


262. Notwithstanding the impressive growth Poland experienced in recent years, regional disparities in economic and social outcomes remain large. The overall living conditions in rural communities generally remain below those of urban communities, and rural households face higher poverty rates.⁹⁷

263. According to the OECD,⁹⁸ “differences between Polish regions in terms of GDP per capita have increased over the last sixteen years. The poorest region Lubelskie has a GDP per capita level equivalent to 44% of the GDP per capita in Mazowieckie, the richest region. Poland has the fourth highest regional economic disparities among all OECD countries”.

Table 6

Regional gap in GDP per capita, 2000-16



Source: OECD⁹⁹

97 <http://www.oecd.org/poland/oecd-rural-policy-reviews-poland-2018-9789264289925-en.htm>

98 <http://www.oecd.org/cfe/POLAND-Regions-and-Cities-2018.pdf>

99 <http://www.oecd.org/cfe/POLAND-Regions-and-Cities-2018.pdf>

264. The voivodeship level of government is situated between the local bodies (*gminy-powiaty*) and the State. As we already said *supra*, the establishment of the current regional government structure is the result of a legislative package on decentralisation enacted in 1998, effective on 1 January 1999. However, voivodeships are not a totally new feature in the legal-political landscape of the country, as these bodies also existed in previous Polish history,¹⁰⁰ although with different names, territorial demarcations, institutional profile and competences.

Constitutional scheme for regional democracy

265. The Polish Constitution does not expressly regulate the voivodeships. Contrary to *gminy*, Polish regions are not recognised or guaranteed by the Constitution. However, Article 164.2 of the Polish Constitution provides that «Other units of regional and/or local government shall be specified by statute». This statute is the Law on the Voivodeship Self-Government of 5 June 1998. The Constitution thus entrusts ordinary legislation to create or (eventually) to abolish the regional bodies and the very existence of voivodeships is not protected under the Polish Constitution.

266. However, an interpretative approach aimed at considering most provisions dealing with local self-government also applicable, by analogy, to voivodeships has been developed by the Constitutional Court in its case-law and does not seem under discussion.

Internal organisation

267. According to the Law on Voivodeship Self-Government, the representative governing body at the regional level is an elected council called “*sejmik*”, which appoints an executive body (*zarząd województwa*), responsible to the council. The leader of that executive is called the *marszałek województwa* (voivodeship marshal).

268. Regional councils are composed of members directly elected, based on a proportional electoral system, for a term of five¹⁰¹ years. Those elections coincide with that of *gminy* and *powiaty*. The number of regional councillors depends on the voivodeship’s population. The main role of the regional council is to lay down the general guidelines and policies of the voivodeship, and to control the execution of those policies as carried out by the executive. It passes by-laws, the regional development strategies and the budget. It also elects the *marszałek* (or “marshal”) and other members of the executive, and holds them to account.

269. The executive (*zarząd województwa*), headed by the *marszałek*, drafts the budget and development strategies, implements the resolutions of the *sejmik* (regional council), manages the *voivodeship’s* property, and deals with many aspects of regional policy, including management of EU funds. Its offices are known as the *urząd marszałkowski*. The executive board consists of the president and four to five persons, who do not have to be council members. The deputy marshal and the executive board are elected by the council at the marshal’s request.

270. The most prominent political officer of the voivodeship is the marshal. This is an executive, managerial position mainly to execute the plans, guidelines and general decisions adopted by the council (although in practice s/he may be the strong person of the party at regional level). Consequently, the marshal is responsible for adopting most of the individual decisions or adjudications of the voivodeship and has the right to propose initiatives to the council (for instance, the development strategy of the voivodeship), but has to obtain a majority. The marshal organises the work of the management board and of the executive offices, manages the regular and operational affairs of the voivodeship and represents the regional body in external relations. In urgent or exceptional cases, the marshal can also discharge the tasks and competences of the management board.

271. It should be clarified that public officials called “*voivodes*” are also established at regional level, but they have nothing to do with the regional bureaucracy or the voivodeship. *Voivodes*, as we said *supra*, are the representatives of the government administration in the region; they cannot influence the work of self-government. As in the case of *gminy* and *powiaty*, “*voivodes*”, may supervise the legality of the decisions and measures adopted by the voivodeship itself.

100 Since 1975, there have been 45 voivodeships in Poland.

101 Starting from 2018 elections.

Regional competences

272. Voivodeships' competences are identified by the different laws and regulations covering the various sectors of governmental action, and by the Law on self-government of regions.

273. At present, the main areas of competences for Polish regions are:

- Strategic space development (plans for spatial plans, environment, waste water, etc.);
- Network and management of regional roads;
- Regional economic development;
- Countryside matters, including agriculture and nature protection (voivodeships are responsible for the management and protection of "landscape parks" and "nature reserves", while the central government is responsible for "national parks");
- Tourism;
- Economic promotion of the regions;
- Cultural infrastructures;
- Regional infrastructures. In some voivodeships, this includes airports (for example: Lublin) and for railways (example: Masovia);
- Management and administration of EU regional funds (under the coordination of the central government, Ministry of Infrastructure);¹⁰²
- Institutions of health care (hospitals including psychiatric hospitals, medical rescue operations) and culture (for instance, libraries);
- Anti-flood protection;
- Railway transportation (short distance and commuting lines);
- Environment protection (planning).

Relations with other levels of government

274. Voivodeships participate regularly in the activities and sessions of the Joint Committee through their own association.¹⁰³ Consequently, they have two representatives in this Joint Committee. There are also other contacts with central administration agencies, such as frequent working meetings with the Ministry of Infrastructure and Development on regional policy tasks, as the delegation was informed.

275. As to relations with local units in the field of co-ordination or supervision, the voivodeships cannot influence the decision-making of municipalities or districts in any way.

Supervision

276. The central government supervision over regional decisions, plans and activities is essentially subject to the same supervision system that applies to municipalities and *powiaty*, and is strictly limited to a question of legality. This supervision is carried out on behalf of the prime minister by the *voivodes*, which, as noted *supra*, are administrative bodies consisting of de-concentrated organs of the State administration. The system is regulated in detail in Chapter 7 of the on the Law on Voivodeship Self-Government:

a. *voivodes* have the right to demand information and data concerning the organisation and functioning of the voivodship, necessary to perform their supervisory duties;

b. the marshal of the voivodeship must submit to the *voivode* the resolutions of the council and executive board within seven days from their adoption;

c. if the *voivode* considers that any regional government resolution, decision or plan is illegal, s/he may declare it null within a time period of 30 days after its submission, after opening a formal procedure, and he can also withhold its execution;

d. if the voivodeship believes that the *voivode*'s decision is unlawful or arbitrary, it may challenge the decision in the administrative courts.

102 EU regional funds are managed by the voivodeship (40%), through regional plans and programs and 60% by national programs run by central government agencies.

103 The "Union of Voivodeships of Poland" (ZWRP), established in 2002.

277. The financial supervision is also carried out by the Regional Audit Chamber.

Regional finances

278. The financial structure of the voivodeships mirrors to a great extent that of municipalities and *powiaty*, as presented *supra*.

279. The main sources of revenue of the voivodeships are as follows:

a. Own resources:

A share in the annual collection of the Corporate Income Tax (14.75%) and of the Personal Income Tax (1.6%). As noted *supra*, these are national taxes, collected by the State administration. The actual share is calculated using a complex set of coefficients and variables; they represent the 52,7% of the income of regions, according to the 2017 data of the Ministry of Finance.

b. Designated subsidies:

These are expenditures from the national budgetary funds, designated to finance specific tasks of the voivodeships. They are allocated or tied payments, in the sense that they must be used only for the designated task for which they are transferred.

c. General subsidy:

The format of this subsidy is similar to the one applying to municipalities, but in this case other specific factors are taken into account, like the number of inhabitants of the voivodeship.

280. Apart from these “typical” or regular sources of funding, it should be noticed that voivodeships may also acquire funds through different sources:

- the sale of properties
- the result of commercial activities (regional public companies)
- allocation of specific funds for region management through regional operating programmes.

281. Polish voivodeships do not have their own taxes and therefore have limited autonomy, since most finance is received from the central government.

282. The equalisation mechanism was revised after a judgement of the Constitutional Court (4 March 2014), which accepted a challenge to the previous system lodged by the Masovian Voivodeship. Masovia was the only net payer among all voivodeships as the richest one.

283. This has become a serious problem during the economic crisis owing to the method of calculation, since it is based on the revenues of the previous two years. During a growth period the impact was not felt, but during the crisis, tax revenues decreased and Masovia had to take out loans to pay the dues. It lodged an application with the Constitutional Court in 2010, claiming that these dues were unconstitutional because in paying them the voivodeship could not carry out its own responsibilities. In other words, the equalisation mechanism introduced such a strong correction in the original allocation of funding that it prevented the Masovian region from fulfilling its own tasks. The concept of equalisation itself was not called into question, but rather its actual implementation and the fact that the current system does not establish a cap or statutory limit on the redistributive effort of the rich regions (“net payers”). Masovia petitioned against the high percentages, applied and asked for a ceiling of 25%, without obtaining a positive reply from the national government. The Constitutional Court ruled in favour of Masovia, founding the present system incompatible with Article 167 of the Constitution (principle of adequacy of regional resources) and gave the government 18 months to remedy the situation.

284. A new provisional equalisation mechanism, in compliance with the ruling of the Constitutional Court, was introduced in 2014. In turn, for regions, in accordance with temporary regulation in effect for the period 2015-2019, the division of the regional component of the general subsidy is determined in 52% by the unemployment rate and 48% by the amount of tax revenues generated by the region.¹⁰⁴

104 See P. PEST, *The system for equalization of local self-government units' revenue in Poland*, cit., p. 106.

International and transfrontier cooperation

285. Voivodships' international cooperation is widely recognised by the Law on Voivodeship Self-Government: Article 18, nn. 13 and 14 establishes the competence of the council on the «adoption of "Priorities of foreign cooperation of the region» and «resolutions on participation in international regional associations and other forms of regional cooperation». The executive board of the region has the competence on «organizing cooperation with the structures of regional self-government in other countries and with international regional associations» (Article 41, 2, n.5).

286. Chapter 6 of the Law deals with "International cooperation", establishing that the regional council adopts the "International cooperation priorities of the region", specifying: 1) the main goals of international cooperation; 2) geographical priorities of future cooperation; 3) intentions for joining international regional associations (Article 75). Article 76 states that: « 1. The cooperation of the region with regional communities of other countries is conducted in accordance with internal law, foreign policy of the State and its international obligations, within the limits of tasks and competences of the region. 2. The region participates in the activities of international regional institutions and is represented in them on the terms specified in the agreement concluded by the national organizations associating *unit of the territorial self-governments*. 3. The rules of joining by the region the international associations of local and regional communities are defined in separate regulations».

287. "Priorities of foreign cooperation of the region" and foreign initiatives of the region, including in particular draft regional cooperation agreements, may be made with the consent of the Minister of Foreign Affairs and may be taken by an absolute majority of the votes.

288. Polish regions participate in many transfrontier co-operation actions and programmes. For instance, the Lublin Region has participated in the realisation of the transnational co-operation programme Poland-Belarus-Ukraine 2007-2013. The Lodz region implements international projects under the European Territorial Co-operation programs, such as Interreg Central Europe, Horizon 2020, Creative Europe and Europe for Citizens Programmes. Another transfrontier area where Polish regions (especially Pomerania) are very active is the Baltic Sea, and co-operation with the regions of other Baltic countries is highly developed. The regions however need the approval of the central administration to participate in these initiatives.

6. OTHER MATTERS RELATED TO LOCAL AND REGIONAL SELF-GOVERNMENT

289. As for the signature of the Additional Protocol to the European Charter of Local Self-Government, the rapporteurs point out that the right to participate in the affairs of local authorities is globally well implemented in Poland.

290. As the Ministry of Interior underlined in its written replies, several participation tools could be mentioned. Among them:

- Local referendum – members of the local government of a *gmina/powiat/voivodeship* may decide, by way of a referendum, on matters concerning the local government, including the dismissal of a directly elected local government authority;
- Youth councils – the *gmina* council may consent to the establishment of a youth council of a consultative nature.
- Senior citizens' councils – the *gmina* council may set up a senior citizens' council. Senior citizens' councils are consultative, advisory and initiative bodies;
- the "*sołectwo*" (village) fund – these are the funds set aside in the *gmina's* budget and guaranteed for the residents of a given *sołectwo* to carry out tasks aimed at improving their living conditions.

291. The 2018 Law on citizens participation introduced new tools:

- The right to initiate a resolution for the residents. So far, the decision to guarantee the right of residents to initiate a resolution has been optional, and its introduction has been decided by the local government units' authorities. The amendments make it compulsory;
- The right of residents to take part in the debate on the report on the condition of the local government unit, which will be presented by its executive body;

- Obligatory citizen's budget in towns with *powiat* rights (the amount of the civic budget will be at least 0.5% of the expenses of the local government unit, and the allocation of funds will be decided annually by the residents). Until now, the creation of a civic budget by local authorities has been voluntary.

292. Therefore, the rapporteurs encourage Poland to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

7. CONCLUSIONS

293. The process of decentralization represented one of the pillars of the democratic transition and consolidation in Poland since the immediate aftermath of 1989, when the first law on the autonomy of municipalities was enacted (1990). The principle was then expressly entrenched in the Constitution and later implemented by successive legislative reforms in the late 1990s, which introduced two additional levels of local authorities, the *powiaty* and the voivodeships.

294. At the time of the previous monitoring visit, in 2014, Poland was ranked among the “top ten” countries within EU Member States for the level of local autonomy. The rapporteurs considered that Polish legislation and its political framework were in compliance with the Charter and that, in general, local and regional democracy in Poland presented an overall acceptable situation from the perspective of the Charter and the Reference Framework for Regional Democracy.

295. Unfortunately, in just a few years, the situation has changed significantly. The elements of attention pointed out by the 2015 report remain and some new issues of concern have arisen, which highlights the alarming trends in the overall situation of local and regional democracy in Poland and results in its rather non-positive evaluation.

296. The changes - most of them resulting from factual aspects and conducts, rather than from formal legal reforms - need to be understood within the general political environment that followed the 2015 presidential and parliamentary elections. The current conflict between the central government (controlled by the PiS) and the local government (mainly controlled by the opposition) is worth mentioning. In this perspective, the process of re-centralisation of competences, the increase in detailed national regulation aimed at setting standards for local services, and the pervasive supervision over local authorities, all appear to be elements of a larger political struggle that is currently taking place in Poland and that is ultimately undermining many of the *acquis* of the last thirty years.

297. The rapporteurs consider the task of monitoring compliance with the Charter, that is, with a treaty entrenching international standards on local self-government, extremely challenging, in such a context of domestic democratic “retrogression”, in which the degradation of the structures and substance of the constitutional democracy happens gradually, through an accumulation of piecemeal changes, each one possibly harmless or even justified, if taken separately.

298. For this reason, although the report focuses on monitoring compliance with the Charter, the rapporteurs cannot avoid to draw attention on the impact that the democratic retrogression at national level is having on the local and regional democracy, even beyond the aspects that have been expressly qualified as problematic in relation to the Charter.

299. The main elements of concern pointed out by the report are the following:

- the level of autonomy enjoyed by local authorities is being eroded by the re-centralisation of several competences previously transferred to such authorities;
- the numerous interferences by State authorities with the local independent functions undermine the assignment to local authorities of full and exclusive powers;
- the local authorities do not enjoy discretion in the exercise of delegated functions due to the detailed State regulation on delegated tasks;
- although the Joint Committee represents an adequate legal framework for consultation, the recent tendency is to bypass this mechanism, making it ineffective;

- the opinion of the inhabitants on boundary changes is not sufficiently taken into account. Even though the consultations were held, in several cases, the government changed the boundaries of municipalities against the will of their inhabitants;
- an increasing number of acts of the State impose rigid organisational solutions to local authorities;
- the status of elected representatives, especially as for their financial compensation, is worsening;
- the supervision on local authorities, carried out by government representatives, is increasingly overused and cannot be considered proportional to the importance of the interests that it is intended to protect;
- the tendency to transfer the responsibilities of local authorities without transferring adequate financial resources is increasing;
- local authorities lack sufficient financial resources from local taxes and charges of which they have the possibility to determine the rate;
- local authorities' level of trust in courts for the legal protection of their autonomy is decreasing;

300. The rapporteurs encourage Polish authorities to resume the path to decentralisation and local and regional democracy that represents an important feature of the Polish constitutional democratic tradition.

301. Finally, the rapporteurs would welcome the signing of the Additional Protocol on the right to participate in the affairs of a local authority.

APPENDIX – Programme of the Congress monitoring visit to Poland

CONGRESS MONITORING VISIT TO POLAND
Warsaw, Łódź, Nowosolna
(5 - 7 June 2018)

PROGRAMME

Congress delegation:

Rapporteurs:

Mr David BARO RIBA

Rapporteur on local democracy
Chamber of Local Authorities, NI-NR¹⁰⁵
Member of the Monitoring Committee of the Congress,
Mayor of La Massana, Andorra

Mr Pascal MANGIN

Rapporteur on regional democracy
Chamber of Regions, PPE/CCE-EPP/CCE¹⁰⁶
Member of the Monitoring Committee of the Congress,
Regional Councillor of the Grand Est Region, France

Congress Secretariat:

Ms Svitlana PEREVERTEN

Co-Secretary to the Monitoring Committee of the
Congress

Expert:

Prof. Tania GROPPi

Expert, Group of Independent Experts on the
European
Charter of Local Self-Government of the Congress
Italy

¹⁰⁵ NI-NR: Member not belonging to a Political Group of the Congress

¹⁰⁶ PPE/CCE-EPP/CCE: European People's Party Group in the Congress

**Tuesday, 5 June 2018
Warsaw**

Joint meeting with the National Delegation of Poland to the Congress, associations and experts:

- National Delegation of Poland to the Congress:

- **Mr Krzysztof IWANIUK**, Mayor of Terespol, Member of the Board of the Union of Rural Communes of the Republic of Poland
- **Ms Bernadeta HORDEJUK**, Regional Councillor, Warminsko-Mazurskie Region
- **Mr Walery CZARNECKI**, Head of the District of Luban

- Associations of local and regional authorities:

- **Mr Michał OLSZEWSKI**, Deputy Mayor of Warsaw, on behalf of the Chair of the Council of the Union of Polish Metropolitan Areas
- **Mr Tomasz FIJOŁEK**, Deputy Director, Union of Polish Metropolitan Areas
- **Mr Marek WOJCIK**, Plenipotentiary of the Board of the Association of Polish Cities
- **Mr Andrzej PORAWSKI**, Executive Director of the Association of Polish Cities
- **Mr Olgierd GEBLEWICZ**, Chairman of the Executive Board of the Union of the Voivodeships of Poland, Marshal of the Zachodniopomorskie voivodeship
- **Mr Bogdan CIEPIELEWSKI**, Executive Director of the Union of the Voivodeships of Poland
- **Ms Alicja WEJNER**, Press officer, Union of the Voivodeships of Poland
- **Mr Ludwik WĘGRZYN**, President of the Board of the Association of Polish Counties, Head of the District of Bochnia
- **Mr Grzegorz KUBALSKI**, Deputy Director of the Association of Polish Counties
- **Mr Paweł TOMCZAK**, Director of the Union of Rural Communes of the Republic of Poland
- **Ms Katarzyna PACZYŃSKA**, Secretary of the Polish delegation to the Congress, Head of international relations of the Association of Polish Cities

- Independent expert:

- **Mr Wiesław KISIEL**, Member of the Group of Independent Experts on the European Charter of Local Self-Government

City of Warsaw:

- **Mr Michał OLSZEWSKI**, Deputy Mayor of Warsaw
- **Mr Tomasz FIJOŁEK**, Deputy Director, Union of Polish Metropolitan Areas

Ministry of the Interior and Administration:

- **Mr Paweł SZEFERNAKER**, Secretary of State
- **Mr Szymon WRÓBEL**, Minister's Advisor in the Department of Public Administration
- **Ms Anna LENARCIK**, Head of Unit, International Affairs Department

Ministry of Finance:

- **Mr Tomasz ROBACZYŃSKI**, Undersecretary of State
- **Ms Zdzisława WASAŹNIK**, Director of the Local Government Finances Department
- **Mr Mirosław STAŃCZYK**, Deputy Director of the Local Government Finances Department
- **Ms Agnieszka MAZUREK**, Chief specialist, Department of local taxes

Wednesday, 6 June 2018
Warsaw

Ministry of Investment and Economic Development:

- **Mr Adam HAMRYSZCZAK**, Undersecretary of State
- **Mr Rafał BALIŃSKI**, Director, Territorial cooperation department
- **Mr Daniel BALIŃSKI**, Deputy Director, Department of development strategy
- **Ms Monika KUSINA-PYCIŃSKA**, Director, Department of European Affairs and International Cooperation
- **Ms Marta LEŚNIAK**, Deputy Director, Department of Regional Operational Programs
- **Mr Jan KUCICKI**, Department of European Affairs and International Cooperation

Senate:

- **Ms Maria KOC**, Deputy President
- **Mr Piotr Benedykt ZIENTARSKI**, Chair of the Local Government and State Administration Committee

Sejm:

- **Mr Ryszard TERLECKI**, Deputy Speaker
- **Mr Włodzimierz BERNACKI**, Chairperson of the Delegation to PACE
- **Mr Andrzej MACIEJEWSKI**, Chairperson of Local Self-Government and Regional Policy Committee
- **Mr Andrzej SZLACHTA**, Chairperson of Public Finance Committee

Constitutional Tribunal:

- **Mr Marcin KOMAN**, Head of the Office of the President of the Constitutional Tribunal
- **Mr Robert LUBAŃSKI**, Spokesman of the Constitutional Tribunal
- **Mr Bartosz SKWARA**, adviser to the President

Supreme Audit Office (NIK):

- **Mr Wojciech KUTYŁA**, Vice-President of the Supreme Audit Office
- **Mr Stanisław JAROSZ**, Director of the Department of Budget and Finance
- **Mr Bogdan SKWARKA**, Director of the Department of Public Administration
- **Mr Piotr MIKLIS**, Director of NIK Regional Branch in Katowice
- **Ms Iwona ZYMAN**, Director of NIK Regional Branch in Opole
- **Mr Przemysław WITEK**, Senior Public Audit Expert, Regional Branch in Katowice
- **Mr Grzegorz HABER**, Head of International Relations unit, Department of Strategy
- **Ms Elżbieta WOJTYCH**, Senior Expert in International Relations unit, Department of Strategy

Ombudsman:

- **Dr Adam BODNAR**, Commissioner for Human Rights
- **Mr Mirosław WRÓBLEWSKI**, Director, Constitutional, International and European Law Department
- **Mr Marcin SOŚNIAK**, Head of the Rights of Migrants and Minorities Unit, Department of Equal Treatment

Thursday, 7 June 2018
Łódź, Nowosolna

Łódzkie Region:

- **Mr Marek MAZUR**, Chair of the Łódzkie Regional Council
- **Ms Jolanta ZIĘBA-GRIK**, Member of the Board of the Łódzkie Region
- **Mr Marcin SKORUPIŃSKI**, Director of the Chancellery of the Regional Council of the Łódzkie Region
- **Mr Jacek KAZMIERSKI**, Inspector for the development and implementation of projects, Marshal's Office of the Łódzkie Region

City of Łódź:

- **Ms Hanna ZDANOWSKA**, Mayor of the City of Łódź
- **Mr Tomasz KACPRZAK**, Chair of Łódź City Council
- **Mr Krzysztof PIĄTKOWSKI**, Deputy Mayor of the City of Łódź
- **Mr Krzysztof MACZKOWSKI**, Treasurer of the City of Łódź
- **Mr Tomasz JAKUBIEC**, Acting Director, Architecture and Development Department and Director of the Bureau of the City Strategy
- **Ms Elżbieta STASZYŃSKA**, Deputy Director, Legal Department
- **Mr Grzegorz JUSTYŃSKI**, Director of Social Participation Office
- **Ms Anna WOSIEK**, Head of Unit, Bureau of the City Strategy
- **Ms Ewa SOBOCIŃSKA**, Senior Officer, Bureau of the City Strategy

Łódź East District:

- **Mr Andrzej OPALA**, Starosta of Łódź East District
- **Ms Ewa GŁADYSZ**, Deputy Starosta of Łódź East District
- **Mr Sławomir SOKOŁOWSKI**, Chair of Łódź East District Council

Nowosolna municipality:

- **Ms Małgorzata KAMIŃSKA**, Chair of the Municipal Council
- **Mr Piotr SZCZEŚNIAK**, Mayor of Nowosolna