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Local and regional democracy in Poland

Monitoring Committee

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Summary

This is the second monitoring report on the situation of local and regional democracy in Poland since the Charter entered into force in 1994, the first being in 2002. Although the country's decentralisation programme is now long established, the Charter remains a guiding instrument. The report, which is globally positive, welcomes the fact that the scope of local self-government is respected and that Polish local government bodies enjoy a wide scope for autonomous policy making. It also draws attention to some concerns, namely that, own-resource revenues do not always match the delegated tasks, concomitant financing is not always ensured and the current economic climate has strained the equalisation system in certain cases. Furthermore, an increasing number of regulations hinders local autonomy.

It is recommended to the national authorities that they ensure concomitant financing of delegated tasks and that regulatory frameworks do not restrict the exercise of local government competences. The government is invited to clarify the division of responsibilities on the governance of public spaces if possible through legislation. Lastly, the Polish authorities are invited to 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).

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 373 (2015)²

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

a. Article 2, paragraph 1.b of Statutory Resolution CM/Res (2011)2 of the Committee of Ministers of the Council of Europe on the Congress of Local and Regional Authorities, which provides 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 aforementioned Resolution CM/Res (2011)2, 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. Resolution 307 (2010) REV2 on procedures for monitoring the obligations and commitments entered into by the Council of Europe member States in respect of their ratification of the European Charter of Local Self-Government (ETS No. 122);

d. Recommendation 83 (2000) on Evaluation of regionalisation in central Europe, especially in Poland adopted by the Standing Committee of the Congress on 25 May 2000 and Recommendation 120 (2002) on local and regional democracy in Poland adopted by the Congress on 14 November 2002;

e. The explanatory memorandum to the present recommendation on local and regional democracy in Poland.

2. The Congress recalls that Poland signed the European Charter of Local Self-Government (hereafter “the Charter”) on 19 February 1993 and ratified it on 22 November 1993. It entered into force in respect of Poland on 1 March 1994. Poland did not sign the Additional Protocol on the right to participate in the affairs of a local authority.

3. It notes that:

a. the Monitoring Committee instructed Jos WIENEN, Netherlands (L, EPP/CCE), rapporteur on local democracy and Cynthia HUGHES, United Kingdom (R, SOC) rapporteur on regional democracy, to prepare and submit to the Congress the report on local and regional democracy in Poland;³

b. the monitoring visit to Poland took place from 20 to 23 May 2014 in the cities of Lublin, Opole Lubelskie and Gdansk and in the regions of Masovia, Lublin Region and Pomerania.

4. The Congress wishes to thank the Permanent Representation of Poland to the Council of Europe and the Polish authorities at central and local levels, representatives of Polish NGOs as well as other interlocutors for their valuable co-operation at different stages of the monitoring procedure and the information conveyed to the delegation.

5. The Congress notes with satisfaction that:

a. Poland’s acceptance of the Charter has been complete and without declarations;

b. in Poland’s transition to democracy, the Charter has been a guiding instrument in the creation of its local and regional bodies and is a key element of the Polish legal order;

2. Debated and adopted by the Congress on 26 March 2015, 3rd sitting (see Document [CG/2015\(28\)12FINAL](#) explanatory memorandum), co-rapporteurs: Jakob (Jos) WIENEN, Netherlands (L, EPP/CCE) and Cynthia HUGHES, United Kingdom (R, SOC).

3. In their work, the rapporteurs were assisted by Professor Dr Angel M Moreno, Consultant, President of the Group of Independent Experts on the European Charter of Local Self-Government and Ms Sedef Cankoçak, Co-secretary to the Congress’ Monitoring Committee.

c. the local and regional reforms carried out in Poland since 1990 have been successful in decentralising the country's administration and laying the foundations for a civic and democratic society;

d. in Poland self-government is strongest at the local level;

e. good practice in consultation and dialogue is exemplified by the Joint Committee.

6. The Congress draws attention however to the following points of concern:

a. the level of autonomy enjoyed by local government is increasingly being eroded by central government regulation;

b. competences delegated to the local and regional level are increasing but adequate concomitant funding to carry out the tasks is lacking, for example in the field of education;

c. higher revenue local and regional government bodies find the equalisation system burdensome at this time of economic stagnation as contributions are calculated on revenues earned in an earlier growth period;

d. the division of competences between local and regional authorities with regard to spatial planning lacks clarity and co-ordination suffers as a result.

7. In the light of this, the Congress recommends that the Polish authorities:

a. legislate to reinforce local authorities' autonomy through funding from own resources and thereby reduce the dependency of local and regional authorities on State transfers;

b. 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;

c. adjust the equalisation system so as to be more reactive to changes in the economic climate, for example by reviewing the scale of donations;

d. 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) in the near future.

8. The Congress invites the Committee of Ministers of the Council of Europe to take account of the present recommendation on local and regional democracy in Poland, as well as its explanatory memorandum, in its own monitoring procedures and other activities relevant to this member State.

DRAFT EXPLANATORY MEMORANDUM

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

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution CM/Res (2011) 2 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter "the Congress") regularly prepares reports on the state of local and regional democracy in all Council of Europe member States and candidate countries.

2. 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 on 22 November 1993. The Charter entered into force on 1 March 1994 with no restrictions.⁴ Therefore, Poland belongs to a select group of Council of Europe members whose acceptance of the Charter has been complete and without declarations.

3. Poland also 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 (CETS 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 (CETS 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 (CETS 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 (CETS No. 206).

5. Previously Recommendation 83 on evaluation of regionalisation in central Europe, especially in Poland, was adopted in 2000⁵ and Recommendation 120, on local and regional democracy, in 2002.⁶

6. The present report relates to a Congress delegation's visit to Poland from 20 to 23 May 2014 to monitor the situation of local and regional democracy in the country on the basis of the Charter. The Monitoring Committee appointed Mr Jos Wiene, Netherlands (L, EPP/CCE) and Ms Cynthia Hughes, United Kingdom (R, SOC) as co-rapporteurs on local and regional democracy respectively. They were assisted by Prof. Dr. Angel-Manuel Moreno, President of the Group of Independent Experts on the European Charter of Local Self-Government, and by one member of the Secretariat of the Congress.

7. The Congress delegation met representatives of State institutions of the Parliament, the Ministry of Administration and Digitisation and the Ministry of Finance; judicial institutions (the Constitutional Court), the Ombudsman (at national level); local authorities for the cities of Lublin, Opole Lubelskie and Gdansk and regional authorities for Masovia, Lublin Region and Pomerania⁷, as well as the Polish associations of local and regional authorities. Unfortunately, it was not possible to meet the Mayor of Warsaw or any representatives of the capital city, which the delegation profoundly regrets. The detailed programme is appended to the present report.

4. <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=122&CM=8&DF=13/06/2014&CL=ENG>.

5. [Recommendation 83\(2000\)](#) on evaluation of regionalisation in central Europe, especially in Poland, debated and approved by the Chamber of Regions on 23 May 2000 and adopted by the Standing Committee of the Congress on 25 May 2000. This recommendation was presented by Mr. Leon Kieres, who is now a judge in the Polish Constitutional Court.

6. Recommendation 120 (2002) on local and regional democracy in Poland.

7. *Pomorskie*.

8. The co-rapporteurs wish to thank the Permanent Representation of Poland to the Council of Europe and all those whom it met on the visit for their readiness to assist the delegation and for the information they so willingly supplied. They also thanks the Polish Delegation to the Congress and the associations of local and regional authorities for contributing to the organisation and smooth running of the visit.

2. Political context and elections

2.1. International context and relations with neighbouring countries

9. Poland is a democratic country, with a presence in major global and European international organisations. The country joined the Council of Europe in 1991, NATO in 1999 and the European Union in 2004. Poland is currently a growing economy, which has not suffered from the global economic crisis, although domestic economic growth slowed down in the period 2009 to 2013. The country has a total population of over 38.3 million persons and an area of 312 679 square kilometres, resulting in a low population density. At present, there are no conflicting relations with any neighbours.

2.2. Internal political context

10. Poland is a republic (Articles 1 and following of the Polish Constitution – hereinafter “the Constitution”). The Head of State is the President of the Republic and is directly elected by the people every five years (Article 127, the Constitution). The last presidential elections in Poland took place in June 2010. As a result, Mr. B.M. Komorowski, of the Civic Platform Party (PO) is the current President of the Republic of Poland.

11. Legislative power resides exclusively at the state level, and is composed of two chambers: the Upper House is the Senate of the Republic of Poland, composed of 100 senators. The Lower House is the “Sejm”⁸ (460 seats). Both are elected every four years, and the last general elections were held in 2011. As a result, the party “Civic Platform” (PO) obtained 207 seats in the House of Representatives and 62 seats in the Senate. The Polish People’s Party (PSL) won 28 seats in the House of Representatives and 2 seats in the Senate. Those two parties reached a political compromise to form a coalition cabinet. Mr. Tusk (Civic Platform) was appointed Prime Minister by the President of the Republic for a second mandate following these elections.

2.3. Local elections

12. Although Poland is a unitary country (Article 3, the Constitution) it is territorially divided into four levels with the state at the head. At the sub-state levels are the regional level: *voivodeships* then the local level, divided into two tiers: the *gminy*⁹ or municipalities (sometimes translated as “communes”) of which there are different types (see *infra*) and the *powiats* or counties. Local elections concern all of these sub-state levels. The latest Electoral Code dates from 2011.

13. The term of office is four years. The electoral system varies according the type of local election (see further section 3.2 *infra*) but is mainly based on the majority system. However in counties and in “towns with county rights” the division of seats among the different lists of candidates is based on a proportional system. The number of councillors to be elected is dependent on the local population so that towns and cities with up to 20 000 inhabitants elect 15 councillors, those with up to 50 000 inhabitants, 21 councillors and up to 100 000, 23 councillors, etc.

14. The previous local elections were held on 21 November 2010 .The second round of elections on 5 December 2010 concerned mayors and other run-off elections. Overall, approximately 48 000 representatives were elected including municipalities, county and regional councils, as well as mayors¹⁰. The ruling party, the conservative Civic Platform Party (PO), gained the majority of seats in all of these elections nationwide, followed by Law and Justice Party (PiS) and the Democratic Left Alliance (SLD) in third place. However, independent candidates and local political committees were favoured at both the county and municipal levels. Turnout reached 47.32% at the first round and 35.31% in the second round.

8. House of Representatives.

9. The singular is *gmina*.

10. See the National Electoral commission website for full details: <http://wybory2010.pkw.gov.pl/geo/eng/000000.html>

15. As for the Mayor of Warsaw, Civic Platform's candidate, the incumbent Hanna Gronkiewicz-Waltz, was re-elected at first round. Independent mayors were elected in Krakow, Katowice, Poznan, Torun and Wroclaw.

16. In terms of gender representation, women's participation – as candidates for election as well as in entering office – increased steadily to more than double over the previous decade. Therefore in 2010, 30.67% of all candidates were women and they formed 24.59% of elected representatives. A quota system has subsequently been introduced (from January 2011) concerning both parliamentary and local elections so that candidate lists should now include at least 35% of the representatives of one gender.

17. The next local elections are scheduled for Poland on 16th November 2014.

2.4. Previous reports and recommendations by the Council of Europe

18. The Congress previously reported on Poland in 2000 and in 2002. This resulted in Recommendation 83 (2000) on the situation of regionalisation in central Europe, especially in Poland, and in 2002 a report on the situation of local and regional democracy in Poland was drawn up which resulted in Recommendation 120 (2002). That report focused (inter alia) on the following points: the clarification of the scope of the Charter; the need to implement a long-term orientation programme aimed at organising devolution to sub-state authorities, the need to clarify the legal sharing of responsibilities among the different tiers of local government and the gradual devolution of powers to be accompanied by the transfer of the necessary financial resources.

3. Honouring of obligations and commitments

3.1. Constitutional and legal developments

19. As noted *supra*, Poland is a unitary republic, with administrative decentralisation. The sub-state levels of government in Poland are formed by the regions (*voivodeships*) the counties (*powiats*) and the municipalities or communes¹¹. 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 (*gminy*) was enshrined in the Territorial Self-Government Act. In May 1990, the first fully democratic local elections took place.

20. In the second reform, a legislative package passed in 1998 and effective from 1 January 1999, established the counties (*powiats*) and the regions (*voivodeships*) based upon pre-existing similar territorial demarcations. This legislative package was enacted under a "new" Constitution for Poland, passed in 1997, in particular in Chapter VII, Articles 163 to 172, entitled "Local Government". Therefore, local self-government is expressly regulated by the domestic Constitution; the authorities are considered as public legal entities, acting through their own governing bodies. They possess legal personality, and have rights of ownership and other property rights" (Article 165.1, Polish Constitution). Each territorial sub-state authority is governed by distinct national legislation: the regional authorities (*voivodeships*) are regulated by the *Voivodeships Act*; the counties (*powiats*), by the *County Government Act*; and the municipalities, by the *Municipal Government Act*. Warsaw, the capital city is specifically regulated by another ad hoc statute: the *Capital City of Warsaw Act*. Other legal rules regulate different aspects of local and regional democracy, or are applicable to local authorities, and they will be mentioned at different points of this report.

3.2. Local Self-Government: European Charter of Local Self-Government

3.2.1. Institutional arrangements

21. As noted *supra*, Poland ratified all the provisions of the Charter without reservations. Technically the Charter is applicable only to the two different tiers of true "local" self-government: municipalities (*gminy*) and counties (*powiats*).

11. English translations of Polish documents sometimes use the word "commune".

22. As for the *gminy* level, Article 164.1 of the Polish Constitution states that “the municipality (*gmina*) shall be the basic unit of local government”. At present, there are 2 413 municipalities. However, 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 regular legislation:

a. The municipality in the strict sense, also called “urban municipality” (*gmina miejska*), of which there are 240. Their populations differ greatly - from 1 000 to more than 1.7 million (in the case of Warsaw). Some of these municipalities may also have the status or “rights” of a county (*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. There are 1 571. Within this type of municipality parishes (*sołectwo*) represent the basic form of settlement. Although there are over 40 000 parishes, they are not considered to be local authorities.

c. The urban-rural municipalities (*gmina miejsko-wiejska*), of which there are 602 in the country. This type of municipality includes towns or townships and the area of villages adjacent to them, which in the past were separate rural municipalities.¹²

At municipal level, the basic organisation is composed of the council and the mayor, and it will be further discussed *infra* (section 3.3.1).

23. As for the *powiat* level, at present there are 314 regular *powiats*¹³ in Poland, which are *supra*-municipal local authorities. An average county has about 85 000 inhabitants and includes the territory of several municipalities. In addition to those “genuine” *powiats*, since 1999 the 66 largest cities (including the capital of the 16 *voivodeships*), enjoy and discharge simultaneously the status and role of a *powiat* (“cities with county rights”). Therefore, the total number of *powiats* is 379. 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*.

24. The above described structure of local government units could change in the future, if some initiatives taken by central government (Ministry of Administration) are successful. In particular, as the Congress delegation was informed, there is ongoing work on a draft Act which aims to provide more attractive financial stimulus for merging local self-government units (and which form the basis for initiatives of interested local self-government units to merge). In addition, the draft Act proposes removing some legal barriers that currently prevent the merger local government units. The merging of *gminy* is further discussed at section 3.3.3, *infra*.

3.2.2. Territorial issues

25. At present, there are no territorial issues deserving a specific mention in Poland. Although the country was subject to several wars and invasions during its troubled history (with enduring territorial impacts), the national boundaries have remained stable since the end of World War II, and there are no outstanding territorial claims on the country. It also enjoys a high ethnic and cultural homogeneity.

3.2.3. Relations between central and local authorities

26. In Poland, the three levels of sub-state, territorial government have developed historically, in a rather “independent” manner. Each level is regulated by an independent statute and has its own goals and institutional profile. This results in three levels of territorial government with few formal relations in terms of co-operation, co-ordination, mutual assistance, etc., and there is no codified set of intergovernmental relations. This does not mean that there are no connections at all, but the vitality of those contacts depends on different circumstances. Therefore, the Delegation detected rather weak inter-administrative relations, especially in the fields of co-ordination and mutual assistance. This could certainly be improved in the future.

12. See: M. Kulesza & D. Szescilo: “Local government in Poland”, in: (A.M. Moreno, editor): Local Government in the Member States of the European Union. A comparative legal perspective. 2012, INAP pubs, page 488.

13. The word « powiat » is usually translated into « county » in English written materials. This word selection has only a pedagogic goal and does not extrapolate to Polish “powiats” the status, role or competences of (for instance) English counties.

27. As for institutional dialogue between central and local authorities, Poland presents an interesting and positive situation (the relations of supervision are considered *infra*). There is, indeed, a formal channel and organisational setting for discussion between the local/regional authorities and state authorities: the Joint Committee between central government and local governments. This is a bilateral body, with equal representation of local bodies and central government agencies. It was founded in 1993 by a decree of the Prime Minister, and in 2005 it was regulated by a specific statute (Act of 6 May 2005). In addition, the Joint Committee also adopts internal rules of procedure. Until 1998 there were four local government associations represented in the Joint Committee (*powiats* and *voivodeships* did not exist then). Since 1999, six associations have been registered as partners in the Joint Committee. The composition of the Joint Committee is as follows: for central government, 12 people (appointed by the Prime Minister) represent the ministries with a say in the operations of local authorities. On the local/regional side, the associations are represented by two persons each, appointed by their steering organs. There are two co-chairs: the Minister of Administration for central government, and a rotating chair for the associations. The Joint Committee meets once a month and holds plenary sessions and working groups. The main task of the Joint Committee is to review government bills and regulations. The interlocutors met by the Delegation said that in almost all cases, the Joint Committee is involved before a law is enacted. The Joint Committee has no post-adoption scrutiny role as regards bills. Almost 90% of governmental decisions affecting local/regional matters seem to be taken by common agreement in the Joint Committee, the main source of non-agreement being the subject of finances.

28. Among the examples of successful practice of the Joint Committee are: (a) the second stage of the Local Government Reform itself: the creation of the counties and regions, and the direct elections of mayors, both elements having been negotiated and agreed within the Joint Committee; (b) the agreement on the Law on Sources of Income of Local Governments in 2003. In general, the Joint Committee is seen as a highly positive experience in the field of inter-territorial dialogue. The difficulties arise when finance is in question.

29. The Ministry of Administration asks the Joint Committee for advice on a regular basis. The government also carries out public consultations on matters of local and regional government (comments about bills are received through the internet). Finally, local bodies have also a voice in the parliamentary activities affecting their interests. The Rules of the Parliamentary Chambers guarantee participation by local and regional bodies once a bill has been proposed in Parliament, and they may also participate in some parliamentary committees.

3.2.4. *Financial resources (see infra, section 3.3.6)*

3.2.5. *Status of the capital city*

30. Warsaw (*Warszawa*) is the capital city of Poland. Therefore, the official seats of the national political institutions and bodies are located there. Apart from that, Warsaw is also a city with county rights. The city of Warsaw is the object of specific regulations embodied in the Capital City of Warsaw Act of 15 March 2002. Under this legal scheme, 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, etc. As compared to other major cities for example, there is no special tax which is collected only in Warsaw. The City of Warsaw is run by the City Council and by the Mayor in the same way as any other urban *gmina*.

31. However, the status of Warsaw has two interesting features. Firstly, its internal organisation, as a prominent Polish academic has pointed out, “from 1944 to 2002, Warsaw was divided into several independent *gminy*, but the model proved ineffective, so the formula of the single *gmina* divided into several auxiliary unit districts was adopted”.¹⁴ Currently, there are eighteen districts or boroughs (*dzielnica*), the largest district has a population of 220 000 (Mokotow), the smallest one has 20 000 inhabitants. Local politicians find this division disproportionate and difficult to manage. Each district has its own administrative organisation with councils – which are consultative bodies – elected by citizens directly. The council nominates the executive board. The Capital city of Warsaw Act regulates the relations between the “central” city council and the various de-concentrated districts with their respective competences, etc. The second particular feature of Warsaw is that it forms a complex settlement, intertwined with several neighbouring *gminy*, known as the Warsaw Metropolitan Area (*Aglomeracja warszawska*). Although it covers up to 10 *gminy* and has more than 2.7 million

14. See: Kulesza, op, cit, at p. 492.

inhabitants, this metropolitan area is more of a construct or a working framework than a local authority in its own right. However, a number of issues are tackled at “metropolitan” level: spatial planning; accessibility and mobility, economic policy, preservation of landscape, etc. In this sense, the Delegation heard those in favour of setting up a true “Metropolitan Area” which would consist of an institutional, supra-municipal organisation to manage affairs, services and governmental activities affecting Warsaw and the group of neighbouring cities.

32. Warsaw also holds privileged relations with the other big cities in Poland (Gdansk, Poznan) and has formed an alliance for mutual cooperation and the advancement of their respective interests: “The Union of Polish Metropolises”, created in 1990.

3.3. Analysis of the situation of local democracy in light of the European Charter on Local Self-Government (the Charter) on an article by article basis

3.3.1. Articles 2 and 3: principle and concept of 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.

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.

33. As regards Art. 2 of the Charter, in Poland, the principle of local self-government is explicitly recognised in the Constitution and in the applicable domestic legislation. Here the key provision is Article 165 of the Polish Constitution, according to which:

a. Units of local government shall possess legal personality. They shall have rights of ownership and other property rights.

b. The self-governing nature of units of local government shall be protected by the courts.

Therefore the Polish Constitution explicitly uses the word “self-government” (*samorząd*) or “self-governing nature” of the local government units. Moreover, the word “self-governing” or “autonomous” is also used as an adjective to refer to local “self-governing local units”, *samorząd lokalny* (in the case of *gminy* and *powiats*) and “self-governing region” (*samorząd regionalny* or *województwo*). Local self-government is thus recognised in the domestic constitutional law in an “open” and “explicit” manner. It is an inherent part of the governmental landscape and a consolidated pillar of Polish politics. This feature has another indirect consequence. Since there is a precise constitutional definition of local autonomy, it is possible to initiate legal challenges against statutes or regulations approved by the parliament, or the national government, that could potentially infringe local autonomy. This topic will be further discussed *infra*.

34. In addition, local self-government is also recognised by the various statutes governing *gminy* and *powiats*. Therefore it can be said that the present Polish constitutional and statutory arrangements fully satisfy the requirements of Article 2 of the Charter. Indeed, several experts and interlocutors mentioned that the Charter had provided inspiration for both the philosophy of the decentralisation processes and the legislation regulating the local government units.¹⁵ Moreover, Article 87 of the Constitution indicates that the sources of universally binding law of the Republic of Poland are: the Constitution; statutes, ratified international agreements and regulations. The Charter has become part of the Polish legal order and, as a ratified international agreement, it takes precedence over domestic statutes, pursuant to Article 91 of the Polish Constitution.

15. As the Ministry of Administration and digitisation stated officially: “the Charter has always been taken into account in the course of work on proposals for new reforms, it is an element of the Polish legal order. The whole local government system, which took shape after 1990 and then in 1998, when the *powiats* and *voivodeships* were created, reflects the provisions of the Charter” (Written replies from the Ministry of Administration and Digitisation, June 2014).

Article 3.1: concept of local self-government

35. Concerning Article 3, the main question is whether, in the present situation, Polish *gminy* and *powiats* regulate and manage a “substantial share of public affairs under their own responsibility and in the interests of the local population”, in the sense of Article 3.1 of the Charter. The concept is rather “subjective” and relative by nature since there is no universal measure to define “substantial”. It must therefore be seen in the light of historical evolution, the culture and the constitutional framework of Poland.

36. Several constitutional provisions guarantee a concept of local self-government which is fully in accordance with the requirements of the Charter. Thus, the preamble of the Polish Constitution mentions the principle of subsidiarity¹⁶. On the other hand, Article 15 states that “the territorial system of the Republic of Poland shall ensure the decentralisation of public power”. In addition, Article 16 provides that “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”, a wording that is clearly inspired by the Charter. Finally, Article 163 of the Constitution provides that “Local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities”. An analysis of the present statutory schemes for local government in Poland shows that Polish laws and regulations entrust municipalities with competences and powers that can be depicted as “fair” or “reasonable” in the light of the “unitary” constitutional characterisation of the country and the dominant practices in advanced countries (see point 3.3.1, *infra*).

37. Furthermore, local stakeholders made no complaints that the present competences of local authorities were insufficient or insubstantial. Indeed most appeared satisfied with the current situation. It should be re-stated here that, in recent years, central government has reformed the decentralisation process several times in favour of *gminy*, *powiats* and *voivodeships*.

38. In conclusion, the scope of local self-government in Poland can be defined as “fair” and sufficient in comparison with European comparative Law. The situation is consistent with the national culture and the political conception of the country. Therefore, it can be said that the requirements of Article 3.1 of the Charter are fully satisfied by the present legal and constitutional situation of Poland.

Article 3.2: organs of local bodies

39. As regards the organisation of *gminy*, Article 169.1 of the Polish Constitution establishes that “the units of local government shall perform their duties through constitutive and executive organs”. Moreover, “the internal organizational structure of units of local government shall be specified, within statutory limits, by their constitutive organs” (4th indent). Therefore, the parliamentary legislation mentioned *supra* provides a legal framework, within which municipalities (and other local/regional units) may decide to set up specific organs or structures.

40. The representative governing body at municipal level is the Municipal Council (*rada miasta*), while the municipality’s executive organ is the Mayor (*Burmistrz*, or “*Prezydent*” in cities such as Warsaw, Gdansk or Lublin).

41. Municipal councils are composed of members directly elected by the local residents, in regular local elections that are held every four years. Therefore, the duration of the municipal councils (and that of the councillors’ term) is four years. In this respect, the Polish Constitution states that “elections to constitutive organs shall be universal, direct, and 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” (Article 169.2). The electoral system differs according to the type of municipality: in most of them, there is a majority system, but in “towns with county rights” the division of seats among the different lists of candidates is based on a proportional system (Electoral Code of 2011). The number of municipal councillors is proportional to the city’s population. 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, etc.¹⁷

16. “The Constitution is based (among other principles)...on the principle of subsidiarity”

17. In the case of Warsaw, the most populated city, there is a statutory limitation of 60 seats in the municipal council.

42. The council is the body for political negotiation, planning and the adoption of the strategic decisions and guidelines (for example: the budget or the local spatial plan). Therefore, it adopts the municipal statute, the municipal budget, local strategies etc. It has also moderate regulatory powers, in the sense that it can enact local ordinances or regulations, if a parliamentary statute so allows. Therefore, the municipalities do not have “autonomous” or independent regulatory powers, due the “administrative” nature of their autonomy. The council also controls the activity of the mayor and of the various municipal administrative units.

43. 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 mayor¹⁸. However, the council cannot remove the mayor, since a municipal referendum is necessary to dismiss the mayor before the end of his term (which also lasts four years). The mayor is vested with a large number of executive competences: he has the duty to implement the policies, plans and guidelines approved by the council, he adopts the individual decisions and adjudications on the different sectors of municipal activity, etc. He also runs the different municipal administration offices or units (*urząd miasta*).

44. The question whether the Polish arrangement for the appointment of mayors complies with the letter and spirit of Article 3.3 of the Charter should be briefly analysed. The Charter requires that local government “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”. These last words naturally raise the question whether Polish mayors (“executive organ” under article 3.3) can be considered to be responsible to the municipal council. They can, since mayors are not fully independent from the councils, and they have their own democratic legitimacy. Not only must the mayor inform and “answer” for his management to the council, but the latter must approve the mayor’s proposals on sensitive issues such as the budget. Furthermore, the council decides on the mayor’s remuneration and, in extreme cases, a referendum may be called at municipal level to dismiss the mayor (a very rare possibility, apparently).

45. According to the delegation’s interlocutors, the council exerts strong control over the mayor. In theory, the council takes the important decisions, and the mayor executes them. Furthermore, the council has a “Revision Committee” that responds to complaints from citizens against the mayor. The mayor can, however, take initiatives and propose investment projects.

46. An example can be found in the domain of budgeting and expenditures where, in a council meeting in December of each year, the mayor presents his budget project and the budgetary resolution is adopted by vote. In June, the mayor receives “clearance” from the council for the budget (a decision called “*Absolutorium*”) and then submits the “budget execution report” to the council; the latter verifies whether the municipal monies were spent according to the purposes and in the amounts specified in the budget. If such clearance is denied, the council can pass a resolution for a referendum to revoke the mayor.¹⁹

47. Local leaders generally approved of the present arrangements for the relations between the council and the mayor and considered the influence of the town council over the mayor as sufficient. The rapporteurs did not find or hear claims that the system should be changed for the election of the mayor by the council, or that the system would produce political tensions in the day-to-day activities of *gminas*. In general, the current system is seen as a reasonable one, consistent with the requirements of democracy and of an effective local administration.

48. In the case of *powiats*, the basic institutional organisation includes the council (*rada powiatu*) and the executive board (*starosta*). The council is also elected every four years in direct and universal elections by the citizens of the municipalities included in the *powiat*’s territory. The electoral system here is proportional. As in the case of *gminas* 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

18. See: M. Kulesza, *op. cit.*, page 496.

19. In several cities, such referenda have been voted, but not in others. For instance, in Lublin, in the previous term a “no clearance” decision was taken but no referendum was held.

council, and the county council has the power to dismiss the county board. Therefore, the letter and the spirit of Article 3.2 of the Charter are fully respected in the case of *powiats*. The executive board of the *powiat* enjoys powers and responsibilities similar to that of the mayor in the *gminas*: implementation and execution of the council policies, rules, strategies and plans; running the day-to-day activities of the *powiat* administrative units, etc.

49. It must be noted that, in the “cities with county rights” (city-*powiat* compact) 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*.

3.3.2. Article 4: scope of local self-government

Article 4 – Scope of local self-government

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

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

3 Public responsibilities shall generally be exercised, in preference, by those authorities 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.

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, paragraphs 1, 2 and 3: Powers and competences

50. The powers and competences of municipalities and counties differ and each has its own constitutional and legal framework.

51. As to *gminy*, Polish cities have traditionally been strong as regards competences and their powers and competences are substantially guaranteed by a double constitutional protection. On one hand, Article 164.3 of the Constitution establishes inherent or residual powers in favour of *gminy*, according to which: “the commune (municipality) shall perform all tasks of local government not reserved to other units of local government”. This provision should be combined with Article 163 of the Constitution, stating that: “local government shall perform public tasks not reserved by the Constitution or statutes to the organs of other public authorities”. Therefore, *gminy* are the natural recipient of governmental powers, competences and responsibilities, unless parliamentary legislation or regulations grant that competence to a specific (different) governmental body. The constitutional provisions are also enshrined in the Municipal Government Act.

52. Despite this ambitious constitutional recognition of a principle that the French public law tradition calls “general clause of competence”,²⁰ the Congress delegation was informed that, in practice, the municipalities face tremendous problems in implementing those constitutional provisions in day-to-day activities.²¹ The main reason is that, according to the Regional Audit Chambers and more especially the Supreme Chamber of Control, the municipalities must have a specific statutory authority to carry out any expenditure of public monies. This requirement is laid down in the Local Finances Act. Therefore, if a given municipality wishes to carry out an initiative or a measure in the interest of the citizens for which it has no express competence in the law, in theory it could do so but in the audit

20. “General competence clause.”

21. As a prominent Polish scholar (who was one of the architects of the present territorial system) has written: “...Central government tends to take a negative approach towards the municipalities’ right to take actions that have not been explicitly designated in the legislation” (see: Kulesza, op. cit, 492)

chambers it could face objections about its statutory authority for spending on that precise activity. This results in a frustrating and unsatisfactory situation for local bodies.

53. Beyond those constitutional provisions, Polish municipalities enjoy many competencies for which they have specific legal authority. The statutory source of the competences derives from both the Municipal Government Act and from laws and regulations governing administrative action. The Law on Municipalities divides those competences into “compulsory” and “optional” tasks.

54. Polish municipalities discharge many powers and responsibilities in several domains of local life, which are identified by the applicable laws and regulations in each of those sectors. That means, also, that there is no “hard core” of essential or “inherent” competences for *gminy* singled out by the Constitution. Accordingly, the competences granted to local authorities in the various sectors of governmental activity may be widened or reduced by the legislator. Currently the municipalities discharge powers and services, *inter alia* in the following fields: environmental protection; public streets, squares and public gardens and parks; traffic and public transportation; water supply and sewage systems; urban waste (disposal); welfare; care homes; public education (primary and middle schools); cultural and leisure facilities; conservation historic monuments; sport facilities and tourism; markets; housing, social assistance programme and culture; etc.

55. Apart from adjudicatory powers, municipalities are also endowed with important planning powers, for instance in the domain of spatial planning and urban development. In this domain, the Congress delegation was informed that a city council may approve in a free and “independent” way the municipal, spatial and urban development plans, without the need to obtain formal approval from the corresponding *powiat*, *gminy* or the central government agencies. On the other hand, this feature was identified by some of the delegation’s interlocutors as a serious drawback in the present landscape of the planning process in the country, which does not ensure the necessary “co-ordination” or harmonisation in this field.²² The law governing spatial planning is considered by many interlocutors to be unsatisfactory.

56. Finally, municipalities have regulatory powers, in the sense that the municipal councils can approve, with due respect to the national laws, by-laws and local ordinances for different purposes: the setting up organisational structures, the regulation of private or business activities within the municipal territory, etc. Apart from their “own” or autonomous competences, municipalities also discharge a fair amount of delegated tasks.

57. As for *powiats*, 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, *powiats* 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. Therefore, the main legal source of competences is the *Powiat* Government Act, which provides a comprehensive list of responsibilities and competences. Among those tasks, the following may be identified: public education (high schools), healthcare at county level, public transport and the maintenance of roads, vehicle registration, social assistance, flood protection, water supply, etc.

Article 4, paragraphs 4 and 5: fullness of competences, delegation

58. Autonomous or “own” responsibilities and competences of municipalities can be considered full, comprehensive and exclusive. In this sense, Article 166 of the Polish 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”. Only specific public authorities of the state administration (*voivode*)²³ have the power to supervise the decisions of municipal and county authorities. This form of control includes the supervision of autonomous activities in terms of their legality (on this issue see *infra* point 3.3.5). Furthermore, the *voivode*’s powers can only be discharged with due respect to the appropriate procedure laid down in legislation.

59. In addition to what can be called “proper” or “own” competences, Polish local authorities may also be required to perform delegated tasks. In this sense, Article 166 of Polish Constitution states that if

22. It must be noted that according to the Lubelskie Voivodeship (Lublin Region), all local spatial development plans must be elaborated in harmony with the regional ones.

23. The regional governor

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 are to be specified by statute.

60. The phenomenon of national agencies delegating central administration tasks to local bodies is a common feature in most European countries. In the case of Poland, local leaders the Congress delegation met have expressed three recurrent claims: recently the number and importance of delegated tasks have increased sharply. In addition national legislation and administrative regulations are too detailed resulting in over-regulation, which limits *de facto* the ability of the *gminy* to adapt the tasks to local conditions.²⁴ Finally a more disturbing trend is the delegation of tasks from central government without adequate financial resources to discharge them. That is, there is insufficient concomitant financing for delegated tasks.

Article 4, paragraph 6 of the Charter: consultation:

61. 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”. On this matter, the Joint Committee constitutes a positive example of inter-governmental consultation, a forum where local (and regional) bodies have a vigorous voice, and where important issues have been negotiated and agreed. (see *supra*, section 3.3.7.)

62. In conclusion, regarding Article 4 of the Charter, the delegation makes three remarks.

- The number and importance of powers and competences enjoyed at present by Polish municipalities are generally regarded as “fair” or “reasonable” by local leaders and representatives in the country and reflect the importance of local authorities (especially *gminy*) as key actors in public life.
- Local stakeholders complain that recently the number of tasks that municipalities have been required to perform has increased sharply. In addition, there is a lack of adequate funding for both own and delegated competences, as well as a certain over-regulation on the part of the government which reduces the autonomy of *gminy*.
- Finally, the Polish public-law system incorporates an implicit principle in favour of decentralisation and subsidiarity which falls to the executive and legislative branches to implement. This general clause heralded an ambitious process of decentralisation in the last two decades.

63. Therefore, it can be considered that the requirements of Article 4 of the Charter are met by the present legal and political situation in Poland.

3.3.3. *Article 5: protection of 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.

64. The process of mergers of *gminy* has been a prominent feature in the Polish territorial landscape over the last few decades. As noted at section 3.2.1 *supra*, the national Government now seeks to reinvigorate this process, by providing new fiscal stimuli, since those in force have proved to be insufficient.

65. As regards changes to the territorial structure, the Council of Ministers may create, merge and dissolve *gminy/powiats*. It also defines the boundaries of municipalities and counties by way of regulations. Revisions and changes in local government units are made by the Council of Ministers

24. According to the National Association of Cities, in education and social welfare, (competences) are not full and exclusive, nor can they be freely adapted to local conditions – the relevant acts of parliament are very detailed, additionally referring many issues to well over one-hundred ministerial regulations.

Provisions of the law concerning important powers, especially spatial planning, are regarded as negative and yet they are not amended – this limits the possibilities of efficient planning of local development (written reply, June 2014).

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

66. When making boundary changes to *gminy*, the Ministry of Administration and Digitisation takes care 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) will ensure the ability of the local body to carry out its tasks. Therefore, the will of the residents is not the only basis for changing the boundaries. The municipality must also provide maps and documents to support the request, as well as the *voivode*'s opinion. The municipality submits the motion (through the *voivode*) to the Ministry of Administration and Digitisation by 31 March of each year, and the government is obliged to issue the regulation by the end of July that year.

67. Furthermore, any changes concerning territorial division are subject to consultation in the Joint Committee of the central and local governments and published on the website of the Government Legislation Centre, the public information bulletin of the Ministry of Administration and Digitisation, as well as the consultation website entitled "*Mam zdanie*".

68. The requirements of Article 5 of the Charter are thus fully complied with by the current legal framework in Poland.

3.3.4. Article 6: administrative structures

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.

69. Polish municipalities enjoy a fair degree of autonomy in the field of internal organisation, which is commonly considered to be a part of local government. Within the limits of state legislation, the council and the mayor may decide to establish a wide array of different committees and internal structures. However, some local authorities associations claim that the existence of numerous Acts of Parliament and administrative regulations impose too rigid organisational structures on municipalities and *powiats*.

70. As for Article 6, paragraph 2 of the Charter, Polish municipalities have the power and the autonomy to recruit highly-qualified staff on the basis of merit and competence. 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 their own human resources, with due respect to public and competitive procedures. The Congress delegation was not made aware of any complaint on the part of Polish local authorities on this matter. A specific statute regulates employment within local government units: the Act on Self-Government Employees of 21 November 2008.

71. Consequently, the current Polish system meets the requirements enshrined in Article 6 of the Charter.

3.3.5. Articles 7 and 8: exercising responsibilities and government supervision

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

1 The conditions of office of local elected representatives shall provide for free exercise of their functions.

2 They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.

3 Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

Article 8 – Administrative supervision of local authorities' activities

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

Article 7: conditions under which responsibilities at local level are exercised

72. In Polish law, the conditions of office of local elected representatives provide for the free exercise of their functions. Poland is an advanced, democratic country. 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 level of allowance depends on the number of residents of the *gmina*.

73. The municipal council sets the remuneration of its members by means of a resolution. It is a flexible system within the framework of national legislation: there is a type of “national average wage” (2 600 zlotys per month), and the council may decide which actual percentage of this figure will be paid to the council members. Additional rates may apply if a member holds a specific position in the City Hall. Deductions are also possible, for instance if the member is absent from a council session. Therefore, councillors’ salaries are capped but they depend on the size of the local body concerned. The maximum salary foreseen by law may apply if the *gmina* has 200 000 inhabitants or more, 75% thereof if the population ranks between 5 000 to 200 000 residents and 50% thereof if it is smaller than 5 000 inhabitants.

74. The remuneration of the mayor follows similar rules, since the council decides on the salary of the mayor, which is also capped by the national legislation and depends on the *gmina*’s population. The deputy mayor is selected by the mayor and earns the same salary.

Article 8: administrative supervision

75. 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. Thus, 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.” and Article 171.2. “The organs exercising review over the activity of units of local government 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 (Parliament) may dissolve a constitutive organ of local government if it has flagrantly violated the Constitution or a statute” (Article 171.3).

76. Regular or day-to-day administrative supervision of *gminy* and *powiats* by state authorities is carried out mainly by two types of bodies: the *voivodes* (regional public officials/governors) and the Regional Audit Chambers (with the Supreme Chamber of Control of the Regional Audit Chambers), at the head).

77. The “*voivode*” is a public official established at regional level (one per *voivodeship*), assisted by their own offices and civil servants although 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 supervise and control the activities, decisions or plans of the three levels of sub-state government present within each *voivodeship*’s territory (the various *gminas* and *powiats* and the *voivodeship* itself). The parameters of such control are strictly determined by the law, and the *governor (voivode)* may only determine the legality of the decisions, rules and adjudications as adopted by the *gminas* and *powiats* included in the territory of the *voivodeship*.

78. In order to facilitate that supervision, city and county councils have the duty to refer all resolutions to the governor/*voivode*, who reviews them. If the *voivode* finds that a given measure or decision goes against the law, s/he may declare it null and void, partially or in full²⁵.

79. During its visit the Congress delegation was informed that one or two such cases occur in each *voivodeship* per year so that co-operation rather than conflict is the rule. Indeed an informal consultation stage often occurs during the preparation of the adversarial process. In the event of disagreement between the local body and the *voivode*, it is not unusual that the lawyers of the local authority and those of the *voivode* hold discussions so that modifications may be made on the side of the local authority in order to avoid the intervention of the *voivode*. 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 in the Regional Administrative Court, where a public hearing takes 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.

80. On the other hand, supervision of the financial management of *gminy* and *powiats* is carried out by Regional Accounting Chambers, of which there is one in each *voivodeship*. Those chambers, under the supreme authority of the Supreme Chamber of Control of the Regional Accounting Chambers ensure that *gminy* and *powiats* manage their expenditure according to the law, and within the municipal/county budget approved. They also check that municipalities and *powiats* present balanced budgets, or budgets with a deficit within the legal limits. Supervision by Regional Accounting Chambers may result in official reports, enquiries or notifications.

81. This constitutes an “*ex post*” control of public expenditure, since “*ex ante*” controls are the exclusive competence of the local authorities themselves (see *infra*). This supervision is also controls “legality” - a term with a wide meaning in the financial field which encompasses the sound management of public finances as well as the integrity and efficiency of spending practices at local level. However, neither the Regional Chambers nor the Supreme Chamber of Control may revoke a local body decision or measure.

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

82. In Poland, as in most countries, the financial resources of local authorities are a common source of controversy. The Polish Constitution establishes a rather favourable framework for local finances

25. 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).

addressed through various provisions, namely Article 167: “Units of local government shall be assured public funds adequate for the performance of the duties assigned to them. 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. The sources of revenues for units of local government shall be specified by statute. 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”. Further, Article 168 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”. In addition, two key pieces of legislation address this sensitive field: The Local Government Revenues Act and the Act on Public Finance of 27 August 2009. The present situation of local finances (for both municipalities and *powiats*) in Poland may be summarised as follows:

Gminy

83. *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:

a. Municipal own income

This includes several sources, such as own taxes (property tax)²⁶ and administrative fees and charges; benefits from municipal assets (sale or rent of municipal real estate), income from municipal companies and public 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). At present, the share for *gminy* in the CIT is 6.71% (of the total collection of this tax from companies established in their area), and 37.42% of the PIT (of the total collection of this tax from taxpayers residing in the municipality).

b. Subsidies

These are complex legal and financial mechanisms for supporting local economies with funds from the central budget. The most important goal of this source of income is to support the implementation of municipal tasks related to education (maintenance of school and teachers’ salaries). The exact amount transferred to each municipality is calculated according to a complex set of variables, regulated by the Local Government Revenues Act.

c. Grants (designated subsidies):

These are a more flexible form of support for specific tasks performed by *gminy* such as those assigned to them by national legislation. The following figures from 2013, provided by the Ministry of Finance, illustrate the overall structure of municipalities’ revenues: (a) own revenue: 48.16%; (b) designated subsidies: 20.8%; (c) general subsidies: 30.97%.

84. 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.

85. Contrary to the official position of the government (Ministry of Finance), municipal leaders claim that their own income remains limited and that they are not fully compensated for the execution of central government tasks delegated to them. In particular, the Association of Polish Cities (ZMP) has formulated four basic claims on the financial situation of *gminy* in Poland: (1) the resources are not sufficient. In 2006-2007 the existing legislation (Act on the Personal Income Tax) was changed, and the changes have weakened the finances of municipalities without any compensation, and without any reduction in the scope of tasks delegated to them. New tasks are delegated by the central government without sufficient financial resources. (2) Local taxes are set by the law and by the Minister of Finance, local governments can only introduce tax exemptions and relief. (3) The financial equalisation system does not take into account the differences in the financial burdens on urban local authorities; instead, it takes into account, twice, the specific nature of rural municipalities. (4) Although Article 6 of the Charter states that local authorities shall be consulted on the way in which redistributed resources are allocated to them, the procedure provided for in domestic legislation is notoriously disregarded, since

26. 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.

sometimes bills are passed without any assessment of the financial impact of the new law on local authorities, despite the fact that such an assessment is obligatory.

86. One of the key problems for *gminy* is the financing of education (primary and middle schools), still based on a model introduced by the Act of 26 January 1982 (The Teachers' Charter). This is a municipal task, funded by a subsidy calculated per student and for the maintenance of buildings. The subsidy is intended to cover the teachers' salaries, but these are defined at national, not local level. According to the local associations, this subsidy has lately been decreasing as there are fewer students than before, and most municipalities can only afford to pay 90% of the salaries. In other words, the subsidies are lower than the effective costs of the service. According to local leaders, the expenses of local self-government units (globally, not just counties) on education amount to around 125% of the "educational part" of the general subsidy that they receive. This leads to a deficit of funds, estimated at some 8 billion zlotys. This is why local bodies would like central government to take over its education tasks.

87. 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 of the Regional Audit Chamber. Municipalities (and *powiats*) 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.).

Powiats

88. The structure of the counties' sources of income is defined by the Local Self-Government Unit Income Act of 13 December 2003. According to that Act, county incomes are as follows:

1) Own income, including:

- a. a share (10.25%) of the income tax from private persons residing within the territory of the county,
- b. a share (1.4%) of the income tax from legal entities with registered office within the territory of the county,
- 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 county 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" part, which is assigned to *powiats* 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: counties 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) Grants

89. As for actual figures,²⁷ in 2013 the counties' income amounted to PLN 23.077.562.589 (zlotys) (according to aggregated data concerning the execution of the county budgets for four quarters of 2013) and was broken down as follows:

- a. own income 29.87% of total revenues, of which:
 - (i) share in the PIT: 15.22%; (ii) share in the CIT: 0.67%; (iii) income from property: 1.53%; (iv) other types of income: 12.45%;

27. Figures provided in writing by the Association of Polish Counties (ZPP)

b. general subsidies 44.53%, of which:

(i) educational part: 34.77%; (ii) balancing part: 2.63%; (iii) compensation part: 6.63%; and (iv) general subvention supplement: 0.5%;

c. designated subsidies: 25.59% (including European funds).

90. According to the official assessment of the Association of Polish Counties (ZPP), the current situation of county financing is far from satisfactory in that own income plays only a secondary role while subsidies provide the main source of income. This is mainly due to the fact that, in contrast to the *gminy*, *powiats* do not have any taxing power. Neither do they have any influence on the tax income obtained by them. These revenues only consist of shares in the income tax which is defined at the national level. Finally, the level of grants for delegated tasks is too low; with grants being calculated on the basis of past, outdated figures and not with reference to the real costs of tasks and services provided. Furthermore, *powiats* concur with municipalities in criticising the current system for the payment of teachers' salaries, as presented *supra*.

3.3.7. Article 10: right to associate

Article 10 – Local authorities' right to associate

1 Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.

2 The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.

3 Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

Article 10, paragraph 1: co-operation structures

91. 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 does not involve creating a separate legal entity, and (c) the consortium of local authorities, which also admits *powiats* and *voivodeships* as members. Some of these associative structures of municipalities are represented in the Joint Committee of government and local government (see *supra*).

92. Despite the possibilities provided by the law, the Congress delegation was informed that the culture of inter-municipal co-operation is not highly developed in Poland but that there are government initiatives in this domain. Namely, that inter-municipal co-operation could be managed by executive boards, composed of those nominated by the local bodies from amongst their members and from outsiders. The Government could support such co-operation by creating "Centres for Common Services". The savings expected from these centres could be one billion zlotys per year. The Government also hopes that inter-municipal co-operation would eventually lead to mergers of local bodies. In the metropolitan areas, the counties are expected to form county associations.

Article 10, paragraph 2: national / regional associations

93. The situation in Poland as regards the "right to associate" requirements of Article 10, paragraph 2 of the Charter can be assessed in a positive manner. 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. This right does not only derive from the Charter, but from the Polish Constitution itself, which states that "Units of local government shall have the right to associate" (Article 172.1).

94. Currently, there are six well-structured and active associations of local and regional authorities in Poland. The oldest is the Association of Rural Communes (Municipalities) of the Republic of Poland,²⁸ and the most recent is the Union of Voivodeships (Regions). In between, four others were established: the Association of Polish Cities (ZMP),²⁹ the Association of Powiats (Zwiazek Powiatow Polskich,

28. See: www.zgwrp.pl

29. See: www.zmp.org.pl

ZPP),³⁰ the Association of Metropolises (*Unia Metropolii Polskich*),³¹ and the Association of Polish Small Towns.

95. These associations (all of them having a national dimension) are inclusive and representative of local authorities (at municipal, county 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 interest, essentially within the Joint Committee (see *supra*).

Article 10, paragraph 3: Transfrontier co-operation

96. The co-operation-oriented culture of the country and a common history with neighbouring countries provide optimal conditions for municipal co-operation in a trans-frontier context in Poland. Furthermore, and as noted in the introduction to this report, Poland has signed and ratified the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No.106). Furthermore, the right to engage in transfrontier cooperation is also protected by the Constitution, which states on this point 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” (Article 172.2). Therefore, Polish local government units are entitled to co-operate with their counterparts in other States. In fact, Polish associations maintain relations with many international partners, for example the Municipality of Lublin has twinning programs with more than 10 cities over Europe including Lviv, Vinitza (Ukraine) and Alcalá de Henares (Spain). The city of Gdansk is also very active in transfrontier co-operation. Namely, it is a member of the Union of Baltic Cities, and therefore engages in co-operation programs with cities belonging to the nine countries with coasts on the Baltic Sea.

In conclusion, the situation is satisfactory as regards Article 10 of the Charter.

3.3.8. Article 11: Legal protection of local government

Article 11 – Legal protection of local self-government

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

97. In Poland, legal protection of local self-government is expressly guaranteed by the Constitution, namely at 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”. Therefore, the domestic constitution guarantees the protection of local authorities (considered as individual entities) and of self-government (as a principle), by the judiciary.

98. At present, the Polish legal system grants local authorities (and regions/*voivodeships*) a specific right of recourse to various types of judicial remedies in order to secure the free exercise of their powers and the protection of their interests. The autonomy of local government units is afforded judicial protection through various mechanisms:

a. Protection by ordinary courts: local bodies may have recourse to ordinary (civil) courts, and engage legal proceedings using the system of remedies provided by private law, including requests for damages.

b. Protection by administrative courts: there is a specific “*locus standi*” for local authorities in the administrative courts system, where local autonomy may provide a legal argument to challenge a measure, decision or regulation approved by the central government. Local bodies may use public law devices, including complaints about decisions and resolutions adopted by supervisory bodies (for example, a legal challenge against a *voivode*’s (governor’s) resolution overruling a decision of a local body, see *supra*).

30. See: www.zpp.pl

31. See: www.metropolie.pl

c. *Protection by the Constitutional Court*: this court adjudicates complaints concerning the non-conformity of the legislation with the Constitution and with ratified international agreements (such as the Charter).

99. The Constitutional Court has played an active role in implementing the Charter system in several constitutional proceedings dealing with local government issues (as many as 20 so far). This is justified on the grounds that, in the domestic legal system, the Charter, as an international treaty, is considered to be “the law of the land”, placed immediately above regular parliamentary statutes. Consequently, the case-law of this court is well developed, and the Constitutional Court can be depicted as the supreme defender of the Charter in the Polish legal system.³² Some of its rulings, indeed, have had political and media impact, such as adjudicating the claim on the equalisation mechanisms for *voivodeships* (regions), triggered by the Masovian Region (see *infra*, point 3.4.7). Each local government unit can complain to the Constitutional Court, that it is affected by a piece of legislation. However, the associations of local/regional bodies cannot do so on behalf of their members.

100. In the light of the preceding considerations, it can be said that the current political and legal situation of the Polish legal system completely meets the requirements of Article 11 of the Charter.

3.3.9. *Article 12: undertakings – reservations formulated by Poland*

101. As noted *supra*, the instrument of ratification of the Charter deposited by Poland contained no declarations nor so called “reservations” to the Charter and this is worthy of a specific mention. Therefore, this international instrument is fully applicable and binding on Poland.

3.4. ***Analysis of the situation of regional democracy in the light of the Reference Framework for Regional Democracy***

3.4.1. *Introduction: Basic facts concerning the regional level of government*

102. At present, there are sixteen voivodeships (*województwa*, in Polish) or regions in Poland. The largest is the Masovian *voivodeship* (over 30 000 km²),³³ 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. The *voivodeship* level of government is situated between the local bodies (*gminas-powiats*) and the state. As noted *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,³⁴ although with different names, territorial demarcations, institutional profile and competences.

103. The question whether *voivodeships* may be characterised as “regional” bodies should be clarified in the light of the Reference Framework for Regional Democracy (hereinafter, the “RFRD”). This non-binding document provides a concept for “regions” that is fully respected in Poland: they are territorial, administrative-governmental bodies, situated between municipalities (and *powiats*) and the State; they have their own competences and powers, namely in those domains singled out by the RFRD: regional development, planning, etc.; they possess a specific legal scheme and they enjoy a separate system of financing, etc. Furthermore, there is certainly a “regional identity” (history, regional flag, regional seal) which has developed in parallel with the process of “modern” regionalisation. However, it should be underlined that Polish *voivodeships*, unlike some other countries, do not fulfil the conditions for regional autonomy, given the unitary nature of the country and its strong national identity. They do not enjoy “political” autonomy, but an “administrative” one. For instance, Polish regions do not have legislative powers having no regional parliaments nor regional taxes.

32. Among those rulings, mention may be made of the following: judgement of 13 March, 2007 (K 8/07), concerning the property statements of members of local government; judgement of 8 February 2005 (K 13/03), concerning the proportional elections to some commune councils; and judgement of 15 March, 2005 (K 9/04), concerning the ownership of real estate of the *gminy*.

33. This is also the richest *voivodeship*, as it produces 22.7% of the GDP (120 billion USD). Furthermore, it includes the capital city. This *voivodeship* has 314 local government units (228 are rural and 56 are urban/rural). There are 30 cities including Warsaw which is a city/*powiat*.

34. Since 1975, there have been 45 *voivodeships* in Poland.

104. Therefore, *voivodeships* may be depicted as being of a rather “technocratic” inspiration, to do with the double requirement for: (a) an intermediate layer of government between the local and the central level of administration (taking into account the large area of the country) and (b) an operational structure responsible for the implementation of the EU regional funds.³⁵

105. In the light of the preceding considerations, Polish regions (*voivodeships*) may be considered as regions in the sense of the RFRD.³⁶

3.4.2. Constitutional recognition and applicable statutes

106. The Polish Constitution does not explicitly 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 *Voivodeships Government Act*,³⁷ 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.

107. This feature of domestic constitutional law is of paramount importance in any analysis of Polish regions, since the Constitution does not mention the regional bodies in any of its articles (excluding the said Article 164.2). Therefore, there would be a “vacuum” in the constitutional regime of *voivodeships*, no constitutional regulation of those bodies whatsoever, and the regular legislator would enjoy the largest discretion in the determination of their legal status. This vacuum could be filled by one of the two following approaches: (a) according to a textualist approach, all the constitutional provisions dealing with self-government are only and exclusively applicable to the “local” bodies (in the strict sense), that is, *gminy* and *powiats*. Consequently, *voivodeships* could not make claims based on (for instance) Article 167 of the Constitution (adequate funding), or Article 165.2 (the courts’ protection of local self-government); (b) according to an interpretative approach based on the spirit of the Constitution, most provisions dealing with local self-government should also be applicable, by analogy, to *voivodeships*. This is, in the view of the delegation, the right approach to the situation in Poland, based on the historical precedents and the usual understanding of domestic politicians and courts. Moreover, their full autonomy within the Constitution is protected by the courts.

3.4.3. Organisation

108. In Polish constitutional law, *voivodeships* are considered territorial, public legal entities, acting through their own organs. The representative governing body at the regional level is an elected assembly called “*sejmik*”, which appoints an executive body (*zarząd województwa*), responsible to the assembly. The leader of that executive is called the *marszałek województwa* (*voivodeship* marshal).

109. Regional councils are composed of members directly elected by the residents in the region, on the basis of direct elections that are held every four years. Those elections coincide with that of *gminy* and *powiats*. The electoral system is proportional. The number of provincial councillors is also proportional to 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.

110. The executive (*zarząd województwa*), headed by the *marszałek*, drafts the budget and development strategies, implements the resolutions of the *sejmik* (regional assembly), 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 assembly at the marshal’s request.

111. 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

35. *Voivodeships* are considered as “NUTS II” the EU regional policy terminology.

36. English materials refer to *voivodeships* as “regions” or “provinces”, without a clear pattern. We prefer here the word “region” as *voivodeships* clearly belong to the regional level of government.

37. Also translated in English as “Act on Voivodeship Self-Government”

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.

112. In connection with the marshal and the management board, regional councils have the following prerogatives:

- to elect the marshal and decide on remuneration;
- to dismiss the marshal in some prescribed cases;
- to elect the management board at the request of the marshal, to dismiss it, and to accept its resignation;
- to appoint and dismiss the treasurer upon a proposal from the marshal;
- to review the reports of the activities of the board and the marshal, especially in the domain of budget execution.

113. 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*, as has been clarified *supra* (see section 3.3.5). *Voivodes* are representatives of government administration in the region; they cannot influence the work of self-government. As in the case of *gminy* and *powiats*, “*voivodes*”, may supervise the legality of the decisions and measures adopted by the *voivodeship* itself). The cases and procedures of such control have been presented *supra*, in connection with *gminy* and counties. The financial supervision is also carried out by the Regional Accounting Chamber.

3.4.4. Regional competences

114. *Voivodeships*’ competences are identified by the different laws and regulations covering the various sectors of governmental action, and by the *Voivodeships Act*. This legal situation means, *inter alia* that there is not a constitutionally protected hard core of regional competences, since they are totally dependent on the will of the national parliament or the central government. Furthermore, the principle of presumed competences (presented *supra*) does not apply to the *voivodeships*, but only to *gminy*.

115. 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);³⁸
- 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).

116. Polish regions have a great experience in implementing development policies and, in recent years, some competences in this area have also been transferred to the regional level. Some regional

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

leaders have complained about the increase in the number of planning guidance documents (regulations) approved at national level by state agencies which, they say, limits the ability of regions to conduct their own plans and strategies. They would prefer to have more freedom in choosing suitable instruments so as to manage the programmes efficiently and react flexibly to issues at regional level.

3.4.5. *Relations with other territorial authorities. Involvement in the state decision-making process*

117. *Voivodeships* participate regularly in the activities and sessions of the Joint Committee (JC) through their own association.³⁹ 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, the delegation was informed.

118. As to relations with local units in the field of co-ordination or supervision, the *voivodeships* cannot influence the decision-making of municipalities or counties in any way. This lack of influence and the independence of decision-making at the level of local self-government are regulated by law but, according to some regional politicians, this results in a lack of co-ordination of competences on spatial planning between local authorities and *voivodeships*, as already mentioned *supra*.

119. Nevertheless *voivodeships* and local units do co-operate in various areas. Thus, the delegation was informed that, at least in some *voivodeships*, the marshal's office organises informal consultations concerning strategic documents (for example, development strategies) where *gminy* are invited to public participation and consultation. For instance, representatives of *powiats* and *gminy* participate in the meetings of the regional territorial forum of the Lublin Region. Joint conferences and working meetings are also common.

3.4.6. *Supervision / control of regions by state authorities*

120. The central government supervision over regional decisions, plans and activities is essentially subjected to the same supervision system that applies to municipalities and *powiats*, 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 at Chapter 7 of the Act on *Voivodeship Self-Government*. The Delegation was informed that the system, *grosso modo*, works this way:

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.

3.4.7. *Finances*

121. The financial structure of the *voivodeships* mirrors to a great extent that of municipalities and *powiats*, as presented *supra*. On the other hand, it is a common opinion that Article 167 of the Polish Constitution is also applicable to *voivodeships*, even if that provision refers specifically to "units of local government". Therefore, the principle of adequate funding for the performance of tasks would also be applicable to them.

Resources

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

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

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;

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*.

123. Some data will help understanding the overall financial situation of the Polish *voivodeships*, such as the 2013 figures about the different sources of income:⁴⁰

- own revenue: 39.10% of the total revenue
- designated subsidies: 44.53 %
- general subsidies: 16.37%

124. 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.

125. It must be noted that Polish *voivodeships* do not have their own taxes and therefore have limited autonomy, since most finance is received from the central government. There are no regional taxes although the *voivodeships* would like to impose them, but central government is firmly against it.

126. The equalisation mechanism is currently a topical issue in Poland, in particular following a recent ruling of the Constitutional Court (of March 2014), which accepted a challenge to the current system lodged by the Masovian *Voivodeship*. To better understand the system, it is important to note that equalisation takes place amongst the different *voivodeships*, as there is no “vertical” equalisation (for example, between *gminas* and *voivodeships*). Once the own revenues of the *voivodeships* (mainly their share in national taxes) are determined, there is a correction of those initial figures. As a consequence, resources from the richest *voivodeships* are transferred to those in a weaker economic situation. Different variables and coefficients are used to calculate this corrective mechanism. As in other European countries, the richest regions transfer to the others less fortunate, but in the case of Poland this system was challenged on constitutional grounds. Masovia is the only net payer among all *voivodeships* as it is the richest.⁴¹

127. 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 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

40. Provided in written response by the Ministry of Finance at the request of the Congress Delegation.

41. This *voivodeship* has the highest number of business operators (750 000) registered. Therefore, it raises 80% of the CIT of the country. On the other hand, the wealthiest people also live in that *voivodeship*, this is why the highest PIC is also collected in that region. Under the current system, the Masovian *Voivodeship* allegedly transferred to the other 15 regions € 1.55 billion during the last 10 years.

Court ruled in favour of Masovia, found 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. The Congress Delegation was told that a bill is now being discussed in order to harmonise the equalisation mechanisms with the ruling of the Constitutional Court.⁴²

3.4.8. *Transfrontier co-operation*

128. Polish regions participate in many transfrontier co-operation actions and programmes. For instance, the Lublin Region participates in the realisation of the transnational co-operation programme Poland-Belarus-Ukraine 2007-2013. Another transfrontier area where Polish regions (especially Pomerania)⁴³ 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.

4. Conclusions

129. In a short time-span of less than three decades, Poland has achieved an impressive triple process of (a) transition to democracy; (b) transformation of the economic system and (c) transition from hyper-centralism to administrative decentralisation.

130. The changes introduced in Poland by the 1990 and 1998 acts enabled the creation of democratic local and regional bodies. Moreover, local democracy was a key ingredient of the 1989 passage to democracy. International treaties were taken into account (especially, the Charter). Many competences were assigned to the local and regional bodies. Currently, they enjoy a wide autonomy in the performance of their tasks, together with a moderate financial endowment. The local/regional reform is unanimously considered a success as it laid the foundations of a civic and democratic society.

131. The strongest level of local government in Poland is the *gmina* and it is also the most autonomous. *Powiaty* are the weakest local government units in terms of finances and competences.

132. In Poland, there is not, at present, a significant debate about the structure of local and regional government. The reforms carried out since 1990 have crystallised into a system whose foundations are assessed in a highly positive and satisfactory manner. Therefore, no major reform is envisaged to take place over the next few years.

133. The rapporteurs consider that Polish legislation and its political framework are in compliance with the Charter. In general, local and regional democracy in Poland presents an overall acceptable situation from the perspective of the Charter and the RFRG. Nevertheless, the rapporteurs point out certain elements that require attention.

a. Although local government units enjoy a wide scope for autonomous policy-making and choice, the level of autonomy is being eroded through increasing regulation by central government.

b. As regards delegated tasks: the number of delegated tasks has increased in the last years, without being accompanied by concomitant funding.⁴⁴

c. The issue of expenses in education (especially, the salaries of teachers) is a matter of concern for the local government bodies. They claim that in recent years funding is inadequate to the task.⁴⁵

42. Subsequent to the delegation's visit, the Government has informed the rapporteurs that the Draft Law amending the Law on income of local government bodies (form no 2668) has been adopted. It takes into account the Constitutional Court's decision of 4 March 2014 (file No.K13/11) and, as at October 2014, is making its passage through parliament.

43. *Pomorskie*

44. In written comments after the visit, the Polish Government contests this statement and points to the Act on the income of local government bodies of 13 November 2003, in particular Article 49 paragraph 6. This provides for compensation to be paid with interest if subsidies do not allow full and timely implementation of delegated tasks. The Government further commented that it is developing a uniform method to calculate the costs of carrying out selected tasks of government administration by local government bodies. The delegation welcomes this new development.

45. The Polish Government contests this statement and refers to the 2003 Act on the income of local government bodies, Article 7 paragraph 3.

d. In the specific case of *voivodeships*, they also claim that there is no concomitant funding for delegated competences. Furthermore, the equalisation mechanism presents many open questions. After the recent decision of the Constitutional Court, a new system is expected to be put in place, but it has not been defined yet by the central government.⁴⁶

e. The rapporteurs' concern in this context is that there is a lack of co-ordination of competences between local and regional authorities on spatial planning; they regret that a new legislative framework and voluntary co-operation amongst local authorities is not sufficiently developed.

f. In the rapporteurs' consideration, the Polish authorities should be encouraged to debate and implement the different measures targeting a stronger decentralisation, which are included in the Strategy for an Efficient State and amend municipal and regional finances to allow local authorities more autonomy. Concomitant financing of delegated tasks is an important point that needs to be tackled by the central government.

g. Finally the rapporteurs would welcome the signing of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

46. Subsequent to the delegation's visit, the Government has informed the rapporteurs that the Draft Law amending the Law on income of local government bodies (form no 2668) has been adopted. It takes into account the Constitutional Court's decision of 4 March 2014 (file No.K13/11) and, as at October 2014, is making its passage through parliament.

Appendix 1 – Programme of the Congress visits in Poland (from 20 to 23 May 2014)

**CONGRESS MONITORING VISIT TO POLAND
Warsaw, Lublin, Opole Lubelskie, Gdansk
(20-23 May 2014)**

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Jos WIENEN

Rapporteur on local democracy
Chamber of Local Authorities, EPP/CCE⁴⁷
Vice-Chair of the Monitoring Committee of the
Congress, Mayor of Katwijk, Netherlands

Ms Cynthia HUGHES

Rapporteur on regional democracy
Chamber of Regions, SOC⁴⁸
Member of the Monitoring Committee of the
Congress, Councillor of Darlington Borough,
United Kingdom

Congress Secretariat:

Ms Sedef CANKOÇAK

Co-Secretary to the Monitoring Committee of
the Congress

Expert:

Prof. Dr. Angel MORENO

Consultant, President of the Group of
Independent Experts on the European Charter
of Local Self-Government of the Congress

Interpreters:

Mr Andrzej GRZADKOWSKI

Ms Dagmara WROBEL

47. EPP/CCE: European People's Party/Christian Democrats Group of the Congress

48. SOC: Socialist Group of the Congress

**Tuesday, 20 May 2014
Warsaw**

Ministry of Administration and Digitization (MAC):

- **Mr Bogdan DOMBROWSKI**, Deputy Minister

Polish delegation to the Congress:

- **Mr Wojciech JANKOWIAK**, Head of the Polish delegation to the Congress
- **Ms Jolanta BARSKA**, Member of the delegation
- **Ms Elzbieta POLAK**, Member of the delegation
- **Ms Bernadeta HORDEJUK**, Member of the delegation
- **Mr Dariusz WROBEL**, Member of the delegation
- **Ms Judyta LEMM**, Member of the delegation
- **Mr Leszek SWIETALSKI**, Member of the delegation
- **Mr Walery CZARNECKI**, Member of the delegation

Joint Meeting with members of the following associations:

Association of Polish Cities

Mr Ryszard GROBELNY, President
Mr Andrzej PORAWSKI, Executive Director

Union of Small Towns

Mr Dariusz WROBEL, Member of the Board

Union of Rural Communes of the Republic of Poland

Mr Leszek SWIETALSKI, Member of the Board

Union of Polish Metropolises

Mr Tomasz FIJOLEK, Deputy Director

Association of Polish Counties (*powiat*)

Mr Marek TRAMŚ, President
Mr Rudolf BORUSIEWICZ, Secretary General

Union of the Voivodeships of the Republic of Poland

Mr Bogdan CIEPIELEWSKI, Director

Joint Committee of the Central Government and Local Governments:

- **Mr Bogdan DOMBROWSKI**, Deputy Minister
- **Andrzej PORAWSKI**, Secretary of the Joint Committee of the Central Government and Local Governments
- **Ryszard GROBELNY**, President of the Association of Polish Cities
- **Grzegorz KUBALSKI**, Expert of the Association of Polish Counties

Experts:

- **Mr Prof. Jerzy REGULSKI**, Advisor to the President of the Republic of Poland
- **Mr Prof. Pawel SWIANIEWICZ**, Head of the Department of Local Development and Policy

Masovian Regional Assembly:

- **Mr Adam STRUZIŁ**, Marshal of the Mazowieckie Voivodeship
- **Mr Krzysztof SKOLIMOWSKI**, Councillor of the Mazowieckie Voivodeship
- **Mr Wojciech BARTELSKI**, Councillor of the Mazowieckie Voivodeship, Vice-Chair of the Audit Committee

Wednesday, 21 May 2014
Warsaw

Parliamentary committees on Local government and Public Finance:

- **Ms Halina ROZPONDEK**, Deputy Chairperson of the Local Self-Government and Regional Policy Committee
- **Mr Radosław WITKOWSKI**, Member of the Local Self-Government and Regional Policy Committee, Chairman of the Standing Subcommittee on the Local Self-Government System
- **Ms Ligia KRAJEWSKA**, Member of the Local Self-Government and Regional Policy Committee
- **Mr Marcin ŚWIĘCICKI**, Member of the Local Self-Government and Regional Policy Committee, Member of the Parliamentary Committee on Public Finance

Ministry of Infrastructure and Development:

- **Mr Wojciech PORCZYK**, Deputy Director, Department for International Cooperation
- **Mr Grzegorz BORKOWSKI**, Department for Coordination of Implementation of EU Funds
- **Mr Daniel BALIŃSKI**, Department for Coordination of Development Strategies and Policies
- **Ms Anna ŚWIĄTECKA-WRONA**, Department of Spatial Development Policy
- **Mr Szymon PIECHOWIAK**, Department of Construction
- **Ms Dorota BORTNOWSKA**, Deputy Director, Housing Department
- **Ms Hanna SKÓRA**, Department of Real Estate Management
- **Mr Jan KUCICKI**, Department of Real Estate Management

Ministry of Finance (Secretary of State dealing with LG budgets):

- **Ms Izabela LESZCZYNA**, Secretary of State
- **Ms Zdzisława WASAŹNIK**, Director, Local Government Finances Department
- **Ms Justyna PRZEKOPIAK**, Director, Local Payments and Taxes Department
- **Mr Marek SZCZERBAK**, Deputy Director, Public Debt Department

Constitutional Court:

- **Mr Leon KIERES**, Judge

Thursday, 22 May 2014
Lublin, Opole Lubelskie

Municipality of Lublin:

- **Ms Katarzyna MIECZKOWSKA-CZERNIAK**, Deputy Mayor of Lublin
- **Mr Jarosław PAKULA**, Vice-Chairman of the Lublin City Council
- **Mr Zbigniew TARGONSKI**, Vice-Chairman of the Lublin City Council

Lubelskie Regional Assembly:

- **Mr Tomasz ZAJAC**, Chair of the Regional Assembly of the Lubelskie Region
- **Mr Krzysztof HETMAN**, Marshal of the Lubelskie Region
- **Mr Kazimierz MAZUREK**, Vice-Chair of the Regional Assembly of the Lubelskie Region
- **Mr Tomasz SOLIS**, Vice-Chair of the Regional Assembly of the Lubelskie Region
- **Ms Alina PITURA**, Director of the Bureau of the Regional Assembly of the Lubelskie Region

- **Ms Małgorzata BLASZCZYK-OSIK**, Head of Department for Regional and International cooperation of the Marshal Office
- **Ms Jolanta SKROK**, Department for Regional and International cooperation of the Marshal Office

Municipality of Opole Lubelskie:

- **Mr Dariusz WROBEL**, Mayor and member of the Polish Delegation to the Congress

**Friday, 23 May 2014
Gdansk, Warsaw**

Municipality of Gdansk:

- **Mr Pawel ADAMOWICZ**, Mayor
- **Mr Bogdan OLESZEK**, Chairman of the City Council
- **Ms Danuta JANCZAREK**, Secretary of the City of Gdansk
- **Mr Maciej BCUZKOWSKI**, Deputy Director of the Mayor's Office
- **Ms Emilia SALACH**, Head of the Press Office

Pomorskie Sejmik (Regional Assembly of Pomerania):

- **Mr Marek BIERNACKI**, Deputy Chairman of the Assembly
- **Mr Jacek BENDYKOWSKI**, Councillor, Co-Chair of the Commission for International Affairs of the Joint Committee of the Central Government and Territorial Self-Government
- **Ms Krystyna WRÓBLEWSKA**, Deputy Director (international cooperation), Economic Development Department

Supreme Audit Office:

- **Mr Piotr MIKLIS**, Director of the Katowice Regional Branch
- **Mr Przemysław WITEK**, Advisor
- **Ms Kinga PRZEPIÓRA**, Advisor

Commissioner for the Protection of Civil Rights:

- **Prof. Irena LIPOWICZ**, Commissioner
- **Ms Katarzyna ŁAKOMA**, Head of the Administrative and Economic Law Department
- **Ms Barbara IMIOŁCZYK**, Coordinator on the Commission of Experts and Social Councils of the Human Rights Defender
- **Mr Radosław Mędrzycki**, Instructor at the Faculty of Law and Administration, Cardinal Stefan Wyszyński University in Warsaw
- **Dr Ziemowit Cieślik**, Assistant Professor at the Faculty of Law and Administration, Cardinal Stefan Wyszyński University in Warsaw