

The Congress of Local and Regional Authorities



21st SESSION
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Local and regional democracy in Serbia

Monitoring Committee
Rapporteur: Odd Arild KVALÖY, Norway (R, NR¹)

Draft recommendation (for vote).....	2
Explanatory memorandum.....	6

Summary

The report concerns the first monitoring visit to Serbia since it joined the Council of Europe on 3 April 2003 and ratified the European Charter of Local Self-Government in 2007. The Rapporteurs express satisfaction that the guiding principles of local self-government are secured in Serbian legislation. The report notes that there is widespread acknowledgment of the need for reforming local self-government and moving towards regional autonomy and welcomes the legislation granting special status to the Autonomous Province of Vojvodina. It also takes note of the developments concerning citizens' participation in the decision-making process and the protection of human rights since the adoption of the present Constitution in 2006. It points to some areas of concern, such as the burden of the financial crisis on municipalities, the lack of intermunicipal cooperation for pooling scarce resources and the insufficient consultation of local authorities by central government.

The Congress recommends that the Serbian Government find a legislative solution to the issue of restitution of public property to local authorities and to improve intermunicipal cooperation as well as consultation between central and local government. It draws attention to the need to continue the implementation of the status of autonomy for the province of Vojvodina, and recommends that Serbia lift its reservations on Articles 4 para. 3 and 8 para. 3 of the European Charter of Local Self-Government dealing with the principle of subsidiarity. Finally, the Congress calls upon Serbia to sign and ratify the Additional Protocols to the Charter.

***Since the visit, new legislation has been adopted in Serbia making certain points of the recommendation and the report invalid. These points will be discussed during the session.

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



DRAFT RECOMMENDATION²

[\[see Recommendation 316 \(2011\) adopted on 20 October 2011\]](#)

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

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

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

c. Congress Resolution 299 (2010), which states that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities as well as the reply made by the Committee of Ministers to Congress Recommendation 282 (2010) [CM/Cong(2011)Rec282 final] encouraging the governments of member States to take account of the above mentioned Reference Framework in connection with policies and reform;

d. the Explanatory memorandum to this recommendation on local and regional democracy in Serbia.

2. The Congress recalls that:

a. Serbia and Montenegro joined the Council of Europe on 3 April 2003. Following the declaration of independence of the Republic of Montenegro on 3 June 2006, and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the Committee of Ministers of the Council of Europe adopted at their 967th meeting a declaration on the continuation of Serbia's membership in the Council of Europe and the continuation of ensuring obligations and commitments;

b. Serbia signed the European Charter of Local Self-Government (ETS No. 122; hereinafter the “Charter”) on 24 June 2005 and ratified it on 6 September 2007. The treaty came into force in Serbia on 1 January 2008. In accordance with Article 12, paragraph 1 of the Charter, the Republic of Serbia declared that it would not be bound by Article 4, paragraphs 3 and 5, Article 6, Article 7, paragraph 2 and Article 8, paragraph 3 of the Charter;

² Preliminary draft recommendation approved by the Monitoring Committee on 4 July 2011 (the names of members who took part in the vote are in italics).

Members of the Committee:

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

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

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

c. A Congress delegation^{3 4} carried out a monitoring visit to Serbia from 29 June to 1 July 2010, visiting Belgrade, Novi Sad and Novi Pazar;

d. The rapporteur wishes to thank the Permanent Representation of Serbia to the Council of Europe, Serbian authorities at central, regional and local levels, the Standing Conference of Towns and Municipalities of Serbia and experts as well as other interlocutors for their valuable cooperation at different stages of the monitoring procedure.

3. The Congress notes with satisfaction that:

a. the guiding principles of local self-government, as enshrined in the European Charter of Local Self-government, are secured in Serbian legislation. The Serbian Constitution guarantees the right of citizens to provincial autonomy and local self-government and enforces it as a limitation to state power, while subjecting it only to supervision of constitutionality and legality;

b. the Rapporteur received the general impression that there exists a widespread acknowledgment of the need for reforming local self-government;

c. the change of Serbia's status from being part of a federated state to an independent country has had a positive impact on the status of provincial autonomy within the unitary state of Serbia. In this context, a special chapter in the Constitution and several laws, including the Statute of the Autonomous Province of Vojvodina in force since 1 January 2010, are proofs of a political commitment in favour of regional autonomy;

d. there have been developments concerning citizens' participation and citizens' consultation in the decision-making process, as well as the protection of human and minority rights in Serbia since the adoption of the present Constitution in November 2006, at national, regional and local levels;

e. the transfrontier cooperation between the autonomous province of Vojvodina and similar entities of other countries is functioning smoothly.

4. The Congress expresses concern that:

a. the functioning of local self-government has been significantly affected by measures undertaken by Serbian authorities in order to cope with the global financial crisis. One of these measures has been to significantly reduce transfers made to local governments from the national budget. These reductions, coupled with the fact that all other sources of local authority revenue are severely diminished due to the economic crisis, have had a seriously damaging impact on the actual ability of local authorities to effectively accomplish their (own or delegated) tasks;

b. there is a lack of awareness about and practice of intermunicipal cooperation in Serbia whereas pooling scarce resources for service delivery could contribute to overcome the dramatic economic situation in many municipalities;

c. Serbian authorities are considerably behind in solving one specific problem Serbia is confronted with, namely, the restitution of public property to local authorities. The much-needed law on the assets of local authorities has still not been enacted;

d. the implementation of legal provisions concerning consultation of local authorities by central government still has considerable room for improvement;

³ Upon decision of the Institutional Committee, Mr Christopher Newbury (Rapporteur for local democracy, United Kingdom) and Mr Odd Arild Kvaløy (Rapporteur for regional democracy, Norway) were appointed Rapporteurs for Serbia and instructed to prepare and submit the report on local and regional democracy in Serbia. They were assisted by Ms Elena Simina Tanasescu, consultant and member of the Group of Independent Experts on the European Charter of Local Self-Government. Following the termination of Mr Christopher Newbury's mandate as a member of the Congress in October 2010, the current recommendation is presented by Mr Odd Arild Kvaløy, Rapporteur for regional democracy.

⁴ Following the Congress reform, the monitoring activities carried out by this Committee were taken over by the Monitoring Committee set up on 1 December 2010.

e. the existing general legal framework does not fully take into consideration the special status of Belgrade as capital city. The specific needs and challenges faced by the capital city would justify the allocation of financial resources accordingly.

5. The Congress welcomes the proclamation of the new Statute of the Autonomous Province of Vojvodina (see paragraph 3.c), but nevertheless underlines the need to continue and further strengthen the process of decentralisation of the autonomous provinces, with particular attention to concomittant financing.

6. The Congress recommends that the Committee of Ministers invite the Serbian authorities:

a. to find alternative solutions to the existing practice of significantly reducing transfers which are given to local governments from the national budget with a view to alleviating the harsh consequences of the global economic crisis, which has already had a major impact on most Serbian municipalities;

b. to speed up the legislative process to find a rapid solution to the issue of restitution of public property to local authorities, by giving full ownership rights to local authorities and defining clear procedures for the transfer of property rights;

c. to revise the constitutional provision allowing central government to dismiss municipal assemblies and simultaneously appoint a temporary body to perform their duties, in order to ensure that an excessive use thereof is avoided, considering it a form of administrative supervision which may go beyond the limits foreseen by Article 8 of the Charter;

d. to increase the field of competences and resources of the capital city of Belgrade while undertaking legislative changes, in the light of Congress Recommendation 219 (2007) on the status of capital city;

e. to revise the legislation dealing with the status of local government staff, in order to define a consistent system for their financial compensation mechanisms;

f. to institutionalise and develop, in cooperation with the Standing Conference of Towns and Municipalities of Serbia, the practice of intermunicipal cooperation and joint delivery of a number of services;

g. to consolidate in compulsory legal standards, the existing mechanisms, procedures and practices in the area of consultation of local authorities in compliance with the requirements of Article 4 (6) of the Charter;

h. to continue the implementation of the status of autonomy for the province of Vojvodina, taking inspiration from the principles set out in the Reference Framework for Regional Democracy [MCL-16(2009)11], in particular as regards concomittant financing;

i. to lift reservations, formulated by Serbia at the time of its ratification, on the articles of the European Charter of Local Self-Government dealing with the principle of subsidiarity (Article 4, paragraph 3) and the principle of proportionality in administrative supervision (Article 8, paragraph 3);

j. to consider, in the near future, signing and then ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS N° 207);

k. to consider the signature and ratification in the near future of the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS N°. 106) and its additional protocols.

7. *The Congress recommends that the Parliamentary Assembly of the Council of Europe take account of these observations and recommendations by monitoring the commitments and obligations which Serbia undertook when acceding to the Council of Europe.*

8. *The Congress recommends to the Serbian authorities responsible for local self-government that they appoint a high-level government representative to participate in one of the Congress sessions to make a presentation of the progress of local self-government reforms in Serbia in light of the observations made in the present recommendation.*

EXPLANATORY MEMORANDUM PRESENTED BY MR ODD ARILD KVALÖY, RAPPORTEUR**Table of contents**

1.	INTRODUCTION	6
2.	PRELIMINARY REMARKS.....	7
3.	LOCAL SELF-GOVERNMENT IN SERBIA	8
	3.1. Article 2 (constitutional and legal foundation)	8
	3.2. Article 3 (concept of local self-government).....	10
	3.3. Article 4 (scope of local self government)	12
	3.4. Article 5 (protection of local authorities boundaries).....	13
	3.5. Article 7 (conditions under which responsibilities are exercised)	13
	3.6. Article 8 (administrative supervision)	14
	3.7. Article 9 (financial resources).....	15
	3.8. Article 10 (right to association).....	16
	3.9. Article 11 (legal protection of local self government)	16
4.	CONCLUSIONS.....	16
	4.1. Legislative framework	17
	4.2. Implementation of the legislation	17
	4.3. Other issues relating to local democracy	18
	APPENDIX - Programme of the monitoring visit of the Congress of Local and Regional Authorities delegation to Serbia.....	20

1. INTRODUCTION

1. The Congress of Local and Regional Authorities of the Council of Europe regularly prepares reports on the state of local and regional democracy in Council of Europe member states.

2. Serbia and Montenegro joined the Council of Europe on 3 April 2003. Following the declaration of independence of the Republic of Montenegro on 3 June 2006, and in accordance with Article 60 of the Constitutional Charter of the State Union of Serbia and Montenegro, the Committee of Ministers of the Council of Europe adopted a declaration at their 967th meeting on the continuation of Serbia's membership of the State Union of Serbia and Montenegro in the Council of Europe and the continuation of ensuring its obligations and commitments.

3. It should be noted that, among instruments related to the European Charter of Local Self-Government, Serbia has not signed the following:

- European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS no. 106)
- Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS no. 159)
- Protocol no. 2 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS no. 169)
- Protocol no. 3 European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional co-operation groupings (ECGs) (CETS no. 206)
- The Convention on the Participation of Foreigners in Public Life at Local Level (ETS no. 144)

4. Serbia signed the European Charter of Local Self-Government (ETS No. 122) on 24 June 2005 and ratified on 6 September 2007. The treaty came into force in Serbia on 1 January 2008. In accordance with Article 12 of the Charter, the Republic of Serbia declared that it considers itself bound by the following provisions of the Charter:

- Article 2;
- Article 3, paragraphs 1 and 2;
- Article 4, paragraphs 1, 2, 4 and 6;
- Article 5;
- Article 7, paragraphs 1 and 3;
- Article 8, paragraphs 1 and 2;
- Article 9, paragraphs 1, 2, 3, 4, 5, 6, 7 and 8;
- Article 10, paragraphs 1, 2 and 3;
- Article 11.

5. At its meeting of 15 February 2010, the Institutional Committee⁵ of the Congress decided to carry out the monitoring of the state of local self-government in Serbia and its compliance with the European Charter of Local Self Government. The Institutional Committee instructed Mr Christopher Newbury (Rapporteur for local democracy, United Kingdom) and Mr Odd Kvaløy (Rapporteur for regional democracy, Norway) to prepare and submit the report on local and regional democracy in Serbia. The rapporteurs were assisted by Ms Elena Simina Tanasescu, consultant, who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and by Ms Lilit Nikoghosyan, Co-secretary to the Institutional Committee of the Congress.

6. A Congress delegation carried out a monitoring visit to Serbia from 29 of June to 1 July 2010 (visiting Belgrade, Novi Sad and Novi Pazar).

7. This report was drafted on the basis of information collected during the visit to Serbia by the Congress monitoring delegation, a survey of relevant legislation, other relevant information and/or documents provided by interlocutors whom the delegation met in Serbia, as well as answers drafted to the questionnaire provided by the delegation in advance of the visit. A full list of the persons met during the visit is set out in the appendix.

8. The rapporteur wishes to thank the Permanent Representation of Serbia to the Council of Europe, the Serbian authorities at central, regional and local levels, the Standing Conference of Towns and Municipalities of Serbia, experts and other interlocutors for their assistance with the organisation of the monitoring visit and their cooperation all along, as well as all persons involved in the visit for their availability and interest in Congress activities.

2. PRELIMINARY REMARKS

9. Serbia is the legal (state) successor to the former Federal Republic of Yugoslavia and the State Union of Serbia and Montenegro. The Republic of Serbia has adopted its present Constitution in November 2006 following a successful referendum organised on the 28-29 November 2006. This legal document contains a preamble which defines the “Province of Kosovo and Metohija [as] an integral part of the territory of Serbia” while enjoying “the status of a substantial autonomy within the sovereign state of Serbia”. The United Nations Security Council Resolution 1244, adopted on June 10, 1999, established the United Nations Interim Administration Mission in Kosovo⁶ (UNMIK). Kosovo unilaterally declared its independence from Serbia on 17 February 2008). This act was rejected by Serbia. The Council of Europe is pursuing a policy of status neutrality towards Kosovo, respecting the UN Security Council Resolution 1244.

10. The Constitution of 2006 defines Serbia for the first time since 1918 as an independent state, and a unitary one (Article 4, paragraph 1). The population of Serbia is a mix of several groups. This fact is acknowledged by the Constitution both in article 1 (“the Republic of Serbia is a state of Serbian people and all citizens who live in it”) and 14 (“the Republic of Serbia shall protect the rights of national minorities”), as well as in several provisions on the protection of fundamental rights with a special view on the protection of minorities (articles 20 - 22, 47 - 49, 75 - 81). All these positive developments are

⁵ Following the Congress reform, the monitoring activities carried out by this Committee were taken over by the Monitoring Committee set up on 1 December 2010.

⁶ “All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.”

somewhat set off by article 10 of the Serbian Constitution⁷, which makes compulsory the Cyrillic alphabet, while referring to the possibility of using “other languages and scripts” in accordance with a “law based on the Constitution”. In practice however, the use of the Latin alphabet does not appear to be hindered.

11. The change from a federated to an independent state had little (and rather for the better) impact on the status of provincial autonomy within the unitary state of Serbia. A special chapter in the Constitution (articles 176 - 193) and several laws, including the recently adopted Statute of the autonomous province of Vojvodina, are proof of a political commitment in favour of regional autonomy. Despite this positive evaluation of existing legal framework, reality on the ground makes obvious the need for further reforms.

12. There seems to exist a widespread acknowledgment of the need for reforming local self-government so as to create favourable conditions for further regionalisation, but the necessary combination of political will and strength does not seem to have yet reached the adequate level of “critical mass”. In this context the rapporteurs have noted that the National Council for Decentralisation, created in 2009 by a Decree of the Serbian Government, with the main task of developing and presenting a comprehensive strategy of decentralisation of the Republic of Serbia, has been inactive since its creation.

13. A feature that Serbia has in common with some other former members of the Yugoslav Federation is a culture of dominance of political parties coupled with the relative weakness of civil society institutions. However, progress has been made in this area, as shown by the impact of a relatively recent decision of the Constitutional Court of Serbia on the level of influence of political parties in the electoral process, particularly at local level. More specifically, political parties no longer may decide - after the results of an election are made public - which of the candidates proposed on electoral lists are to become local councillors, and councillors thus elected no longer have to submit blank resignations to the political party which proposed them on an electoral list. Although this decision of the Constitutional Court only concerns the law on local elections, it is expected that it will have an impact at a larger scale and oblige political parties to review their position also in national elections.

14. Also, like some other states that resulted from the aftermath of the dismantling of the Yugoslav Federation, Serbia is aiming at European Union membership and is subject to annual progress reports of the European Commission under the enlargement policy.

3. LOCAL SELF-GOVERNMENT IN SERBIA

15. Serbia has signed the European Charter on Local Self Government on 24 June 2005 and its parliament ratified it on 6 September 2007. The Charter came into force in Serbia on 1 January 2008.

16. Serbia has formulated reservations on Article 4, paragraphs 3 and 5, Article 6, Article 7, paragraph 2, Article 8, paragraph 3 of the Charter concerning, in particular, local authorities' exercise of public responsibility and their scope of competence, appropriate structures and administrative means that correspond to the local authorities' mission, financial compensation of elected representatives and the principle of proportionality in the context of administrative supervision. Both central and local government as well as representatives of civil society seem to agree that the main obstacle to the full ratification of the Charter lies with specific provisions in the Constitution; however, political commitment towards further decentralisation, which has to be acknowledged in the case of Serbia, does not allow for a revision of the fundamental law in the foreseeable future. Therefore, when assessing compliance of Serbian legal standards and practice with the Charter on Local Self Government only those provisions deemed compulsory will be taken into account.

3.1. Article 2 (constitutional and legal foundation)

17. Self-government is well secured in Serbian legislation. The Constitution guarantees the right of citizens to provincial autonomy and local self-government and enforces it as a limitation to state power, while subjecting it only to supervision of constitutionality and legality (article 12). Article 97 of

⁷ Also see the Opinion of the Venice Commission on the Constitution of Serbia, 17-18 March 2007. <http://www.venice.coe.int/docs/2007/CDL-AD%282007%29004-e.pdf>

the Serbian Constitution, which enumerates the competences of the central government, declares that “Serbia organises and provides for” [*inter alia*] the “territorial organisation of the Republic of Serbia and the system of local self-government”. Furthermore, an entire chapter of the Constitution is dedicated to the country’s territorial organisation. According to its provisions, autonomous provinces and local self-government units shall have the status of legal entities.

18. Within this chapter, the repartition of competences articulated by article 177 of the Constitution explains why Serbia has not ratified paragraph 3 of Article 4 of the Charter pertaining to the principle of subsidiarity: while appearing to provide for it⁸, the last paragraph tellingly declares “*What matters shall be of republic, provincial or local interest shall be specified by the Law*”. However, the Constitution lists the original competences of local authorities, legal reasoning allowing for the deduction that remaining competences belong with central government.

19. Self-organisation as well as financial and functional independence are guaranteed for autonomous provinces, while self organisation and functional autonomy are guaranteed for local self-government. Judicial guarantees for local self-government and regional autonomy are both strong and weak. Among strong ones there have to be mentioned (i) the possibility of any local or regional entity to introduce a complaint directly in front of the Constitutional Court with regard to any legal act that might impede on its autonomy and (ii) the limited possibility (maximum 5 days) of the central government to discontinue the application of a legal act issued by a local authority deemed to be unconstitutional under the strict control of the Constitutional Court. On the other hand, central government may (i) institute proceedings to assess the constitutionality or legality of a legal act issued by a local authority only to postpone its coming into force and may (ii) interfere with local elected representatives by dismantling local councils, while replacing them with temporary nominated ones, upon claims of illegality.

20. Towards the end of 2007, the Serbian parliament adopted a package of (general) laws pertaining to local government, namely laws on local self-government, territorial organisation, local elections and capital city. Even prior to that, in 2006, a law on local government finances had been adopted. Another set of sectoral⁹ laws were adopted during the last few years (e.g. the law on health protection, the law on the fundamentals of the educational system, etc.). A different set of laws refer to procedures and forms to be used by local and regional authorities. Another group of laws are currently under preparation or parliamentary scrutiny, namely laws on the staff of local authorities, referendum and legal initiative, and the (central) state electoral commission. This rather extensive legislative corpus adopted in a relatively short lapse of time could be signalling a commitment of Serbian authorities in favour of decentralisation. However, in their current version, main legal provisions pertaining to local self government and provincial autonomy remain a mere continuation and development of constitutional ones, with all their advantages and disadvantages. Several pending issues were outlined in a relatively recent analysis realised by the Council of Europe¹⁰; in a nutshell they refer to technical aspects pertaining to self-government such as relations between mayor and city council, dismissal of the head of administration at local level, tight regulation of the role of local communities, etc. Annual monitoring reports of the European Commission also point to some technical and detailed issues, but mostly underline the need for an overall decentralisation strategy for Serbia. All these elements seem to confirm the general observation according to which Serbia displays clear signs of political will favourable to decentralisation, but its effective implementation still lacks impetus.

21. A new law on the capital city was under preparation at the time of the monitoring visit, as existing legal standards were deemed “not satisfactory” for both central and (mostly) for local government, despite a specific provision on the city of Belgrade in Articles 188 and 189 of the Serbian Constitution (general provisions on local self-government).¹¹ In particular, the meeting with the deputy head of the

⁸ “Local self-government units shall be competent in those matters which may be realised, in an effective way, within a local self-government unit, and autonomous provinces in those matters which may be realised, in an effective way, within an autonomous province, which shall not be the competence of the Republic of Serbia.”

⁹ These laws regulate specific areas and by which particular attributions are transferred or delegated from central government to local authorities.

¹⁰ B.Milosavljevic, Analysis of the state of play regarding the implementation of local self-government legislation in the Republic of Serbia, Belgrade, 2009.

¹¹ Article 189 in its last paragraph specifically mentions: “The status of the City of Belgrade, the capital of the Republic of Serbia, shall be regulated by the Law on the Capital and the Statute of the City of Belgrade. The City of Belgrade shall have competences delegated to the municipality and city by the Constitution and the Law, and other competences may be delegated to it in accordance with the Law on the Capital.”

city assembly of Belgrade revealed the perceptions of Belgrade local authorities on the current legal framework, namely, that “local government now only enjoys transferred competencies from the state and not own attributions stemming from the people”, while believing that “the entire Charter has been ratified, but Serbian legislation is still lagging behind”. The city of Belgrade is entrusted with the delivery of utility services to its citizens, land planning and urbanism, social welfare, preschool and primary education and, since 2007, health care and collection of local taxes. Economic development, police, fire-fighters, emergency situations and various types of administrative inspections are also on their wish list. The scale of the population in the city of Belgrade (1.6 million) allows for a difference in local capacities and needs which cannot be properly taken into consideration under the general legal framework: 85% of the Belgrade budget comes from own resources (property, income and utility taxes), while only 15% is due to transfers from the state budget. Also, figures show a tenfold increase in the Belgrade budget between 2000 - 2008, and then a drastic 40% reduction in 2009. Apart from these specific features, the local authorities in the city of Belgrade seemed also to be concerned with general issues regarding the entire Serbian local public administration: disproportion between new attributions due to decentralisation and (un)matching resources coupled with limited administrative capacity to fulfil them; difficulties in recruiting and retaining professional staff; political party influence, etc.

22. One further positive evolution should be noted: the Statute of the Autonomous Province of Vojvodina, adopted in 1991, has been assessed as outdated by local political forces and by the Serbian Parliament. Thus a new statute has been enacted in order to harmonise the normative system with the provisions of the new Constitution of the Republic of Serbia (November 2006) – pursuant to the provisions of the Constitutional Law on the Implementation of the Constitution of the Republic of Serbia which stated that the obligation of the new composition of the Autonomous Province of Vojvodina Assembly was to submit the draft version of its new Statute within 90 days from its constitution and after obtaining consent from the National Assembly. The Assembly of Autonomous Province of Vojvodina adopted the draft version of the Autonomous Province of Vojvodina Statute on 14 October 2008 and the National Assembly of the Republic of Serbia gave its prior consent for the draft version of the Statute on 30 November 2009. Despite resistance, mainly from nationalistic political parties at state level, the Autonomous Province of Vojvodina Assembly proclaimed the new Statute on 14 December 2009 and it came into force after the enactment of the Decision on Proclamation, on 1 January 2010. Its implementation has not significantly altered the existing practice with regard to provincial autonomy, but made possible its assertion at regional level and endowed it with even more legitimacy. It is too early to provide for a full assessment of its implementation, but the regional authorities visited displayed wide and clear satisfaction with regard to their current status.

23. Overall, these legal standards and practices allow for a positive assessment of the constitutional and legal foundation of local self-government in Serbia.

3.2. Article 3 (concept of local self-government)

24. The basic requirement of the first paragraph of Article 3 of the Charter expresses the idea that the legal right to regulate and manage a substantial share of local affairs must belong to local self-government. Serbian legal standards provide for two categories of local self-government units apart from the capital city, Belgrade, namely municipalities and towns. Serbia is currently divided into 150 municipalities and 24 towns. The territory of a town may be divided into town municipalities.

25. Attributions of towns correspond to those delegated by the Constitution to municipalities and include regulation of municipal activities, urban construction sites and business premises, responsibility for transport infrastructure and other public facilities of municipal interest as well as citizens’ needs in areas such as culture, education health, social and child welfare, protection of environment and agricultural land, etc. Municipalities autonomously adopt their budget and annual balance sheet, as well as urban and municipal development plans. They autonomously manage municipal assets and protect human and minority rights. All these attributions are to be performed in accordance with the law. Given the comprehensive range of attributions delegated to local authorities by the Serbian Constitution and relevant legislation, formal compliance with Article 3 paragraph 1 of the Charter can be assessed.

26. However, the Explanatory report of the Charter stresses that para.1 of Article 3 is to be understood as also referring to the means needed to accomplish all these abilities. In this area full compliance with the Charter is still to be achieved. This is particularly true for the situation created during the past two years, when Serbia was severely hit by the global economic crisis. The Congress

delegation has learned during the monitoring visit that transfers to all local authorities from the national budget (according to the law) were significantly decreased to match existing available funds. If during 2009 this decrease was almost 37% compared to the previous year, in 2010 chances were that the decrease could reach almost 70%, if 2008 is taken as referential. This comes in addition to the fact that all other sources of revenue in local budgets (both own and shared) are severely diminished due to the economic crisis, a fact which raises questions with regard to the actual ability of local authorities to effectively accomplish their (own or delegated) attributions.

27. Paragraph 2 of the same Article of the Charter is understood as requiring the democratic exercise of rights pertaining to local self-government, mainly through democratically elected representative authorities and/or instruments of direct democracy. Relevant legislation allows for free, regular and democratic elections of local authorities and provides valuable tools for direct democracy. In practice there are numerous examples of direct consultation of citizens by local authorities, but referendums are rare. One possible explanation could be the very limited time provided by the law on referendums and people's initiative¹² for collecting signatures in order to start a referendum, but more generally speaking there seems to be a certain lack of interest of citizens in the direct exercise of power, including at local level. Also, civil society seems to have a deep mistrust of this instrument as, in Serbia, representation has been for a long time the main vehicle used by democracy. The delegation has been informed that a new draft law on referendums and people's initiatives is prepared and, according to it, the time limit for collecting signatures in order to start a referendum has been extended to 90 days (as compared to 7 days, set by the current law).

28. The law on local elections provides for a proportional party-list representation which was meant to ensure an adequate political standing for all political orientations, including those representing minority groups. However, some provisions of this law have been subject to criticism, including by the Venice Commission¹³, particularly a provision which made possible a contract between the political party proposing a candidate and the respective candidate or already elected councillor, regulating mutual obligations. Among these, the possibility for the political party to submit a resignation from the position of councillor on behalf of the proposed candidate or councillor (the so-called "blank resignation") has drawn the attention of numerous commentators. In practice, it meant that the local councillor was not the actual owner of his/her mandate and it created a stronger link and accountability line between the councillor and the political party than between the councillor and its electors. Furthermore, although the law only provided for such a "blank resignation" as a mere possibility in order to enhance party discipline, in practice this kind of "contract" became compulsory and universal. Since legal provisions expressly mentioned the irreversibility of this type of "blank resignation", the final outcome was a total dependence of candidates and/or councillors on the party which submitted and supported their candidacy. As mentioned above, in a decision published on the 2 July 2010, the Constitutional Court of Serbia found this provision in breach of the Constitution on several accounts (in practice, "blank resignation" is not used anymore -see below, para. 37).

29. A second controversial provision of the same law made it possible for political parties (which submit blocked lists of candidates for the elections) to decide which candidates from the list should become councillors (thus effectively distributing mandates in a - possibly and most often certainly - different way than the voters might have wanted) after the results of the election were made public and this in a relatively long lapse of time. In practice this provision bound local councillors to political parties even more and somewhat perverted the political will citizens had expressed during the vote, de facto annulling the direct character of the elections. The Constitutional Court has been strong in quashing this provision too. The delegation has also been informed that the Ministry for Public Administration and Local Self-Government has prepared a new text of the Law on Local Elections with an intention to create a new system allowing citizens to vote for candidates individually and not for a list of candidates, thus allowing the candidate who wins most votes to be elected and enabling citizens and not political parties to choose their representatives in the local assemblies. This draft law has still not been adopted by the National Assembly.

30. Locally elected officials other than local councillors are designated by municipal assemblies by a majority vote. Mayors and the other members of municipal councils receive a four-year mandate and cannot be members of municipal assemblies after their appointment. The particular fact that members of the municipal assembly are obliged to give up their direct mandate upon their nomination to

¹² Currently under revision with the Serbian Parliament.

¹³ [http://www.venice.coe.int/docs/2005/CDL-EL\(2005\)027-e.pdf](http://www.venice.coe.int/docs/2005/CDL-EL(2005)027-e.pdf)

executive posts in local administration and can be dismissed by the mayor, raises questions as regards their possible membership in the Congress of Local and Regional Authorities of the Council of Europe, in particular from the point of view of Article 2.1 of the Charter. Their status is to be regulated through a law currently under preparation by the Ministry of Public Administration and which was not available for the Congress delegation at the time of the visit. However, members of the delegation have learned that one of the main issues in this draft law seems to be the procedure used for the designation of the mayor, some officials declaring that direct election by citizens would be a better solution, while others considered the existing option. It was interesting to note that no gap between local and national authorities could be observed in this respect; rather, each individual asked seemed to express a personal point of view with little consideration for the consequences of such a choice upon the accountability of the mayor, but with openly expressed concern upon the relationship between the mayor and the political party which supported her/him, particularly after the strong stand taken by the Constitutional Court in its recent decision concerning local councillors.

31. The Congress delegation feels safe to note that, despite technical details that may well remain as pending issues, the process of decentralisation has well started in Serbia and seems to have entered a decisive phase, where strong political will is still needed in order to get further concrete results, but where a patchwork of already accomplished steps show a solid understanding of the concept of local self-government as enunciated by the Charter.

3.3. Article 4 (scope of local self government)

32. Article 4 of the Charter takes further the concept of local self-government and explains the manner in which the repartition of competences should be made and that local authorities should be consulted in planning and decision-making processes related to matters which concern them. It is worth mentioning again that it is precisely para.3 of Article 4 of the Charter that Serbia has not ratified due to constitutional provisions (particularly Article 177) which collide with the principle of subsidiarity as meant in the Charter. None of the officials met during the monitoring visit expressed concern regarding this point and none mentioned any intention on the part of Serbian authorities to revise the Constitution to allow for the ratification of this remaining paragraph.

33. The basic powers and responsibilities of local authorities are prescribed by the Serbian Constitution and further detailed by several laws (see above); they tend to be rather comprehensive with regard to attributions in the competence of local authorities and ensure regional autonomy for the autonomous province of Vojvodina. As already mentioned, it is not formal compliance with these requirements that seems to be at stake, but rather the effective implementation of existing standards and regulations,¹⁴ mainly from the perspective of financial resources needed to match delegated and even own attributions. This factor, coupled with the fact that Serbia has not ratified Article 6 of the Charter (pertaining precisely to the appropriate resources for the tasks of local authorities), may enable the Congress delegation to consider this as a difficult pending issue. Although the Congress delegation has heard from the Minister of Public Administration that “decentralisation is real” to the point where “local authorities tend not to consult the Ministry of Public Administration because it has no money”, this cannot be considered as a relief. Moreover, the Ministry of Public Finance seems to be aware of the dimensions of the problem concerning the financial means available to local authorities, several of whom have strongly underlined its impact on their capacity to fulfil their mission.

34. As far as public finance is concerned, there seems to exist a general acknowledgment, both at central and local level, of the delay taken in solving one specific problem Serbia is confronted with, namely the restitution of property. This goes beyond the general issue which is common to many ex-communist states that have nationalised private property and are due to give it back to legitimate private owners. In Serbia, this process started towards the beginning of the 90s. However, not only private but also public property of local authorities remained nationalised. In practice, this led to situations where, in order to sell an item which is used by a local authority but does not legally belong to it or to rent a commercial space, an approval from the central government had to be obtained. Swapping from a highly centralised state within a federal one to an independent unitary but decentralised state is a process that, in Serbia, seems not only to take time, but also to encounter genuine misunderstandings at all levels, particularly at the political decision-making one. The Law on Planning and Construction adopted in August 2009 defines the types of compulsory spatial and urban

¹⁴ Review on local self-government law implementation in Serbia, May 2009, Belgrade, report drafted for EXCHANGE2 - Joint Support to Local Government.

plans and the related construction and legislation processes. This Law reverts the right of ownership to local authorities only on built and undeveloped construction land which, until then, they had the right to use. The Ministry of Public Finance has a broader draft law on the assets of local authorities under preparation, which should also address the issue of the restitution of property to local authorities. The Congress delegation did not have access to this document, which, according to information received, is still in an early stage, although both the Speaker and the Committee on local self-government of the Serbian Parliament were aware of and eager to debate on it.

35. Against this background, the general assessment on compliance with Article 4 of the Charter can only be of mixed nature. Even from a positive law perspective Serbia still needs to adopt standards and regulations in order to ensure a “full and exclusive exercise” of attributions given to local authorities, particularly with regard to the “full discretion” needed for the use of means already available. Furthermore, implementation of the existing legal framework should be made in good faith. Congress delegation was informed by several stakeholders that the latest law on local government finance provides for own, shared, transferred and borrowed revenues for local authorities as well as for transparent rules pertaining to fiscal equalisation, but due to the global economic crisis some of its provisions have been temporarily suspended by central government. While being aware of the negative impact the economic crisis might have had particularly on a state and economy in transition, the Congress delegation has to note the need to make sure that local authorities do not bear an excessive share of the burden.

36. Finally, consultation of local authorities in matters which concern them directly is fairly well protected by the Constitution and legislation, as well as relatively well implemented in practice, particularly after the last general elections. Congress delegation has learned from several sources, including those directly concerned, that relations between the Standing Conference of Towns and Municipalities and the Ministry of Public Administration have greatly improved lately, and specifically that the Minister has good personal ties with the national association of local authorities since, prior to holding his current office, he was a locally elected person himself. This favourable context seems to have contributed to a better understanding of the scope of local self-government and to a significant improvement in direct consultation of local authorities and autonomous provinces. Nevertheless the practice and culture of consultation of local authorities and their associations has considerable room for improvement. Implementation of legal provisions concerning consultation is arbitrary and can vary from situation to situation. Further codification in compulsory legal standards of existing mechanisms, procedures and practices in the area of consultation of local authorities would better comply with the requirements of the Charter.

3.4. Article 5 (protection of local authorities' boundaries)

37. Articles 188 and 189 of the Serbian Constitution provide for sufficient guarantees for the legal protection of the boundaries of local authorities. Thus, the territory of a local self-government unit is specified by the law, while the establishment, revocation or alteration of the territory thereof is to be preceded by a referendum. Current law on local self-government, which was adopted in 2007 and which increased the number of towns and municipalities, seems to have followed the above-mentioned procedure and has not encountered any resistance either at local or central level.

3.5. Article 7 (conditions under which responsibilities are exercised)

38. This article aims at ensuring that locally elected representatives may not be prevented from carrying out their functions by a third party or by material considerations. As already mentioned, Serbian legislation has been subject to criticism on this account, particularly due to its electoral legislation and the way in which it prevented full ownership and exercise of the mandate councillors managed to obtain following the electoral process. The recent decision of the Serbian Constitutional Court (mentioned in paragraph 28) has contributed to a significant improvement of the situation. In a nutshell, according to articles 166 and 168 of the Serbian Constitution, provisions declared unconstitutional by the Court are no longer in force and all public authorities and private persons are obliged to respect this. In practice, that translates into the fact that “blank resignation” no longer exists, while mandates in local elections will have to be attributed according to the system of blocked lists. Furthermore, several officials have declared to the Congress delegation that this decision would have a broader impact, reaching national elections as well, thus contributing to the “purification” of the political system. In any case, it is safe to assert that, henceforth, conditions of office of local elected representatives provide for the free exercise of their functions. Incompatibilities between the office of mayor and local assemblies further contribute to the level of formal compliance of Serbian legislation

with the requirements of the Charter. Note has to be made with regard to the draft law currently under preparation with the Ministry of Public Administration and which was not available for the Congress delegation that should further, and in detail, regulate the status of local elected representatives.

39. Against this background, practice seems to be somewhat lagging behind positive law, the level of independence of local elected representatives from their respective parties being a function of personal skills and abilities. However, the Congress delegation was able to meet several locally elected representatives who seemed to have taken some distance from their respective parties and even expressed personal views on controversial political issues (such as the then politically hot debate on the direct or indirect election of mayors or the benefits and disadvantages of the recent decision of the Constitutional Court on the actual exercise of their mandate), knowing and saying that the official positions of the respective political parties are different.

40. Overall, the rapporteur tends to express optimism with regard to the potential existing in Serbia for a free exercise of the mandate of local representatives.

41. Serbia has not ratified the second paragraph of Article 7 of the Charter; therefore the rapporteur is not bound to assess compliance with it. However, it is the case that several officials met during the monitoring visit have mentioned, en passant, that financial compensation for expenses incurred in the exercise of the office are relatively modest and chances are that, due to the economic crisis, they will become even more so. Some of the interlocutors have alluded to possible “alternative” means available for local officials, but these considerations seemed to address more an endemic problem having to do with the political class at large than any particular case of (declared or undeclared) corruption.

42. Although not relevant for this article of the Charter, but rather for Article 6 which is not ratified by Serbia, the issue of the status of local government employees has been a recurrent one in several meetings the Congress delegation had during the monitoring visit. NGOs, in particular, but also the Standing Conference of Towns and Municipalities, expressed worries with regard to this issue and more specifically with regard to the “huge” (as two interlocutors have underlined) training needs. Strong opinions were also expressed with regard to the much needed “depoliticisation and professionalisation of staff” that should accompany the decentralisation process already started. The issue on the status and salaries of local government employees has been frequently mentioned.

3.6. Article 8 (administrative supervision)

43. This article of the Charter refers to the administrative supervision of local authorities not by citizens or ombudsmen, but only by other levels of government. The Constitution of Serbia (Article 192) and relevant implementing legislation tends to deal with this in rather strict terms: central government has to cancel the enforcement of a municipal general act which is deemed noncompliant with the Constitution or the law and has to start proceedings in front of the Constitutional Court within five days, in order to assess its constitutionality or legality. Also, central government may dismiss municipal assemblies and simultaneously appoint a temporary body to perform duties within the competences of the respective assembly.¹⁵ Formally, supervision is foreseen only for legality reasons and some officials have claimed that legal provisions were enforced only in those cases where decentralisation has been taken hostage for other political and/or illegal (possibly corruption) goals. The Speaker of the Serbian Parliament has informed the Congress delegation that appointment of temporary bodies already happened in 11 municipalities, without further comments on the possibility that such a procedure could be extensively or even abusively used.

44. The rapporteur is of the opinion that such an administrative supervision goes beyond the limits foreseen by Article 8 of the Charter. It is true that the trespassing of those limits refers more to the principle of proportionality (paragraph 3 of Article 8) that Serbia has not ratified. However, the safeguards put in place seem easy to be misunderstood and the judicial guarantees offered (intervention of the Constitutional Court) may not be sufficient. To balance these provisions, Article 193 of the Serbian Constitution allows municipalities or their legal representatives to lodge a complaint

¹⁵ Article 192 last paragraph of the Serbian Constitution expressly mentions that “Government may, under the terms specified by the Law, dismiss the Municipal Assembly. Simultaneously with the dismissal of the Municipal Assembly, the Government shall appoint a temporary body which shall perform duties within the competences of the Assembly, taking into consideration the political and national composition of the dismissed Municipal Assembly.”

in case they notice an infringement of their local autonomy, but this seems too little a compensation for the actual loss of autonomy, which may potentially occur upon central government initiative. Since what appears to open the way for an excess of authority is enshrined in the Constitution, there is little chance that the situation would find redress in the foreseeable future. The rapporteur believes that the legal provision in the Serbian Constitution being in conformity with the Charter, Serbian authorities could therefore consider lifting the reservation on paragraph 3 Article 8 of the Charter, to ensure proportionality between the intervention of the controlling authority and the importance of the interests which it is intended to protect.

3.7. Article 9 (financial resources)

45. Article 9 of the Charter is a core provision for local self-government as the legal authority imparted upon local authorities would be meaningless if they were deprived of financial resources to carry them out.

46. Article 188 of the Serbian Constitution specifically provides that “affairs of a local self-government unit shall be financed from the direct revenues of the local self-government unit, the budget of the Republic of Serbia, in accordance with the Law, and the budget of the autonomous province, in cases when the autonomous province delegated the performing of affairs within its competences, in accordance with the decision of the Assembly of the Autonomous Province.” Article 184 of the Serbian Constitution is entitled “Financial autonomy of autonomous provinces” and makes sure that autonomous provinces shall have direct revenues for financing their competences. However, the type and amount of these direct revenues is to be mentioned in a law, which should also specify the share autonomous provinces take in the revenues of the state. The Speaker of the Assembly of Vojvodina and the Council of Vojvodina have informed the Rapporteurs that the constitutional provision which earmarks at least 7% of the State budget for the Autonomous Province of Vojvodina is duly respected in practice. However, the rapporteurs consider that to achieve compliance with Article 9 paragraph 2 of the Charter¹⁶ (or paragraph 44 of the Reference Framework for Regional Democracy), it would be more appropriate to ensure that the resources of the autonomous provinces are commensurate with their competences and responsibilities.

47. The Ministry of Public Finance informed the Congress delegation that the law on local finance was drafted with support from USAID, Council of Europe, World Bank and various NGOs and came into force during 2006. Several independent evaluations have underlined the progress it represents when compared to previous legal standards: stability and transparency of transfers, improved fiscal equalisation, increased share of local authorities in their own revenues (e.g. property tax), bigger part of transfers from central government not earmarked, etc. However, starting with 2009, the year when the global economic crisis hit Serbia, part of the provisions of this law were suspended, particularly those referring to transfers. Although the Standing Conference of Towns and Municipalities acknowledges constructive dialogue with central authorities, it also underlines that reduced transfers are “an eternal topic” in all meetings held with the Prime Minister, the Ministry of Finance and the Ministry of Public Administration. On the other hand, the Committee on local self-government of the Serbian Parliament informed the Congress delegation that, since local authorities have to collect their own revenues, they seem to be better motivated to perform this activity, but this has also revealed existing (significant) discrepancies in their administrative capacity.

48. Local budgets in Serbia have as main sources their own revenues, shared revenues, transfers from the state and borrowings from other sources. In 2009, when the economic crisis first hit Serbia, the ratio between these sources was (roughly) 40% own revenues, 35% shared revenues, 20% transfers and the rest from borrowing. The most important sources of own revenues are taxes on land development and on land construction and property tax. However, local government property is still a pending issue with the Ministry of Public finance (see above paragraph 34).

49. Fiscal equalisation is calculated based on average per capita revenues for all municipalities (and not the towns). All municipalities which have shared revenues lower than 90% of the national average are entitled to receive up to 90% of the national average but, starting with 2009, these provisions too were put on hold.

¹⁶ By virtue of Article 13 of the Charter, the provisions thereof can be extended to regional governments.

50. Under these circumstances, Serbian local self-government may well enjoy “own financial resources” but the rapporteur fears they cannot also be considered as “appropriate” in order to fully allow them to fulfil their attributions. In fact, the relatively poor resources available to local authorities are the result of both diminished transfers from central authorities (mainly motivated by the economic crisis) and lack of local capacities to attract and collect their own revenues. The prospects of future improvement of this situation appear relatively low, unless the legal framework is completed and fully implemented, while ownership at local level is enhanced. Despite these considerations, which could be valid for other countries in Europe as well, it should be noted again that the global economic crisis is certainly a factor not to be ignored, which has strongly impacted not only the local authorities, but also the national budget of Serbia. However, careful attention should be paid to the necessary balance in bearing the burden of the crisis and ensuring that it is shared in a reasonable and equitable manner by central and local government.

3.8. Article 10 (right to association)

51. This article of the Charter is meant to allow local authorities to cooperate with each other in order to carry out tasks of common interest. Article 181 of the Serbian Constitution provides for the right of autonomous provinces and local self-government units to cooperate with corresponding units from other countries. Article 13 of the Serbian law on local self government allows for “units of local self-government to cooperate and join each other for the purpose of realising common goals, plans and programs of development, as well as other needs of common importance”. To this purpose they can join resources and set up common bodies, companies, institutions and other organizations and departments “in keeping with the law and the Statute”. The Congress delegation was informed by the Speaker of the Assembly of Vojvodina that the autonomous province of Vojvodina has taken full advantage of these provisions and has established cross border cooperation with similar entities from Hungary, Romania, Croatia, Bosnia-Herzegovina (Republic of Srpska). The delegation would, however, draw attention to the fact that Serbia has not signed the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS no. 106), nor its additional protocols.

52. However, cooperation between local authorities is scarce mainly due to the lack of administrative capacity and awareness of advantages this form of cooperation could have for a better use of available resources or the improvement of service quality. During the entire monitoring visit, the rapporteurs have not heard of any attempt by a local authority to pool scarce existing resources, while it is rather obvious that, for instance in the region of Novi Pazar, this could contribute to overcome the dramatic economic situation. The delegation was informed that the Standing Conference of Towns and Municipalities undertakes measures for improving the situation in this area, by providing necessary guidelines and specific instruments for developing intermunicipal cooperation.

3.9. Article 11 (legal protection of local self-government)

53. Both the Constitution and the law on local self government provide for relatively strong judicial tools of protection of local autonomy. Local authorities have the right (i) to lodge a complaint, as well as (ii) to initiate an *a posteriori* constitutional review of any legal act that would infringe upon self-government or provincial autonomy (Article 193 of the Constitution). The President of the Constitutional Court informed the Congress delegation that these provisions are deemed as extremely protective for local self government.

54. The rapporteur tends to agree with the evaluation made by the President of the Constitutional Court as far as the formal compliance with the requirements of the Charter is concerned, but in the absence of information pertaining to the actual implementation of those legal provisions, cannot make a fully fledged assessment. Since translated case law of the Constitutional Court was not available on the website of the Constitutional Court during the preparation period of this report, the delegation has not been in a position to verify if any complaints have been lodged by local or provincial authorities. Mention must be made here of the much-appreciated assistance given by the Constitutional Court, which provided an English translation of its decision of 2 July 2010 pertaining to the law on local elections.

4. CONCLUSIONS

55. The overall impression the Congress delegation got during its visit to Serbia was that the reform, in public administration in general and in local public administration in particular, is soon to come if not already there. The country is now facing a rather apathetic but quite dissatisfied civil society and a mix of political will, more rather than less favourable to a sharp reform of the political class and the state at large, and prone to support decentralisation. “*Depoliticisation*” and “*professionalisation*” of local authorities and the staff of local authorities were words often heard from many sides and stakeholders met by the delegation, generally mentioned as goals to be achieved in a near future. Within this context, Serbian legislation concerning local self government seems to be on a good track, with an important number of relevant laws already in place and some others (hopefully soon) to come. In general, it does not appear out of place to express optimism with regard to the potential good will and political commitment for a complete and correct implementation of that legislation. However, some concerns still persist with regard to (i) the legislative framework on self government and regional autonomy, as well as (ii) some practices currently in place.

4.1. Legislative framework

56. Serbia has not fully ratified the Charter on Local Self Government. In particular, the principles of subsidiarity and proportionality in administrative supervision by central authorities, and the autonomy of local authorities in establishing their own structures and resources are not compulsory in Serbia. In the near future there are slim chances for a full and complete ratification of the Charter. A political majority in support of such an action appears difficult to be achieved and this maintains the current situation (“benign” as one official put it). Specific provisions in the Constitution are taken as a screen for the current stalemate and no revision of the fundamental law is envisaged in the present political context.

57. Although relevant constitutional provisions are compliant with the Charter and the autonomous province of Vojvodina appears to be a vigorous example of successful regional autonomy, and while bearing in mind that the situation of Kosovo and Metohija is particular, the Council of Europe Reference

58. Framework for Regional Democracy¹⁷ does not seem to be fully echoed by existing Serbian legislation. Several political stakeholders have mentioned the Constitution as the main obstacle in an attempt to excuse the lack of legislative initiative in this area, while other officials drew attention to constitutional provisions concerning provincial autonomy as a proof of political good will. All interlocutors met during the monitoring visit wanted to underline the existence of statistical regions (and pertaining legislation) as required by the European Union accession goal Serbia has set itself, but all of them also mentioned existing awareness that this fact is not in compliance with the Council of Europe Reference Framework.

59. Furthermore, the situation of financial resources, adequate to meet the competencies of local and regional authorities, is not satisfactory due to a complex set of causes, among which legislation plays a fundamental role. The much needed law on the assets of local authorities is still awaited. It is expected that this piece of legislation would also address the issue of the restitution of property to municipalities and towns, thus enabling local authorities to increase their own revenues and contributing to a better performance of their attributions.

60. Some detailed provisions of existing laws pertaining to local self-government should be improved in order to fully comply with the Charter, particularly those concerning relations between mayors and local councils or relations between local staff and elected representatives. The status of the staff of local and regional authorities needs careful revision, while training needs remain an issue that should be addressed in an appropriate manner. It has also been brought to the delegation’s attention that the question of the regulation of financial compensation for local authority staff and establishment of criteria for their remuneration is also a pertinent one.

4.2. Implementation of the legislation

¹⁷ The Reference Framework for Regional Democracy is appended to the Utrecht Declaration adopted by the 16th Council of Europe Conference of Ministers responsible for Local and Regional Government on 16-17 November 2009 in Utrecht and is also mentioned in Resolution 299 (2010) of the Congress, which stated that the Congress would use the Reference Framework in its monitoring activities.

61. Like other countries in the region and similar also to other former members of the Yugoslav federation, Serbia displays a certain gap between political declarations coupled with formal legislation and actual implementation of standards and procedures. This is not to say that misimplementation is constant and widespread, but some areas tend to be more neglected than others. As far as compliance with the Charter goes, there are some specific practices which still raise concern.

62. The very concept of self-government refers to the fact that local and regional authorities should be in a position where they “regulate and manage a substantial share of the public affairs” of a given country. This requirement of the Charter appears to be somewhat hindered in Serbia, where a certain lack of capacity at local level is coupled with a rather strong grip that central authorities seem to perpetuate as a relic of the recent past. Relations between central and local government could be further improved taking as a basis the fact that local authorities are endowed by the Constitution with their own attributions while they may also get delegated competencies which are granted to them by central authorities.

63. In particular, this comes as evidence when assessing financial means that should match own and delegated attributions of local authorities. Recently adopted legislation concerning local finances, evaluated by all stakeholders as progress compared to previous legal standards, is currently not fully applied. One possible explanation is the severe economic crisis that has hit an economy in transition, but this objective cause should not be misused and transformed into the source of abusive breaches of legal certainty and discretionary economic decisions. Reasonableness, balance and equity in the decision-making process coupled with permanent and thorough consultation with the directly concerned authorities could help to improve a situation which is difficult for all those involved.

64. Likewise, administrative supervision and control of local authorities might appear as another area where arbitrariness is looming “at the door”. While constitutional provisions do allow for temporary replacements of locally elected authorities to be decided by central government, it may be the case that this mere possibility could also be extensively used. One cannot totally exclude the possibility that, in some instances, such decisions could be motivated by political reasons rather than strictly legal ones. It is therefore advisable to strictly follow legal rules and procedures when performing administrative control. At the same time, prudence and measure can only enhance chances to solve apparently conflictual situations. It is true that Serbia is not bound by the principle of proportionality as stated in the Charter, but this could be the very reason why formal compliance with existing legal standards should be strictly observed in practice, mainly by central authorities.

65. Finally, it seems that although constitutional and legal provisions fully compliant with the Charter do exist, local authorities in Serbia make little use of the possibility to cooperate with each other in order to carry out tasks of common interest or to increase the efficiency of their use of available resources. In the absence of clearly underlined advantages of such an instrument and against the background of a relatively poorly trained human resources, incentives and interest for the association of local authorities seem to be missing. One way forward could be to strengthen administrative capacity at local level, while a more proactive attitude from the local authorities themselves, particularly of the small and less resourced ones, should be strongly encouraged.

4.3. Other issues relating to local democracy

66. Citizens’ participation and citizens’ consultation in the decision-making process as well as the protection of human and minority rights have improved in Serbia since the adoption of the present Constitution, both at national and local level. A comprehensive set of legal standards, generally translating and/or transposing basic international ones, have been adopted by national authorities, while at local level efforts appear to be made. However, they are rather uneven and depend on the financial capacity of the local authority concerned. The standard institutional framework in this area comprises an office for Roma inclusion and a local Ombudsman, while some (better off) towns and the autonomous province of Vojvodina also have a local council for minority rights and even an office for refugees and displaced persons. NGOs seem to take a rather proactive stake in local government and, in some parts, particularly in the economically challenged municipalities in the south of Serbia, cooperation between representatives of civil society and local authorities can be considered fruitful. As regards national minorities from Eastern Serbia, the rapporteur recalls Resolution 1632 (2008) of the Parliamentary Assembly of the Council of Europe (see, in particular, point 15) and encourage local and regional authorities to “ensure the full implementation of the relevant legislative provisions” in the field of minority rights.

67. Some concerns can still be raised with regard to the specific situation of the Roma. A case in point could be the well-off region of Vojvodina, where the Roma population is known not to have a common language, but three different dialects. Although, the Roma are formally considered to have a radio broadcast, none of the regional authorities met could say in what language or dialect it was made. On the other hand, the representatives of the Assembly of Vojvodina were aware of the emphasis put by the European Union and the Council of Europe on the Roma issue. In a written communication the Assembly of the Autonomous Province of Vojvodina informed the delegation about a number of activities organised in the Autonomous Province, through its Office for the Inclusion of the Roma population, as well as a number of other government bodies, for facilitating the integration of the Roma, including financing university studies, providing scholarships and accommodation to Roma students enrolled in secondary schools, organising pre-school studies of Roma language, etc. The delegation was also informed that there were Roma coordinators in 24 municipalities in Vojvodina, which served as a link between the Roma community, local self-government bodies and other state institutions. This is a positive point which, according to the rapporteur, deserves to be emphasised.

APPENDIX

Programme of the monitoring visit of the Congress of Local and Regional Authorities delegation to Serbia

Meetings in Belgrade, Novi Sad and Novi Pazar (29 June - 1 July 2010)

Congress delegation

Mr Odd Arild KVALÖY Co-Rapporteur, member of the Monitoring Committee of the Congress,
Councillor, Rogaland County Council, Norway

Mr Christopher NEWBURY Co-Rapporteur, former member of the Monitoring Committee of the Congress, United Kingdom

Dr Elena Simina TANASESCU Consultant

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Tuesday, 29 June 2010, Belgrade

Briefing with Belgrade Council of Europe Office staff

Mr Milan MARKOVIC, Minister of Public Administration and Local Self Government
Mr Sasa MOGIC, Assistant Minister
Ms Sanja MILICEV, Advisor

Ms Diana DRAGUTINOVIC, Minister of Finance
Mr Vuk DJOKOVIC, State Secretary
Ms Marija ROSIC, Chief of Cabinet
Mr Branislav STIPANOVIC, Advisor, Department for budget planning
Mr Zoran CIRIC, PR Officer

Ms Bosa NENADIC, President of the Constitutional Court
Ms Vesna Ilic PRELIC, Judge
Mr Bratislav DJOKIC, Judge
Ms Ljiljana LAZIC, Councillor
Ms Ljubica PAVLOVIC, Councillor for International Cooperation

Mr Djordje STANICIC, Secretary General the Standing Conference of Towns and Municipalities
Mr Nenad MILENKOVIC, Vice President and Mayor of New Belgrade Municipality

Ms Slavica DJUKIC DEJANOVIC, Speaker of the Serbian Parliament
Mr Dragoljub MICUNOVIC, Head of Foreign Affairs Caucus in the Serbian Parliament
Mr Jovan PALALIC, Head of Local Self Government Caucus

Ms Natasa CORBIC, Director of the National Council of Decentralisation
Ms Natasa DRAGOJLOVIC, Director's Assistant

Wednesday, 30 June 2010, Novi Sad, Belgrade

Mr Sandor EGERESI Speaker of the Assembly of Vojvodina
Ms Maja SEDLAREVIC, Deputy Speaker
Mr Boris BARJAKTAROVIC, Vice President of the Executive Council of Vojvodina and Provincial Secretary for Regional and International Cooperation
Mr Dejan AVDALOVIC, Advisor to the President of the Parliamentary Assembly of Vojvodina
Mr Aleksandar POPOV, Director of Center for Regionalism
Ms Stanka PARAC DAMJANOVIC, Director of LDA Subotica

Mr Thomas GNOCCHI, Head of Political and Civil Society Section, EU Delegation, Serbia
Ms Sanda BABIC, Political Officer
Ms Gordana ARACKIC, Democracy Officer

Mr Aleksandar ANTIC, President of the Belgrade City Assembly
Mr Zoran ALIMPIC, Vice President
Mr Zeljko OZEGOVIC and Ms Nada DUMIC, members of the Belgrade City Council

Thursday, 1 July 2010, Novi Pazar

Mr Meho MAHMUTOVIC, Mayor of Novi Pazar
Mr Mirsad JUSUFOVIC, Mayor's Cabinet Chief
Mr Resat HODZIC, Member of the City Council
Mr Sead BUKVIC, Staff member of the Municipality of Sjenica

The representatives of the Civil Society

Ms Semiha KACAR, Sandzak Committee for Human Rights (Novi Pazar)
Ms Aida COROVIC, Urban-In (Novi Pazar)
Mr Slobodan MARTINOVIC, Argument (Prijepolje)
Mr Nazim HALILOVIC, Fotos (Tutin)
Mr Sedat VRCIC, Flores (Sjenica)

Departure from Novi Pazar to Kragujevac - meeting of the Institutional Committee on 2 July 2010