

# The Congress of Local and Regional Authorities



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## Local and regional democracy in the Republic of Moldova

Monitoring Committee

Rapporteurs:<sup>1</sup> Francis LEC, France (L, SOC) ; Angelo MIELE, Italy<sup>2</sup> (R, EPP/CD)

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### Summary

This report on local and regional democracy in the Republic of Moldova is a follow-up to Congress Recommendation 179 (2005), adopted in November 2005. The rapporteurs note with satisfaction that positive progress has been made regarding the legislation and institutions in respect of all the statutory texts concerning the local public administration of the Republic of Moldova since the latest Recommendation in 2005. In this regard, the draft National Decentralisation Strategy is a sign of the current Government's declared commitment to conducting a thorough reform of local public administration so as to consolidate local authorities' autonomy and improve the management and quality of the services provided to members of the public. The Congress nevertheless underlines that the level of local authorities' own resources remain inadequate, supervision of local authorities is sometimes excessive and there is a lack of clarity with regard to the distribution of powers and financial resources.

The Congress recommends that the Moldovan authorities continue with the measures they have launched in the context of the National Decentralisation Strategy so that it can be adopted and implemented in keeping with the national authorities' declared intentions. It also invites the authorities to draw up further programmes and strategies to ensure the free movement of people and goods and to implement economic development programmes accompanied by appropriate financial resources for localities in the Nistru/Dniestr security zone. Finally, the Congress calls on the Moldovan authorities to enact a new law on the special status of the capital, Chişinău, and to sign and ratify in the near future the Additional Protocol to the Charter on the Right to Participate in the Affairs of a Local Authority.

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<sup>1</sup>L : Chambre des pouvoirs locaux / R : Chambre des régions.

GILD : Groupe Indépendant et Libéral Démocratique du Congrès.

PPE/DC : Groupe Parti Populaire Européen - Démocrates Chrétiens du Congrès.

SOC : Groupe Socialiste du Congrès.

NI : Membre n'appartenant à aucun groupe politique du Congrès.

<sup>2</sup> By decision of the Monitoring Committee on 24 February 2012, Mr Angelo MIELE, Italy (R, EPP/CD) was appointed Rapporteur on regional democracy in the Republic of Moldova, in order to replace Mr Ignacio SANCHEZ AMOR, who is no longer a member of the Congress since December 2011.



**DRAFT RECOMMENDATION<sup>3</sup>****(See Recommendation 322 (2012) adopted on 22 March 2012)**

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 relating to the Congress of Local and Regional Authorities of the Council of Europe, which stipulates 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 Statutory Resolution CM/Res(2011)2 relating to the Congress of Local and Regional Authorities of the Council of Europe, which stipulates 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) REV 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;

d. Recommendation 219 (2007) on the status of capital cities;

e. Recommendation 179 (2005) of the Congress on local democracy in Moldova;

f. Resolution 299 (2010) of the Congress on Follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Government (Utrecht, Netherlands, 16-17 November 2009), 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 the Congress Recommendation 282 (2010) (CM/CONG(2011)Rec282final, encouraging the governments of member states to take account of the above mentioned Reference Framework;

g. the explanatory memorandum of the present recommendation on local and regional democracy in the Republic of Moldova.

2. The Congress underlines that:

a. The Republic of Moldova became a member of the Council of Europe on 13 July 1995. It signed the European Charter of Local Self-Government (ETS No.122, hereafter referred to as “the Charter”) on 2 May 1996 and ratified it on 2 October 1997 without any reservations. The Charter came into force in respect of the Republic of Moldova on 1 February 1998;

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<sup>3</sup> Preliminary draft recommendation approved by the Monitoring Committee on 24 February 2012.

Members of the Committee:

*L. O. Molin* (President), *M. Abuladze*, *U. Aldegren*, *K. Andersen*, *L. Avetyan* (alternate: *E. Yeritsyan*), *A. Babayev* (alternate: *I. Khalilov*), *T. Badan*, *M. Barcina Angulo*, *V. Belikov*, *G. Bende* (alternate: *E. Penzes*), *G. Bergemann*, *M. Bespalova*, *V. Broccoli*, *Z. Broz*, *A. Buchmann*, *X. Cadoret*, *E. Calota*, *S. Carugo*, *S. Chernov*, *D. Chichinadze*, *B. Collin-Langen*, *M. Cools*, *J. Costa*, *D. Çukur*, *L. Dellai*, *M. De Lamotte*, *N. Dogan*, *G. Doğanoglu*, *M. Gaju*, *V. Gebel*, *G. Geguzinskas*, *S. Glavak*, *S. Guckian*, *M. Guegan*, *M. Gulevskiy*, *H. Halldorsson*, *M. Heatley*, *J. Hepburn*, *B. Hirs*, *J. Hlinka*, *C. Hughes*, *A. Ibrahimov* (alternate: *R. Aliyev*), *G. Illes*, *J. Jalinska* (alternate: *M. Juzupa*), *S. James*, *A. Jaunsleinis*, *M. Jegeni Yıldız*, *M. Juhkami*, *J-P. Klein* (alternate: *E. Eicher*), *A. Kriza*, *I. Kulichenko* (alternate: *N. Rybak*), *F. Lec*, *J-P. Liouville*, *I. Loizidou*, *M. Magomedov*, *P. Mangin* (alternate: *J-M. Belliard*), *T. Margaryan*, *G. Marsan*, *H. Marva*, *V. Mc Hugh*, *M. Merrild*, *I. Micallef*, *T. Mikus*, *K. Miskiniene*, *M. Monesi*, *G. Mosler-Törnström*, *A. Muzio*, *M. Njilas*, *Z. Ozegovic* (alternate: *V. Vasic*), *R. Paita* (alternate: *A. Miele*), *U. Paslawska*, *H. Pihlajasaari*, *G. Pinto*, *G. Policinski*, *A. Pruszkowski*, *C. Radulescu* (alternate: *L. Sfirloaga*), *R. Rautava* (alternate: *S. Ruponen*), *H. Richtermocova*, *A. Rokofillou*, *N. Romanova*, *D. Ruseva*, *J. Sauwens*, *P. Schowtka*, *W. Schuster*, *D. Shakespeare*, *M. Simonovic* (alternate: *S. Lazic*), *G. Spartanski*, *M. Tamiros*, *A. Torres Pereira*, *V. Udovychenko* (alternate: *O. Radziievskiy*), *A. Ugues*, *G. Ugulava* (alternate: *P. Zambakidze*), *A. Uss*, *P. Uszok*, *V. Varnavskiy* (alternate: *A. Borisov*), *O. Van Veldhuizen*, *L. Vennesland*, *L. Verbeek*, *H. Weninger*, *K. Whitmore* (alternate: *P. Grove*), *J. Wiene*, *D. Wrobel*, *U. Wüthrich-Pelloli*, *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*.

*b.* The Republic of Moldova has not signed 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);

*c.* On 23 March 2011 the Congress Monitoring Committee appointed Mr Francis Lec (L, SOC, France) and Mr Ignacio Sanchez Amor<sup>4</sup> (R, SOC, Spain) rapporteurs and instructed them to prepare and submit to the Congress a report on local and regional democracy in the Republic of Moldova;

*d.* The rapporteurs travelled to the Republic of Moldova to Chişinău on 12 and 13 September 2011 and subsequently to Chişinău, Coşniţa (Dubăsari) and Condroiţa from 23 to 25 November 2011. The delegation met the Acting President of the Republic of Moldova, representatives of the Parliament and the Government, representatives of the Congress of Local Authorities of Moldova (hereafter referred to as CALM), representatives of the Constitutional Court and the Court of Auditors, the Parliamentary Advocate (Ombudsman), the representatives of the OSCE in the Republic of Moldova, the Mayor of Chişinău, representatives of the Autonomous Territorial Unit of Gagauzia and the local representatives of Coşniţa and Condroiţa;

*e.* The Congress would like to thank the Permanent Representation of the Republic of Moldova to the Council of Europe, the Moldovan authorities at central, regional and local levels, the Moldovan delegation to the Congress and its secretariat, the CALM, and all the persons consulted, for their valuable co-operation during the different stages of the monitoring procedure and for the information provided to the delegation.

3. The Congress notes with satisfaction:

*a.* the progress made in the Republic of Moldova since the last recommendation in 2005, in particular the measures launched by Parliament in the form of an action plan in response to all of the Council of Europe recommendations. This plan has given rise to several legislative and institutional initiatives in the field of local public administration;

*b.* that the decentralisation of power and local self-government are one of the strategic priorities of the 2011-2014 Work Programme of the Government of the Republic of Moldova;

*c.* that on 26 January 2012 the Government approved the National Decentralisation Strategy, which should be on the Parliament's agenda for the first half of 2012;

*d.* the Council of Europe joint project with the Republic of Moldova for the introduction of confidence-building measures on both banks of the river Nistru/Dniestr in 2011, including the proposed follow-up measures to be taken in 2012, and the outlook for 2013;

*e.* the progress made in regional development policy, particularly through various crossborder projects in which the Republic of Moldova is currently taking part;

*f.* the inclusion on the Parliament's agenda (for the first half of 2012) of the enactment of a new law on the status of the capital city;

*g.* the threefold increase in the number of women acceding to local public office over the past 8 years and the existence of several projects aimed at consolidating women's position in society, in particular the "Gender Strategy".

4. Taking note that a certain number of points taken up in Congress Recommendation 179 (2005) on local and regional democracy in Moldova still remain relevant, the Congress notes with regret:

*a.* that one of the consequences of the current political crisis in the Republic of Moldova has been to put a break on the measures for the development of local public administration set out in the Moldovan Government's Work Programme for 2011-2014;

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<sup>4</sup> By decision of the Monitoring Committee on 24 February 2012, Mr Angelo MIELE, Italy (R, EPP/CD) was appointed Rapporteur on regional democracy in the Republic of Moldova, in order to replace Mr Ignacio SANCHEZ AMOR, who is no longer a member of the Congress since December 2011.

- b. that the Ministry of Local Authorities has been abolished;
- c. the major imbalance between local authorities' powers and responsibilities and the resources allocated to them;
- d. local authorities' very limited financial and fiscal autonomy, which is reflected in the excessive oversight exercised by the national authorities over tier II and by tier II over tier I, in particular with regard to the management of financial resources;
- e. the insufficiency of local taxes and the lack of clarity in the way in which central government redistributes financial resources to local authorities;
- f. the lack of clarity in the distribution of powers and responsibilities between the two tiers of local authorities and between local and central government;
- g. the lack of regulations for expediency checks, sometimes carried out at its own discretion, by central government on the way in which local authorities exercise the powers delegated to them by the state;
- h. local authorities' limited freedom in recruiting and fixing the conditions for the remuneration of local government officials, and the existence of discrimination between public officials working for central government and those working for local government officials with regard to their conditions of pay;
- i. the functioning of the capital, which is governed by an inappropriate law that does not correspond to the special situation of Chişinău, which has a dual status, given that it is both a tier I territorial unit (*oraş*) and a tier II unit (*municipiu*);
- j. the difficulties that local elected representatives in the region to the right of the Nistru/Dniestr have in fulfilling their duties, owing to the pressure exerted on them by the security forces in the Transnistrian region of the Republic of Moldova;
- k. the difficulties facing citizens living in localities close to the Transnistrian region of the Republic of Moldova with regard to freedom of movement and the management of their everyday affairs;
- l. the insufficient dialogue between central government and the authorities of Gagauzia with regard to all aspects of local self-government concerning them.

5. The Congress recommends that the Committee of Ministers invite the Moldovan authorities to:

- a. continue discussions on the National Decentralisation Strategy within Parliament with a view to its adoption and ensure that it is implemented in keeping with the national authorities' stated intentions;
- b. reconsider establishing a Ministry of Local Authorities;
- c. allocate to local authorities financial resources which are commensurate with their powers and responsibilities, as stated in Article 9(2) of the Charter, so that they are in a position to exercise them;
- d. reduce the supervision of local authorities to allow them to manage their own affairs, in compliance with Article 8(3) of the Charter;
- e. permit local authorities to collect more fees and local taxes, in addition to property tax and taxes on built assets, the rates of which could be determined by local authorities within the limits set by the law, in keeping with Article 9(3) of the Charter. It also appears necessary to clarify the procedures for the share of financial resources allocated to local authorities so that they are in a position to draw up their own budget and meet their citizens' needs;

*f.* review the legislation currently in force in respect of local public administration to bring it into line with the principles set out in the Charter. In particular revise the provisions concerning powers and responsibilities to clarify the powers and responsibilities of tier I and tier II local authorities and those of central government with regard to local democracy. This should be done in such a way as to avoid the overlapping of powers and responsibilities not only between these levels but also between central government and local authorities;

*g.* review the legislation governing expediency checks to ensure that they are clearly regulated and restricted, in particular by laying down criteria defining the exact cases in which such checks may be carried out;

*h.* safeguard local authorities' right to decide on their own staff policy and eliminate discrimination towards local public officials in national legislation with regard to the status and remuneration of national public officials and local government officials;

*i.* continue the efforts made by the authorities to improve the consultation of local authorities on all matters concerning them on the basis of a detailed procedure in keeping with Article 4(6) of the Charter;

*j.* enact and implement a new law on the status of the capital city, Chişinău, in accordance with Recommendation 219 (2007) of the Congress;

*k.* take the necessary steps to render the area close to the Transnistrian region of the Republic of Moldova more secure and put a stop to the intimidation to which some local elected representatives are subjected;

*l.* take measures to ensure the free movement of people and goods and implement economic development programmes with commensurate financial resources for local authorities in the immediate neighbourhood of the Transnistrian region of the Republic of Moldova;

*m.* introduce a mechanism for improving dialogue between central government and the authorities of the Autonomous Territorial Unit of Gagauzia on all aspects of local democracy;

*n.* sign and ratify, in the near future, the Additional Protocol to the Charter on the Right to Participate in the Affairs of a Local Authority dated 16 November 2009 (CETS No. 207).

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**1. Introduction**

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2011)<sup>2</sup> of the Committee of Ministers of the Council of Europe, the Congress of Local and Regional Authorities (hereafter referred to as “the Congress”) regularly prepares reports on the state of local and regional democracy in all Council of Europe member states.

2. The Republic of Moldova signed the European Charter of Local Self-Government on 2 May 1996 and ratified it on 2 October 1997. It thereby undertook to observe all the provisions thereof with no reservations or declarations. The Charter came into force in the Republic of Moldova on 1 February 1998.

3. The Republic of Moldova also signed and ratified:

a. the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.106) on 4 May 1998, which came into force in respect of the Republic of Moldova on 1 February 2000;

b. the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.159) of 27 June 2001, which came into force in respect of the Republic of Moldova on 28 September 2001;

c. Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No.169) on 27 June 2001, which came into force in respect of the Republic of Moldova on 28 September 2001.

4. The Congress of Local and Regional Authorities has made several visits to the Republic of Moldova to monitor the state of local and regional democracy. These visits gave rise to four recommendations<sup>5</sup> and three resolutions, the last of which, Recommendation 179 (2005) on local democracy in Republic of Moldova, was adopted by the Congress in 2005.

5. The Monitoring Committee of the Congress appointed Mr Francis LEC (L, SOC, France) and Mr Ignacio SANCHEZ-AMOR (R, SOC, Spain) rapporteurs on local and regional democracy respectively. It instructed them to submit a report and a recommendation on local and regional democracy in the Republic of Moldova to the Congress.

6. Mr Ignacio SANCHEZ-AMOR's term of office as a Congress member ended in December 2011.

7. Two monitoring visits were made to the Republic of Moldova in 2011: to Chişinău on 12 and 13 September 2011 and to Chişinău, Cognisa (Dubăsari) and Condroiţa from 23 to 25 November.<sup>6</sup>

8. The delegation met the interim President of the Republic of Moldova, representatives of the Parliament and the Government, representatives of the Congress of Local Authorities of Moldova (CALM), the President of the Constitutional Court and the Court of Auditors, the Parliamentary Advocate (Ombudsman), the President of the Central Electoral Commission, the Mayor of Chişinău, representatives of the Autonomous Territorial Unit of Gagauzia and the local representatives of Coşniţa and Condroiţa (see the detailed programme appended).

9. With regard to the situation of local authorities in the vicinity of the Transnistrian region of the Republic of Moldova, the delegation met the Organization for Security and Co-operation in Europe (OSCE) Mission. It also submitted two requests for assistance to the OSCE and the Deputy Prime Minister for Reintegration of the Republic of Moldova so that it could visit this region and meet the local authorities in Tiraspol in September and in Dubăsari in November 2011. Despite all the efforts made by the aforementioned institutions, the authorities in this region refused to meet the delegation.

10. The Congress would like to thank the Permanent Delegation of the Republic of Moldova to the Council of Europe, the Moldovan delegation to the Congress and its secretariat, the Moldovan authorities at central, regional and local level, CALM, and the various other interlocutors, for their valuable co-operation at the different stages of the monitoring procedure and for the information provided to the delegation, which ensured the smooth conduct of the visit.

11. This report has been prepared on the basis of the information gathered during the two visits made by the Congress delegation, the examination of the relevant legislation and the information and documents provided by the various experts and international organisations.

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<sup>5</sup> Recommendation 179 (2005) on local and regional democracy in Moldova; Recommendation 110 (2002) on local and regional democracy in Moldova; Resolution 132 (2002) on local and regional democracy in Moldova; Resolution 103 (2000) on regional democracy in Moldova; Recommendation 84 (2000)<sup>1</sup> on regional democracy in Moldova; Recommendation 38 (1998) on the situation of local and regional self-government in the Republic of Moldova and Resolution 59 (1998) on the situation of local and regional self-government in the Republic of Moldova.

<sup>6</sup> The Congress rapporteurs were assisted by Mr Michel VERPEAUX, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government, and Ms Oleséa SAVCA, local expert, as well as the Congress Secretariat.

## 2. General information: national political context

12. The Republic of Moldova proclaimed its independence from the USSR on 27 August 1991. According to the Moldovan Constitution of 29 July 1994, the Republic of Moldova is a sovereign, independent, unitary and indivisible State. The form of government of the State is republican.

13. The Republic of Moldova, which has a surface area of 33,843 km<sup>2</sup>, is bordered to the north, east and south by Ukraine. In the west, the River Prut separates the Republic of Moldova from Romania. The country is completely landlocked between Romania and Ukraine, without any access to the Black Sea apart from less than a kilometre along the banks of the Lower Danube.

14. The Republic of Moldova is a parliamentary republic whose president is elected for a four-year term of office by a unicameral parliament (101 seats), requiring the support of three fifths of the deputies (at least 61 votes). Since April 2009 there has been a political crisis in the Republic of Moldova preventing the election of a president. To date no candidate has managed to secure enough votes. In such situations, the Constitution provides that the Speaker of the Parliament shall take over the duties of the Head of State. Marian Lupu has held this office since 30 December 2010.

15. In order to understand the current political deadlock, which is affecting all the levels of political life in the country, it is worth recalling the recent electoral history of Moldova. On 5 April 2009, parliamentary elections took place and were followed by violent incidents on 7 and 8 April 2009. Following the Parliament's failure to elect the President of the Republic (by a 3/5ths majority) on 20 May and 3 June 2009, new parliamentary elections were held on 29 July 2009. The Parliament again failed to elect the President of the Republic on 10 November 2009 and 7 December 2009.

16. The proposal of the Communist Party of the Republic of Moldova (PCRM) to amend the Constitution with a view to electing the president in the Parliament in three rounds was rejected by the Parliament. The initiative of the Alliance for European Integration to organise nationwide, direct presidential elections was submitted to a referendum on 5 September 2010. The referendum however failed, due to inadequate voter turnout (i.e. 30%, instead of the 33% required). On 29 September 2010, Mr Ghimpu, interim President of Moldova, dissolved the Parliament and signed the decree calling early parliamentary elections for 28 November 2010.

17. Following these elections, a pro-European government was formed by the Alliance for European Integration (the AIE-2 comprising the PLDM, the PDM and the PL). However the AIE-2 (which has 59 members in Parliament) still does not have the required qualified majority to elect the President. On 1 December 2011, by Law No. 232, the Parliament amended Law No. 1234-XIV of 22 September 2000 on the procedure for the election of the President of the Republic of Moldova which states in its Article 6, para.4 that "If fewer than three-fifths of the members of parliament have participated in the election of the President of the Republic of Moldova, the presidential election is deemed not to have taken place. The Parliament should then fix a new date of election within thirty days".

18. Following the revision of the law, a new date was set for presidential elections previously scheduled for 16 December 2011. However, on 12 January 2012 the Constitutional Court declared the election held null and void on the grounds that the confidentiality of the ballot had been violated. Discussions are ongoing between members of the Alliance and the opposition parties to find a solution to this political crisis.

19. The executive branch of the state is headed by the Prime Minister, who is appointed by the President of the Republic after consultation of the parliamentary parties. The candidate for the post of Prime Minister must seek Parliament's vote of confidence on his or her programme of activities and the complete list of members of the Government, within 15 days of his or her appointment. Following the Parliament's vote of confidence, the President of the Republic appoints the Government. Mr Vlad Filat was appointed Prime Minister (ad interim) on 25 September 2009 and was re-appointed to this office after the elections held on 28 November 2010.

20. In the Republic of Moldova, the legislative, executive and judicial powers are separate and co-operate in the exercise of their respective prerogatives, in accordance with the Constitution.



21. General local elections were held in the Republic of Moldova on 5 and 19 June 2011.<sup>7</sup> According to the Report of the Congress on local elections in Moldova on 5 June 2011 (CG/BUR (2027)), they brought about greater political diversity and new players have appeared on the political scene. The elections took place in a more open media environment.

### **3. Respect of obligations and commitments: effects of preceding reports and recommendations**

22. As indicated in the introduction, the Congress of Local and Regional Authorities has made several visits for the purpose of monitoring local and regional democracy in the Republic of Moldova, which gave rise to four recommendations and three resolutions, the latest of which – Recommendation 179 (2005) on local democracy in Moldova - was adopted by the Congress in 2005.

23. Recommendation 179 (2005) mentioned a number of concerns including the following points:

- numerous cases of interference by the central authorities in local authority affairs;
- absence of any clear distribution of responsibilities between the central and local authorities;
- institutional stakeholders not consulted on reforms concerning local self-government;
- local authorities have very limited freedom to organise themselves, in particular because of the obligation of recruiting a given number of civil servants to be affected to precise tasks;
- the very limited extent of local financial autonomy;
- in practice, decisions on budgetary resource management by local authorities are subject to approval by the central authorities or the districts (*raions*);
- local authorities' resources derive mainly from transfers from central government and the districts, which makes them extremely dependent on the state and its constituents;
- the highly stringent supervision of local financial management by the districts, which transmit state subsidies to the local authorities;
- the criteria used by the Ministry of Finance for deciding the amounts of transfers are not transparent enough;
- the virtual non-existence of real local taxes and the lack of an effective mechanism for collecting local taxes;
- the fact that the idea put forward by the Moldovan authorities in February 2005 of setting up a special ministry responsible for dealing, in a co-ordinated manner, with all matters relating to local authorities seems to have been abandoned.

24. On the basis of these recommendations in 2005, the Parliament of Moldova launched a plan to take action in response to all of the Council of Europe's recommendations and several initiatives and/or legislative and institutional modifications have taken place. For example, a calendar for amending the legal and institutional framework was submitted to the Parliament. Three laws were enacted: firstly, Law No. 436-XVI (of 28 December 2006) on local public administration, secondly Law No. 435-XVI (of 28 December 2006) on administrative decentralisation and thirdly Law No. 438-XVI (of 28 December 2006) on regional development in the Republic of Moldova. The fourth law, on local finances, was not enacted. At the current time local finances continue to be governed by the Law of 2003, despite the fact that in 2006 it was considered to be "outdated" and inadequate in view of economic developments at that time.

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<sup>7</sup> See Recommendation of the Congress 313(2011) Local elections in Moldova (5 June 2011), Resolution of the Congress 329(2011) Local elections in Moldova (2011), and the Report on local elections in Moldova, 5 June 2011 CG/BUR (2027).

25. In this context, in keeping with Recommendation 179/2005 and at the request of Moldovan mayors, the Ministry of Local Public Administration was set up pursuant to Law No. 25-XVI of 16 February 2006. The Deputy Prime Minister was given responsibility for this ministry to show the importance attached to issues concerning local self-government. One of the basic duties of the ministry was to maintain relations with local authorities at tiers I and II and to co-ordinate these activities. The ministry was therefore intended to constitute a liaison body between central government and local authorities. On 18 September 2009, Mr Filat's government decided to close down this ministry and local government issues are now dealt with by the State Chancellery and in particular by the Directorate of Local Public Administration and the Policy of Decentralisation Department.

26. During the monitoring visit, the delegation noted that opinions on the need for a Ministry of Local Public Administration were divided between its advocates, who saw it as a means of improving representation of local authorities and promoting their interests in their dealings with central government, and its opponents, who regarded it as a "purely political instrument".

27. There is some clear disappointment about both the legislative and the institutional situation: some of these new laws have not been implemented. Moreover, the Ministry of Local Public Administration has been closed down without any transparent analysis of the grounds for doing so.

28. The appraisal in 2011 of how these innovations have worked out in effect and the impact of various changes since the review in 2005 must be put into perspective, given that some negative aspects have become entrenched while some progress has also been made. A relatively large number of statutory instruments have been adopted but it is likely that not all of these have had an effect. There is still a gap between the legal framework and actual practice. Recommendation 179 (2005) was not sufficient to make local stakeholders aware of what needs to be done.

29. The visit of the Congress Delegation was therefore eagerly awaited in 2011 and corresponded to the expectations of the local elected representatives represented in CALM. This apolitical association represents all the local authorities of the Republic of Moldova. The local elected representatives seem to think that the Moldovan authorities do not consider local self-government to be a real priority.

30. Not all changes expected in response to the Congress Recommendation of 2005 have been completed and efforts to implement the recommendations were interrupted in 2007 after the local elections. Financial issues and those concerning local authority staff are still very pressing. No changes have been made to local financing and, instead of improving, the situation has deteriorated and can be considered, from the standpoint of local elected representatives, to have reached a deadlock. The absence of political stability at national level would seem to have prevented the government from adopting the necessary measures.

31. The local elected representatives have the feeling that, despite the fact that local self-government is enshrined in legislation, it does not exist in the Republic of Moldova. Some of them deplore the political dependence on the second tier of authorities. They claim that financial autonomy does not exist in practice and that taxes are calculated and levied at national level. Many took the view that powers were transferred on the basis of obscure criteria. Authority still seems to be exercised in a vertical fashion. Local authorities' dependence on central government is often deplored by the local elected representatives, who point out that the relevant legislation is unclear if not incompatible with the Charter, and the financial system is not in keeping with the legislation.

32. The local representatives often condemned the situation, giving the example of education: although the Law of 2006 on decentralisation stipulated that education does not fall within the remit of the local authorities, they often pointed out to the delegation that 70% to 90% of local budgets are used to finance the education sector. Teachers' salaries take up a substantial proportion of the budget of first tier local authorities. The smaller the local authority; the greater the financial burden of education.

33. The same applies to the property register where difficulties have not been solved in a satisfactory manner; the most frequent problems seem to concern the identification of proprietors and the evaluation of the value of their property. The municipalities' properties are not correctly registered and no clear difference is made between state-owned properties and those belonging to local authorities.

34. Central government representatives think that some local elected representatives understand local self-government to mean unlimited freedom of action. At the same time, the dominant opinion in central government seems to be that the development of local authorities is the key to the country's development. The political parties which make up the Alliance believe that local autonomy is an essential element for European integration. Moreover the decentralisation of power and local self-government is one of the strategic priorities of the 2011-2014 Work Programme of the Government of the Republic of Moldova. Central government has therefore drawn up a draft National Decentralisation Strategy, which is presented as groundbreaking from the standpoint of its method and whose aim is to ensure that Moldovan legislation complies more closely with the requirements of the Charter.

35. The draft National Decentralisation Strategy is presented as a new way of proceeding compared to that implemented in response to Recommendation 179 (2005). Law No. 436-XVI of 28 December 2006 on local public administration assigned powers and responsibilities to local authorities but it did not provide for genuine collaboration between central and local government. As a result the local authorities considered the Law of 2006 to be a failure and this led central government to adopt a new method to restore local authorities' confidence through a process for implementing the legislation in such a way that it lasts. The Government stated its determination to honour its commitments.

36. This draft strategy draws on all of the legislation relating to local authorities, including that on public service and the property register. CALM was invited to take part in the work on the draft Strategy. It made it clear that it wished to be consulted on all draft legislation concerning local authorities and decentralisation prior to enactment.

37. If the draft strategy is adopted, it should be implemented in two stages:

- During the initial stage (the first twelve months) practical steps will be taken to train local authorities to exercise the powers and responsibilities that are to be transferred to them.
- During the second stage, from 2012 to 2015, the relevant laws and regulations (approximately forty) will be revised to incorporate the principles of local and regional self-government enshrined in the Charter into domestic legislation.

38. Five areas of intervention have been selected to meet the various requirements and obligations deriving from the Charter:

- decentralisation of services and powers and responsibilities;
- decentralisation of finances (and taxes);
- decentralisation of physical assets and local development;
- the administrative capacity of local authorities;
- democracy, deontology, human rights and gender equality.

39. The draft Strategy has been submitted to all the parliamentary groups and they have all come out in favour of the principle of a reform. The authorities of the city of Chişinău are in favour of the procedure indicated in the Strategy but on condition that the problems that have not been solved for many years are settled first. Otherwise, the Strategy may well remain a dead letter.

40. The draft Strategy is a positive sign for the development of local democracy provided that the intentions declared during its drafting are actually implemented. The rapporteurs noted that the political importance accorded to this by local politicians varied and that there was still some scepticism as to the adoption and/or implementation of the project.

41. In the preparation of the draft Strategy, the composition of the Joint Committee for Decentralisation<sup>8</sup> was revised. It now comprises 14 representatives, seven of whom represent the Government (the Prime Minister and the representatives of different ministries which will have to hand over powers and responsibilities in the context of the Strategy) and five of whom represent the local authorities (three mayors, the Mayor of Chişinău and the Governor of the Territorial Unit of Gagauzia – the *Bashkan*). In addition to these twelve members, there is also a representative of an NGO and an academic. Local elected representatives have been appointed by CALM and by the Association of the presidents of *raions*, according to a principle of political and territorial representation. This Committee is the advisory body responsible for monitoring and co-ordinating decentralisation and is chaired by the Prime Minister.

42. The Speaker of the People's Assembly of Gagauzia told the delegation that no representatives of Gagauzia have been invited or involved in the discussions on the draft Decentralisation Strategy. It should be noted that the Governor of Gagauzia is a member of the Joint Committee for Decentralisation in charge of the National Decentralisation Strategy. The People's Assembly of Gagauzia has therefore drawn up its own economic and social development strategy, which is valid until 2015.

43. According to the information provided to the Rapporteurs by the Moldovan Government, the autonomous status of Gagauzia was taken into account in the drafting of the National Decentralisation Strategy. Public consultations on the draft Strategy were held with representatives of the local government in Comrat. The Moldovan Government also said that, after the 5 June 2011 local elections, a Russian language guide was prepared for local elected officials in Gagauzia.

44. During the thirty or so meetings that were held to discuss the adoption of the draft Strategy, some 2,500 persons are said to have presented their points of view on different aspects of the Strategy. However, opinions differ as to the exact number of meetings held; some local elected representatives told the rapporteurs that, in reality, the Committee had actually only met two or three times because the number of meetings depended on the Prime Minister's agenda.

45. Since the delegation's visit, the rapporteurs have been informed that the Government adopted the draft Decentralisation Strategy on 26 January 2012; it was subsequently submitted to the Parliament. The draft Strategy is on the agenda of the Parliament's first session in 2012.

46. At the same time as the draft Strategy, the delegation noted the setting up in July 2011 of an ad-hoc parliamentary committee on decentralisation. Its objectives include ensuring that domestic legislation and the sectoral legislation deriving from the Law on local public administration is compatible with the Charter. The Committee provides a sort of parliamentary supervision of the implementation of decentralisation.

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<sup>8</sup> This Joint Committee was created by law No. 435 from 2006. It has truly become operational since 2009, date of change of its composition.

#### 4. The situation of local democracy

##### 4.1. Organisation of local authorities in the Republic of Moldova

47. All of the laws and regulations<sup>9</sup> concerning local public administration in the Republic of Moldova have evolved from the legislative and institutional standpoint, particularly between 2005 and 2007. However, some legislative provisions are still unclear. For example there are contradictions in a number of points in the legislation concerning local finances and an imbalance between assigned responsibilities and funding. There is also a considerable difference between the existing legislative framework and the actual situation of local authorities, which will be described in this report (see below).

48. Paragraph 1 of Article 109 of the Constitution entitled “Basic principles of local public administration” stipulates that: “Public administration as manifested in the administrative/territorial units is based on the principles of local autonomy, of decentralisation of public services, of the eligibility of local public administration authorities and of consulting the citizenry on local problems of special interest”. Paragraph 2 stipulates that “The concept of autonomy encompasses both the organisation and functioning of local public administration, as well as the management of the communities represented by that administration”.

49. Paragraph 1 of Article 110 of the Constitution of the Republic of Moldova, stipulates that “From the administrative point of view the territory of the Republic of Moldova is divided into villages, towns, *raïons* (districts), and the Autonomous Territorial Unit of Gagauzia. Under the law, certain towns may be declared municipalities”.

50. The legal framework of the Autonomous Territorial Unit of Gagauzia (ATU of Gagauzia) is governed by Article 111 of the Constitution of the Republic of Moldova and by Law No. 344-XIII of 23 December 1994 on the special legal status of Gagauzia (*Gagauz-Yeri*) and other statutory instruments of the People’s Assembly of Gagauzia (*Halc Topluşu*), which must not be incompatible with either the Constitution or the laws of the Republic of Moldova.

51. Paragraph 2 of Article 110 of the Constitution of the Republic of Moldova grants specific forms of self-government to the areas situated on the left bank of the Nistru/Dniestr: “The places on the left bank of the Nistru/Dniestr river, as well as certain other places in the south of the Republic of Moldova, may be granted special forms of autonomy according to special statutory provisions of organic law.” Nevertheless, the conflict in this Transnistrian region of the Republic of Moldova has still not been resolved. The authorities of the Transnistrian region are a self-proclaimed entity, which assume authority *de facto* and are still seeking to transform their *de facto* independence into a status of “independent state”. Neither the Republic of Moldova nor any UN member state recognises this region.

52. Under Law No. 764 of 27 February 2001 on the organisation of local government in the Republic of Moldova, Moldova is divided into 898 first-tier administrative units (towns, villages and communes) and 34 second-tier administrative units. The latter comprise 32 districts (*raïons*), represented by the presidents of the districts (*raïons*). In addition to these administrative units, there is also the ATU of Gagauzia and the municipality of Chişinău. The 32 *raïons* are also towns. There are five municipalities in the Republic of Moldova which correspond to cities (Chişinău, Balti and Comrat, Tiraspol and Bender); following the military conflict in the Transnistrian region, the two last-mentioned are no longer under the control of Chişinău.

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<sup>9</sup> The main reference texts concerning local public administration are: the Constitution of the Republic of Moldova, the Law on decentralised government No. 435-XVI of 28.12.2006, the Law on local public administration No. 436-XVI of 28.12.2006, the Law on local public finances, No. 397-XV of 16.10.2003, the Law on local and regional administrative organisation of the Republic of Moldova, No. 764 of 27.02.2001, the Law on the status of local elected representatives No. 768 of 02.02.2000, Law No. 438-XVI on regional development in the Republic of Moldova, of 28.12.2006 and the Law on the special legal status of Gagauzia, (*Gagauz-Yeri*) No. 344-XIII of 23.12.1994 (see Appendix I).

53. The latest local elections took place on 5 and 19 June 2011. At these elections, 898 mayors of towns, villages and communes, as well as 11,744<sup>10</sup> local councillors - 1,118 of whom represent second-tier units and 10,626 first-tier units - were elected. 386 mayors were elected in the first round and 512 in the second, including the mayor of the municipality of Chişinău. In the ATU of Gagauzia, 378 first-tier councillors and 26 mayors were elected.

54. The term of office of these elected representatives is four years. The members of local councils are elected under a proportional representation system, without a threshold. The election takes place on the basis of lists presented by the political parties. The presidents of the *raions* are indirectly elected by the councils of the *raions*. As a result, the presidents of the *raions* are dependent on partisan politics and have no legitimacy of their own. The mayors are directly elected by citizens under the majority system.

55. Several of the elected representatives and other interlocutors we met seemed to be in favour of electing the presidents of *raions* directly, in the same way as mayors of Moldovan communes are elected, to strengthen local autonomy.

56. The Republic of Moldova has undergone three main local government reforms:

- 1994-1998: changes to the Soviet system of local and regional administrative organisation were approved by law. As a result the territory comprised 38 *raions* until 1998, including 5 in the area on the left bank of the Dniestr. The ATUG was established in 1994 and comprises 3 *raions* – dolay, which are still part of the current administrative division of this unit.

- 1998-2001: the law of 1998 on the organisation of local government reorganised the *raions* on the right bank of the Nistru/Dniestr by grouping them into 9 *judete* (or regions). This local and regional reorganisation was followed by a major administrative reform including a fresh redistribution of powers and responsibilities and resources.

- 2001-2003: in December 2001, the communists won the parliamentary elections and adopted a new local government reform, which was implemented after the local elections in 2003 and saw the return of the *raions* and a relative weakening of local autonomy.

57. In the opinion of some local elected representatives, there was greater local autonomy between 1998 and 2003 following the establishment of the *judete*. They pointed out, for example, that during this period local authorities were allocated 50% of VAT. Some elected representatives feel that there has been a recentralisation of power since 2001.

58. In the Republic of Moldova, at Government level, matters concerning local public administration are dealt with by the State Chancellery, in particular the Directorate of Local Public Administration and the Political Directorate of Decentralisation. It was also the State Chancellery which was in charge of preparing the draft National Strategy for Decentralisation (hereafter referred to as “the Strategy”). This draft strategy represents the current Government’s commitment to conducting an in-depth reform of local government to consolidate local authorities’ capacities and improve the management and the standard of services provided to members of the public.

59. The delegation therefore had the impression that, the local authorities of the Republic of Moldova are autonomous in theory but that in practice this autonomy is limited, on the one hand because of the interference of central government in the everyday activities of local authorities, and on the other hand because of the insufficiency of the financial resources allocated to them. In addition, there is a lack of clarity with regard to the distribution of powers and responsibilities and funding. The delegation took note of declarations by various government representatives expressing a clear desire to improve this situation by genuinely enhancing local autonomy.

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<sup>10</sup> According to the information provided by the Central Electoral Commission

#### **4.2. Method of acceptance of the European Charter of Local Self-Government**

60. The Republic of Moldova has been a member of the Council of Europe since 13 July 1995. It has signed and ratified 96 Council of Europe treaties. The European Charter of Local Self-Government, which it ratified without reservations or declarations, came into force in respect of the Republic of Moldova on 1 February 1998.

61. The Constitution of the Republic of Moldova contains some of the principles of the Charter, which are also taken up in Article 7 of the Law of 28 December 2006 on local public administration, which enhances the application of the Charter in domestic law by providing that: "When exercising their powers, local authorities enjoy the autonomy provided for and guaranteed by the Constitution of the Republic of Moldova, the European Charter of Local Self-Government and other treaties to which Moldova is a party". There is no doubt therefore that the principles of the Charter are clearly asserted in the Constitution and in domestic law. Therefore, the Charter serves as a reference text for Moldova's domestic law on local and regional democracy.

62. In domestic law, treaties have a higher status than legislation in the hierarchy of norms. Where appropriate, therefore, the Constitutional Court refers to the Charter in its judgments.

63. In 2001, for instance, the Constitutional Court put an end to the interruption of local elected representatives' terms of office on the basis of Charter principles. In a Constitutional Court judgment of 6 November 1995, the Court found that the self-government of local authorities was one of the fundamental principles underlying the organisation and functioning of local government, from which it could be inferred that local authorities had a right to manage their own affairs without interference from central government.

64. The Court is not empowered to take up cases of its own accord. Cases may be referred to it by members of parliament, the President of the Republic, the Government, the Principal State Prosecutor, the Minister of Justice, the Parliamentary Advocate (or Ombudsman) and the Supreme Court of Justice. The local authorities, by contrast, do not have any specific legal remedies available to them to raise particular issues (except for Gagauzia). An alternative is for them to make use of the remedy available to members of parliament, addressing the members who are members of their party if they wish to take a case to the Court. This being said, the CALM has expressed regret to the delegation on the absence of the right of direct appeal to the Constitutional Court open to local public authorities - or their representatives - against the acts of the Government, which would (or could have) an impact on local democracy.

65. The Constitutional Court told the delegation that there had been 18 applications to the Court in which the Charter had been referred to. Of these 18 cases, the Court based itself on the Charter in 13 of its judgments and in one opinion in which national legislation was interpreted in the light of the Charter. The legal instruments to which applications alleging violations of the Charter most frequently refer are the Law on the organisation of local government, the Law on local public administration and Chapter VIII of the Constitution of the Republic of Moldova, entitled "Public Administration". The low number of decisions in which the Charter is relied on may be accounted for by a degree of ignorance about the Charter by those who raise a question of local democracy. The Court does not rule on the constitutionality of draft legislation but it does give opinions on proposals for amendments to the Constitution.

66. The Parliamentary Advocate (or Ombudsman), which is an institution that was set up in the Republic of Moldova following a UN recommendation by Law No. 1349 of 17 October 1997 on the Parliamentary Advocate, may bring action in the courts including the Constitutional Court where there is an allegation of a human rights violation. The Ombudsman's main task is to monitor respect for the constitutional rights and freedoms of individuals by central and local government authorities, institutions, organisations, companies of all sorts and persons in positions of responsibility at all levels. Most complaints to the Ombudsman come from Chişinău because this is where most government bodies are found, where the population is densest and where citizens have reached a higher academic level, meaning that they are better educated and informed than the rest of the country.

67. There are no specific statistics on the proportion of applications to the Ombudsman which relate to the local authorities.

68. With regard to the Additional Protocol to the Charter on the Right to Participate in the Affairs of a Local Authority (ETS No. 207), the delegation was informed that discussions had taken place at the Ministry of Foreign Affairs and European Integration of the Republic of Moldova with a view to signing the Protocol in the near future.

#### **4.3. Analysis of the situation of local democracy in the Republic of Moldova in the light of Charter provisions**

##### *4.3.1. Article 1*

###### **Article 1**

The Parties undertake to consider themselves bound by the following articles in the manner and to the extent prescribed in Article 12 of this Charter.

69. As stated in the introduction above, the Republic of Moldova has ratified the Charter without reservations or declarations.

##### *4.3.2. Articles 2 and 3*

###### **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.

70. In general terms, there has been a certain improvement in local autonomy since 2009. Nevertheless, several of the people we interviewed made references to a paradox, which is that the country's legislation takes up the principle of local self-government as laid down in Articles 2 and 3 of the Charter and enshrined in ten or so Moldovan laws but, which in practice, gives rise to a very low level of local self-government. According to the local elected representatives, this stems partly from a lack of political will to apply these laws and partly from the financial and political crisis.

71. As to the direct participation of citizens in local public life, Chapter 14 of the Electoral Code and the Law of 28 December 2006 on local public administration provide for a local consultation mechanism, but there is no such thing in practice. The rapporteurs were informed that an amendment to the latter law means that it is no longer possible to dismiss a mayor by means of a local referendum.

##### *4.3.3. Article 4*

###### **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.

72. Article 4 of the Charter is one of the most controversial in Moldovan legislation and practice. Since the nature of local authorities' responsibilities is fundamental to the reality of local self-government, it is in the interests of both clarity and legal certainty that basic responsibilities should not be assigned to them on an ad hoc basis but should be sufficiently rooted in legislation. Yet it would seem that the relations between first-tier authorities and second-tier authorities are uncertain.

73. Under Article 113 of the Constitution the councils of the *raïons* "co-ordinate the activity of the village and town councils to carry out public services of interest to the *raïons*", and this seems to give the *raïons* some sort of precedence over first-tier authorities. The delegation's attention was also drawn to the lack of clarity regarding the apportionment of certain powers and responsibilities between the two tiers. If we look at the spheres of education and health, it can be readily observed that both the Law on local public administration and the Law on administrative decentralisation do not consider education to be a local government responsibility. Despite this, Article 8 of the Law on local public finances provides that the "maintenance" of educational establishments – although it does not explain precisely what it means by this term – is the responsibility of local authorities. Likewise Article 45 of the Law on education assigns responsibilities to local authorities without making any distinction between those assigned to first-tier authorities and those assigned to second-tier authorities. There is a similar situation with the Law on health protection, which assigns at least fifteen responsibilities to the local authorities without specifying which tier is meant and without any mention being made of these responsibilities in either the Law on local public administration or the Law on administrative decentralisation. It would seem that there are identical problems in other areas of responsibility.<sup>11</sup>

74. The delegation considers that some adjustment is needed in the areas of responsibility set out in Article 4 of the Law on administrative decentralisation and in other sectoral laws with an impact on local authorities. A clear allocation of powers and responsibilities for each level would also solve the problem of overlapping responsibilities, which is a problem in the relations between the two tiers of local government and between local and central government. Hospitals and educational establishments were the examples that were cited the most.

75. As to the process of consulting local authorities provided for in Articles 4(6) and 9(6) of the Charter, the delegation was informed by the elected representatives that the situation had improved slightly since 2009.

76. Article 6(5) of the Law on local public administration states: "Central government authorities shall consult associations representing local authorities on local government issues". Paragraph 1 of Article 8 is more detailed, stipulating that: "Local authorities shall be consulted during the process of drawing up, adopting and amending laws and regulations relating to the organisation and functioning of local government". The delegation considers the wording of these provisions to be too general and suggests that the text should make provision for effective consultation on all matters which concern local authorities directly so that they can have a direct influence on the planning and decision-making process.

77. This view is shared by the members of CALM, which stated that some of the laws which have a direct impact on local authorities continued to be adopted without specific consultations with local authorities having been held. This was the case, in particular, with the bill on the remuneration of civil servants, the law on the state budget and various government regulations.

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<sup>11</sup> Law No. 239-XVI of 8 November 2007 on plant species and Law No. 149-XVI of 8 June 2006 on fish stocks, fishing and fish farming.

78. The members of CALM pointed out that consultation of the local authorities is often taken by the governmental authorities to mean simply giving information *a posteriori* on draft laws which have already been drawn up or implemented, sometimes accompanied by a link to the Internet sites of the ministries concerned. Citing the Charter, the local authorities regretted the fact that they were not involved in the process of devising political projects which concerned them.

79. CALM also complains of the absence of consultation with local authorities during negotiations of international agreements or negotiations with the IMF or the EU, although the resulting instruments have a direct impact on local authorities' financial, political, economic and social powers. It appears, in fact, that in domestic law, there is no formal obligation of consultation with local authorities during the negotiation of international agreements, even if the latter have consequences on local democracy.

80. As to the consultation of local authorities on the draft Strategy, the delegation was able to confirm that CALM had been consulted on and taken part in the preparatory work for this project.

81. The State Chancellery informed the delegation that a questionnaire had also been sent to the mayors and presidents of *raïons*. Replies had been received from 220 of the 898 mayors consulted and 13 of the 32 presidents, meaning that the response rate was 26%. This rate is considered satisfactory by the government considering that 94% of the replies were in favour of the draft Strategy. The government believes that the low response rate of 26% can be accounted for by the recent elections, in June 2011, which, it claims, gave little time to the newly elected representatives to reply to the questionnaire. To make the questionnaire more accessible, a communication policy was adopted making use of the Internet, the services of CALM and radio and television programmes. Criticism of the Strategy has been made public and may be consulted on the Government's website. According to the government departments, most of the criticism relates to the slowness of the process.

82. CALM said that it wanted genuine consultation and dialogue with the central government on all questions concerning them from the very beginning of the process of preparing draft laws and political strategies and not just an opinion on what has already been decided by central government. CALM also proposed that, where there were differences of opinion over certain draft laws and regulations, the local authorities' views should be appended to the relevant documents.

83. CALM told the delegation that it would like to be able to examine all the consultation mechanisms that may already exist between central and local government in all the Charter's signatory states.

#### 4.3.4. Article 5

##### 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.

84. Local authority boundaries in Moldova are protected by the Law on the organisation of local and regional authorities, Article 18 of which provides: "Changes in the boundaries of local and regional authorities justified by the need to transfer an authority or its administrative centre to another location shall be made by parliament following a public consultation". To date, the Republic of Moldova has not experienced any problems in this area.

85. The rapporteurs raised the question of communes with under 1 500 inhabitants, which account for 28% of the Republic of Moldova's communes. Article 17 of the Law on the organisation of local government sets the minimum size of a locality at 1 500 inhabitants. Yet, of the 898 localities in the Republic of Moldova, 237 (or 28%) fail to reach this threshold. The Ministry of Finance has expressed a desire to keep only those communes which are economically viable. In its view, small communes are "consumers" rather than generators of services for their inhabitants and therefore a merger policy would be the best response to their situation.

86. The Government appears only to want to embark on a reform of this type with caution.

#### 4.3.5. Articles 6 and 7

##### **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.

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

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

87. Policy on local government employees, particularly the structure and staff of local authorities, is established in accordance with Government Decision No. 688 of 10 June 2003 on the structure of the staff serving mayors of villages (communes) and towns (municipalities). Despite the fact that this Government Decision is supposed to be no more than a recommendation,<sup>12</sup> it would seem that in practice most local authorities are expected to abide strictly by it. For example, it seems that all attempts to show any initiative in this respect and to exceed the limits set by this decision, have been rejected by supervisory bodies, second-tier financial bodies and central government bodies, especially by the directorates general of finance and the Ministry of Finance.

88. Recommendation 179(2005) drew the Moldovan authorities' attention to the need to distinguish between the rules on state civil servants and those on local government officials, so that local authorities could rely on high-quality staff who felt a responsibility to them.

89. The rules governing civil servants and local government employees are one of the chief concerns of most of the people the Congress delegation talked to, whether they were national elected representatives or mayors. All of these people agreed that the existence of a high-quality civil service working for the local authorities is one of the preconditions for a true decentralisation process.

90. The actual situation most certainly does not live up to the stated ambitions. For example there are not enough local government accountants as there is only one on average for every three or four communes. There are only one or two local government officials per one thousand inhabitants in first- and second-tier local authorities and only 0.8 per 1 000 in Chişinău.

91. The other recurring issue raised in connection with local government officials is their remuneration. A local government official's monthly pay is about 1000 Lei (€60) whereas a state civil servant earns 3 400 Lei (€212). On average, pay for local government employees is three times lower than that of state civil servants. In any case, public sector pay is lower than that in the private sector and this does not encourage anybody to work in the public sector, still less in local government. Many of the failings that may be noted in all parts of the civil service can be put down to these low pay levels.

<sup>12</sup> Constitutional Court Decision No. 14/18.05.2004, finding that Government Decision No. 688 was a recommendation.

92. The Government has been alerted to this problem and has instigated a reform, which is what all the people the delegation interviewed during the monitoring visit want. A bill on pay arrangements for civil servants, tabled by the Ministry of Labour, Social Protection and Family Affairs, is currently being adopted. Its aim is to establish a minimum salary for any public official of 2000 Lei (€125) so as to narrow the large wage gap between the two bodies of public servants. Identical indexed scales should be established for identical functions, taking account both of responsibilities and the number of inhabitants in the communes concerned. Raises could be paid from June 2012 onwards but would vary from one commune to the next. Only about 850 000 Lei (about €53 000) would be needed to finance the increase.

93. It has been proposed that pay raises could be financed through extra-budgetary resources or, in other words, sources other than state grants. This was the tenor of an amendment tabled in parliament despite the fact that a law of 2003 (the Law on local public finances) prohibits measures of this type. According to information supplied by the Parliament of the Republic of Moldova to the delegation, this law should even be retroactive, taking effect from October 2011 if it is adopted.

94. The bill has caused great dissatisfaction and been a major source of concern for local authorities, which only learnt of its existence too late. They say that they were neither consulted nor invited to take part in the preparation of the bill despite the fact that it is of direct concern to local government employees, whose situation CALM describes as “very serious”.

95. On 7 December 2011, CALM sent a letter to the Speaker of the Parliament, Mr Marian Lupu, and to the parliamentary committees concerned, highlighting the clear discrepancies between the bill and the national and international instruments promoting local self-government and decentralisation. It was said to be particularly incompatible with the following provisions:

- Article 109 of the Constitution of the Republic of Moldova;
- Articles 3(1), 4(4) and 6 of the European Charter of Local Self-Government;
- Articles 3, 6, 7, 10 and 14 of the Law on local public administration;
- Article 3 of the Law on administrative decentralisation.

96. CALM also regrets that this bill contains discriminatory clauses concerning civil servants' wage scales, applying different rates for the same position. For example, Article 18 (which provides for wage increases with retroactive effect from October 2011 onwards) applies higher coefficients for the wage increases of some categories of state civil servant than it does for those of local government officials. According to the Centre for combating Economic Crime and Corruption (CCECC), this amounts to unequal treatment of state civil servants and local government officials.

97. The rapporteurs were also informed by CALM that several opinions have been sent to parliament, the government and the Ministry of Labour, Social Protection and Family Affairs, including:

- an opinion on Law No. 355-XVI of 23 December 2005 on the remuneration system for the budgetary sector (which relates directly to the salaries of mayors and presidents of *raïons*), asking for changes in the rules on the system of remuneration for public officials;
- an opinion on the law on the 2011 state budget;
- an opinion on the legislative amendment on the investiture of elected representatives and early termination or suspension of their terms of office.

98. The rapporteurs would call to mind the Charter principle whereby it is essential for the efficiency of local authorities that they are able to recruit and maintain a staff whose quality corresponds to the authority's responsibilities.

## 4.3.6. Article 8

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

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|---|---|
| 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.  |

99. In the Republic of Moldova, administrative supervision of local authorities is carried out by the State Chancellery, which is established by the Law on local public administration,<sup>13</sup> and exercises this power through its local offices. Through Government Decision No. 845 of 18 December 2009, ten State Chancellery offices were established at local level and a local government representative manages each one. This representative is appointed and dismissed by the Secretary General of the Government.

100. Consequently, under Article 64 of the Law on local public administration, the local authorities are subject to a compulsory review of the legality of measures they adopt.

101. Article 8(g) of the Regulation on the organisation and functioning of the local offices of the State Chancellery sets out the measures that are subject to compulsory review:

- a. decisions of first and second-tier local councils, including laws and regulations adopted by the People's Assembly of the ATU of Gagauzia;
- b. regulations adopted by the *pretor*, the mayor, the presidents of *raions*, the Governor (*Bashkan*) and the Executive Council of the ATU of Gagauzia;
- c. measures relating to the organisation of procurement (tenders) and to the allocation of land;
- d. measures relating to the employment and dismissal of local government staff;
- e. measures relating to spending or financial commitments of 30 000 Lei (around 1875 euros) or more for first-tier authorities and 300 000 Lei (around 18 750 euros) or more for second-tier authorities;
- f. measures adopted by local authorities when performing tasks delegated to them by the state;
- g. all decisions made by the local authority at the request of the local council, the secretary, the mayor, the president of the *raion* or private individuals or corporate bodies and in other cases prescribed by law.

102. Article 70 of the aforementioned law provides for a review of the appropriateness of the way in which local authorities exercise powers delegated to them by the state. A review is also conducted of the lawfulness of measures implemented when exercising such powers. In cases where the supervisory authority finds that the measure is illegal or inappropriate, it may amend or revoke the impugned measure within fifteen days of receiving it. The decision as to whether the measure is "appropriate" is left to the discretion of the central authority which deals with the local authority, meaning that the standards of appropriateness are determined by the central authority. At all events, the supervisory authority must notify the local authority concerned of its decision within five days of adopting it. The local authority may contest the supervisory authority's decision in the administrative courts within thirty days of being notified of it.

<sup>13</sup> Chapter IX of the Law on local public administration, entitled "administrative supervision of local authority activities".

## 4.3.7. Article 9

**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.

103. The lack of financial autonomy of local authorities in the Republic of Moldova was already highlighted in Recommendation 179 (2005). In addition, the recommendation drew attention to the fact that local authorities are extremely dependent on the state and its constituents and that there were virtually no local taxes or effective mechanisms for collecting them.

104. The rules on local authority funding are laid down by Law No. 397-XV of 16 October 2003 on local public finances, which was regarded by a large majority of the people interviewed by the delegation as an outdated law, which was, to say the least, at variance with the other legislation in this sphere. The Ministry of Finance told the Congress delegation that in 2007 and 2008 a local government funding bill was drawn up with the aim of meeting the requirements of the Council of Europe's recommendations. The plan was to establish direct relations between the state budget and the local budgets of both first and second-tier local authorities, to set single, consistent rules on financial equalisation and to set up a transparent, fair mechanism to balance the financial capacity of local budgets. Over this period, the Ministry of Finances talked to the Moldovan parliament and government about the development and promotion of the bill but in the end it was considered premature and was dropped. The Ministry of Finance also considered it necessary to devise new viable methods for balancing budgets at all levels of local government. However, at present there do not seem to be any specific activities in this respect.

105. The question of matching resources with competencies is a major concern for local authorities, and funding problems are still a focus of discussions between the state and local authorities, especially as there is a major imbalance between the situation in Chişinău and that in other local authorities. Chişinău is the only locality which finances its activities using its own resources whereas the other local authorities are at least 70% dependent on the state budget.

106. According to the Ministry of Finance, the drop in revenue, a consequence of the economic crisis in Europe, has affected central government and the local authorities and had a considerable impact on budgets at all levels in recent years. On this point, the CALM has asked the delegation to strongly assert that the economic crisis should not in any event constitute an argument to justify recentralisation tendencies.

107. In the Republic of Moldova, the National Budget is made up of four budgets (figures from 2011):<sup>14</sup>

- the state budget, amounting to 19 048 million Lei in income and 20 315 million Lei in expenditure;
- the local government budget, amounting to 7 381 million Lei in income and 7 835 million Lei in expenditure;
- the state social insurance budget (National Social Insurance Fund), amounting to 9,122 million Lei in income and 9,303 million Lei in expenditure;
- the compulsory health insurance fund, amounting to 3,673 million Lei in income and 3,673 million Lei in expenditure.

108. Only 60 million Lei of the 7 billion Lei budget for local government comes from indirect local taxes.

109. Local budgets are made up of authorities' own resources, special resources, state transfers and income from the state's general revenue. Own resources comprise the taxes on built assets and local taxes (of which there are 12) provided for each locality, which are charged at rates decided on by the local authorities themselves. Special resources are made up of income from public institutions which charge for their services, donations and other elements. State transfers are made for purposes of vertical and horizontal financial equalisation. They can also be earmarked for special purposes by the government. Income from the state's general revenue corresponds to quotas which are calculated at central government level on VAT charged on goods and services.

110. Currently, the local authorities' own resources account for only a small share of total resources (15%). Income from the state's general revenue accounts for some 25%. Lastly, state transfers, whose main aim is to correct budgetary imbalances at local level, have considerable weight, representing some 60% of the total.

111. Another argument put forward by the Ministry of Finance is that the territorial division of the Republic of Moldova is excessive. The local public administrations have 931 local budgets to manage, corresponding to the 898 first-tier authorities (villages, communes, towns and municipalities), the 32 raions and the ATU of Gagauzia, with the result that many of these authorities have a very low tax potential and are highly dependent on the state. Nonetheless, the CALM considers this argument to be contrary to local democracy and cites as examples countries with more highly fragmented administrative and territorial structures than the Republic of Moldova, such as the Czech Republic, Romania, Norway etc. where financial autonomy has in fact made progress.

112. The Ministry of Finance considers that it is not currently the right time to establish a mechanism which would enable the income differences between the budgets of the 931 administrative units to be reduced (to provide local authorities with sufficient resources to carry out all their responsibilities), especially given the current situation of territorial administrative organisation in the Republic of Moldova.

113. Both local elected representatives and central government representatives stressed how important it was to place clear limits on the powers and responsibilities of first-tier and second-tier local authorities. The Law on local public finances establishes some limits but does not make a clear distinction between authorities' own, delegated or shared powers. Some of the people interviewed highlighted the need to make specific arrangements for earmarked resources where it came to delegated powers and responsibilities in the sphere of education. CALM pointed out that 70% to 90% of local finances consisted of earmarked transfers, which local authorities could not use as they wished.

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<sup>14</sup> Law No. 52/31.03.2011 of the Republic of Moldova on the state budget for 2011, published in *Monitorul Oficial* 63-64/151 of 20 April 2011; Law No. 54/31.03.2011 of the Republic of Moldova on the state social insurance budget for 2011, published in *Monitorul Oficial* 63-64/153 of 20 April 2011; Law No. 55/31.03.2011 of the Republic of Moldova on the compulsory health insurance fund in 2011, published in *Monitorul Oficial* 63-64/155 of 20 April 2011.

114. In 2011, amendments were made to Part VII of the Tax Code on “Local taxes”, as a result of which specific quotas for each type of tax are fixed every year by the local authority’s representative body.

115. According to the information provided to Rapporteurs by the Ministry of Finance after the visit, the shared taxes between the State budget and second-tier local budgets are as follows:

- personal income tax (PIT): 100% is collected;
- tax on corporate entities: 100% is collected (with some exceptions);
- road tax for cars registered in the Republic of Moldova: 50%;
- VAT on goods and services provided in the ATU of Gagauzia: at least 10%;
- Excises duties on manufactured products in the ATU of Gagauzia: at least 50%.

116. In addition, the Ministry of Finance has indicated that the personal income tax and the tax on corporate entities (where 100% is collected at the *raion* level) are divided between the budgets of the second and first tier.

117. It should be noted that in 2007, 0% tax was introduced for corporate entities. On 1 January 2012, this tax was abolished and a standard rate of 12% will now be applied.

118. According to the parliamentarians interviewed by the delegation, one of the means of increasing the financial potential of first-tier local authorities is to alter the methods of assessing the incomes of private individuals, which come to about 200 million Lei per year (about €12.5 million). There is also a need to revise the law on property tax, which corresponds to about 250 million Lei (about €15.6 million) per year. This opinion is not shared by the Ministry of Finance, which quotes other figures.

119. According to the comments made to the delegation on this subject, the tax base for local authorities lacks uniformity and is not large enough for them to exercise their own powers and responsibilities.

120. As to financial equalisation procedures, the Ministry of Finance explained to the rapporteurs that an estimate of needs and average spending per inhabitant is carried out beforehand so that it is possible to calculate budgetary equalization transfers. Some of the parliamentarians and local elected representatives we met strongly condemned this system as resembling a set of “Russian dolls”, which applies to local government funding and works to the detriment of first-tier authorities, making them financially dependent on the *raions*.

121. Local authority budgets are still largely dependent on the state as most tax is still collected and redistributed by central government. Neither is this dependence solely financial and administrative in nature. Some elected representatives clearly asserted that the distribution of resources was sometimes influenced by political considerations as the political affinities of local politicians could be taken into account when funds were allocated to local authorities. If this were true, it would mean that national political parties were interfering directly in the system for the redistribution of local finances. The rapporteurs would point out that this allegation of interference was also firmly denied by other interlocutors. Their dependent situation prompted some authorities with few economic resources to remain tied into this restricted system, which provided them with only the bare minimum of resources.

122. One of the reasons given by central government to justify this financial dependence is that local authorities do not have the competence to manage local affairs. The CALM on the other hand denounces the strong subordination of local authorities to central government. Local elected representatives, on the other hand, point to the insufficient grants paid by the state to cover local responsibilities. As a result, many local authorities still do not have a water supply system or a road network. In some localities, 80% of the local budget is earmarked for education. In such cases, local authorities have to devise ways of finding resources other than those provided by the state, which can include privatisation. Practices of this sort are not liable to enhance local authorities’ autonomy.



123. In the Ministry of Finance's view, the capacity for local authorities to take on their responsibilities needs to be increased. To achieve this, there is a need to develop authorities' own resources, reform the system of shared taxes and enhance local government autonomy and financial supervision. To address the current imbalances, the Court of Auditors of the Republic of Moldova has recommended setting up an internal audit system for first and second-tier authorities. Only Chişinău municipality has set up such a system to date.

124. The tax base of local authorities and their financial autonomy in particular are essential for them to be politically independent from the government. Accordingly, every move to increase administrative and political decentralisation must be carried out hand in hand with an overall process of financial decentralisation.

#### 4.3.8. Article 10

##### **Article 10 – Local authorities' right to associate**

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

125. There are no restrictions on local authorities' right to associate in the Republic of Moldova.

126. Co-operation with local authorities in other countries is also highly productive, as was confirmed to the delegation by the Ministry of Regional Development and Construction and some local authorities.

127. In this connection, it should be noted that the Republic of Moldova has signed and ratified the following instruments:

- the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.106) of 4 May 1998, which came into force in respect of the Republic of Moldova on 1 February 2000;

- the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 159) of 27 June 2001, which came into force in respect of the Republic of Moldova on 28 September 2001;

- Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No.169) of 27 June 2001, which came into force in respect of the Republic of Moldova on 28 September 2001.

#### 4.3.9. Article 11

##### **Article 11 – Legal protection of local self-government**

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

128. Legal protection is an important issue for local self-government in the Republic of Moldova. Current legislation provides a degree of protection against abuses but it not very clearly spelt out. This imprecision hampers the efficient protection of local authorities.

129. In this connection, the delegation noted that neither the Law on the organisation of local government nor the other laws referred to above contain a chapter or an article setting out tangible forms of protection for local self-government as provided for in Article 11 of the Charter in the following terms: "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".

130. The legislation of the Republic of Moldova does not clearly state that the local authorities have a subjective right to address the judicial authorities directly to protect the rights and interests of local communities. Under Article 2 of Law No. 793-XIV of 10 February 2000 on administrative proceedings, all natural or legal persons who consider themselves to have been injured may have recourse to the administrative courts. Because the law fails to specify what type of legal persons may apply to administrative courts, it is possible to infer that both private-law and public-law entities may apply. Since they are public law entities (under Article 4 of the Law on local public administration), local authorities may therefore in theory bring a case before the administrative courts as an applicant. In practice, however, this does not seem that obvious.

131. Both the Law on local public administration and the Law on administrative proceedings make it possible for local authorities to bring administrative proceedings against decisions which might resemble a review of appropriateness. Accordingly, a local authority would be entirely within its rights to ask for the suspension of a decision adopted by a body which has carried out a review of appropriateness or ask for a provisional measure to be adopted.

#### **4.4. Capital city status**

132. The first mention of the city of Chişinău in a document dates back to 17 July 1436. The name of the city, they say, comes from “cişmea”, which means “source of water”. The municipality of Chişinău has some 719,600 inhabitants.<sup>15</sup> The number of people living in the city proper is 664,700.

133. The Constitution (Art. 110, para. 3) stipulates that the status of the capital city of the Republic of Moldova, the City of Chişinău, shall be governed by organic law. Law No. 431-XIII of 19 April 1995 established the status of the municipality of Chişinău and, apart from some minor details, it has not been altered since. However, this law is incompatible with the Law on local public administration, for example with regard to the appointment of the heads of departments. The mayor of Chişinău therefore asks that a new law be drafted.

134. The Moldovan Parliament pointed out that the Law of 1995 on the status of the municipality of Chişinău has undergone 80 amendments. In view of this situation, the Parliament was in favour of preparing fresh legislation. It said that this remained a priority for the central authorities and that there was currently a working group in charge of this project at the State Chancellery.

135. The delegation underlined the fact that it was necessary for Chişinău, as a capital city, to be governed by a specific law and to have an appropriate legal framework to serve the interests of its inhabitants, particularly given that the city of Chişinău has a dual status: as a city it is both a tier I territorial unit (as a city) and a tier II unit, given that it is a municipality acting as a metropolitan area comprising 18 sub-localities. It also appears, under the terms of the Law on regional development of 28 December 2006, that Chişinău is to become a metropolitan development region.

136. Article 110 of the Constitution stipulates that certain cities may be declared municipalities. This applies to the cities of Balti and Comrat. However, these municipalities do not have a clear legal basis either.

137. Given these facts, the delegation feels that it is necessary to accelerate the adaptation of a specific law on the status of Chişinău in the light of the Charter and Recommendation 219(2007) of the Congress on capital cities.

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<sup>15</sup> National Statistics Office of the Republic of Moldova.

138. Chişinău comprises five districts: Botanica, Buiucani, Centru, Ciocana and Rişcani. The districts have under their administration autonomous territorial units: towns and villages (communes). In the 5 districts, the public authorities are represented by a district representative, the *pretor*, who is appointed by the mayor of the capital and is answerable to the municipal authorities. Today, the mayor of Chişinău is Mr Chirtoaca, who was elected for the first time in 2007. He is a member of the Liberal Party, had the backing of the Alliance for European Integration and was re-elected in the second round in June 2011. Owing to the electoral system in force, the mayor of Chişinău is obliged to share power with the opposition given that the municipal council, which is elected separately, is governed by a Communist majority. Four parties are represented on the Chişinău municipal council (the communist party, the liberal party, the liberal-democrat party and the democracy party, the three last-mentioned forming the Alliance). Consensus finding between the executive and the local assembly is therefore necessary to ensure the smooth functioning of municipal administration. Following the June 2011 elections, Chişinău municipal council meetings were boycotted either by the Alliance or by the Communists, until November 2011, when the council finally held its first session, thus avoiding its dissolution (which occurs if the first meeting is not held within the first six months). Such a situation may have an influence on considerations concerning the direct election of local executive authorities.

139. Issues concerning the capital city are mainly of an economic nature. Indeed, Chişinău is the only locality which has a financial surplus, while the others are running a deficit, and this has created a geographical imbalance between the capital city and the remainder of the country. Chişinău produces approximately 70% of national wealth but only retains 25% to meet its own needs. Its budget is €120 million, but it was pointed out that it is smaller than in 2007. According to the municipal authorities, central government has not paid much attention to the problems of Chişinău, which does not receive any special contribution from the State. It was pointed out that all taxes are levied by central government apart from 10% which are left to the city authorities.

140. Since the zero tax for corporate bodies was first introduced in 2007, the budget of the capital has decreased by 30%, which is a loss of some €30 million.

141. The difficulties facing the capital city are also of a demographic nature. There are large (Russian, Ukrainian and Bulgarian) minorities living in the city of Chişinău and they represent 30% of the population. The city has always been under considerable population pressure precisely because it is so economically attractive. It had 100,000 inhabitants in 1994 and now officially has 719,600 inhabitants (which represents 22% of the total population and 48.5% of the urban population). Some observers believe that there are actually about 1 million inhabitants. 10,000 flats are currently being built to deal with the increase.

142. Nor, in the eyes of the municipal authorities, does the capital city have judicial powers, which would allow it to intervene where necessary, for example in terms of policing. One of the points raised was the absence of the right to impose penalties. There are no municipal police as the police forces are answerable to the Ministry of the Interior. This situation may appear paradoxical given that the municipality finances the maintenance of police premises. Decisions concerning police matters are subject to approval by the traffic police, for example the installation of traffic lights.

143. In Chişinău, the representative of the Government is a member of the municipal council, which means that he or she may approve the council's decisions one day and then later have to scrutinise them.

144. Public officials working for the city authorities also expressed concern at the draft legislation on the remuneration of public officials and at the content of regulations which they consider to discriminate against local public officials. They hope that this draft legislation will either be dropped or amended by parliament.

145. The rapporteurs also visited Condroiţa, a locality of the district of Buiucani which belongs to the municipality of Chişinău.

146. Condrîța is a first-tier territorial unit with a population under the threshold of 1,500 inhabitants required by the law on local administrative organisation, namely 736 inhabitants, of whom 400 are entitled to vote. The village of Condrîța, which covers a surface area of 150 hectares, has a relatively poor infrastructure. There is no running water or waste drainage system and only 10% of households are connected to the gas network. The budget represents 1,061,000 Lei (approximately €72,000) 314,000 Lei (approximately €19,600 thousand) of which is made up of local income. The education budget accounts for 70 to 80% of Condrîța's total budget.

147. Condrîța has a primary school (62 pupils) but has neither a nursery school nor any medical facilities. There is only one nurse in the village.

148. The local authorities are represented by the mayor, Mr Bosneaga, and by the municipal council, which comprises 9 councillors. The town hall employs 4 public officials. They must consult the mayor of the capital and deputy mayors on all matters concerning local affairs (acquisitions, access to public procurement contracts, projects, etc).

149. It is also the Chișinău city authorities which supervise the activities of Condrîța authorities.

150. This locality is not yet a member of CALM but the mayor told the rapporteurs that he intended to propose to his councillors that they should apply for membership.

151. The delegation believes that these localities, which have very few resources and little infrastructure - 28% of Moldovan localities - deserve special attention from the authorities of the Republic of Moldova. Their lack of resources and poor development potential considerably undermine the prospects for satisfactory municipal management.

#### **4.5. Specific local democracy issues**

##### *4.5.1. Issues concerning automatic termination of local elected representatives' mandate*

152. The Parliament of the Republic of Moldova intends to supplement Article 24 of Law No. 436 of 28 December 2006 on local public administration, the 1st paragraph of which provided for cases of early termination of the mandate of members of the deliberative assembly of a local authority. The amendment planned is to add a further case of early termination of a local mandate in the event of absence, without justification, from three consecutive sittings of the council or standing committee of which the representative is a member. Unjustified absences of an elected representative from several meetings of the local council to which he or she belongs, which may occur if the person has left the country, is likely to cause deadlocks. Such situations seem to arise sufficiently frequently to justify the intervention of the legislature, and are, in the eyes of the various authorities we met, a cause for concern.

153. The Law of 2006 stipulates that it is the local council which has the right to withdraw the representative's mandate but it does not give any other details of the procedure. It may be tempting for the majority in power to try to "force" an elected representative to resign if she or he acts in a manner that displeases the majority. It might be more appropriate for an external authority, which is more unbiased and independent than the local council, to have the power to withdraw a mandate.

154. One solution might be to entrust this power to the Central Electoral Commission (CEC). The intervention of the CEC should guarantee that the decision initially taken by the local council concerned is unbiased. The CEC could subsequently replace the elected representative with the next person on the list from which the representative was appointed.

##### *4.5.2. The role of women in decentralised local authorities*

155. The local authorities of the Republic of Moldova consider that in this field their country is ahead of other countries in southern Europe. 50 women were elected as mayors in 2003 out of a total of some 600, and in 2011 166 out of 898 mayors were women. However only three women were elected president of a *raion* out of a total of 32. Although the trend is towards an increasing number of women in elected office, they continue to have difficulty in acceding easily to local administrative functions. It should nevertheless be pointed out that elected women who have already held this office have secured the voters' confidence and been more easily re-elected. The greatest difficulty therefore

seems to be to obtain a first term of office. One of the duties of CALM is to help women gain access to local public office.

156. The delegation was informed that in 2011 CALM devised a Gender Strategy and prior to the general local elections it worked together with some 70 women mayors. In 2004, the Association of Woman Mayors was established in the Republic of Moldova; its main concern is the role of women mayors.

157. The Government stressed to the delegation that an important aspect of the National Decentralisation Strategy is that it was drafted with attention to human rights and gender equality. The gender parity dimension is an integral part of the Strategy; equality between women and men in the development, implementation, monitoring and evaluation of local policies is the key feature of this policy.

158. There is currently no question of revising the law to strengthen equal representation in local authority bodies but rather to change mentalities, particularly within political parties to persuade them to accept greater parity at local level.

## **5. Regional development in the Republic of Moldova**

### **5.1. Background**

159. Regional development in the Republic of Moldova has been seen in legislation as an essential component of the policy of administrative and economic decentralisation. There are no regions, in the sense of entities with their own organisational structure and powers, between tier II and central government.

160. The Law of 28 December 2006 on regional development in the Republic of Moldova divided the country into six development regions which are not administrative regions. According to Article 3 of this Law “the development regions are not local or regional administrative units and do not have legal personality”.

161. The main objectives of regional development in the Republic of Moldova are:

- to secure lasting social and economic development throughout the Republic;
- to reduce existing imbalances between the regions;
- to use European funds to support this development;
- to support local activities geared towards social and economic development.

162. The Ministry of Regional Development and Construction is responsible for the development of the regions. This is a relatively new ministry, set up in 2009, which was originally called the Ministry of Construction and Regional Development”. The title was inverted to underline the fact that priority would be given to regional development and measures to counter unbalanced development.

163. The first step entailed the establishment of the North, Centre and South regions. 2012 should see further legislative measures ensuing from the law of 28 December 2006, establishing three regional development agencies for Chişinău, the Gagauzia ATU and the Transnistrian region of the Republic of Moldova.

164. Within these regions, the law established regional development councils, which are operational and deliberative bodies. These councils are made up of the presidents of the *raïons* that are part of the region, representatives of first-tier administrations (mayors), representatives of the business world and representatives of civil society. The regional councils’ main responsibility is to establish priorities among the projects that are to be funded as part of the National Development Strategy. The National Council for Regional Development distributes the financing available from the National Fund for Regional Development among the three regions. The aim is therefore to facilitate the funding of regional investment, regional to be understood as a geographical and economic but not an administrative term.

165. The regional development councils are consulted by the regional development agencies on the procedures for selection and implementation of projects. By way of example, the Centre region (which covers 13 *raïons*) is currently taking part in 69 projects aimed at tiers I and II. The eligibility criterion for territorial units' participation in projects is the development of the locality. The decision as to how funds will be distributed lies with the National Regional Development Council following an evaluation at national level. This evaluation is carried out by interministerial committees to ensure that there is no overlapping of projects.

166. The delegation noted that regional development agencies had been set up in the development regions to co-ordinate development efforts and implement regional development projects aimed at securing sustainable economic growth at regional level.

167. The minister informed the delegation that in 2012, the ministry proposed to use a calculation of GDP for each region to assess how to redistribute available resources more effectively for the purposes of regional development.

168. It should be noted that the ministry has its own control system, which monitors investments. External control is carried out by the Court of Accounts.

169. This ministry has set up ambitious joint activities with its counterparts in the Czech Republic, Latvia and Estonia. It is also involved in cross-border co-operation projects with Ukraine and Romania and runs programmes concerning the Black Sea and South-East Europe transnational programmes.

170. The delegation believes that these cross-border co-operation initiatives provide an important source of funding for regional development projects, both in the context of the instruments of the European neighbourhood policy (for example the Joint Operational Programme Republic of Moldova-Romania-Ukraine 2007-2013 and the Black Sea Basin Joint Operational Programme 2007-2013) and in the context of co-operation in other Euroregions, in which the Republic of Moldova participates: Lower Danube (Romania-Republic of Moldova-Ukraine), Siret-Prut-Nistru (Romania-Republic of Moldova) and Upper Prut (Romania-Republic of Moldova-Ukraine).

## **5.2. Issues relating to the autonomy of certain areas**

### *5.2.1. Status of the Autonomous Territorial Unit of Gagauzia*

171. The status of the Autonomous Territorial Unit of Gagauzia, hereafter referred to as the ATU of Gagauzia, is defined in Article 110 (1) and 111<sup>16</sup> of the Constitution of the Republic of Moldova. It is described as "*an autonomous territorial-unit having a special status and representing a form of self-determination of the Gagauzian people, which constitutes an integral and inalienable part of the Republic of Moldova and shall independently solve, within the limits of its competence and pursuant to the provisions of the Republic of Moldova Constitution, political, economic and cultural issues in the interest of the whole of society*" (paragraph 1). The Law on local public administration of the Republic of Moldova stipulates in Article 2 (2) that "*the organisation and operation of local administration in the autonomous territorial entities with special status shall be determined, in accordance with the Constitution, by the Law on administrative decentralisation, the Law on the status of the corresponding region<sup>17</sup> and the present Law*".

<sup>16</sup> Law No. 344-XV of 25.07.2003 rewords Article 111 of the Constitution of the RM, thereby establishing a special legal status for the ATU of Gagauzia, which is governed by separate regulations.

<sup>17</sup> Full reference: Law No. 334-XIII of 23 December 1994 on the special legal status of Gagauzia (*Gagauz-Yeri*).

172. The ATU of Gagauzia is also regulated by the Law of 31 August 1989 on the status of the official language of the Republic of Moldova, by the Law of 31 August 1989 on the use of languages spoken in the Republic of Moldova and by other statutory texts of the People's Assembly of Gagauzia (*Halc Topluşu*), which must not be incompatible with the Constitution and legislation of the Republic of Moldova. Article 1 of the Law on the special legal status of Gagauzia grants collective rights to the Gagauz minority but also provides for a form of self-determination that does not compromise the territorial integrity of the Republic of Moldova. It is also important to mention that the ATU of Gagauzia is governed by the Legal Code of Gagauzia, a basic legal instrument adopted by the People's Assembly of Gagauzia on 14 May 1998. This legal instrument is applicable throughout the ATU of Gagauzia.

173. In 2011 the ATU of Gagauzia had 160,700 inhabitants<sup>18</sup> on a surface area of 1,848 km<sup>2</sup>, which is 5.5% of the surface area of the Republic of Moldova. The administrative centre of Gagauzia, situated some 104 km from Chişinău, is the municipality of Comrat, which has a population of 25,300.<sup>19</sup> The ATU of Gagauzia is made up of 32 localities: one municipality (Comrat), two towns (Ceadâr-Lunga and Vulcăneşti), a locality belonging to the town of Vulcăneşti and 28 villages (municipalities).

174. Gagauzia, which has its own emblems, was authorised to set up a legislative assembly. The autonomous government has its own powers. The Gagauz government is represented by a Governor (*Bashkan*), who exercises supreme authority in the ATU of Gagauzia and is directly elected by Gagauzian voters for a four-year term of office. The Governor is a member of the Government of the Republic of Moldova.

175. On 18 November 2011 the Ministry of Justice of the Republic of Moldova registered the Party of Regions, whose chairman is the Governor of Gagauzia.

176. The budget of the ATU of Gagauzia is drawn up in accordance with the provisions of the law governing the special status of Gagauzia. Pursuant to this law, the Government is responsible for ensuring that the ATU of Gagauzia complies with the legislation of the Republic of Moldova. In this regard, the representatives of Gagauzia complain that they do not have the right to draw up their own budget because everything has to be done in agreement with Chişinău.

177. The local authorities of Gagauzia believe that its status has not been interpreted in a way that fosters autonomy. They believe that autonomy has suffered a marked setback compared to a few years ago. The representatives of Gagauzia also said they feared for the status of Gagauzia if changes were made to the Constitution of the Republic of Moldova. The possible revision of the Moldovan Constitution could have consequences for the current status of Gagauzia.

178. The Government of the Republic of Moldova, on the contrary, believes that Gagauzia must become a model of local self-government as it has a higher level of development than the other raions. The Government recalls that the ATU of Gagauzia is mentioned in the Moldovan Constitution and emphasizes that there is no basis to open a debate on its status.

179. One of the issues concerning Gagauzia concerns language. Unesco has listed Gagauz as an endangered language. The inhabitants of this region speak Russian and not Gagauz, which is protected under the autonomy status. However, there are three official languages in Gagauzia: Gagauz, Russian and Moldovan. It should be noted that all nationalities are represented in the local authorities of Gagauzia.

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<sup>18</sup> According to the National Statistics Office of the Republic of Moldova.

<sup>19</sup> *Idem*

180. The Governor of Gagauzia provided the delegation with a certain amount of information. He said that relations between the central authorities of Gagauzia and the 32 local authorities of this area were very good. The mayors of the communes of Gagauzia meet every month and the ministers of the executive authority of Gagauzia fix the agenda for these meetings. Decisions require a unanimous vote and local authorities are free to raise any sort of issue. It was pointed out that the local authorities of Gagauzia can recruit their own staff and draw up their own development programmes.

#### 5.2.2. *The case of the Transnistrian region of the Republic of Moldova*

181. The issue of Transnistria is undoubtedly the most sensitive issue faced by the Republic of Moldova.

182. The conflict in the Transnistrian region of the Republic of Moldova broke out in the late 1980s – early 1990s in the context of the political and geopolitical changes which took place on the European continent following the breakdown of the USSR. Armed conflicts took place between Chişinău and Tiraspol in spring 1992 and led to the political and administrative territorial division of the country. Twenty years have passed but the problem of the Republic of Moldova's Transnistrian region is still unsolved. The first negotiations for a political settlement of the conflict in the Transnistrian region were launched in 1997 in a "five-party" format involving the adversaries (Moldova and the Transnistrian region) and three mediators – Russia, Ukraine and the Chair-in-Office of the OSCE. In October 2005 the EU and the United States were appointed as observers, enlarging the format to a "5+2" set-up.

183. The delegation took note of the contents of the Council of Europe project concerning confidence-building measures in the Transnistrian region for 2010-2011, the report on the implementation of confidence-building measures on both sides of the Nistru/Dniestr in 2011, the proposals containing a description of the follow-up in 2012 and the outlook for 2013. These measures will be crucial to the settlement of the conflict in the Transnistrian region of the Republic of Moldova.

184. The proposal to establish a Euroregion of Nistru/Dniestr (the Republic of Moldova-Ukraine) is one of the confidence-building measures. The Euroregion comprised, in the initial project the local authorities on the left bank of the Nistru/Dniestr, namely the territories not under the control of Chişinău. Although the local authorities of what the Moldovan government calls the "left bank" have shown interest in this initiative, the self-proclaimed authorities in Tiraspol have, for the time being, refused to subscribe to it. In February 2012 during his visit to Kiev, the Prime Minister of the Republic of Moldova signed the statutory documents pertaining to the creation of the Euroregion Nistru/Dniestr which consists of a project of cross-border collaboration between 6 *raïons* of the Republic of Moldova (Donduşeni, Ocniţa, Rezina, Soroca, Floreşti, Şoldăneşti) with the Ukrainian region of Vinnitsa (In Ukrainian: Вінницька область, Vinnyts'ka oblast'). The agreement concerning the creation of the Euroregion Nistru/Dniestr was drawn up in accordance with the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities of 21 May 1980 (ETS No. 106). The project is financed by the EU and provides for the allocation of certain funds for economic development, infrastructure, culture, education and ecology.

185. The delegation also met the OSCE Mission. It had made two requests for assistance to the OSCE and the Deputy Prime Minister for Reintegration of the Republic of Moldova to secure permission to travel to this region to meet the local authorities, particularly to Tiraspol in September 2011 and Dubăsari in November 2011. These requests were rejected by the authorities on the left bank of the Nistru/Dniestr. The rapporteurs regret that they were refused this opportunity to exchange views.

186. The rapporteurs visited the village of Coşniţa, which is the administrative headquarters of the *raïon* of Dubăsari (the town of Dubăsari itself has been occupied by the security forces of the Transnistrian region of the Republic of Moldova since the 1992 war). In the security zone around Dubăsari, one can still see signs of the conflict that took place in Transnistria twenty years ago, particularly in the form of the border guard stations. The rapporteurs also visited a border control point in the region. According to the information provided by the OSCE, there are currently 22 border control points.



187. The situation of this *raïon* which is “in administrative exile” in Coșnița is unprecedented in the Republic of Moldova and this is causing difficulties given that the village of Coșnița is unable to provide all the services that would be provided by a *raïon*. Moreover as long as these law-enforcement forces are present, there will be permanent pressure on these localities. The presence of military forces in this area is also a factor of intimidation and even danger for the population and elected representatives in this area.

188. In Coșnița, the delegation met the president of the *raïon*, Mr Policinski, and the mayors of several first-tier localities. The local elected representatives for these areas very close to the Transnistrian region spoke to the rapporteurs about their everyday difficulties, such as:

- The problems faced by Moldovan farmers who had land on the Transnistrian side of the border. The lives of these farmers was complicated by the existence of specific Transnistrian rules (regulations, taxes). 100,000 people find themselves in this situation.

- Intimidation by members of the armed forces and militiamen, who interfere in the activities of these localities. For example, the Congress was informed of an incident which occurred on 2 March 2011, in which the Mayor of Corjova, Mr Mitu, and a local elected representative, Mr Cotofan, were arrested for no reason;

- The daily “border” checks: people living in the security zone are tired of having to present their papers, to justify their movements and give the exact duration of their visits in order to be able to visit family and friends or go to work every day on the left bank of the Nistru/Dniestr.

The local authorities on the right bank of the Nistru/Dniestr have condemned these practices. The mayors of some villages told the delegation that, despite the efforts made by Tiraspol political regime to separate the two sides of the Nistru/Dniestr, the local people refuse to remain hostile to each other: “Over time we have come to realise that the only way to obtain results is by collaborating and comparing our experiences. After all, politicians come and go but people and their problems remain. We have relatives and friends on the other side of the Nistru/Dniestr, and even if we are living in an isolated area, we try to develop lasting social relations”.

189. The authorities of the Republic of Moldova need to give the citizens and elected representatives of these localities more attention and more resources. The inhabitants of the villages situated on the two banks of of Nistru/Dniestr are waiting for the government to authorise their free movement without having customs procedures imposed on them by the self-proclaimed authorities of the capital Tiraspol, and without interference in their daily activities. The local elected representatives expect central government to establish development strategies in this security zone. According to what they told us, the region has not been developed since 1995 and neither European bodies nor the authorities of the Republic of Moldova take any account of these localities.

190. From the administrative standpoint, the region on the left bank of the Nistru/Dniestr is divided into 5 *raïons*: Camenca, Dubăsari, Grigoriopol, Rîbnița and Slobozia and 2 municipalities, Tiraspol and Tighina (Bender), which are all under the control of the “authority” in Tiraspol. Bender is not geographically speaking in the Transnistrian part but on the right bank of the Nistru/Dniestr but the situation remains complex for this is where military confrontation took place in 1992.

191. It is difficult to know exactly how many people live in the secessionist region of the Republic of Moldova but according to information from the OSCE (which makes reference to the Tiraspol office of statistics) there are some 550,000 people living in this region, 100,000-144,000 of whom live in Tiraspol on a total surface area of 4,163 km<sup>2</sup>.

## 6. Conclusions

192. The rapporteurs feel that their assessment of the progress of local and regional democracy in the Republic of Moldova since the last recommendation in 2005 should be subject to some qualification. Although improvements have been noted in various fields, the recommendations that were adopted in respect of the Republic of Moldova need to be reiterated.

193. The rapporteurs underline the fact that the principles of the Charter are clearly set out in the Constitution and in domestic legislation. The Charter is frequently referred to in respect of matters concerning local and regional democracy and this is obviously to be welcomed.

194. Noteworthy examples of progress made in the Republic of Moldova since the last recommendation include the measures launched by Parliament since 2005, in particular in the form of an action plan in response to all of the Council of Europe recommendations. This plan has given rise to several legislative and institutional initiatives in the field of local government.

195. The delegation nevertheless regrets the marked difference between the legislation governing local and regional democracy and the actual situation on the ground.

196. One example is local authorities' insufficient financial autonomy: their considerable dependency on central government and its components and the quasi-absence of local taxes and lack of effective arrangements for levying such taxes. Since 2005, when this state of affairs was noted in the Congress recommendation, the situation has scarcely improved.

197. The rapporteurs are also concerned at the lack of clarity in the distribution of powers. The delegation believes that the clear distribution of powers at each level would solve the problem of the overlapping of powers, both between the two levels and with regard to the distribution of powers between central and local authorities.

198. Local authorities' financial dependence on the state budget and the very close scrutiny exercised over tier I local budgets, which are financed by tier II, also continues to be a subject for concern as regards compliance with the Charter.

199. The delegation feels that it is necessary to increase own resources, to reform the system of shared taxes and to increase financial autonomy and the supervision of local authorities' finances.

200. With regard to the process for the consultation of local authorities (Articles 4.6 and 9.6 of the Charter), local representatives told the rapporteurs that the situation had improved slightly since 2009. Nevertheless, CALM said that it wished to have genuine consultation and dialogue with central government on all issues concerning local authorities (as explicitly stated in the Charter) from the very outset of legislative initiatives – or policy strategies – until their implementation. The delegation agreed that effective consultation was required on all issues directly concerning local and regional authorities. While the rapporteurs feel that the improvement they noted in the consultation process was a positive and encouraging sign from the Moldovan authorities, they urge them to further improve their consultation arrangements by making them not only clearer but above all systematic whenever issues concerning local and regional authorities are being discussed.

201. The issue of the status of civil servants and local authority staff continues to be one of the main concerns of most of the persons we spoke to. CALM opposes the draft legislation proposed by the Ministry of Labour, Social Protection and Family Affairs concerning the systems for the remuneration of public officials. In the eyes of most of the people we met, this legislation, which is on the point of being enacted, includes discriminatory rules on the wage scales of public officials. It has caused a great deal of discontent, particularly among local authorities who learned, somewhat late, of the existence of this initiative. The rapporteurs believe that the local authorities should also be consulted on this issue and that it is vital that a dialogue take place on this draft legislation prior to its enactment.

202. The delegation also noted the lack of operational autonomy. It is therefore important to draw attention to Article 6 of the Charter, which stipulates that it is essential for the efficiency of local authorities that they should be in a position to recruit and employ staff whose qualifications correspond to the responsibilities of the local authority concerned.

203. The rapporteurs would underline the considerable progress made in the Republic of Moldova on the issue of women's access to local public office. According to the information provided, the number of women elected to local public office over the past 8 years has risen threefold. Moreover, the fact that there are several projects designed to consolidate women's position in society, particularly the Gender Strategy, is a very positive sign.

204. With regard to the capital of the Republic of Moldova, the delegation underlines the need for Chişinău to be governed by a specific law and to have an appropriate legal framework to serve the interests of its inhabitants, particularly given that the city of Chişinău has a dual status: as a city it is both a tier I territorial unit and also a tier II unit, given that it is a municipality acting as a metropolitan area comprising 18 sub-localities. In this connection, the delegation is pleased to note that the enactment of a new law on the status of the capital city is on the Parliament's agenda for the first half of 2012.

205. The issue of localities with fewer than 1,500 inhabitants was also part of the discussions with the Congress delegation. The delegation thinks that the Republic of Moldova should give special attention to these localities, which represent 28% of all Moldovan localities, as they have a low financial potential and very little infrastructure. Their weak resources and capacity for development considerably limits the prospects of satisfactory municipal management. The Minister of Finance had proposed an alternative in the form of a merger policy. However, the Government has been unable to reach a consensus on this proposal. The rapporteurs are of the opinion that alternatives must rapidly be found to remedy this situation, which is leaving the localities in great difficulty.

206. The rapporteurs consider regional development to be one of the areas where progress is being made. The delegation noted that there were cross-border co-operation initiatives, constituting a potential source of funding for regional development projects both in the context of the instruments of the European neighbourhood policy and in the context of co-operation in the Euro regions, in which the Republic of Moldova participates: Lower Danube (Romania-Republic of Moldova-Ukraine), Siret-Prut-Nistru (Romania-Republic of Moldova) and Upper Prut (Romania-Republic of Moldova-Ukraine).

207. The delegation noted that the principles of local self-government set out in the Charter were being implemented in Gagauzia. Nevertheless, the rapporteurs reiterate the need to improve dialogue between central government and the Gagauz authorities on all aspects of local self-government concerning them.

208. The rapporteurs greatly regretted that they had been refused the opportunity to hold an exchange of views with the local authorities of the Transnistrian region of the Republic of Moldova. With regard to the citizens and local elected representatives living close to the Transnistrian region, in the Nistru/Dniestr security zone, the delegation particularly underlined the importance of taking measures to ensure the free movement of people and goods and to launch economic development programmes with the appropriate funding for these localities and their inhabitants, who are confronted with difficulties particularly with regard to travelling from one area to the other, border controls and taxes. The delegation would draw attention to the Council of Europe project concerning the confidence-building measures in the Transnistrian region planned for 2010-2011 and the report on the implementation of confidence-building measures on both sides of the Nistru/Dniestr in 2011, including the proposed follow-up measures to be taken in 2012, and the outlook for 2013. These measures are necessary to help solve the conflict in the Transnistrian region of the Republic of Moldova.

209. During its two visits, the delegation spent a great deal of time discussing the draft National Decentralisation Strategy, which represents the current government's commitment to conducting a thorough reform of local government, designed to consolidate local authorities' administrative and financial capacity, improvements in management and the quality of services provided to members of the public. The delegation believes that this Strategy is a positive sign of the development of local democracy, provided that what happens in practice matches the declared intentions.

210. The rapporteurs noted the doubts expressed by local politicians and their continuing scepticism with regard to the adoption and/or implementation of this project.

211. Since the delegation's visit, the rapporteurs have been informed that the Government adopted the National Decentralisation Strategy on 26 January 2012 and that it has been forwarded to the Parliament and is on the agenda of its first session in 2012. This is an encouraging sign for local democracy in the Republic of Moldova. The rapporteurs recommend that the Congress closely monitor this development.

212. The rapporteurs would like to see decentralisation at the heart of the domestic reforms scheduled to take place in the Republic of Moldova and recommend that the Moldovan authorities continue with the measures they have launched in the context of the National Decentralisation Strategy so that it can be adopted and implemented in keeping with the stated intentions of the authorities.

213. Finally, the rapporteurs welcome the information they have received concerning discussions that are taking place at the Ministry of Foreign Affairs and European Integration with a view to signing and ratifying the Additional Protocol to the Charter on the Right to Participate in the Affairs of a Local Authority (ETS No. 207) in the near future. According to the rapporteurs, these discussions illustrate the authorities' stated resolve to foster local and regional democracy in their country in accordance with Council of Europe standards.

## **Appendix 1 – Basic legislation concerning local authorities, local and regional self-government and local and regional democracy in the Republic of Moldova**

The basic legislation concerning local authorities, local and regional self-government and local and regional democracy in the Republic of Moldova comprises a series of laws, the most important of which are:

- the Constitution of the Republic of Moldova of 29 July 1994;
- Law No 764-XV of 27 December 2001 on the organisation of local government in the Republic of Moldova;
- Law No 436-XVI of 28 December 2006 on local public administration;
- Law No 435-XVI of 28 December 2006 on administrative decentralisation;
- Law No. 438-XVI of 28 December 2006 on regional development in the Republic of Moldova;
- Law No. 397-XV of 16 October 2003 on local public finances;
- Law No. 847-XIII of 24 May 1996 on the budgetary system and process ;
- the Fiscal Code of the Republic of Moldova No. 1163 of 24 April 1997;
- Law No. 431-XIII of 19 April 1995 on the municipality of Chişinău;
- Law No. 344-XIII of 23 December 1994 on the special legal status of Gagauzia;
- Law No. 768-XIV of 2 February 2000 on the status of local elected representatives;
- Law No. 523-XIV of 16 July 1999 on the public property of local authorities;
- Law No. 457-XV of 14 November 2003 approving the Framework Regulation concerning the Constitution and the functioning of local and district (*raïon*) councils;
- Law No. 463-XV of 6 November 2003 on the Framework Status of villages (communes), towns and cities (municipalities);
- Law No. 91-XVI of 5 April 2007 on the ownership of public land and its delimitation.

**Appendix 2 – Programmes of the Congress monitoring visits in the Republic of Moldova  
(12-13 septembre 2011 et 23-25 novembre 2011)**

**CONGRESS MONITORING VISIT TO THE REPUBLIC OF MOLDOVA  
(12 and 13 September 2011)**

**PROGRAMME**

**The Congress delegation:**

Rapporteurs:

Mr Francis LEC,	Co-rapporteur, Vice-Chair of the Congress Monitoring Committee, Vice-Chair of the Council of the Department of the Somme and municipal councillor of Amiens (L, SOC, France)
Mr Ignacio SANCHEZ-AMOR,	Co-rapporteur, Vice-Chair of the Congress and member of the Monitoring Committee (R, SOC, Spain)

Expert:

Mr Michel VERPEAUX,	Consultant, Member of the Group of Independent Experts on the European Charter of Local Self-Government
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Assisted by:

Ms Olesea SAVCA,	Local expert
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Congress Secretariat:

Mr Jean-Philippe BOZOULS,	Executive Secretary of the Chamber of Local Authorities of the Council of Europe Congress
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**Monday 12 September 2011 - Chişinău**

**Congress of Local Authorities of Moldova (CALM):**

- Ms Tatiana BADAN, President of CALM
- Mr Viorel FURDUI, Executive Director of CALM
- Mr Octavii IVANOV, Expert on local development - CALM
- Mr Grigore POLICINSCHI, President of the Association of Presidents of district (*raïon*) councils
- Ms Silvia BUTUCEL, President of the Association of Women Mayors
- Mr Ion CROITORU, Mayor of Marinici (Nisporeni District) and Representative of the National League of the Association of Mayors
- Ms Olesea CRUC, National Co-ordinator for Programmes of Good Practices of the Local Authorities of the Republic of Moldova

## Monday 12 September 2011 - Chişinău (cont)

### **Parliament of the Republic of Moldova:**

- Mr Marian LUPU, Speaker of the Parliament *and Interim President of the Republic of Moldova*

### **Parliamentary committees:**

- Mr Veaceslav IONITA, Chair of the parliamentary committee on the economy, the budget and finances
- Mr Iurie TAP, Chair of the parliamentary committee on decentralisation

## Tuesday 13 September 2011 - Chişinău

- Mr Mihai MOLDOVANU, Deputy Prime Minister

### **State Chancellery:**

- Mr Victor BODIU, Secretary General of the Government  
with the participation of:
- Ms Victoria CUJBA, Deputy Head of the Directorate of decentralisation policies
- Mr George MOCANU, Head of the Directorate of local public administration
- Mr Vladislav SIRBU, Head of the Administrative Control Section
- Mr Vladimir UNGUREANU, Head of the Section responsible for infrastructure and regional development
- Mr Sergiu PALIHOVICI, Representative of the Government at local and regional level - Chişinău Office

### **Ministry of Finance:**

- Mr Veaceslav NEGRUȚA, Minister of Finance  
with the participation of:
- Mr Vasile BULICANU, Director of the Budgetary Synthesis Department/Directorate and/or
- Ms Ala CIȘLARU, Director of the Department responsible for local authority budgets
- Ms Iulia MATRAGUNA, Principal advisor - Local authority finances department

### **Ministry of Regional Development and Construction:**

- Mr Marcel RADUCAN, Minister of Regional Development and Construction  
with the participation of:
- Mr Veaceslav GUȚUȚUI, Deputy Minister
- Ms Valentina PLEȘCA, Director of the Directorate General of Regional Development
- Mr Tudor MEȘINĂ, Director of the Centre Regional Development Agency and President of the Centre Regional Council

### **People's Assembly of Gagauzia**

- Ms Ana HARLAMENCO, Chair and Speaker of the Assembly
- Mr Demian KARASENI, Deputy Speaker

**CONGRESS MONITORING VISIT TO THE REPUBLIC OF MOLDOVA  
(23-25 November 2011)**

**PROGRAMME**

**Congress delegation:**

Rapporteurs:

Mr Francis LEC, Co-rapporteur, Vice-Chair of the Congress Monitoring Committee, Vice-Chair of the Council of the Department of the Somme and municipal councillor of Amiens (L, SOC, France)

Mr Ignacio SANCHEZ-AMOR, Co-rapporteur, Vice-Chair of the Congress and member of the Monitoring Committee (R, SOC, Spain)

Expert:

Mr Michel VERPEAUX, Consultant, Member of the Group of Independent Experts on the European Charter of Local Self-Government

Assisted by:

Ms Olesea SAVCA, Local expert

Congress Secretariat:

Mr Jean-Philippe BOZOULS, Executive Secretary of the Chamber of Local Authorities of the Council of Europe Congress

**Wednesday 23 November 2011 - Chişinău**

**Moldovan delegation to the Congress:**

- Mr Alexandru AMBROS, Head of the Moldovan delegation to the Congress and Mayor of the town of Ungheni
- Ms Tatiana BADAN, Mayor of the village of Selemet, Cimislia district, and President of CALM
- Mr Grigore POLICINSCHI, President of Dubasari district
- Mr Dorin CHIRTOACA, Mayor of Chişinău
- Mr Valerii KOLIOGLO, Mayor of the village of Copceac, Gagauzia
- Ms Silvia TURCANU, Mayor of the village of Chiscareni, Sangerei district
- Mr Grigore COBZAC, President of Hancesti district
- Ms Eleonora GRAUR, President of Rezina district
- Ms Eufrosinia CRETU, President of Leova district
- Mr Ion PAREA, President of Riscani district

**Ministry of Foreign Affairs and European Integration:**

- Mr Andrei POPOV, Vice-Minister of Foreign Affairs and European Integration



### Wednesday 23 November 2011 - Chişinău (cont..)

**Chişinău city authorities:**

- Mr Dorin CHIRTOACA, Mayor of Chişinău
- Mrs Alexandra MOTPAN, Directorate of local public administration
- Mrs Raisa COTOROBAI, Directorate of internal audit
- Mrs Gabriela CIUMAC, Directorate of external relations, regional co-operation and European integration
- Mr Vladimir SERBAN, Head (*Pretor*) of the Centre sector of the capital

**Court of Auditors:**

- Mr Serafim URECHEAN, President
- Mr Valeriu CHITAN, Member
- Mrs Ecaterina PAKNEHAD, Member

**Deputy Speaker of the Parliament of Moldova and member of the PACE:**

- Mrs Liliana PALIHOVICI

### Thursday 24 November 2011 - Chişinău

**Chair of the Central Electoral Commission**

- Mr CIOCAN

**Ombudsman:**

- Mr Anatolie MUNTEANU, Ombudsman and Director of the Centre for Human Rights in the Republic of Moldova
- Mr Tudor LAZAR, Ombudsman
- Mrs Tamara PLAMADEALA, Ombudsman

**Constitutional Court:**

- Mr Alexandru TANASE, President

**OSCE Mission in the Republic of Moldova:**

- Mr Jan PLESINGER, Deputy Head of the OSCE Mission in the Republic of Moldova

**Governor of the Autonomous Territorial Unit of Gagauzia:**

- Mr Mihail FURMUZAL, Governor (*Bashkan*) of Gagauzia

### Friday 25 November 2011 - Dubasari and Condrita

**Dubasari district council (in Cosnita):**

- Mr Grigore POLICINSCHI, President of Dubasari district and Vice-Chair of CALM, Member of the Moldovan delegation to the Congress
- Ms Maria JIMBEI, Vice-Chair of Dubasari district

**Condrita village council:**

- Mr Alexei BOSNEAGA, Mayor of Condrita