

34th SESSION

Report
CG34(2018)14prov
19 February 2018

Local democracy in Andorra

Monitoring Committee

Rapporteurs:¹ Gaye DOGANOGLU, Turkey (L, EPP/CCE)
Zdenek BROZ, Czech Republic (L, ECR)

Draft recommendation (for vote).....2
Explanatory memorandum (for information)4

Summary

This report is prepared following the first monitoring visit to Andorra since it ratified the European Charter of Local Self-Government in 2011. It highlights a globally satisfactory level of local democracy in Andorra and its general compliance with the commitments under the Charter.

The Congress expresses satisfaction with a culture of consultation and close dialogue between the central and local authorities in Andorra facilitated by their proximity and long-standing traditions and the representation of municipalities in the composition of the Parliament.

Nevertheless, it points out the absence of a special status of the city of Andorra la Vella that would take account of the particular situation of the capital compared to other municipalities in accordance with Congress Recommendation 219 (2007) on the status of capital cities. The Congress also suggests formalizing in law the mechanism of consultation of local authorities.

At the moment of the Congress monitoring visit to Andorra, the government, the parliament and local authorities were negotiating an important reform of the competences and the financial resources of local authorities. Consequently, the Congress encourages the Andorran authorities to pursue the reform efforts on the basis of the relevant principles of the Charter.

Finally, it recommends that the Andorran authorities consider the possibility of signing and ratifying the Additional Protocol to the Charter on the right to participate in the affairs of a local authority.

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

DRAFT RECOMMENDATION²

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(2015)9 relating to the Congress, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3 of Statutory Resolution CM/Res(2015)9 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe, and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented”;

c. Chapter XVII of the Rules and Procedures of the Congress on the organisation of the monitoring procedures;

d. the present explanatory memorandum on local democracy in Andorra, drawn up by the rapporteurs, Ms Gaye Doganoglu, Turkey (L, EPP/CCE) and Mr Zdenek Broz, Czech Republic (L, CRE/ECR) following a visit to Andorra from 25 to 26 April 2017.

2. With regard to Andorra:

a. it signed the European Charter of Local Self-Government (ETS No 122) on 27 October 2010 and ratified it on 23 March 2011 with the exception of Article 9.2 on commensurate financial resources, Article 9.5 on financial equalisation, Article 9.8 on access to national capital market; the Charter came into force for Andorra on 1 July 2011;

b. it 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 n° 207);

c. the state of local democracy in Andorra has not previously been subject to a monitoring visit by the Congress, since the ratification of the European Charter of Local Self-Government;

d. the Monitoring Committee instructed Ms Gaye Doganoglu and Mr Zdenek Broz to prepare and submit to the Congress, as rapporteurs, a report on local democracy in Andorra. In their work, the rapporteurs were assisted by Prof. Dr. Tania Groppi, expert, member of the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress secretariat.

e. The Congress delegation carried out a monitoring visit to Andorra from 25 to 26 April 2017, visiting Andorra la Vella, Canillo and Encamp. During the visit the delegation met representatives of national authorities (Government, Ministry of Finance), Court of Auditors, General Council (Parliament), Constitutional Court, local authorities, experts, Ombudsman and members of the National delegation of Andorra to the Congress. The detailed programme of the visit is appended.

2 Preliminary draft recommendation approved by the Monitoring Committee on 14 February 2018.

Members of the committee, members of the Chamber of Local Authorities:

H. Akgun, M. Angelopoulos, L. Ansala (alternate: J. Rostedt), T. Arifi, G.A. Axelsson, N. Barbu, V. Belikov, M. Belin, E. Bendodo Bensayag, R. Biedron, A. Bindi, A. Bogdanovic, Z. Broz, M. Bufi, X. Cadoret, V. Casian, M. Cools, V. Crudu, N. Dirginciene, G. Doganoglu, R. Fejstamer, M. Gauci, G. Geguzinskas, K. Germanova, L. Gidei (alternate: V. Dontu), B. A. Gram, N. Grozev, I. Hanzek, B. Hirs, J. Hlinka, V. Hovhanissyan, G. Illes, H. B. Johansen, A. Jozic, A. Kaleva, G. Kaminskis, O. Kasuri, N. Kavtaradze, J-P. Klein, A. Knobova, B. Krnc, L. Kroon (alternate: H. Bergmann), C. Lammerskitten, A. Leadbetter, F. Lec, K. Marchenko, T. Margaryan (alternate: E. Yeritsyan), G. Marsan, P. MCGowan, S. Mosharov, R. O’Grady, D. Pantana, N. Parlon Gil, S. Paunovic, V. Prokopiv, I. Radojicic, G. Riba Casal, R. Rio, J. Rocklind, R. Rohr, B. Rudkin, I. Seredyuk, A.-M. Sotiriadou, R. Spiegler, T. Taghiyev, P. Thornton (alternate: H. Carr), A. Torres Pereira, A. Ugues, S. Vaag, R. Vergili, B. Voehringer, A. Vyras, H. Weninger, J. Wiene, D. Wrobel.

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

Secretariat of the committee: S. Poirel, secretary to the committee and S. Pereverten, co-secretary to the committee.

3. The Congress wishes to thank the Permanent Representation of Andorra to the Council of Europe and the Andorran authorities at central and local levels, as well as other interlocutors for their valuable co-operation and for the information provided to the delegation.

4. The Congress notes with satisfaction:

a. a globally satisfactory level of local democracy in Andorra, as demonstrated by the low level of conflicts between State and local authorities;

b. general compliance with the commitments entered into by the Principality of Andorra when it ratified the European Charter of Local Self-Government on 23 March 2011 ;

c. a culture of consultation and close dialogue between the State and local authorities facilitated by their proximity due to the reduced dimension of the country and by long-standing traditions;

d. representation of municipalities in the composition of the Parliament;

e. on-going negotiation in a tripartite process, involving the government, the parliament and local authorities of a reform of the competences and the financial resources aimed at updating the entire system of transfers.

5. The Congress notes that the following points call for particular attention:

a. the absence of a formal recognition in law of mechanisms of consultation with local authorities on matters that directly affect them even though systematic and effective consultations are held in practice;

b. the city of Andorra la Vella has not been granted a special status, on the basis of Congress Recommendation 219 (2007), establishing different legal arrangements to take account of the particular situation of the Capital city compared to other municipalities.

6. In light of the foregoing, Congress requests that the Committee of Ministers invite the Andorran authorities:

a. to formalise in law the mechanism of consultation of local authorities by the central authorities which would further safeguard the right of local authorities to be consulted on all matters that concern them directly;

b. to grant the city of Andorra la Vella a special status, on the basis of Congress Recommendation 219 (2007), establishing different legal arrangements to take into account the particular situation of the Capital city compared to other municipalities;

c. to consider ratifying paragraphs 2 and 5 of Article 9, which are de facto applied in Andorra;

d. to pursue the reform efforts with regard to competences and financial resources of local authorities on the basis of the relevant principles of the Charter;

e. to consider signing and ratifying the additional protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

7. The Congress calls on the Committee of Ministers to take account of this recommendation on local democracy in Andorra and the accompanying explanatory memorandum in its activities relating to this member State.

EXPLANATORY MEMORANDUM**Table of contents**

1.	INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE.....	5
2.	HISTORICAL AND POLITICAL BACKGROUND, AND REFORMS.....	5
2.1.	Historical background.....	5
2.2.	Institutional framework and political background	7
2.3.	Previous reports and recommendations	9
3.	HONOURING OF OBLIGATIONS AND COMMITMENTS	10
3.1.	The Constitution and the basic legislative framework.....	10
3.2.	The local government system	11
3.3.	Status of the Capital city	17
4.	ANALYSIS (ARTICLE BY ARTICLE) OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER.....	18
4.1.	Article 2: Foundation of local self-government.....	18
4.2.	Article 3: Concept of local self-government.....	18
4.3.	Article 4: Scope of local self-government.....	20
4.4.	Article 5: Protection of local authority boundaries	21
4.5.	Article 6: Appropriate administrative structures and resources.....	21
4.6.	Article 7: Conditions under which responsibilities at local level are exercised.....	22
4.7.	Article 8: Administrative supervision of local authorities' activities.....	23
4.8.	Article 9: Financial resources	23
4.9.	Article 10: Local authorities' right to associate	25
4.10.	Article 11: Legal protection of local self-government	26
4.11.	On the possible signature of 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) ...	26
5.	CONCLUSIONS	27
	APPENDIX – Programme of the Congress monitoring delegation visit to Andorra (25-26 April 2017) .	29

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

1. In accordance with Article 2 of Statutory Resolution CM/Res(2015)9 of the Committee of Ministers, the Congress of Local and Regional Authorities of the Council of Europe (“the Congress”) regularly prepares reports on the state of local and regional democracy in all Council of Europe member states.

2. Andorra joined the Council of Europe on the 10th of November 1994. On the 27th of October 2010 Andorra signed the European Charter of Local Self-Government (ETS No 122). It was ratified on the 23rd of March 2011 and it came into force for Andorra on the 1st of July 2011. According to the Declaration contained in the instrument of ratification deposited on the 23rd of March 2011, “In accordance with Article 12, paragraph 2, of the Charter, the Principality of Andorra declares itself bound by the following Articles and paragraphs : Article 2; Article 3: paragraphs 1 and 2; Article 4: paragraphs 1, 2, 3, 4, 5 and 6; Article 5; Article 6: paragraphs 1 and 2; Article 7: paragraphs 1, 2 and 3; Article 8: paragraphs 1, 2 and 3; Article 9: paragraphs 1, 3, 4, 6 and 7; Article 10: paragraphs 1, 2 and 3; Article 11.” As a consequence, Andorra is not bound by Article 9.2 on commensurate financial resources, Article 9.5 on financial equalisation, Article 9.8 on access to national capital market.

3. Andorra 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 n° 207).

4. The state of local democracy in Andorra has not previously been subject to a monitoring visit by the Congress.

5. The Monitoring Committee appointed Ms Gaye Doganoglu, Turkey (L, EPP/CCE) and Mr Zdenek Broz, Czech Republic (L, CRE/ECR) as rapporteurs and charged them with drawing up and submitting to the Congress a report on local democracy in Andorra.

6. The delegation carried out a monitoring visit to Andorra from 25 to 26 April 2017, to examine the situation of local democracy in the light of the Charter. The delegation was assisted by Prof. Dr Tania Groppi who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress Secretariat.

7. During the visit, the Congress delegation met representatives of authorities at national and local levels, experts, mayors and municipal councillors, representatives of the government, ministries and other institutions. The detailed program of the visit is appended to the present report.

8. The rapporteurs wish to thank the Permanent Representation of Andorra to the Council of Europe as well as all the interlocutors met during the visit for their availability and the information they kindly provided to the delegation.

2. HISTORICAL AND POLITICAL BACKGROUND, AND REFORMS

2.1. *Historical background*

9. Among the smallest States of continental Europe which are not members of the European Union (Liechtenstein, San Marino, Vatican City, Principality of Monaco), the Principality of Andorra is the biggest (468 sq. km.) and the most densely populated (78,264 inhabitants in 2016)³ one.

10. The Principality of Andorra’s origins date back to feudal times:⁴ the Valleys of Andorra were then a fief in the hands of the Count of Urgell, who became the Bishop of Urgell in the 12th century. During the second half of the 13th century, the conflict between the Bishop of Urgell and the Count of Foix for territorial dominance of the Valleys of Andorra culminated in the signature of two agreements in 1278 and 1288, setting up a co-seigniorial system in Andorra.

³ <http://www.estadistica.ad/>

⁴ On the historical origin of the Principality of Andorra, see M. Mateu, F. Luchoire, *La Principauté d'Andorre hier et aujourd'hui*, Paris, Economica, 1999.

11. Until 1993, it was these two agreements, the “*Pareatges*”, which defined Andorra’s political system as a co-principality, run by the Bishop of Urgell and the Count of Foix (succeeded initially by the King of Navarre, then the King of France, then later the President of the Republic of France). These two persons were regarded as the holders of sovereign power.

12. In 1419, the Co-princes authorised the establishment of the *Consell de la Terra*, a body representing all of the inhabitants of Andorra, whose main purpose was to defend the inhabitants’ interests and which was granted some legislative and executive powers. Its members were two Cónsols (the mayor and deputy mayor) and two parliamentarians from each parish. In 1866, with the Nova Reforma (New Reform), this body was updated and made more democratic. In the new *Consell General*, the power of the *Comuns* was separated from that of the *Consell General* and the right to vote was granted to all heads of family.⁵

13. A process of reform to modernize the institutions of the country began in 1981: a decree was adopted by the delegates of the Co-princes, establishing an institution with executive powers and marking the beginning of a phase of transformation which ended with the approval of the 1993 Constitution⁶.

14. The Constitution was prepared by a tripartite commission, composed by the representatives of the General Council and by the two Co-princes. It was then approved through popular referendum. On 14 March 1993, the electorate of Andorra voted in favour of the new text with a large majority (74% of the total votes).

15. In the same 1993, the General Council approved all the most important laws implementing the Constitution⁷. The trilateral treaty defining Andorra’s relations with France and Spain was also concluded.

16. It should also be mentioned that the population of Andorra⁸ increased 12-fold during the second half of the twentieth century,⁹ mostly as a result of immigration, being a key factor to demographic growth and a boost in economic development. In 2016, only 36,138 inhabitants, out of 78,264, were Andorran citizens. In all, over 100 nationalities live together in Andorra. The largest foreign communities are Spanish (20,652), Portuguese (10,300) and French (3,946).¹⁰

17. Andorran citizens can automatically transmit their nationality to their children according to the *ius sanguinis* principle. Andorran nationality may also be acquired after 20 years’ residency in Andorra regardless of nationality of origin, 10 years’ residency if the person has completed a period of compulsory schooling in Andorra or 3 years’ residency if the person is married to an Andorran national. Persons who wish to become Andorran nationals must give up their nationality of origin.

18. Long an impoverished land having little contact with any nations other than adjoining France and Spain, Andorra after World War II achieved considerable prosperity through a developing tourist industry. This development, abetted by improvements in transport and communications, has tended to break down Andorra’s isolation¹¹. Nowadays Andorra is a popular tourist destination, visited by approximately 9 million people each year, attracted by winter sports, summer climate and shopping.

19. The Andorran tax system, historically based on indirect taxation, has been going through a process of change for quite some time now to bring it into line with those of the EU and OECD countries.

5 1933 saw the establishment of male universal suffrage, which was extended to women in 1978.

6 It is the decree of the 15th of January 1981, on which see P. Figuereda i Cairol, *Aproximación a las instituciones del Principado de Andorra*, Barcelona, Cuadernos Civitas, 1996, p. 529 ff.

7 These laws are namely: *Llei qualificada del Tribunal constitucional*, *Llei qualificada de la justícia*, *Llei qualificada del règim electoral i del referèndum*, *Lei qualificada de delimitació de competències dels Comuns*, *Llei qualificada de transferències als Comuns*.

8 http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/AD/A_HRC_WG.6_9_AND_1_Andorra_eng.pdf

9 However, inhabitants were only 6,176 in 1950: see C. Mondou, *La Constitution andorrane du 28 avril 1993: la disparition de la dernière institution féodale d’Europe*, in *Revue de la recherche juridique*, 1996, 83 ff.

10 <http://www.estadistica.ad>

11 See Consell General de les Valls, *Estructura i perspectives de la economia andorrana. Estudi preparatori de planificació* edited by J.M. Bricall, C. Camps, J.M. Cullell, E.P. Farré-Escofet, A. Petitbó, J. Sogues i R. Tomàs, Barcelona, Edicions 62 s/a, 1975.

20. Andorra has committed to the two internationally agreed standards on transparency and exchange of information for tax purposes developed by the OECD: the exchange of information on request (EOI) and the automatic exchange of information (AEOI). Andorra has signed the OECD/Council of Europe Convention on Mutual Administrative Assistance in Tax Matters (the MAC) and has introduced the international spontaneous exchange of information in tax matters into domestic legislation.

21. Private foreign investment has become one of the strategic tools of Andorran policy to encourage economic growth. Andorra has liberalised the legal framework on foreign investment, and foreign participation in Andorran companies can now reach 100% of the capital.

22. In 2014, a personal income tax was introduced by Law 5/2014 of 24 April 2014 and has been levied since 1 January 2015.

23. It should be added that Andorra is not a member of the EU. Andorra entered into the United Nations in 1993 and into the Council of Europe in 1994.

24. Finally, one of the fundamental features of the country, which represents another evidence of its uniqueness, is that it has no army. Andorra has been at peace for over 700 years and has remained distanced from international conflicts.¹²

2.2. Institutional framework and political background

25. The 1993 Constitution defines Andorra as «a democratic and social independent State abiding by the rule of law» (Article 1.1). It proclaims that «Sovereignty is vested in the Andorran People, who exercise it through the different means of participation and by way of the institutions established in this Constitution» (Article 1.3) and that «The political system of Andorra is that of a parliamentary Co-principality» (Article 1.4).

26. Therefore, with the enactment of the Constitution Andorra got full independence from France and Spain, although the Co-princes continue as Head of State (Article 43), but the government retains the executive power. The two Co-princes serve coequally with limited powers that do not include veto over government acts. Article 48 of the Constitution states that each Co-prince must appoint a personal representative in Andorra. In addition both France and Spain have their own embassies. As Co-princes of Andorra, the President of France and the Bishop of Urgell participate in the negotiation of the international treaties with France and Spain which deal with internal security, defence, Andorran territory, diplomatic representation, and judicial or penal cooperation (Article 66). Some consider institution of the Co-princes as an anachronism, while the majority sees them as a link with Andorra's traditions and a way to balance the power of Andorra's neighbours.

27. The *Consell General* possesses legislative power, approves the budget of the country and controls the political activity of the government (Article 50).

28. Its 28 members are elected every four years by Andorran citizens over the age of eighteen according to a mixed system (Article 50)¹³. Fourteen councillors are elected according to the proportional system in a single constituency, on closed lists. Although the legislation does not set explicitly any electoral threshold, a party list must in practice obtain at least 7.14 % of votes in order to win a seat, taking into account the size of the electoral districts.

29. Fourteen councillors are elected by the majority system in the *Parròquies* (Parishes or municipalities). Every Parish has two seats, which favours strongly the small ones (e.g. in 2015 local elections Andorra la Vella has 7,538 electors, Canillo only 915¹⁴). The list that obtains more votes in a Parish gets both seats.

30. Political parties wishing to submit a list must obtain the signature of 0.5% of the voters in the constituency concerned. They must submit complete lists - fourteen candidates and three alternates for seats allocated according to the proportional system and two candidates and three alternates for

¹² http://lib.ohchr.org/HRBodies/UPR/Documents/Session9/AD/A_HRC_WG.6_9_AND_1_Andorra_eng.pdf

¹³ *Decret legislatiu del 26-11-2014 pel que s'aprova el text refós de la Llei qualificada del règim electoral i del referèndum.* See also <http://elections-en-europe.net/institutions/elections-en-andorre/>

¹⁴ <https://www.govern.ad/interior/item/6653-la-participacio-a-les-eleccions-comunals-es-del-60-8>

the seats awarded according to the majority system. It is not possible to be a candidate both for a seat on the proportional system and for a seat in the majority system. It is not possible to sit both in a municipal council and in the national parliament.

31. The *Sindicatura* is the ruling organ of the General Council and it is chaired by the *Síndic General* (Article 55).

32. Executive power is vested in the government, which has a four-year mandate. The government consists of the Head of government (*Cap de Govern*, elected by the General Council and appointed by the Co-princes) and ministers (appointed and dismissed by the Head of government)¹⁵.

33. The government conducts Andorra's national and international policy, administers the State and exercises regulatory powers (Article 72). It can also initiate bills as the General Council, three municipalities or a tenth part of the electoral roll (Article 58).

34. The government as a whole is politically answerable to the General Council: one fifth of the councillors may sign a reasoned motion of censure against the Head of government. If the motion is approved, the head of government shall be dismissed (Article 69).

35. Membership of the government is incompatible with membership of the *Consell General* (Article 78.2).

36. Jurisdictional power in Andorra is held by the *Batlles* (magistrates), the Magistrates' Court (*Tribunal de Batlles*), the Criminal Court (*Tribunal de Corts*) and the High Court of Justice (*Tribunal Superior de la Justícia d'Andorra*), and also by the respective presidents of those courts (Article 87). It has three jurisdictions: civil, criminal and administrative.

37. Jurisdictional power is organized pursuant to the *llei qualificada* on justice of 3 September 1993 (a *llei qualificada* is a law enacted by the absolute majority of the members of the *Consell General*, according to Article 57.3).

38. The Superior Council of Justice (*Consell Superior de la Justícia*) is the self-governing institutional body, which represents the judicial power. It consists of five members nominated one by each Co-Princes, one by the Head of government, one by the *Síndic General* and one by Magistrates and *Batlles*. Their term of office is six years, renewable once (Article 89). It imposes discipline, ensures the independence and smooth operation of the justice system — although it does not itself exercise judicial functions — and appoints the members of the Public Prosecutor's Office, upon the advice of the government (Article 93.2).

39. The Constitution introduces a Constitutional Tribunal (*Tribunal constitucional*), a specialized constitutional justice organ, the supreme interpreter of the Constitution, consisting of four members, two appointed by the Co-princes and two by the General Council, who hold office for eight years and are renewed in rotation every two years (Articles 95 and 96).

40. The Constitutional Tribunal has several competences and its jurisprudence, open and innovative, represents an important element contributing to the system's dynamism¹⁶. It judges, *a posteriori*, the constitutionality of laws and of legislative decrees, through indirect review (on an appeal lodged by the court responsible for applying the constitutionally dubious disposition) and direct review (on an appeal lodged, in this case, by the Head of government, one fifth of the members of the *Consell General*, or by three municipalities). The Tribunal decides indeed, *a priori*, on the constitutionality of international treaties, at the request of one of the Co-princes, one fifth of the parliamentarians or the Head of government; it adjudicates on conflicts of jurisdiction between the organs of the State (Co-princes, *Consell General*, government, *Consell superior de la Justícia*) and between the State and the *Comuns*). It decides on the constitutional *amparo* remedies; verifies the constitutionality of the parliamentary standing order on the basis of an appeal lodged by one fifth of the councillors; rends its opinion to the Co-princes, at the request of even one of them, when promulgating the law.

¹⁵ See *Llei de Govern*, 15 December 2000, Art. 2.

¹⁶ On the Constitutional Tribunal of Andorra see, specifically, C.Mondou, *Le Tribunal constitutionnel andorrane: la recherche d'une justice constitutionnelle exemplaire*, in *Annuaire de droit constitutionnel*, Paris, Economica, 1995, p. 35 ff.; F. Luhaire, *Le Tribunal constitutionnel de la Principauté d'Andorre*, in *Cahiers du Conseil constitutionnel*, 2000, n. 8, p. 39 ff.

41. The *Tribunal de Comptes* (Court of Auditors), organically linked to the *Consell General*, is an independent technical body which inspects public expenditure and also checks the transparency of the economic, financial and accounting management of the public administration, examining its compliance with all the legal provisions in force; it also issues reports and opinions on the accounts and economic and financial management of the Andorran public administration.¹⁷

42. In addition to the courts, which are the main guardians of human rights, the independent institution of the Ombudsman (*Raonador del Ciutadà*) was created in 1998¹⁸. The Ombudsman's main function is to defend and oversee the fulfilment and application of the rights and liberties included in the Constitution and to ensure that the public sector adheres to constitutional principles. The Ombudsman is independent from other institutions and provides its functions free of charge to interested persons. Complaints or claims may be lodged by any physical or legal person who can cite a legitimate interest, regardless of their nationality, age, status or residence. The *Raonador del Ciutadà* deals, *inter alia*, with individual complaints concerning activities of the government. The Ombudsman presents an annual activity report to Parliament.

43. Andorra's democracy is in the process of redefining its political party system.¹⁹ Three out of the five parties that dominated the political scene in past years have dissolved. After the general elections of 1 March 2015, four political parties (or coalitions) got seats in the Parliament of Andorra.²⁰

44. *Demòcrates per Andorra* (Democrats for Andorra) is a political party founded in 2011 by the merger of the Liberal Party of Andorra, the New Center (Christian Democrat), the Reform Party of Andorra and some elements of the Social-Democratic Party. Founded as a coalition for the legislative elections of April 2011, the Democrats for Andorra were transformed into a real political party in September 2011. They have now a majority in the Parliament, with 15 seats.

45. The *Liberals d'Andorra*, (Liberal Party of Andorra or Andorran Liberals) was founded in 1992 and follows a liberal political line. It is also a member of the European Liberal Democrat and Reform Party (ELDR). In 2011, it merged with the New Center to give birth to the Democrats for Andorra, but regained its autonomy for the 2015 parliamentary elections, when it obtained 8 seats.

46. *Junts* is a coalition between the *Partit Socialdemòcrata d'Andorra*, *Verds d'Andorra*, *Iniciativa Ciutadana i Independents*. The Social Democratic Party of Andorra (PS) was founded in 2000. It has a status of observer in the European Socialist Party. The Social Democrats won the legislative elections in 2009, forming the first left-wing government in the history of the Principality. The government, however, fell two years later and the Social Democratic Party, considerably weakened, returned to the opposition. It got 3 seats. *Socialdemocràcia i Progrés* was established in May 2013 and won two seats in 2015 elections.

47. The actual cabinet is led by Antoni Martí, the leader of the Democrats for Andorra, which also served as Prime Minister from 2011 to 2015.

48. At local level, in the seven municipalities, the last elections to elect the members of the municipal councils took place on 13 December 2015.

2.3. Previous reports and recommendations

49. This is the first monitoring visit by the Congress in Andorra since the ratification of the Charter in 2011.

¹⁷ Llei del Tribunal de Comptes, 13 April 2000.

¹⁸ Llei de creació i funcionament del Raonador del Ciutadà, 4 June 1998.

¹⁹ <http://www.countrywatch.com/Content/pdfs/reviews/B336M69Q.01c.pdf>

²⁰ <http://elections-en-europe.net/partis-politiques/partis-politiques-dandorre/>

3. HONOURING OF OBLIGATIONS AND COMMITMENTS

3.1. *The Constitution and the basic legislative framework*

50. The most peculiar institutional aspect of Andorra is its character of a highly decentralised State.²¹

51. At first sight, this might seem surprising in a country with a small surface area, but has historical reasons. From the beginning, Andorra was in fact born as a “federation” of six Parishes (Catalan: *parròquies*, singular – *parròquia*). A Parish, as its name indicates, is originally a religious constituency that as time passes becomes a political-territorial district. The governing and administrative bodies of Parishes, named *Comuns*, were entitled with competences that have been increasingly delegated to the first parliament, the Council of the Land, whose composition saw the presence, on a parity basis, of the *Comuns*’ representatives. The Council of the Land, created on 11 February 1419, was composed, until 1866 by the mayor (*Cònsol Major*) and by the deputy mayor (*Cònsol menor*), incoming and outgoing, of each of the six *Parròquies* of Andorra. From 1866 onwards, it was replaced by the General Council, composed of four representatives of each one of the six Parishes, named *consellers generals*.

52. Within today’s Constitution, the role of the Parishes, whose number has in time increased to seven (*Escaldes-Engordany* was created in 1978), is recognized by Article 1, paragraph 5, which states that «Andorra is composed of the Parishes of Canillo, Encamp, Ordino, la Massana, Andorra la Vella, Sant Julià de Lòria and Escaldes-Engordany».

53. Title VI (“Territorial Structure”) contains the discipline concerning the *Comuns* (Local Councils), “as organs of representation and administration of the Parishes”, which are granted rights of self-government “subject to the Constitution, the laws and tradition”. They “represent the interests of the Parishes, approve and carry out the communal budget, fix and develop their public policies within the bounds of their territory and manage and administer all Parish property, whether in the communal, public, patrimonial or private domain. Their ruling organs are elected democratically” (Article 79).

54. Local Councils have secondary legislative powers, administrative and financial autonomy delimited by qualified laws, at least in the matters directly listed in the Constitution, which fall among the sectors of the economic activities and of the territorial planning. In addition, State functions can be delegated to the Parishes by law (Article 80).

55. Financial autonomy is granted by Article 81, according to which: “In order ensure the economic capacity of the Local Councils, a Qualified Law shall determine the transfer of funds from the General Budget to the Local Councils, and guarantee that a part of these funds be apportioned in equal quantities to each of the Parishes, and the other part to be shared proportionally on grounds of population, extension of their territory and other indicators”.

56. Jurisdictional disputes (conflicts) between the State and the *Comuns* are settled by the Constitutional Tribunal (Article 82). According to Articles 83 and 99.1, appeals of unconstitutionality against laws or statutory rules may be lodged by three Local Councils. In addition, three *Comuns* have the legislative initiative (Articles 83 and 58.2).

57. Historically, in turn, some Parishes are divided into smaller districts, the *Quarts* (or *Veïnats* for the Canillo Parish), with their own administrative bodies, recognized by Article 84 of the Constitution, stating that laws must consider custom and usage to determine their jurisdiction, as well as their relationship with the *Comuns*. Today the *Quarts* and *Veïnats* have a typically symbolic role.

58. As previously indicated, an important aspect of the constitutional autonomy of the Parishes resides in the composition of the *Consell General*, i.e. the parliament of Andorra. Although Andorrans constituents did not choose a bicameral parliament, the Parishes are directly represented within the

²¹ *Andorra has even been defined as a “quasi-federal State”*: see T. Groppi, *Una costituzione moderna per uno stato feudale: il caso del Principato di Andorra*, in G. Guidi editor, *Piccolo Stato, costituzione e connessioni internazionali*, Torino, Giappichelli, 2003, pp.25-33; some authors rather refer to “decentralized unitary state”, see C. Mondou, *La Constitution andorrane du 28 avril 1993: la disparition de la dernière institution féodale d’Europe*, cit., p. 96, who notes that fully-fledged federal projects were discussed several times, without ever being approved within the *Consell General*.

unicameral national parliament, since Article 52 disposes that half of the general councillors are elected, in an equal number, by each Parish, whereas the other half is elected on a national constituency basis.

59. Article 50, for its part, explicitly states that the General Council “expresses the mixed and apportioned representation of the national population and of the seven Parishes”.

60. Major consequences arise from this composition of the General Council. First of all, for the constitutional revision: according to Article 106, any amendment to the Constitution must be approved by the *Consell General* by a majority of two thirds, thus enabling Parish representatives to stop any amendment proposal.

61. Furthermore, the approval of some *lleis qualificades* requires the favourable vote of the absolute majority of the *Consell general's* members elected within the Parish constituency (Article 57.3); these laws are namely the law on the electoral system and the referendum (also regulating Parish elections and form of government) and the law on the *Comuns'* competences and on the transfer of resources to the latter.²²

3.2. The local government system

62. Andorra consists of seven Parishes. Until relatively recently, it had only six Parishes (Canillo, Encamp, Ordino, la Massana, Andorra la Vella, Sant Julià de Lòria); the seventh, Escaldes-Engordany, was created in 1978.



Source: *Andorra in figures 2015*

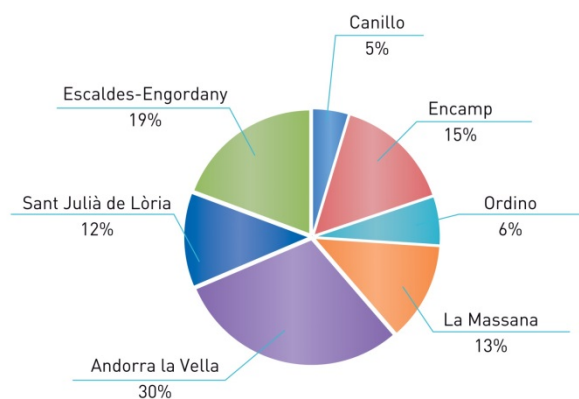
63. Andorra la Vella is the capital of Andorra. Some Parishes have a further territorial subdivision; Ordino, La Massana and Sant Julià de Lòria are subdivided into *Quarts* (quarters), while Canillo is subdivided into 10 *Veïnats* (neighborhoods). Those mostly coincide with villages, which exists in all Parishes.

²² See C. Mondou, *La Constitution andorrane du 28 avril 1993: la disparition de la dernière institution féodale d'Europe*, cit., p. 99.

Parish	Area (km ²)	Population (in 2016)
Canillo:	106,305	4 360
Encamp:	84,695	12 338
Ordino:	85	4 810
La Massana:	65	10 571
Andorra la Vella:	31,750	22 128
Sant Julià de Lòria:	63,500	9 536
Escaldes-Engordany:	31,750	14 521
Total	468	78 264

Population by Parish²³

The population is concentrated mostly in the central Parishes, Andorra la Vella being the most populated.



Source: Ministry of Finance; Department of Statistics.

Source: Andorra in figures 2015

64. The representative and administrative body of each Parish is called *Comú*, which acts through its Council. The Constitution defines *Comú* as public corporations with a legal personality and local legislative powers, subject to the law, by way of by-laws, regulations and decrees (Article 79).

65. Each *Comú* determines the size of its Council, based on population. The number of members of *Comuns* varies between 10 and 14 councillors.²⁴

²³ http://www.estadistica.ad/serveiestudis/web/banc_dades4.asp?lang=4&codi_tema=2&codi_divisio=9&codi_subtemes=8

²⁴ On these aspects of the organizations of the *Comuns* see *Llei qualificada del règim electoral i del referèndum*, 3 September 1993 and its amendments: *Llei qualificada de modificació dels articles 6.1 i 7.1 de la Llei qualificada del règim*

66. All council members are elected, for four years, in single multi-member districts, consisting of the whole Parish, using closed lists. Half of the seats are allocated to the party that received most of votes. The other half of the seats is allocated proportionally to the votes obtained by the different parties, including the list that has won. With this system, the winning party obtains an absolute majority.

67. A *Cònsol major* (mayor) and a *Cònsol menor* (deputy mayor) are elected among the councillors (*Art. 73 Llei qualificada del règim electoral i del referèndum*) for four years, unless a motion of censure, that includes a candidate mayor, is approved by the absolute majority of the Council. The regulatory power belongs to the Council, whereas the mayor and the deputy mayor are entitled with the executive functions. All the *Comuns* have a *Junta de govern* (council of government), consisting of members appointed and dismissed by the council at the request of the mayor. There is a limitation of two consecutive mandates for both, the mayor (and deputy mayor), but not for the councillors.

68. The local governments are quite powerful in Andorra as they have control over large blocks of communal land.

69. The municipalities are also responsible for conducting regular public consultations, managing electoral procedures in the Parish, performing local planning, creating and maintaining public services, managing the use of natural resources.

Basic powers of local authorities are defined in the Constitution. In accordance with Article 80, the Local Councils, within the framework of their administrative and financial autonomy, have their powers delimited by a qualified law, at least in the following matters:

- Population census;
- Electoral roll. Participation in the management of the electoral procedure and administration under the terms provided for by the law;
- Popular consultations;
- Commerce, industry and professional activities;
- Delimitation of the communal territory;
- Property of their own, and of the communal public domain;
- Natural resources;
- Cadastral register;
- Local planning;
- Public thoroughfares;
- Culture, sports and social activities;
- Communal public services.

70. Other matters within the jurisdiction of the State may be delegated to the Parishes by law (Article 80.3).

71. The Qualified Law on local competences has been adopted on November 4, 1993.²⁵ According to this law, the residual competences, i.e. those that are not assigned or delegated to the municipalities, are up to the State (Art. 3.3). The State legal provisions apply in case there is a void of local regulations (Art. 3.4).²⁶

72. No controls are provided on local acts by the government, except for the possibility to be challenged in ordinary courts. In case of conflicts of norms, the State norms prevail, with the possibility for the municipality to lodge an appeal to the Constitutional Tribunal (Art. 5). During the monitoring visit, rapporteurs were told that only a few conflicts have been raised, both by the government and by the municipalities (13 in total), with the last one dating back to 2009.

electoral i del referèndum (1999); *Llei de modificació de la Llei qualificada del règim electoral i del referèndum* (2000); *Llei 28/2007, del 22 de novembre, qualificada de modificació de la Llei qualificada del règim electoral i del referèndum*; *Llei 9/2008, del 12 de juny, qualificada de modificació de la Llei qualificada del règim electoral i del referèndum, del 3 de setembre de 1993*; *Llei 7/2014, del 24 d'abril, qualificada de modificació de la Llei 28/2007, del 22 de novembre, qualificada de modificació de la Llei qualificada de règim electoral i del referèndum*.

²⁵ *Llei qualificada de delimitació de competències dels Comuns, 4 November 1993, amended by Llei 6/2007, del 22 de març, qualificada de modificació de l'apartat 5 de l'article 9 de la Llei qualificada de delimitació de competències dels Comuns, de 4 de novembre de 1993.*

²⁶ Art. 3.3: « Totes les competències que no siguin o previstes per aquesta Llei o les delegades per altres lleis, corresponen a l'Estat ». Art. 3.4: « L'ordenament jurídic estatal s'aplica supletòriament al propi de cadascun dels Comuns ».

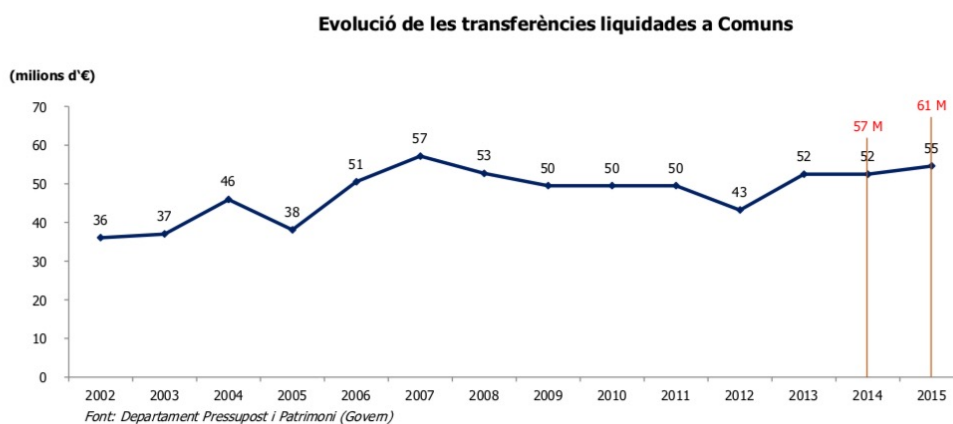
73. The *Llei qualificada de transferències als Comuns* was adopted on 4 December 1993. Since then it has been amended several times.²⁷ The most important amendments affected Article 7, according to which, originally, 85% of the transfer had to be spent for investments, whereas only the 15% was for general expenditures. The threshold was lowered to 80% in 2007 and the debt relief was introduced as possible destination of the transfer, in addition to the investments. This limitation was removed in 2015.²⁸ It was a historical claim of the municipalities which became reinforced after the financial crisis, when the municipalities saw the incomes deriving from their own resources reduced, due to the impact of the crisis on constructions and on real estate. However, the municipalities reacted very well to the crisis, as they managed to reduce their expenditures: after some years of deficit, they now have a surplus.

74. Article 3 of the *Llei qualificada de transferències als Comuns* establishes the criteria for the State to calculate transfers to local authorities, that should be the higher amount between: a) 18% of all the effective fiscal revenues of the previous year; b) 30% of the revenues on some specific taxes (Impost de Mercaderia Indirecte, taxes d'entrada de mercaderies, i de la devolució de la tarifa exterior comú – TEC- per part de la Comunitat Econòmica Europea).

75. It sets also the criteria for the allocation of transfers to the seven municipalities: 50% in equal parts; 35% in proportion to the number of inhabitants; 15% in proportion to the territory.

Evolució transferències de Govern a Comuns

- Un detall de l'evolució de les transferències liquidades per Govern i rebudes pels Comuns, d'acord amb la Llei de transferències (LQTC) durant el període comprès entre l'exercici 2002 i l'exercici 2015, és com segueix:



Source: Crowe Horwath Alfa Capital 2017

76. At the end of the 2013 fiscal year, a verbal agreement between the municipalities and the government established the transfer for 2014 at the amount of 52.5 million Euros (otherwise municipalities would have received 57 million). A written agreement signed on 28 April 2014 established the transfer for 2015 and 2016 at 54.6 million (it would have reached 61 million).

77. At the moment of the visit of the Congress delegation, a tripartite negotiation process on reform, among the parliament, the government and the municipalities, that has been lasting for three years, was about to be finalised. The purpose of the reform is to update the entire system of transfers, by

27 Llei qualificada de transferències als Comuns, 4 December 1993, amended by: Llei qualificada 11/2003, del 27 de juny, de modificació de l'article 7 de la Llei qualificada de transferències als Comuns; Llei 7/2007, del 17 de maig, qualificada de modificació de l'article 9 de la Llei qualificada de transferències als Comuns, de 4 de novembre de 1993; Llei 10/2007, del 17 de maig, qualificada de modificació de la Llei qualificada 11/2003 de modificació de l'article 7 de la Llei qualificada de transferències als Comuns, del 27 de juny; Llei 15/2015, del 3 de desembre, qualificada de modificació de la Llei 10/2007, del 17 de maig, qualificada de modificació de la Llei qualificada 11/2003, de modificació de l'article 7 i de supressió dels articles 8 i 9 de la Llei qualificada de transferències als Comuns, del 27 de juny.

28 See Llei qualificada 15/2015, del 3 de desembre,

adapting it to the factual competences of municipalities and to the new framework of State taxation, that was changed after the introduction of a full system of direct taxes,²⁹ like the income tax and the tax on corporation. In addition, the criteria of distribution of transfers among municipalities are going to be revised, taking into account new parameters and on the basis of the principle of solidarity in favour of the municipalities that have fewer incomes from local taxes.

78. During the consultation procedure, the delegation was informed that two bills had been tabled in the *Consell General*, one to amend the Law on competences and the other to amend the Law on transfers to the *Comuns*. According to the government, if these two qualified laws are approved, the *Comuns* will receive a sum of €55 million in 2018 and this amount will be reassessed every year on the basis of the annual index for the rate of change in GDP. The draft Law on transfers also provides that transfers will be allocated on the following bases:

- for general funds (80% of the amount): 31% in equal parts between the *Comuns*, 26% in proportion to the number of inhabitants, 20% in proportion to the surface area, 16% in proportion to the number of children and elderly people and 7% in proportion to the number of nights reserved by tourists in hotel rooms;
- for sustainable redistribution funds (the remaining 20%): one-third will be allocated to *Comuns* earmarking some of the transfers for economic, social or environmental sustainability investments, one-third to those honouring their commitments in this respect and one-third for solidarity and *Comuns*' specific challenges.

79. Local authorities have also their own taxes since in accordance with the Constitution, the tax powers are distributed between the municipalities and the State. Article 80.2 of the Constitution establishes that within the framework of the State's power to impose taxes, the aforementioned Qualified Law determines the economic and fiscal faculties of the Local Councils required in the exercise of their jurisdiction. These faculties shall deal at least, with the use and exploitation of natural resources, traditional tributes, and with the taxes for communal services, administrative licences, establishment of commercial, industrial and professional activities and real estate.

80. The local authorities in each Parish have been authorised to raise general taxes as well as establish, administer and raise supplementary taxes.

81. The Qualified Law on the delimitation of competences of municipalities of 4 November 1993³⁰ determined local tax authority for the following types of taxes:

- Traditional tax for residents;
- Property tax;
- Income tax expense of tenants;
- Tax on conducting business, entrepreneurial and professional activities;
- Tax on construction.
- Capital transfer taxes (shared with the government).

82. On 27 June 2003 the General Council approved the Municipal Finance Law 10/2003 (*Llei de les finances comunals*) for self-regulations regarding taxation and financial management, establishing an adequate framework allowing the *Comuns* to create their own tax and financial jurisdiction and unify their tax framework.³¹

83. This Law also regulates the *Comuns* borrowing thresholds, it sets maximum limits and control mechanisms and contributes to a more stable and financially balanced public sector in Andorra. The Law was amended by Law 32/2012 of 22 November, which introduces selective modifications in order to take into account the current needs and requirements of the municipalities.

²⁹ The taxation system²⁹ in the Principality of Andorra, historically based on indirect taxation, has been in the process of changing for quite some time now, with the aim of achieving a tax system that is comparable with those of the EU and OECD countries (<https://all-andorra.com/tax/>).

³⁰ <https://all-andorra.com/tax/>

³¹ Llei 10/2003, del 27 de juny, de les finances comunals, amended by: Llei 14/2007, del 20 de setembre, de modificació de la Llei 10/2003 de les finances comunals, del 27 de juny; Llei 32/2012, del 22 de novembre, de modificació de la Llei 10/2003, del 27 de juny, de les finances comunals.

84. The Municipal Finance Law establishes the tax jurisdiction of the municipalities with regard to the following taxes:

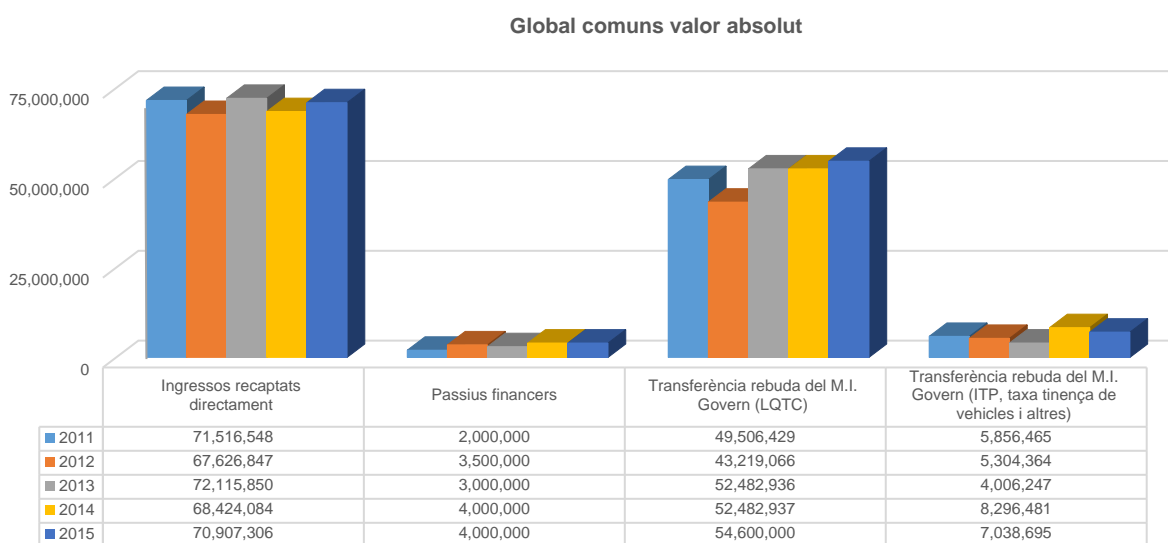
- Traditional household taxes *Foc i Lloc* (meaning hearth and home);
- Taxes for the rendering of communal services;
- Taxes and rights on government documentation and authorization;
- Tax on commercial, industrial and non-commercial professional activities;
- Real estate tax on buildings and land, and real estate transactions registered in the property registry of the municipalities;
- Participation of the municipalities in the tax on vehicle ownership, which is governmental tax based on the number of vehicles registered in the government register.

85. Consequently, taxes are not uniformly regulated in the various Parishes, which can even decide to not apply some local taxes.

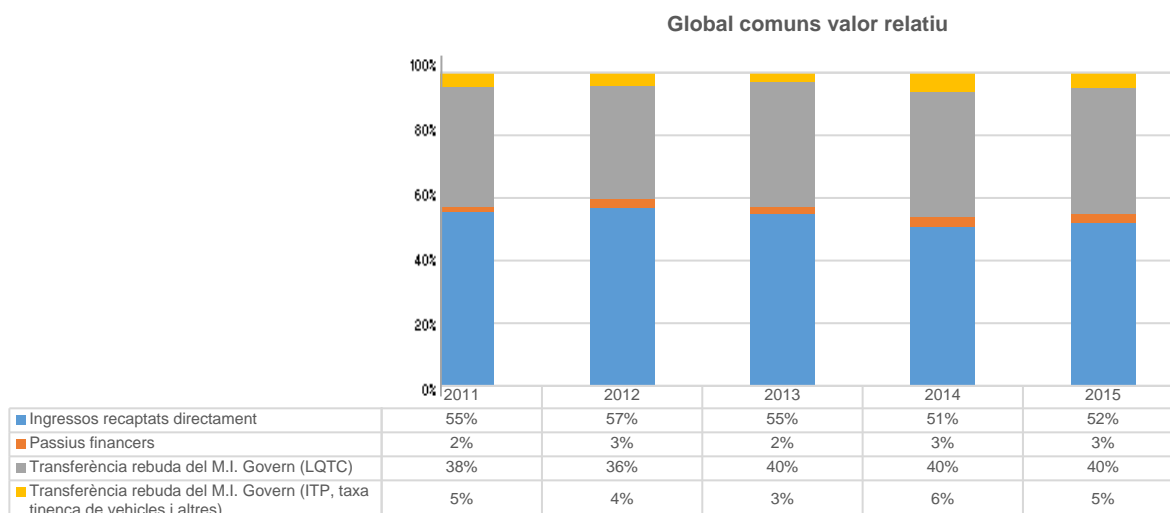
86. More recently, the *Llei 32/2014, del 27 de novembre, de sostenibilitat de les finances públiques i d'estabilitat pressupostària i fiscal* introduced principles on the budgetary sustainability, with the purpose to assure a balanced budget for all the public sector, including local authorities. The law limits the amount of debts and introduces a medium to long term budget approach, obliging to a budgetary planning.

Global Comuns	2011		2012		2013		2014		2015	
Total d'ingressos liquidats	128.879.442	100%	119.650.277	100%	131.605.033	100%	133.203.502	100%	136.546.001	100%
Ingressos recaptats directament	71.516.548	55%	67.626.847	57%	72.115.850	55%	68.424.084	51%	70.907.306	52%
Passius financers	2.000.000	2%	3.500.000	3%	3.000.000	2%	4.000.000	3%	4.000.000	3%
Transferència rebuda del M.I. Govern (LQTC)	49.506.429	38%	43.219.066	36%	52.482.936	40%	52.482.937	40%	54.600.000	40%
Transferència rebuda del M.I. Govern (ITP, taxa tinença de vehicles i altres)	5.856.465	5%	5.304.364	4%	4.006.247	3%	8.296.481	6%	7.038.695	5%

Source: Tribunal de comptes, elaboració pròpia a partir d'informació dels Comuns (Imports en euros)



Source: Tribunal de comptes, elaboració pròpia a partir d'informació dels Comuns (Imports en euros)



Source: Tribunal de comptes, elaboració pròpia a partir d'informació dels Comuns (Imports en euros)

87. As a result of the local taxes and of the State transfers, the status of the revenues of the 7 municipalities is deeply differentiated. State transfers amount to 54% of all local revenues in Canillo; 32% in Encamp; 64% in Ordino; 54% in La Massana; 29% in Andorra la Vella; 54% in Sant Julià de Lòria; 35% in Escaldes-Engordany.³²

3.3. Status of the Capital city

88. In accordance with Article 2.3 of the Constitution, Andorra la Vella is the Capital of the State. The settlement of Andorra la Vella has been the principal city of Andorra since 1278 when the French and the Episcopal co-princes concluded an agreement on joint suzerainty.

89. As of 2016, the Parish has a population of 22,128 and the urban area, which includes Escaldes-Engordany plus satellite villages, over 40,000 inhabitants. It is also the economic capital of the country, providing many services to the companies, tourists, schools, ministries.

90. During the meeting with the Mayor and the deputy Mayor of Andorra la Vella, the rapporteurs were told that, according to them, the role of Andorra la Vella as capital city is not sufficiently taken into account by the State, notably as regards the distribution of the State transfers. The territorial considerations weigh too heavily in this process which results in an unfair distribution of financial resources among the municipalities. The distribution criteria do not take into account that Andorra la Vella as Capital city, offers many services of national interest, such as schools and other cultural institutions, the only Olympic swimming pool and stadium, an important conference centre etc. Some of them are mostly at the expenses of the municipal budget.³³ For this reason, the Capital city works with the government and the parliament to modify the existing legislation in order to receive a special transfer from the Government, in the context of the reform of the laws on transfers and competences.

91. During the consultation procedure the government emphasised that in no respect did it want to weaken the position of the capital, although it did not express itself clearly on the question of granting a status as capital in the institutional sense of the term.

³² Data on the 2015 budget, provided by Crowe Horwath Alfa Capital report.

³³ Detailed figures have been provided to the rapporteurs by the Mayor on the costs for the municipality of the following institutions: Institut Estudis Musicals; Escola d'Art; Escola Teatre i Dansa; Estadi Comunal; Centre Esportiu Serradells.

4. ANALYSIS (ARTICLE BY ARTICLE) OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER

4.1. Article 2: Foundation of local self-government

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

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

92. Consistently with a long tradition of local self-government deeply rooted in the history of Andorra (actually the Parishes are at the origin of the Principality), the principle of local self-government is recognized in the 1993 Constitution and the Qualified Laws, especially in the *Llei qualificada de delimitació de competències dels Comuns*.

93. Article 79.1 of the Constitution provides that “The Local Councils, as organs of representation and administration of the Parishes, are public corporations with legal status and with local regulatory powers subject to law by means of ordinances, regulations and decrees. Within the area of their jurisdiction subject to the Constitution, the law and tradition, the Local Councils function under the principle of self-government, recognised and guaranteed by the Constitution”.

94. As for the legal status of the European Charter of local self-government, Andorra ratified the Charter on 23^r March 2011. According to Article 3, paragraph 4, of the Constitution, “Treaties and international agreements take effect in the legal system from the moment of their publication in the Official Gazette of the Principality of Andorra and cannot be amended or repealed by law”. The conventions, therefore, takes precedence over domestic law and are enforceable in Andorran courts.

95. No data has been found on the impact of the Charter on the legal system of Andorra. According to the President of the Constitutional Court who met with the rapporteurs, the Charter has not been mentioned by the Court in its rare decisions on local self-government. The Charter is not mentioned either in the Qualified Laws on local self-government which have been drafted in 1993, well before the ratification of the Charter.

96. Express reference is made to the Charter in the explanatory memorandum to the Order on organisation and functioning adopted by the *Comuns* on 24 November 2011, in that it establishes the *Comuns* right to associate (in accordance with Article 10 of the Charter – see below, paragraph 149).

97. The rapporteurs consider that the requirements of Article 2 of the Charter are fully respected in Andorra.

4.2. Article 3: Concept of local self-government

Article 3 – Concept of local self-government

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

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

Article 3.1: Concept of local self-government

98. The main question that must be addressed under this heading is whether, in the present situation, Andorran municipalities do regulate and manage a “substantial share of public affairs under their own responsibility and in the interests of the local population”. This provision of the Charter requires an assessment which takes into account a rather “subjective” and relative nature of the concept of

“a substantial share of public affairs”, since no official or universal method of measuring such substantial character has yet been developed. The question therefore must be addressed considering the historical evolution, the culture and the constitutional traditions of the country under analysis.

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

100. Local government in Andorra has fewer functions, compared to other countries. According to the information provided to the rapporteurs, municipalities are responsible for approximately 22% of the public sector. Education and health are State competences. The most important local competences are population census, local planning, municipal roads and public domain. Municipalities also contribute to touristic infrastructures. Social affairs are a State competence, but municipalities are developing preschool services and services for elderly people and extra-curricular activities.

101. Taking into account the specificity of Andorra, as a State with a small surface area, and considering that none of the interlocutors complained about the scope of local competences, rapporteurs consider that the Constitution and the laws entrust municipalities with a series of competences and powers that can be assessed as “fair” or “reasonable” in the sense of Article 3.1 of the Charter.

Article 3.2: Municipal form of government

102. As for article 3, paragraph 2, the right to self-government is exercised in Andorra by elected bodies, the *Comuns*. All the members are elected, for four years, in single multi-member districts, consisting of the whole Parish, using closed lists. Half of the seats are allocated to the party that received most of votes. The other half of the seats is allocated proportionally to the votes obtained by the different parties, including the list that has won. With this system, the winning party obtains an absolute majority. A *Cònsol major* (mayor) and a *Cònsol menor* (deputy mayor) are elected among the councillors for four years: they are usually members of the winning party. They must resign if they are affected by a motion of censure, which includes a candidate mayor, approved by the absolute majority of the Council.

103. It should be mentioned that during the meetings the rapporteurs heard complaints of the limited role of the opposition and minorities in the local councils in practice due to the specificity of electoral system according to which 30 - 40% of votes is sufficient to obtain the absolute majority of seats. The second most voted list, with 25-30% of votes, could elect only one or two representatives. The delegation was informed that the limited number of councillors makes the work of the opposition difficult since it does not have any budget and is unable to participate in all the committees. In addition, some meetings can be scheduled on a very short notice, as part of a procedure authorised by the Order on organisation and functioning adopted by the *Comuns* in 2011. Rapporteurs were told that a law, establishing some basic principles on the functioning of the *Comuns*, would be necessary.

104. During the consultation process the government informed the rapporteurs, with regard to the lack of representation of minority parties in the *Comuns*, that the representation of these parties is established directly by the Qualified Law on the electoral system and referendums. Any amendment to this law must be approved by a dual majority of both the councillors elected to parishes and the councillors elected at national level. The government also stated that the municipal election system established by the Qualified Law on the electoral system and referendums of 1993 has brought stability to the *Comuns* ever since and has made it possible for power to change hands regularly between the political parties.

105. The rapporteurs consider that the system currently in force in Andorra meets the requirements of Article 3.2, whose purpose it is to guarantee the exercise of local self-government by democratically elected bodies.

106. However, the rapporteurs consider it necessary for the remarks they heard during their visit to be taken into consideration so as to improve the effectiveness and smooth running of councils.

4.3. Article 4: Scope of local self-government

Article 4 – Scope of local self-government

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

107. Article 4, paragraph 1 of the Charter requires that the basic powers and responsibilities of local authorities are prescribed by the constitution or by statute. Article 80 of the Constitution of Andorra lists the matters in which, at least, the Qualified Law should recognize powers and responsibilities to the municipalities. By way of implementation of this constitutional provision, Article 4 of the Qualified Law on local competences adopted on 4 November 1994 determines the competences of the *Comuns*.

108. As for Article 4, paragraph 2 of the Charter, according to which “Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority”, the Qualified law on local competences states that the competences neither assigned nor delegated to the municipalities belong to the State (Art. 3.3). Nevertheless, in practice *Comuns* seem to be free to address other needs of their population. Rapporteurs were told that municipalities assumed new competences outside the listed matters, for example for elderly people or preschools. No complaints have been raised by local authorities on their scope of competences during the meetings.

109. Article 4, paragraph 3 of the Charter articulates the general principle of subsidiarity. It establishes that “Public responsibilities shall generally be exercised, in preference, by those authorities that 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”. In the opinion of the rapporteurs, the size of the country has to be taken into account when assessing the application of this provision, during the visit no issues were raised with regard to the principle subsidiarity.

110. Article 4, paragraph 4 raises the problem of overlapping responsibilities. In the interest of clarity, it provides that “Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law”. This principle seems fully respected in Andorra: in the exercise of their competences, the *Comuns* enjoy full normative, executive and enforcing power, as well as financial and tax authority.

111. Article 4, paragraph 5 deals with delegated powers, asking for local authorities to be allowed discretion in the exercise of those powers. This provision does not raise any special issues in Andorra either.

112. Finally, Article 4 paragraph 6 of the Charter provides that “local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly”. During the meetings all the interlocutors

evaluated the relationship between the State and the municipalities as very smooth and fair. Although a formal mechanism of consultation does not exist, the municipalities are always consulted by the government and all important decisions (including the ongoing reform of the competences and the financial transfers) have been duly negotiated with the municipalities. The size of the country also has to be taken into account since the proximity of the central authorities certainly facilitates informal ways of consultations. The delegation observed that the prime minister is very accessible to local representatives although no specific Ministry has the competence for local government. In addition, most of the national politicians have a record as mayors or local councillors and are very much familiar with local issues and needs.

113. Therefore, the rapporteurs consider that in practice local authorities of Andorra are consulted in due time and in an appropriate way on all matters that concern them directly. At the same time they would suggest entrenching the consultation requirements in the law in order to give a stronger guarantee to local authorities and secure the maintenance of consultations on the same systematic level in future.

114. In conclusion, rapporteurs believe that, taking into account the specificities of Andorra, Article 4 of the Charter can be considered as generally respected.

4.4. Article 5: Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

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

115. This article requires that the local communities are consulted in case of changes in local authorities' boundaries.

117. In Andorra, changes to local authorities' boundaries may be made on the basis of agreements between *Comuns*, final court rulings or international treaties signed by the Principality of Andorra which apply by extension to the *Comuns*.

118. In the case involving the Parish of Escaldes-Engordany, this Parish was established by division from the Parish of Andorra la Vella by a decree of the Co-princes on 14 June 1978, after the local population had been asking for 30 years the institution of a *Comù*.

119. Finally, the fact that the Parishes are provided for directly by the Constitution implies that their amalgamation requires a constitutional amendment, according to the procedure set out in Article 106, which introduces the requirement of a national referendum: "The revision of the Constitution shall require the approval of the General Council by a majority of two-thirds of the members of the Chamber. Immediately after its approval the proposal shall be submitted to ratification in a referendum".

120. Taking into account the specificity of Andorra, the rapporteurs consider that Article 5 is respected.

4.5. Article 6: Appropriate administrative structures and resources

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

1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.

2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

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

122. The Qualified Law on the competences of local authorities assigns *Comuns* the power to establish their own internal organisation and functioning, in accordance with the Constitution, general laws and customs and traditions (Art. 4.13). In 1995 the *Comuns* had already adopted common rules on their functioning (*Reglament de funcionament dels Comuns*). In 2011 they brought them up to date by means of an order on organisation and functioning which applies to all the *Comuns*.

123. As regards article 6, paragraph 2 of the Charter, Andorran municipalities have the power and the autonomy to recruit high-quality staff on the basis of an open competition. However, rapporteurs were told by the local authorities of Andorra la Vella that the municipality is overstaffed (with 478 employees) and that 45% of the municipal budget is spent on staff. The mayor would like to reduce this expenditure, but she is unable to do it, as the staff has the status of civil servants. Therefore, employees cannot be dismissed, and the only remaining possibility is to not replace them after retirement.

124. The rapporteurs consider that the requirements of Article 6 of the Charter are respected in Andorra.

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

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

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

125. Article 7, paragraph 1, aims at ensuring the free exercise of functions by local elected representatives. To this purpose, Article 7, paragraph 2, refers to an appropriate financial compensation.

126. No particular issues were raised in this respect during the visit. Under the Order on the organisation and functioning of the *Comuns*, the mayor and deputy mayor, as well as other members of the *Junta de Govern* are entitled to a monthly financial compensation. The other councillors enjoy a financial compensation for their effective participation in the meetings of the council and its committees. The minimum is fixed by the *Reunió de cònsols de les valls*. Rapporteurs have been told that each municipality establishes the financial compensation to elected representatives at the beginning of each term after elections and that the amount is appropriate.

127. As for Article 7, paragraph 3, according to which “Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles”, the incompatibilities are determined by Articles 16, 17, 63 and 74 of the *Llei qualificada del règim electoral i del referèndum (Qualified Law on electoral system and referendum)*.

128. The rapporteurs conclude that the requirements of Article 7 of the Charter are fully respected in Andorra.

4.7. Article 8: Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities' activities

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

129. Article 8 of the Charter concerns the supervision of local authorities. In Andorra, Article 82.2 of the Constitution provides that “The acts of the Local Councils shall be directly enforced through the means established by law. Against such acts administrative and jurisdictional appeals may be lodged with the purpose of controlling their conformity with the legal system”. A similar provision is included in Articles 5 and 6 of the Qualified Law on competences.

130. As result of those provisions, the Government has no supervisory power on the activities of the Parishes. Only the courts, the Constitutional Tribunal and the *Tribunal de comptes* – which do not depend on the government – are entitled to control the activity of the municipalities.

131. In particular, the Constitutional Court decides the conflicts “arising from the interpretation or exercise of jurisdiction between the general organs of the State and the Local Councils” (Article 82.1).

132. The *Tribunal de comptes (Court of Auditors)* is responsible for the financial audit of each municipality as regards the regularity and compliance with the standards of the public administration and the law (legality control). It also prepares reports on the expenditures addressed to the parliament and to the municipalities, which have to implement the recommendations. If crimes are detected, they are notified to the prosecutor’s office.

133. Law no. 32/2014 of 27 November 2014 on fiscal sustainability sets out a ceiling for indebtedness and strengthens internal controls, widening the powers of the internal auditors. The Law will be applied to municipalities starting from 2019, when the term of the councils elected in 2015 will end.

134. The rapporteurs consider that the requirements of Article 8 of the Charter are fully respected in Andorra.

4.8. Article 9: Financial resources

Article 9 – Financial resources of local authorities

- 1 Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
- 2 Local authorities' financial resources shall be commensurate 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.

135. Article 9 of the Charter is aimed at ensuring that local authorities are entitled to sufficient financial resources. The legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out. Andorra has not ratified Article 9, paragraph 2; Article 9, paragraph 5 and Article 9, paragraph 8 of the Charter.

136. In Andorra, the financial resources of the municipalities are based on their own taxes, taxes shared with the government, and on transfer of funds from the General Budget. The principles on financial resources are established directly by the Constitution (Articles 80.2 and 81) and developed throughout several Qualified Laws and ordinary laws.

137. At the moment of the visit of the Congress delegation, a tripartite negotiation process on a reform, lasting three years and involving the parliament, the government and the municipalities, was about to be finalised. The purpose of the reform is to update the entire system of transfers, through adapting it to the competences of municipalities and the new framework of State taxation, in place since the introduction of a full system of direct taxes, such as the income tax and the tax on corporation. In addition, the criteria of distribution between municipalities are planned to be revised, taking into account new parameters and based on the principle of solidarity introduced in favour of the municipalities that have fewer revenues from local taxes. The less economically advantaged Parishes would be compensated, as they are less able to generate their own resources. To this purpose, some asymmetries, that have an impact on the budget, have been identified, linking the expenditures for competences to the transfer of funds from the State.

138. Article 9.1 seeks to ensure that local authorities are not deprived of the power to determine expenditure priorities. From 1993 to 2015 some limitations did exist on the use of financial transfers: only 20% was for general expenditures, while 80% had to be used for investments or debt relief. In 2015, this limitation was removed and as a result the autonomy of expenditure of the municipalities increased.

139. Article 9.3 establishes the principle that part of the resources of local authorities shall derive from local taxes, whereas Article 9.4 establishes the principle of the diversification of the resources. The rapporteurs consider that both principles are respected in Andorra, as a relevant part of the financial resources of municipalities derives from their own taxes. The fact that local authorities can determine the rate of those taxes allows the income to keep pace with the evolution of the costs.

140. Article 9.6 provides that local authorities shall be consulted during the preparation of the legislation on the redistribution of resources. The rapporteurs believe that this provision is fully respected in Andorra, taking into account the reduced dimension of the country, the smooth relationship at institutional and personal level between the national government and the municipalities and the representation of the Parishes in the parliament. The currently discussed reform of the transfer and competences which is the result of a long process of tripartite negotiations provides for an additional evidence of consultations.

141. As for Article 9.7, according to which block grants are preferable to earmarked grants, in Andorra the transfers are based on objective criteria and they are not bound to any specific destination.

142. As for the non-ratified provisions of the Charter, the rapporteurs are convinced that the on-going reform on transfers and competences, properly consulted with local authorities, will be implemented with due respect for the relevant principles of the Charter and that no obstacles will exist to the ratification of paragraphs 2 and 5 of Article 9 after the enactment of the reform.

143. Article 9.2 establishes the principle of an adequate relationship between financial resources and competences: although no elements have been provided till now to show that the actual level of financial resources is not commensurate with the responsibilities of Andorran municipalities, the reform under discussion is aimed at addressing this issue, removing any residual doubts on the compliance with Article 9.2.

144. Article 9.5 sets the principles of solidarity, referring to financial equalisation procedures to protect the financially weaker local authorities. Rapporteurs were told by all the interlocutors, both at national and municipal level, that the introduction of the financial solidarity principle is one of the main points of the reform under discussion. Once the reform is approved, no obstacle will remain to the ratification of this paragraph of the Charter.

145. The possibility for Andorra to ratify Article 9.8 is more complicated, as there is no national capital market in Andorra and local authorities are too small to have access to the international financial market.

146. The rapporteurs consider that the requirements of Article 9 of the Charter are respected in Andorra. As for the non-ratified provisions, they consider that very little is required to enable ratification of paragraphs 2 and 5 of Article 9. Consequently, the rapporteurs encourage Andorran authorities, once the reform in process is finally approved, to ratify these provisions.

4.9. Article 10: Local authorities' right to associate

Article 10 – Local authorities' right to associate

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

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

148. In this regard, the specificity of Andorra has to be considered: there are only seven municipalities and the Principality itself is a product of co-operation among the Parishes. Both elements could contribute to explain why this issue has not been addressed by a written regulation.

149. The *Comuns'* right to associate is expressly granted in Chapter XII of the Order of 24 November 2011 on the organisation and functioning of the *Comuns*. The rapporteurs were told by local authority representatives that an association of municipalities was set up in 2002 although co-operation between parishes was already well established. On the first Tuesday of every month, mayors meet to promote co-operation. This meeting – the *Reunió de cònsols* – is expressly referred to in Articles 35 and 36 of the aforementioned order.

150. Under Article 34 of the order, municipalities are free to co-operate with their counterparts in other States without any authorisation from the government. The delegation was informed that they have signed many decentralised co-operation agreements, especially on cultural matters.

151. During the consultation process the rapporteurs were informed that a draft Law on co-operation between central government and the *Comuns* and among the *Comuns* had been tabled in the *Consell General*. According to the government, this draft Law adopts the principles of institutional loyalty, co-operation in general and mutual information and assistance. It also deals with the development of public intermunicipal co-operation establishments (EPCIs), management requests and co-operation agreements between authorities and has a whole chapter given over to co-operation in the human resources field, laying down the principle of mobility between authorities.

152. The delegation was also told that despite the absence of a law covering this area, the *Comuns* provide joint services based on agreements or contracts. Examples of this form of co-operation are joint waste collection centres, the nationally co-ordinated selective waste collection system and forest cleaning arrangements.

153. The rapporteurs conclude that Article 10 is satisfactorily complied with.

4.10. Article 11: Legal protection of local self-government

Article 11 – Legal protection of local self-government

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

154. Article 11 of the Charter refers to an effective judicial remedy to secure the respect of local self-government.

155. In Andorra, the municipalities have, in addition to ordinary legal remedies, the possibility to lodge a complaint on an individual basis directly to the Constitutional Court. According to Article 82.1 of the Constitution, "Conflicts arising from the interpretation or exercise of jurisdiction between the general organs of the State and the Local Councils shall be settled by the Constitutional Court".

156. In addition, three *Comuns* are entitled to lodge appeals of unconstitutionality against laws or statutory rules, within the thirty days following the publication of the rule. The *Tribunal constitucional* shall pass judgement within the maximum of two months (Articles 83 and 99 of the Constitution).

157. Finally the *Comuns* may lodge, on an individual basis, a complaint of *empara*, according to Article 102 of the Constitution (for example to protect the right to jurisdiction).

158. In practice, only 13 conflicts have been submitted to the Constitutional Court between 1997 and 2008, the last one being decided on 8 of June 2009. It is evident that, notwithstanding this broad range of judicial remedies available to local authorities, other avenues to protect local self-government do exist. All the interlocutors agreed that personal and geographical closeness is conducive to the amicable settlement of most of the disputes.

159. The rapporteurs consider that the requirements of Article 11 of the Charter are fully respected in Andorra.

4.11. On the possible signature of 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)

160. As for the possibility for Andorra to sign the Additional Protocol to the European Charter of Local Self-Government, the main concern was expressed in relation to an interpretation of paragraph 4.1 of Article 1 that would allegedly provide for an individual electoral right for non-national residents.

161. This concern is understandable, taking into account the high ratio of foreigners in the population and the will of Andorra to protect its identity, tradition and uniqueness. In 2016 only 36,138 inhabitants out of 78,264, were Andorran citizens.

162. However, the rapporteurs would like to draw the attention to the precise wording of paragraph 4.1 of Article 1: "Each Party shall recognize by law the right of nationals of the Party to participate, as voters or candidates, in the election of members of the council or assembly of the local authority in which they reside".

163. The rapporteurs note that the explanatory report to the Additional protocol, regarding paragraph 4.1 of Article 1, expressly states that "the purpose of the current paragraph is to make clear that the Additional protocol does not oppose the granting of electoral rights by the Party to other persons, such as nationals not resident in the local authority or non-nationals. If the Party chooses to grant such a right, this provision requires it to do so by law. This paragraph does thus not provide for an individual electoral right of non-nationals of the Party. Under Council of Europe standards, this matter is the subject of Part C of the Convention on the Participation of Foreigners in Public Life at Local Level".³⁴

164. On the contrary, paragraph 4.2, that refers to foreign residents, leaves a broad margin of appreciation to the State on foreign residents' right of participation: "The law shall also recognise the right of other persons to so participate where the Party, in accordance with its own constitutional order, so decides or where this accords with the Party's international legal obligations".

165. In consequence, the rapporteurs encourage Andorra to sign the Additional Protocol.

5. CONCLUSIONS

166. The Principality of Andorra's origins date back to feudalism. From the beginning, the Parishes played a fundamental role, as in fact Andorra was born as a "federation" of six Parishes.

167. A process of reform aimed at modernizing the institutions of the country, began in 1981: a decree was adopted by the delegates of the Co-princes, marking the beginning of a phase of transformation, which ended with the approval of the 1993 Constitution.

168. Under today's Constitution, the role of the Parishes, whose number has in the meantime increased to seven (Escaldes-Engordany was created in 1978), is recognized by Article 1, paragraph 5, which states that «Andorra is composed of the Parishes of Canillo, Encamp, Ordino, la Massana, Andorra la Vella, Sant Julià de Lòria and Escaldes-Engordany».

169. Still nowadays, both from the normative and factual point of view, the Parishes represent the core of the Principality of Andorra. They are active and democratic institutions, whose proximity to the population enables them to carry on a relevant role for the general welfare of their inhabitants.

170. According to the rapporteurs, the municipalities enjoy a substantial level of normative, administrative and financial autonomy, granted by the Constitution and by a set of qualified laws. Local authorities are not subject to any supervision by the government, but solely to the control of the courts, and may lodge an appeal or a conflict to the Constitutional Court. They are allowed to introduce legislative initiatives in the parliament and they are taken into account in its composition, since half of the members of parliament are elected in territorial constituencies. This way, the *Comuns* play an important role in the constitutional revision procedures and in the enactment of qualified laws.

171. The relations between the municipalities and the State are reported as smooth and fair. Although a formal mechanism of consultation does not exist, the government always consults the municipalities and negotiates with them all important decisions. In the opinion of the rapporteurs, the small surface area of the country has to be taken into account since it facilitates informal ways of consultations. However, the rapporteurs would still suggest formalizing the mechanism of consultation with local

³⁴ <http://conventions.coe.int/Treaty/EN/Reports/Html/207.htm>

authorities in law so as to provide for a legal guarantee of their right to be consulted on all matters that concern them directly

172. An important reform of the competences and the financial resources is currently being negotiated in a tripartite process, involving the government, the parliament and the local authorities. The delegation was informed that this negotiation process is about to be finalized. The reform is aimed at updating the entire system of transfers, adapting it to the competences of municipalities and to the new framework of State taxation, established following the introduction of a full system of direct taxes, such as the income tax and the tax on corporation. In addition, the criteria of distribution between municipalities are planned to be revised on the basis of new parameters and the principle of solidarity introduced in favour of the municipalities that have fewer revenues from local taxes.

173. Taking into account the specificities of the country, the rapporteurs believe that the level of local democracy is globally satisfactory in Andorra and the requirements of the Charter are generally complied with.

174. The only issue to be solved is the special status of the Capital city, Andorra la Vella, which has not been recognized by the legislation, despite the constitutional provision of Article 2.3.

175. Taking into account the reform in progress, the rapporteurs consider that very little is required to enable the ratification of paragraph 2 (on adequate (commensurate) financial resources) and paragraph 5 (on financial equalization) of Article 9 of the Charter. Consequently, they encourage Andorran authorities, once the reform has been approved, to ratify these provisions.

176. The possibility for the country to ratify Article 9.8 is more complicated, as there is no national capital market in Andorra and local authorities are too small to have access to the international financial market.

177. Finally, in the light of the clarifications made supra (see paragraph 163), the rapporteurs encourage Andorra to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No.207).

APPENDIX – Programme Congress monitoring delegation visit to Andorra (25-26 April 2017)

**CONGRESS MONITORING VISIT TO THE PRINCIPALITY OF ANDORRA
Andorra la Vella, Canillo, Encamp (25 – 26 April 2017)**

PROGRAMME

Congress delegation:

Rapporteurs:

Ms Gaye DOGANOGLU

Rapporteur on local democracy
Chamber of Local Authorities, EPP/CCE³⁵
Member of the Municipal Council of Konyaalti /
Antalya, Turkey

Mr Zdenek BROZ

Rapporteur on local democracy
Chamber of Local Authorities, ECR³⁶
Mayor of City of Sumperk
Czech Republic

Congress secretariat:

Ms Svitlana PEREVERTEN

Co-secretary to the Monitoring Committee of
the Congress of Local and Regional Authorities
of the Council of Europe

Expert:

Prof.Dr. Tania GROPPI

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

Interpreters:

Mr Mike LUCAS

Ms Rosaura BARTUMEU

The working languages, for which interpretation is provided during the meeting, will be Catalan and English

35 EPP/CCE: European People's Party Group in the Congress

36 ECR: European Conservatives and Reformists Group in the Congress

**Tuesday 25 April 2017
Andorra la Vella**

- **Meeting with the National Delegation of Andorra to the Congress**
 - **Mr David BARÓ RIBA**, Mayor of La Massana
 - **Mrs Gemma RIBA CASAL**, Deputy Mayor of Ordino
 - **Mrs Trinitat MARIN GONZALEZ**, Mayor of Escaldes-Engordany
 - **Mr Josep Miquel VILA BASTIDA**, Mayor of Sant Julia de Loria

 - **Mr Isaac PÉREZ MAS**, Secretary of the Andorran Delegation to the Congress

- **City of Andorra la Vella**
 - **Ms Conxita MARSOL RIART**, Mayor
 - **Mr Marc PONS MARTELL**, Deputy Mayor

- **Court of Auditors**
 - **Mr Francesc D'ASSÍS PONS TOMÀS**, President
 - **Ms Montserrat MONTES ECHEVARRIA**, Member
 - **Mr Carles SANSA TORM**, Member

- **General Council (Parliament)**
 - **Ms Mònica BONELL TUSET**, General Subsindic (Vice-President)
 - **Ms Sofia GARRALLÀ TOMÀS**, Vice-Chair of the Legislative Committee for the Interior
 - **Ms Maria MARTISELLA GONZÁLEZ**, Member of the Legislative Committee for the Interior
 - **Mr Pere LÓPEZ AGRÀS**, Chair of the Mixed Parliamentary Group
 - **Mr Víctor NAUDI ZAMORA**, Vice-Chair of the Legislative Committee for the Interior
 - **Mr Josep HINOJOSA BESOLÍ**, Secretary General

- **Ministry of Finance**
 - **Mr Jordi CINCA MATEOS**, Minister
 - **Ms Clàudia CORNELLA DURANY**, Secretary of State for International Financial Matters

**Wednesday 26 April 2017
Andorra la Vella, Canillo, Encamp**

- **Government**
 - **H.E. Mr Antoni MARTÍ PETIT**, Head of Government
 - **Ms Consol NAUDÍ BAIXENCH**, Secretary of State for Institutional Relations
 - **Mr Iago ANDREU**, Chief of staff

- **Ombudsman (El Raonador del Ciutada)**
 - **Mr Josep RODRIGUEZ GUTIÉRREZ**, Ombudsman
 - **Ms Rosa Sarabia REBOLLEDO**, Secretary General

- **Constitutional Court**
 - **Mr Isidre MOLAS BATLLORI**, President
 - **Ms Meritxell TOMÀS BALDRICH**, Secretary General

- **Parish of Canillo**
 - **Mr Josep MANDICÓ CALVÓ**, Mayor
 - **Mr David PALMITJAVILA DUEDRA**, Deputy Mayor

- **Parish of Encamp**
 - **Mr Jordi TORRES ARAUZ**, Mayor
 - **Ms Esther PARÍS RIBA**, Deputy Mayor