

The Congress of Local and Regional Authorities



Chamber of Local Authorities

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Local Democracy in Montenegro

Institutional Committee of the Chamber of Local Authorities

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Summary

This first Congress recommendation and explanatory memorandum examine the state of local democracy in Montenegro in the light of the European Charter of Local Self Government and suggest a list of recommendations aimed at reforming the voting system of local authorities, enhancing capacities of municipalities, promoting intermunicipal cooperation, etc.

In the course of the last decade there has been considerable focus on reform programmes focusing on the structure and functioning of local administration and financing mechanisms of local self-government bodies in Montenegro and this is a continuing process.

The Rapporteur's overall view is that the provision made on local self-government in the Constitution and other relevant legislation is Charter compatible. This is a situation, which reflects the commitment on the part of the Montenegrin Government, local authorities and the Union of Municipalities to the reform of local self-government in the country on a principled basis.

The delegation, however, also noted several concerns about the Charter compatibility of the practice, as compared to the law, of several issues, such as the insufficient staffing and financial means of municipalities to perform attributed competences and presented a number of conclusions and related recommendations.

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



A. DRAFT RECOMMENDATION ²

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

a. Article 2, paragraph 1.b of Statutory Resolution (2007)6 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 (2007)6 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. the explanatory memorandum on local democracy in Montenegro drawn up by the Rapporteur, Nigel Mermagen, following an official visit to Montenegro from 22 to 24 March 2010. During his work, the Rapporteur was assisted by Christopher Himsworth, consultant, who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and by Lilit Nikoghosyan, Co-secretary of the Institutional Committee of the Congress.

2. The Congress recalls that:

a. Montenegro signed the European Charter of Local Self-Government on 24 June 2005 and ratified it on 12 September 2008 with a commitment to observe the following paragraphs:

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

b. Montenegro signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority on 16 November 2009.

c. the Institutional Committee decided on 15 February 2010 to carry out the first monitoring of the state of local self-government in Montenegro and its compliance with the European Charter of Local Self-Government. It instructed Nigel Mermagen, United Kingdom (L, ILDG) to prepare and submit to the Congress, as Rapporteur, the report on local democracy in Montenegro.

² Preliminary draft recommendation approved by the Institutional Committee of the Chamber of Local Authorities on 2 July 2010.

Members of the Committee:

E. Calota (Chair), M. Y. *Barcina Angulo*, J. *Brons*, M. *Catovic*, V. *Chilikov* (alternate: *D. Ruseva*), M. *Cohen* (alternate: *I. Micallef*), B. *Collin-Langen*, M. *Cools*, J. *Costa* (alternate: *A. Torres Pereira*), A.Ü. *Erzen* (alternate: *G. Doganoglu*), A. *Gravells* (alternate: *N. Mermagen*), M. *Guégan*, M. *Gulevskiy* (alternate: *V. Belikov*), G. *Illes*, W. *Kelsch*, O. *Kidik*, I. *Kulichenko* (alternate: *Y. Kartashov*), F. *Lec*, Y. *Mischeriakov*, L. O. *Molin*, J. *Mrazek*, A. *Muzio* (alternate: *F. Pellegrini*), C. *Newbury*, P.R. *Paun-Jura* (alternate), A. *Rokofillou*, B. *Rope*, M.G. *Sassi*, J. *Wiener*, E. *Yeritsyan* (alternate), D. *Zmegac*.

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

Secretariat of the Committee: S. *Poirel*, L. *Nikoghosyan*

3. Wishes to thank the Montenegrin authorities at central and local levels, the Union of Municipalities, experts and other interlocutors for the information conveyed to the delegation.

4. Notes with satisfaction that:

a. the Constitution of Montenegro provides a clear basis for local self-government. Its relevant provisions taken together with the Law on Local Self-Government of 2003 (as amended) and the draft Law on Territorial Organisation do make good provision for the formal recognition in domestic legislation and in the Constitution of the principle of local self-government, as required by Article 2 of the Charter;

b. there exists a widespread acknowledgment of the need for the reform of local self-government, especially at the level of the national government – the relevant ministry currently being the Ministry of the Interior and Public Administration;

c. in the recent decade there has been considerable focus on reform programmes, this is a continuing process and one in which cooperation with the Council of Europe has been a prominent feature;

d. the provision for administrative supervision, which is made by the recently enacted Law on Amendments to the Law on Administrative Supervision in 2009 appears to be Charter compatible.

e. the capacity building contribution of several of the NGOs active in Montenegro extends to training programmes for municipal councillors.

5. Concludes that:

a. overall the provision made in the Constitution regarding local self-government, in the 2003 Law and elsewhere are Charter compatible. However, the general state of the statute book in Montenegro continues to be in flux. Several new pieces of legislation are already in the parliamentary process or else are at a preparatory stage;

b. the current situation reflects the commitment which has been shown in recent years on the part of the Ministry of the Interior and Public Administration. and its counterparts in the municipalities and the Union of Municipalities to the reform of local self-government in the country on a principled basis.

6. *Recommends that the Committee of Ministers invite the Montenegrin authorities to take account of the following suggestions with a view to future reforms:*

a. to initiate a reform of the voting system for the election of mayors and municipal councillors. Substantial changes in the local election law of Montenegro could provide either for the replacement of list voting by constituency/ward representation (perhaps based on the single transferable vote system) or, at the very least, by substitution of an open list system;

b. to aim at achieving a full separation of the laws on the two election systems (national and local). This would have the benefit of allocating to local democracy the distinctive treatment it deserves. It would also more readily enable the introduction of a 'resident' rather than a 'citizen' franchise;

c. to take steps to enhance the workforce capacity of municipalities by continuing to provide adequate training and technical support for municipal staff. More particularly, the efforts made at the different levels of government and with strong intervention from the Union of Municipalities (following its Training Needs Analysis of 2007) and international organisations to devise and implement a National Training Strategy should be pursued. In the medium and longer term this will contribute greatly to staff competence in the municipalities;

d. to create the necessary conditions and take the appropriate measures, in cooperation with the Union of Municipalities of Montenegro, to ensure a coherent and robust use of co-operation by municipalities to enable the joint delivery of services. If the smaller and the least resourced municipalities could perform tasks jointly, this would be much better, in the evident absence of enthusiasm on the part of either government or municipalities for mergers, than inappropriate intervention by central government or complete service failure;

e. to encourage and promote, in cooperation with the Union of Municipalities of Montenegro, better interregional cooperation between Montenegrin municipalities and their neighbouring counterparts;

f. to ensure that the standard financial resources available to all municipalities are sufficient for them to carry out their statutory responsibilities without regular recourse to equalisation payments;

g. to reconsider the restrictions on the extent of the Charter articles by which Montenegro is bound with a view to lifting some or all of them.

7. Recommends to the Union of Municipalities of Montenegro that it uses its political influence to the full and strike the right balance between co-operation with central government and the robust maintenance of the autonomy of local self-government.

8. Recommends that the Parliamentary Assembly of the Council of Europe take account of these observations and recommendations by monitoring the commitments and obligations which Montenegro undertook when acceding to the Council of Europe.

9. Recommends to the Montenegrin authorities responsible for local self-government that they appoint a high-level government representative to attend one of the Congress sessions to make a presentation of the progress of local self-government reforms in Montenegro.

B. EXPLANATORY MEMORANDUM

I. Introduction

1. The Congress of Local and Regional Authorities of the Council of Europe (referred to hereinafter as the Congress), by virtue of its Statutory Resolution CM/Res (2007)6, regularly prepares reports on the state of local and regional democracy in Council of Europe member states.

2. Montenegrin membership in the Council of Europe had two phases: the first one within the State Union of Serbia and Montenegro, and the second one as an independent State. The State Union joined the Council of Europe on 3 April 2003. Three years later, Montenegro called for a referendum on independence, which was held on 21 May 2006 and decided that Montenegro would continue as an independent State. Serbia being a legal successor to the State Union, Montenegro had to re-apply for its membership to the Council of Europe and joined the organisation on 11 May 2007, thus becoming its 47th member state.

3. Montenegro signed the European Charter of Local Self-Government on 24 June 2005 and ratified on 12 September 2008. The treaty came into force in Montenegro on 1st January 2009. In a subsequent Declaration contained in a Note verbale from the Permanent Representation of Montenegro, dated 30 April 2010 and addressed to the Council of Europe, it was mentioned that in accordance with Article 12 of the European Charter of Self-Government, Montenegro considers itself bound by the following paragraphs:³

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

This declaration is deemed to be part of the Montenegrin instrument of ratification, with effect from 1 January 2009.

4. Montenegro has also signed the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities on 10 November 2009. Montenegro has also signed the following protocols:

- Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities on 10 November 2009 (CETS N°159)
- Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation on 10 November 2009 (CETS N°169)
- Protocol No. 3 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning Euroregional Co-operation Groupings (ECGs) on 16 November 2009 (CETS N°206)
- Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority on 16 November 2009 (CETS N°207)

5. At its meeting of 15 February 2010, the Institutional Committee decided to carry out the first monitoring of the state of local self-government in Montenegro and its compliance with the European Charter of Local Self Government. The Institutional Committee instructed Mr Nigel Mermagen (UK, L, ILDG) to prepare and submit the report on local democracy in Montenegro in his capacity as rapporteur. During his work, the rapporteur was assisted by Mr Christopher Himsworth, consultant, who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and by Ms Lilit Nikoghosyan, Co-secretary of the Institutional Committee of the

³ The Note verbale from the Permanent Representation of Montenegro reads as follows: "During the review of the ratification procedure, the competent authorities of Montenegro have noticed an important administrative mistake. The Instrument of Ratification of the European Charter of Local Self-Government does not contain the declaration regarding Montenegro's implementation of the Charter, despite the fact that it is required by Article 3 of the Law on Ratification of the European Charter of Self-Government, adopted by the Parliament of Montenegro on 29 July 2008.

Given the fact that the Montenegrin authorities have been implementing the Charter so far in accordance with the Law on Ratification of the European Charter of Self-Government and the said Declaration, the Permanent Representation of Montenegro has the honour to request that the mentioned Declaration is deemed to be included in the Instrument of Ratification of the European Charter of Self-Government.

Congress. A Congress delegation visited Podgorica and Kotor in Montenegro from 22 to 24 March 2010.

6. This report gives an overview of local democracy in Montenegro in the light of Council of Europe principles and standards, particularly the European Charter of Local Self-Government.

7. This report was drafted on the basis of information collected during the visit to Montenegro by the Congress's monitoring delegation, a survey of relevant legislation, other relevant information documents provided by interlocutors whom the delegation met in Montenegro, as well as specifically drafted answers to the Questionnaire, which the delegation had presented in advance of the visit. A full list of the persons met during the visit is set out in the appendix.

8. The rapporteur would like to thank the Montenegrin authorities for their assistance with the organisation of the monitoring visit and their cooperation all along. He would also like to thank all the persons met for giving up their time and taking a keen interest in the Congress's activities.

II. The context

9. It will be useful if, before embarking on the analysis of the law and practice of local self-government in Montenegro, to describe some of the principal features of Montenegro, which will serve as a contextual backdrop to the discussion:

- (a) Montenegro is, in the first instance, a new country. Although Montenegro did enjoy the status of an independent state by the 19th century - at the time of the Congress of Berlin in 1878 it became the twenty seventh independent country in the world, after the First World War it became a part of the Kingdom of Serbs, Croats and Slovenes and later of the Kingdom of Yugoslavia. After the Second World War Montenegro was part of the Socialist Federal Republic of Yugoslavia and then, following the period of war in that country in the 1990s, Montenegro remained, with Serbia, as a part of the continuing Federal Republic of Yugoslavia and then, from 2003, the State Union of Serbia and Montenegro. Only in 2006, following a (hotly contested) referendum on 2 May, did the modern state of Montenegro achieve its independence. A new constitution was adopted in 2007. Although many of the institutions and relevant laws on local self-government predate the country's formal independence, one is looking at a very new country in terms of its Council of Europe membership and adherence to the Charter of Local Self-Government.
- (b) Montenegro is a very small country in European terms. Its surface area is almost 14000 square kilometres and the country's population stands at approximately 670.000 - much smaller than single cities in many European countries although larger than, for example Luxembourg or Malta.
- (c) The statistical smallness of the country does not, however, mean that it lacks social, geographical, economic and political complexity.
- (d) It is, in the first place, a relatively poor country in economic terms. It was never a highly developed republic within the former Yugoslavia and, since the collapse of the integrated economy of that state, Montenegro has had to make some abrupt adjustments. The decline of the aluminium plant near Podgorica but, on the other hand, the emergence of a powerful real estate market and tourism industry in the coastal area are perhaps the most dominant signs of transition. In economic terms – but also with important consequences for government – there have developed three fairly distinct regions of Montenegro. The north is relatively underdeveloped, with difficult mountainous terrain, although there is the prospect of tourist led growth. In the central area (including Niksic and the capital Podgorica) there is greater development and a large percentage of population. Podgorica itself houses about a third of the country's population. And, in the coastal area of the south, there is the region, which enjoys the greatest opportunities from the development of tourism but also the greatest threat of economic (and environmental) exploitation. It is clear that the widening gap between the different regions of Montenegro has had a marked impact on the governance of the country.

There is much scope for jealousies and sensitivities to develop between those who resent being ignored and left behind by economic development and those who resent having to bail out (as they would see it) the economically less developed areas.

- (e) Another consequence of the Yugoslav inheritance is a mixed population. Montenegro did not suffer the extremes of inter-ethnic tension, violence and war endured by other regions in the former Yugoslavia in the 1990s but the influence of a degree of ethnic difference between population groups and the differing attitudes (some geographically based, some not) to Montenegrin independence have a continuing effect upon the current politics and policies of the country. In raw terms, the population may be described (rather artificially in both cases) as consisting of the following 'ethnic' groups: Montenegrin (43%), Serbian (32%), Bosniac (8%), Albanian and others (12%); and linguistically: Serbian (63.6%), Montenegrin (22%), Bosnian (5.5%) and Albanian (5.3%). Or, on religious lines: Christian Orthodox (74%), Muslim (17.7%), Catholic (3.5%) and others. As far as local self-government is concerned, the principal effects of these population divisions are to be seen in the consequences for the larger municipalities (especially the capital) of having to accommodate and provide services for large incomer communities and also in the continuing debate about the territorial re-organisation of municipalities and about the sub-division of municipalities (especially the capital Podgorica) to reflect ethnic allegiances. Ethnic considerations have led to some pressures for the creation of new municipalities, including pressure for the elevation of what are currently identified as 'city municipalities' in Podgorica – there are two, one of which (Tuzi) has a majority Albanian population – to municipality status; and also pressures to create similar 'town municipalities' within other municipalities – a proposal which achieved incorporation in a draft law (but never enacted) in very recent years. Many in Montenegro are proud of the quality of inter-ethnic relations in the country and in its municipalities and of the country's avoidance of violence at a time when other parts of the former Yugoslavia were at war. But there are continuing questions about the extent to which Montenegro is a 'civic state' blind to ethnic difference or, on the other hand, one which should give greater expression to that ethnic difference.
- (f) Territorial organisation is one of the inheritances from the former Yugoslavia. The existing division of the country into 21 municipalities (including the capital Podgorica and the old royal capital Cetinje) dates back to the 1960s and, combining local (even clannish) loyalties and geographical imperatives, has proved highly resilient to change. As one of the Montenegrin interlocutors put it: tradition is stronger than rationality.
- (g) Another aspect of the Yugoslav inheritance has been the cultural dominance of the political parties in the country, the dominance since independence, in particular of the Democratic Party of Socialists, and the relative weaknesses within the country of balancing institutions of civil society.
- (h) One consequence of this party political configuration combined with the weakness of civil society but also with the fierce economic growth in some sectors and geographical areas (and poor development in others) is the reported levels of corruption (much of it politically driven) in Montenegrin society, although at local level all of Montenegro's municipalities have committed themselves to combat this corruption. An Evaluation Report from GRECO, the Group of States against Corruption, in 2006 stated that the Montenegrin authorities considered corruption as 'a complex, extremely dangerous and widespread criminal phenomenon' and a public opinion survey had identified corruption as one of the major concerns of Montenegrin citizens. As well as the judiciary and the police, other activities affected were healthcare, public procurement, licensing and privatisation. This has consequences, in turn, for government, including local self-government in municipalities. It has the capacity, for instance, to distort recruitment to the municipal service, whether as councillors or as employees.
- (i) Another current feature of Montenegro, however, has been the widespread acknowledgment of the need for the reform of local self-government, especially at the level of the national government – the relevant ministry currently being the Ministry of the Interior and Public Administration. At least since 1998 (and with greater intensity since 2002 with the adoption in that year of a national 'Strategy for Administrative Reform') there has been considerable focus on reform programmes and this is a continuing process and one in which collaboration with

the Council of Europe has been a prominent feature. This has, of course, both good and also less comfortable consequences for the current monitoring process. It is good to be able to report at a time of progressive change in the country. On the other hand, the pace of legislative change, which has affected the text of the Law on Local Self-Government (in relation to which diverse proposals for amendments have been launched in recent years, culminating in final changes made with effect from December 2009), the Law on Local Government Finance which is subject to reforming proposals, electoral law, the law on territorial organisation, the law on public service, the law on public utilities and some others makes it impossible to reach concluded views on the final content of these reforms and, less still, on their actual practical impact.

- (j) One related contextual consideration is the ambition of the Government of Montenegro to achieve candidate status in relation to admission to the European Union. Montenegro applied formally to join the EU in December 2008. One consequence is that Montenegro is subject to the annual progress reports process under the Enlargement Strategy.

III. Local self-government in Montenegro measured against the Charter

10. In section IV below, some general findings and conclusions drawn are listed. This section is dedicated to measuring Montenegrin law and practice against the Charter article by article.

11. Article 1 (and Article 12) (extent of Charter commitment)

Montenegro ratified the Charter with effect from 1 January 2009 and considers itself bound by Article 2; Article 3, paragraphs 1 and 2; Article 4, paragraphs 1, 2, 4 and 6; Article 5; Article 6, paragraph 1; Article 7, paragraphs 1 and 3; Article 8, paragraph 1; Article 9, paragraphs 1, 2, 3, 4, 5, 6, 7 and 8; Article 10, paragraphs 1, 2 and 3; Article 11 of the Charter. This report has been drafted taking into account the scope of Montenegro's Charter commitments.

12. Article 2 (Constitutional and legal foundations)

The Constitution of 2007 provides a clear basis for local self-government as follows:

- (a) Article 22 states that 'the right to local self-government shall be guaranteed'.
- (b) Articles 113-117 spell out further principles. Article 113 states that 'in local self-government the decisions shall be made directly and through freely elected representatives'; and that 'the right.....shall include the right of citizens and local self-government bodies to regulate and manage certain public and other affairs, in their own responsibility and in the interest of the local population'. Article 114 prescribes that 'the basic form of local self-government shall be the municipality' but that 'it shall also be possible to establish other forms of local self-government'. Article 115 says that 'the municipality shall have the status of a legal entity'; that 'the municipality shall adopt the statute and general acts' and that 'authorities of the municipality shall be the assembly and the president'. Article 116 states that 'the municipality shall exercise certain property related powers over the state owned assets in accordance with the law. The municipality shall have property. The municipality shall be financed from its own resources and the assets of the state. The municipality shall have a budget.' Article 117 provides that 'the municipality shall be autonomous in the performance of its duties' but that 'the Government may dismiss the municipal assembly [or] discharge the president of the municipality from duty, only if the municipal assembly [or] the president of the municipality fails to perform the duties thereof for a period longer than six months'.

13. Thereafter, the Law on Local Self-Government of 2003 (as amended to December 2009) (in this report, often referred to as 'the Law of 2003') provides what was described to the delegation as a "Constitution for Local Self- Government". The opening of Part I of the Law (General Provisions) contains Articles which set out the general principles (very largely Charter based) on which Montenegro's system of local self-government is intended to be secured. Thus, they define local self-government as including "the right of citizens and local government bodies to regulate and manage

specific public and other affairs within the limits set by the law, guided by their own responsibility and interests of the local population” (Article 1); local governance is to be exercised in municipalities, the Capital and the Historic Capital (Article 2); local governance to be exercised following the principles of democracy, decentralisation, depoliticisation, autonomy, legality, professionalism, efficiency of local government bodies and mutual co-operation between the State and the municipality (Article 3); and local governance shall be exercised in neighbourhood districts as well (Article 4). In addition, there are provisions incorporating principles of citizen participation, equal protection of rights, the protection of municipal autonomy from state intervention, municipal property, protection of minority rights, restrictions on political activity by employees, the public conduct of local government bodies, the rights of municipalities to express views, the principles of mutual co-operation, and the rights of municipalities to associate and to legal protection (Articles 5-17).

14. The actual municipalities, through which local self-governance is exercised, are identified by reference to the Law of Territorial Organisation, a revised version of which is currently subject to the parliamentary process. For the time being, the Law on the Division of the Socialist Republic of Montenegro, as amended, remains in force. This current draft makes no changes to the existing organisation but preserves, for the time being, the total of 21 municipalities i.e. the Capital City (Podgorica), the Historic Capital Cetinje, plus 19 other municipalities. It also makes revised provision for the establishment of any new municipalities, or the abolition or amended boundaries of existing municipalities, laying down criteria for change and also the procedures to be followed. (See also para 27 below). Current municipalities vary very considerably in size, whether measured by area or population. Thus, the largest municipality by area (Niksic) extends to over 2000 square kilometres and two others (Pljevlja and Podgorica) are over 1000 square kilometres whereas the smallest (Tivat) extends to only 46 square kilometres. More importantly, two municipalities have quite large populations (Niksic on over 75000 and Podgorica itself on nearly 178000) whereas six municipalities have populations of under 10000 and one (Savnik) has a population of under 3000.

15. There is no doubt that, taken together, these provisions of the Constitution, the Law of 2003 (as amended) and the draft Law on Territorial Organisation do make good provision for the formal recognition in domestic legislation and in the Constitution of the principle of local self-government, as required by Article 2 of the Charter.

16. **Article 3** (Concept of local self-government)

The principal requirement of Article 3(1) is that local authorities “regulate and manage a substantial share of public affairs under their responsibility.” To ascertain whether this is a position formally established in the law of Montenegro, one should turn principally to Part III of the Law of 2003 (as amended). Article 28 declares that the “municipality conducts local self-government affairs of direct and common interest to the local population.” And the “municipality also conducts affairs delegated by law or entrusted by means of government regulations.” The two categories of ‘own’ and ‘delegated/entrusted’ affairs are then further expanded in the articles which follow (for ‘own affairs’ Articles 29-37, for ‘delegated/entrusted’ Articles 38-39). In Article 30 it is also provided that a “municipality may also conduct other affairs of interest for the local population that do not fall within the competence of state authorities or other bodies and organisations.”

17. In Article 31, municipalities are empowered and required to make various categories of plans, including development plans; spatial, urban and other plans; a budget; and a multi-annual investment plan. Then Article 32 of the law imposes obligations to carry out (mainly “regulate and provide”) a very wide range of functions across a total of 28 different sectoral areas. These cannot be set out in full in this report but they include responsibilities in relation to the construction and maintenance of roads; provision of transport facilities; the regulation of the proper use of construction land in accordance with local plans; overseeing the protection of the environment (including water management); the management of waters; the regulation of housing; the promotion of culture and protection of cultural heritage; the promotion of sports; the exploitation and protection of arable land; the promotion of health, education and social and child care; the provision of information services; the development of libraries, providing the conditions for consumer protection; and many others.

18. In addition, Article 33 provides powers to manage and dispose of property, set revenue levels; maintain the electoral register; provide legal aid to citizens; and some others. All these functions fall

into the category of “own” functions of municipalities but, in addition, the Government may delegate functions to municipalities (Art 38), including, it is stated, functions in the fields of education, primary healthcare and some others. The power to delegate is used (in relation to larger municipalities e.g. Kotor) to transfer a range of functions. There is also a power to ‘entrust’ functions to municipalities but it is understood that this power is less widely used.

19. In the light of this very strong list of competences (deriving from the different articles described) which, in the case of the “own” competences at least, are attributed to all 21 municipalities in Montenegro, the Congress delegation would have no doubt but to conclude that they do, in formal terms, satisfy the Charter requirement of conferring “a substantial share of public affairs” on the municipalities. The delegation does, however, have some reservations about the practical extent of the functions actually exercised on the ground by municipalities.

20. These reservations are twofold:

- (a) In the first place, it must be the case that, to establish the actual extent of all the allocated competences, it would be necessary to read them in conjunction with the sectoral legislation in all the affected areas. The delegation has not been able to inspect such legislation (if indeed it exists in all cases) in the course of this monitoring process. A recent EU Progress Report stated that sectoral laws were indeed not wholly harmonised.
- (b) Secondly, and *much* more importantly, the actual performance of the allocated functions will always be dependent on the capacity (financial, in terms of staff competence, and otherwise) of municipalities. It is at this point that the delegation has very grave reservations about whether the terms of Article 3(1) are in fact satisfied and will return to this issue later in the report (see paras 26, 30 and 46 below).

21. Article 3(2) stipulates the need for freely elected councils or assemblies “which may possess executive organs responsible to them” and the delegation would make the following observations in relation to Montenegro:

- (a) As to the assemblies, provision is made for there to be 30 elected members per municipality plus one extra member per 5000 voters. (Podgorica has 55 members.) The law on elections to the assemblies is something currently subject to reform proposals. The existing principles and rules are contained in the 2003 Act (as amended) as well as the more detailed provision (jointly with provision for national elections) in the Law on Election of Councillors and MPs 1998 (as substantially amended). The electoral system currently deployed in Montenegro is the ‘closed list system’ of proportional representation. This gives electors the opportunity to vote for councillors simply by reference to party lists, with the opportunity given to the parties themselves once their relative strengths in the election are known to nominate individuals of their choice to become councillors up to the allocated number. Although the delegation has not seen the text of the current draft Bill, it is understood that, in broad terms, it would continue the tradition of including provision for both parliamentary and local elections in the same law and retain the existing list system of voting but with small adjustments (including the percentage threshold minima for small parties). The delegation was informed that the draft Bill had been submitted to the Venice Commission for its scrutiny.
- (b) In the delegation’s view, the long-standing list system for local elections is, in the light of representations made to the delegation, a less than satisfactory way of achieving “freely elected councils”, as required by the Charter. The spirit of Article 3, as now reinforced by the Additional Protocol on Public Participation, presumes that the electoral system is the vehicle for ensuring the accountability of local authorities to their local populations. The involvement of political parties can be (and in most countries is) an essential part of a vibrant electoral system and thus of a high degree of public accountability. On the other hand, with the deployment of the list system used in Montenegro, elections became a tool of control by political parties. Parties can use their power to nominate and substitute candidates and thus to evade any significant degree of public choice, scrutiny or accountability. The Rapporteur believes, more substantial changes should be made to the local election law of Montenegro to provide either for the replacement of list voting by constituency/ward representation (perhaps based on the

single transferable vote system) or at the very least, by substitution of an open list system to provide some elector choice.

- (c) The delegation has been informed that a practice has emerged in Montenegro of seeking amendments to electoral laws on the initiative of the Parliament rather than the Government and also that consensus is sought before changes are made. This seems entirely appropriate and the Rapporteur believes that this approach should be adopted to achieve a separation of the laws on the two election systems (national and local). This would have the benefit of allocating to local democracy the distinctive treatment it deserves. It would also, more readily, enable the introduction of a 'resident' rather than a 'citizen' franchise. This would be in preparation for the European Union standards and would also accommodate the position in Montenegro and other post-Yugoslav states where many residents originally from other parts of the former Federation do not currently have the right to vote.

22. The electoral changes proposed so far are suggested on the basis of improving the popular accountability of councils. The delegation is also aware, however, that the methods of election adopted in Montenegro have the effect of producing, in most municipalities, weak councils vis a vis the executive body (the mayor). Many of the interlocutors met emphasised the dominance of the mayor in municipal relations, with the council being not much more than a rubber stamp in many cases.⁴ Councillors, as mere party nominees, cannot be guaranteed to have the qualities of independence and expertise which are necessary to exercise the powers formally allocated to the assemblies under Article 45 of the Law of 2003 (including the important functions of adopting municipal development plans and programmes, physical and city plans and the final budget statement) nor to exercise the independent powers of scrutiny and control over mayors/presidents, which are expected of them by the Law and by the Charter. Electoral reform would be an important step in the direction of correcting these faults.

23. Turning to the executive itself, this report coincides with a point of very substantial change in Montenegro. The system of directly elected mayors first established by the Law on Election of Mayors 2003 has been changed by amendments made in 2009 to a system of municipal mayors/presidents elected by the council (although not necessarily from the elected members of the council). At one point, it was proposed that the directly elected mayors might be retained in the capitals but the changes are now (following amendments currently being made to the Law of the Capital City) to apply to all municipalities and will take effect as the mayoral terms of office come to an end.

24. These changes cannot be faulted in purely Charter terms. It is well accepted that directly elected mayors can be regarded as "responsible" to councils and this is the model adopted in many countries. It is Charter compatible, as long as principal local decisions, such as the fixing of the budget, are retained by councils. This has been formally the case in Montenegro.

25. The Rapporteur does, however, want to register certain reservations about the move away from the system of directly elected mayors. Although the case has been made that direct election can produce hostilities and even paralysis in relations between mayors and councils of different political allegiances and should, therefore, be replaced, this is viewed, by some of the persons the delegation met, as a removal of the one and only opportunity in Montenegro for the direct election of individuals by the people. It can be seen as a removal of a significant element of local popular control and thus as a further sign of increasing controls by political parties. The current list system of election of councillors gives the political parties domination of that process. The reversion to indirectly elected mayors further adds to political control. The mayor, under the new system of indirect elections, will be removable by the council. It remains to be seen whether this does in practice reduce the mayor's generally dominant position.

26. The final provision in Article 3 of the Charter refers to, but in no way requires, forms of direct citizen participation such as citizen meetings and referendums. On the other hand, the new Additional Protocol on the Right to Participate does strengthen the position by requiring states to secure that right. This is something for which abundant provision appears to be made for Montenegro in the Law

⁴ For an important study on which the Congress delegation relied, see the UNDP Report of an Assessment Mission to Montenegro 'Towards a "Municipal Assemblies Support Initiative" in Montenegro' (2009).

of 2003. Part VIII of the Law provides for many forms of involvement by local populations in the form of initiatives, citizens' meetings, referendums and others. These provisions are supplemented by others in Part IX of the Law under the heading of 'Relations and Co-operation between Local self-Government and Citizens'.

27. Article 4 (Scope of local self-government)⁵

This is the point at which one should return to the issue of municipal competences. Article 4 elaborates on the manner in which competences are conferred; it requires that they should normally be "full and exclusive"; that powers should not be "undermined or limited" except as provided by law; and that authorities should be consulted in planning and decision-making processes in relation to matters which concern them. And this is also the point at which the Rapporteur repeats his concerns that, despite the long list of formal competences attributed to all municipalities under Part III.1 of the 2003 Law (as amended), he cannot accept that the powers can be regarded as "full and exclusive" in the case of all municipalities. Staffing and finance will be discussed later but, in the delegation's view (based on the views of the Ministry of the Interior and Public Administration and other sources) it can be concluded that, in the case of the smallest municipalities and probably many others, they simply do not have the capacity to discharge many of the functions formally allocated to them. Many appear to be confined to the supervision of basic utilities through their arm's length public service organisations. (The delegation does note that two major groups of the 28 listed 'own' functions of municipalities are stated to be dependent upon the 'available capacity' of the municipality.) The delegation has heard from the Ministry that municipalities are "helped" to perform their tasks by central government. This might satisfy Article 37 of the 2003 Law (which permits the Government to decide that affairs of common interest to two or more municipalities are of 'public interest' and perform the functions itself). But the Rapporteur believes that this does not satisfy the Charter. This issue will be further discussed below (paras 30 and 46)

28. Article 5 (Protection of local authority boundaries)

It is the Congress delegation's view that the current draft Law on Territorial Organisation (at present in the parliamentary process) contains sufficient provision to satisfy the Charter requirement of consultation on boundary changes.

29. Article 6 (Appropriate administrative structures)⁶

The principal focus here is on the Charter requirements of the conditions of service permitting the recruitment of high quality staff on the basis of merit and competence; and of adequate training opportunities and remuneration. In Montenegro, this is another area in which legislative change is ongoing. New public service legislation is anticipated – although not, it seems, in a way that would give local government its own law, as many in the sector would wish. The delegation has received a range of different views on the current quality of municipality administrations, some of them conflicting. One area of concern is the position of the chief administrator, the statutorily required head of each municipality's administrative service. Article 57 (para 5 & 6) of the Law of 2003 states that the Mayor determines the organisation and operation of local government after consulting the Chief Administrator and appoints and dismisses the chief Administrator with the consent of the Assembly. Nevertheless some uncertainty remains because of the provision made by Article 74(2) of the same law, which attributes to the Chief Administrator the "authority of a second instance body in administrative affairs within the powers of the municipality".

30. More positively, the efforts made at the different levels of government and with strong intervention from the Union of Municipalities (following its Training Needs Analysis of 2007) and international organisations to devise and implement a National Training Strategy, resulting in the formation of a National Council for its implementation, should be commended. In the medium and longer term this will contribute greatly to staff competence in the municipalities.

⁵ Montenegro is not bound by paragraphs 3 and 5 of this Article.

⁶ Montenegro is not bound by paragraph 2 – recruitment, training and remuneration of staff.

31. Beyond that, however, the delegation heard from many sources of a lack of competent staff in the service of municipalities and further that they lack equipment and other resources. It is not that municipalities do not appoint staff but that instead they appoint too many staff who lack necessary education and expertise. Both overstaffing and under-qualification are frequent problems. Perhaps the clearest single sign of this phenomenon is that many municipalities are simply unable to attract valuable (and readily available) grants from the Government and from the EU and other international bodies because they do not have the capacity (in terms of staff skills) to apply for and implement project assistance. Another problem is that of control over illegal building development.

32. The Rapporteur cannot avoid linking these problems to the prevalence of political patronage and corruption in the administrative culture of Montenegro, as already discussed in paras 8 and 20 above. Although efforts are being made by the Ministry and the Union of Municipalities to implement a merit system, as long as any paid posts in municipalities are filled not on merit but on the basis of party affiliation, the scope for future progress in this respect has to be limited.

33. Article 7 (Conditions under which responsibilities are exercised)⁷

This article refers to local councillors freedom to exercise their responsibilities; financial compensation for councillors; and incompatibilities with local elective office. It has, however, to be doubted whether, in Montenegro, the conditions of party political subservience described in paras 8, 20 and 31 do, in practice, permit the free exercise of responsibilities. The UNDP Report earlier referred to does record a rapid transition over time from the role of councillors as those who, under earlier regimes, were primarily deployed to deliver to localities policies determined centrally to those whose job it is to represent their own local constituents and to argue on their behalf. On the other hand, it is also clear that, especially as a result of the party dominated electoral system, party loyalty remains the primary obligation for councillors. A conclusion reached in the Union of Municipalities' own Training Needs Analysis (2007) was that 'councillors look to their party for decisions before taking account of the interests of their citizens'.

34. More generally, the delegation was particularly pleased to note that the capacity building contribution of several of the NGOs active in Montenegro extended to councillor training programmes. The delegation noted, in particular, the OSCE's Handbook for Councillors, which appeared to be a very attractive training manual. On expenses/compensation, there is no national scheme enacted in legislation. Instead this is a matter for local regulation in municipal statutes. From evidence which was gathered, it is not unusual for councillors to be paid an allowance of 104 Euros per month (with some other payments for attendance at specific meetings) but it seems likely that there are fairly substantial variations on this figure. Although there may be a strong case for the adoption of a national system in due course (for example, one which at least prescribes minimum levels of payment/compensation) it seems doubtful whether this could be recommended in advance of the implementation of electoral reforms already discussed.

35. Article 8 (Administrative supervision)⁸

This Charter provision is intended to prevent any form of oppressive supervision of local authorities by central government. In terms of the law of Montenegro, provision for administrative supervision, is made by the recently enacted Law on Amendments to the Law on Administrative Supervision 2009. It appears to be Charter compatible.

36. The Congress delegation is furthermore not aware of complaints from municipalities of any excessive or improper use of powers of supervision. In fact, to the contrary, it was explained by international informants, that there was much too little supervision (on grounds of legality) of municipalities. The new Act, which the Rapporteur welcomes as not hostile to local self-government should be fully implemented.

37. In addition to systematic administrative supervision, two other forms of control should also be mentioned under Article 8. In the first place, there are a number of points within the legislation of

⁷ Montenegro is not bound by paragraph 2 – financial compensation for councillors.

⁸ Montenegro is not bound by paragraphs 2 and 3 – limits of administrative supervision and its proportionality.

Montenegro, which impose the need for Central Government consent before certain municipality acts and decisions can be made. It is, for instance, necessary for municipalities to get Government consent to the taking out of loans (Law on Local Government Finance 2003 Article 64). And the Law on State Property requires Government consent to certain property transfers. The Law on Spatial Planning and Construction requires Government consent to proposals for local plans. None of these seems to raise major Charter issues.

38. Secondly, provision is made in the Law of 2003 (reflecting provision in Article 117 of the Constitution) for the dismissal by the Government of Councils and/or Mayors/Presidents in specified circumstances i.e. when they have failed to perform their duties for a period longer than six months.⁹ The delegation believes, although no evidence of the oppressive use (or threatened use) of these provisions was received, they reflect a disproportionate right to intrude in the work of municipalities. In relation to mayors/presidents there is provision for their dismissal by the council (wholly appropriate with the introduction of council elected mayors) and for citizen initiatives to recall (less obviously appropriate in the light of the ending of direct elections).

39. **Article 9** (Financial resources)

With a series of requirements protective of the financing of local self-government, Article 9 is a core provision of the Charter. In Montenegro, the Constitution provides that municipalities shall be financed from their own resources and by the state and that municipalities shall have a budget (Article 116). The principal legislative provision is made (in outline only) in Part VI of the 2003 Act and then (substantively) in the Law on Local Government Finance 2003 (as amended), the Real Estate Tax Law and many other specific laws.

40. The latter law makes the extensive and apparently comprehensive provision for the funding of municipalities. It provides a long list of 'own revenue sources' for municipalities including municipal taxes, an inheritance and gift tax, a tax on games of chance, tourist fees, many other fees, revenues from property, fines etc.¹⁰ Municipal taxes include a surtax on personal income of up to 13% (15% in the Capitals);¹¹ a real estate tax¹²; a beverage tax,¹³ a tax on vacant plots;¹⁴ a tax on company title.¹⁵ Municipalities may also introduce 'voluntary taxes'¹⁶ and, more importantly, municipalities benefit from shared revenues from personal income tax (10% of revenues on the municipality's territory); tax on real estate transfers (50%)¹⁷ and revenues for concessions of 30%.¹⁸ Some municipalities also benefit from an equalisation fund, which distributes according to a formula laid down.¹⁹ There is also provision for conditional grants from Government towards investment projects.²⁰ Provision is also made in the Law for municipality budget procedures and for other matters.

41. The question has then to be: to what extent do all the provisions, in practice, meet the requirements of the Charter? Do municipalities have "adequate financial resources"? Are the resources commensurate with their responsibilities? Do they draw some of their resources from local taxes, whose rate they themselves can determine? Is there an effectual equalisation scheme? Are grants earmarked? On these matters, the delegation was assisted by the availability of financial statistics supplied by the Ministry of Finance. The delegation also received from the Union of Municipalities a paper published by the Union in December 2009 ('Analysis of Problems in Local Government Finance'), which is critical of the funding arrangements for municipalities. A working group formed by the Ministry of Finance in late 2009 with representatives of the Union of Municipalities has been considering the reform of the system of local government finance, and changes are planned to be adopted later this year.

⁹ See the Law of 2003 Articles 125-6 (Councils) and Article 60b (Mayors/Presidents).

¹⁰ Article 5 of the Law

¹¹ Articles 7-8 of the Law

¹² Articles 9-11 of the Law

¹³ Articles 12 -16 of the Law

¹⁴ Articles 17-21 of the Law

¹⁵ Articles 22-23 of the Law

¹⁶ Article 24 of the Law

¹⁷ Articles 24 and 27 of the Law

¹⁸ Article 28 of the Law

¹⁹ Articles 30 – 33 of the Law

²⁰ Articles 36-38 of the Law

42. The statistical tables provided by the Ministry of Finance provide a detailed breakdown of income and expenditure for all the municipalities of Montenegro for the years 2007 to 2009. As to income, this is divided into the categories of “local income”, “given income”, income from the “equalisation fund”, “conditional donations” and “other income”. Further details within those categories provide information on the extent to which each of the local taxes has been relied on by each municipality where, although the position varies from authority to authority, the most prominent categories appear to be revenue from the personal income tax supplement, the property tax, the enterprise tax, the local communal tax, as well as fees for the use of municipal roads.

43. The ceded tax details show a reliance on the tax on personal income and the real estate tax but also a considerable benefit for many municipalities from concessions/compensation for the use of natural resources. The equalisation fund information reveals the change made between 2007 and 2009. In the two earlier years, every municipality received something from the fund, although the amount given to six of them was extremely small. In 2009, those six received nothing at all and a further two relied on equalisation for less than 10% of their total income. On the other hand, six municipalities relied on equalisation for over 40% of their total incomes and, in two cases, this rose to over 60%. Conditional donations represented a very small percentage of total incomes but “other income” (including property sales) was much more significant. Perhaps the most prominent characteristic revealed by the figures is the balance between local and ceded (and other) income. In 2009, across the board, slightly over 50% was derived from local income (with three municipalities at over 70%) and the two earlier years were not very different. As to the overall figures for the period, they show that total municipality income rose from over 305m Euros in 2007 to nearly 348m Euros in 2008 but fell away to 280m Euros in 2009, with nearly one third (over 91m Euros) attributable to Podgorica. In 2009, 11 municipalities had an income of under 6m Euros.

44. The general point made in the UM paper of December 2009 was that, although the reforms introduced from 1 January 2008 were expected to improve considerably local government finance by ensuring greater fiscal autonomy and sufficient revenues, instead the new legislation reduces fiscal autonomy so that for the majority of municipalities the revenues from which they must finance their affairs are insufficient and cannot even cover basic needs, not to mention local economic development. In addition, however, the paper acknowledges that the global economic crisis has had an immense impact on the economy and on the budgets of municipalities and has made the problems in local government finance even bigger.

45. The paper elaborates in detail and at length on the ways in which existing revenue sources are inadequate; concludes that the situation is so critical that it threatens the mere functioning of municipalities. Deficits in budgets are quite possible; fiscal autonomy is questioned; administrative and fiscal decentralisation are not harmonised. The paper concludes with some ‘proposed measures’. The sales tax and gaming taxes (heavily criticised in the paper) should be either abolished or transferred to central government; the percentage of revenues from personal income tax paid to municipalities should be increased or revenues from other sources should be increased – notably from VAT, profit tax, concessions from exploitation of natural resources, excise duties on alcohol/cigarettes, and some others. The Union proposed a big list of reforms.

46. These are criticisms supported from other sources. A paper supplied to the delegation by the Podgorica Municipality complains that “it is clear from data on the implementation of the budget plan over the past two years, that these sources of funds are insufficient, rather than mirroring the increasing responsibilities of units of local self-government, the sources of funding are being reduced by amendments to laws and are less and less commensurate with their financial need, compromising of obligations”. And the UNDP Report states that, despite various changes made to the Law on local Government Finance in 2007, the EU Commission considered in 2008 the ‘capacity of the municipalities for financial management, including budgeting, public procurement and allocation of grants to be in need for further improvement’. A consequence of poor financial administration is the availability of only out-of-date databases to record tax liabilities which, with other failings, produces low levels of taxes, actually gathered in. A complaint from the municipalities has been that central government has secured to itself the taxes more easily collected and left the more difficult taxes to local government.

47. Thus, although the delegation is not able to provide a wholly independent assessment of the financial position of municipalities based on its own sources, it does have to conclude that the overall position on revenue funding of municipalities is not wholly satisfactory and indeed that there remains much room for improvement. In addition to the complaints registered by the Union, the fact that such a high proportion of municipalities (15 out of 21) are dependent on equalisation payments tends to show that the standard financial resources are inadequate and not commensurate with responsibilities. Clearly there is considerable grant earmarking to the extent that municipalities rely on the conditional funding of specific projects. To the extent that there is Government discretion in the award of projects and grants, there is scope for some municipalities rather than others to benefit.

48. It is difficult to resolve the question about how many of the municipalities' difficulties in overall funding (difficulties acknowledged within Government itself) are attributable to the recent global financial crisis or how far attributable to internal faults but the delegation is certain that there is scope for much improvement in the internal law and practice within the country. As to other requirements of Article 9, the delegation received no particular criticisms about municipality access to capital funds (by loans) or to the consultation on the distribution of resources. On consultation more generally, see Article 10.

49. **Article 10** (Right to associate)

The Charter requirements imposed by this Article have three different dimensions, the first being that local authorities shall be entitled to cooperate with each other in order to carry out tasks of common interest. The power of municipalities to co-operate in this way (by means of inter-municipal unions) is provided by Articles 131-137 of the 2003 Law. The delegation also notes that, by Article 37, the central government can compel joint working by municipalities. The delegation doubts the Charter compatibility of this particular provision but is not aware that it has been used to oppressive effect. Therefore, the Rapporteur believes, that, in permitting co-operation, Montenegrin law is broadly compatible with Article 10.

50. It is, however, appropriate at this point to comment on what the delegations believes to have been only the very slight uptake by municipalities of the opportunities to co-operate which are offered. The delegation is aware that limited use of co-operation has been made use of by some municipalities in the field of tourism provision (in both the south and north of the country, including the development of national parks) and in respect of responsibilities for rural roads. The delegation is also aware that, in respect of the provision of (sanitised) landfill sites, some attempts have been made by groups of municipalities to solve the problem on a joint basis (one such example is based on Kotor and adjoining municipalities) but that these so far have been unsuccessful – largely because of local opposition on a “Not in my Back Yard” basis. The reason why the responsibility of co-operative working is so important in the context of Montenegro is that it might be part, at least, of the solution to the wider problem of lack of capacity discussed earlier.

51. If the smaller and the least resourced municipalities could perform tasks jointly, this would be very much better, in the evident absence of enthusiasm on the part of either Government or municipalities for mergers, than inappropriate intervention by central government or complete service failure. The Government and also the Union of Municipalities should encourage this. It may be the *only* route to securing the satisfaction of the Charter's requirements.

52. The second element of Article 10 of the Charter relates to the right to form associations of local authorities. This right is conferred by Articles 127-130 of the Law of 2003 which provides a power to establish an association and the manifestation of this right and its predecessors is the proud existence of the Union of Municipalities since 1972. The Union is an association of all the municipalities of Montenegro. One of the principal functions of the Union is to represent the collective views of the municipalities to central government and this it appears to do on a regular basis. Sometimes these views are critical of government (see e.g. the paper on local finance referred to in paras 39 and 43). The delegation understands that the Union provides support services to its member municipalities including advice services and training (after its own Training Needs Analysis of 2007) (see paras 28, 29, above). The Union also maintains links with counterparts abroad and works in partnership with international organisations to deliver externally funded programmes. It is, however, an organisation which is underfunded and understaffed.

53. Specific mention is made in Part XII of the 2004 Law about the relations which are expected between local government bodies and State authorities. Reflecting the principle first articulated in Article 3 of the Law, Article 119 requires that such relations be based on mutual co-operation. This is spelled out further in detailed provision made in Articles 120-123. An important manifestation of the co-operative relations between the Union on behalf of municipalities and the Government is their joint participation in the Co-ordination Committee for the Reform of Local Self-Government. The delegation is, however, doubtful whether the Union is using its political muscle to the full. Perhaps party political alliances between central government and the municipalities are a partial explanation for this but it is regrettable if the cause of local democracy is less than adequately represented for this reason. Co-operation with central government is doubtless a good thing but this should not be at the cost of the robust maintenance of the autonomy of local self-government.

54. Article 10(3) of the Charter provides for an entitlement of local authorities to co-operate with counterparts in other states. In Montenegro, such a right is assured by Article 130 of the Law of 2003 and, although it is understood that the actual opportunities taken by municipalities vary widely, the delegation is aware that some municipalities (e.g., in particular, Podgorica the capital and Kotor with its international heritage status) do maintain international connections. The delegation's impression is, however, that in a region where co-operation with immediate neighbours is important, further, much more extensive connections between municipalities and their neighbouring counterparts should be strongly encouraged. The Union of Municipalities is already beginning to take a lead on this, and a number of cross-border programmes are being implemented.

55. **Article 11** (Legal protection)

This Article requires that local authorities must have recourse to a judicial remedy to secure their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation. In Montenegro Article 17 of the 2003 Law does indeed provide that municipalities shall enjoy legal protection, subject to the Constitution and the law; and then Article 142 permits individuals to initiate a procedure in the Constitutional Court to assess the constitutionality and legality of general regulations of state authorities that violate the right to local governance, as defined by the Constitution or the law. Perhaps more important in Charter terms is that a similar right is also given to assemblies of municipalities. In addition (by Article 143 of the 2003 Law) a power is given to municipalities to file a constitutional appeal to the Constitutional Court where the citizens' right to local governance is violated by a specific state regulation or activity. By Article 144, 'the Association' (the Union of Municipalities established under Article 128) may submit an initiative to the President of Montenegro not to promulgate an adopted law which violates the citizens' right to local self-governance.

IV. Overall findings and conclusions

56. A number of conclusions in the light of the Congress delegation's inquiries in Montenegro should be drawn.

57. Probably the most important starting point is to reiterate what was stated at the end of the treatment of Article 2 of the Charter. It was noted that the general state of the statute book in Montenegro continues to be in flux. Several new pieces of legislation are already in the parliamentary process or else are at a preparatory stage. However, the Rapporteur's overall view is that, one or two small aspects apart, the provision made in the Constitution and then in the 2003 Law and elsewhere is very much Charter compatible. This is a situation which reflects the commitment which has been shown in recent years on the part of those in the Ministry of the Interior and Public Administration and their counterparts in the municipalities and the Union of Municipalities to the reform of local self-government in the country on a principled basis.

58. On the other hand, the delegation also noted several concerns about the Charter compatibility of the practice, as opposed to the law, of local self-government and (whilst not forgetting recommendations on other specific matters) it might be useful to summarise these concerns under five broad headings:

(a) Competences and territorial organisation

Although, viewed separately and with a focus on the formal competences allocated to municipalities, it appears that local authorities in Montenegro do indeed 'regulate and manage a substantial share of public affairs' in the country and on the basis of a territorial distribution of municipalities which has been in place for many years, the delegation is not persuaded that, in many parts of the country, that promise is delivered in practice. In many instances, especially in the north of the country, the municipalities do not have the population base to enable service delivery at a sufficient level. The response to this problem might take the form of mergers of municipalities. Or it might, more readily, take the form of a coherent and robust use of co-operation by municipalities to enable the joint delivery of services.

(b) Funding Issues

This is a related phenomenon which contributes to the lack of capacity in many of the municipalities of Montenegro. Lacking a large enough population and revenue base, the smaller municipalities, despite the promise of the reforms of the financial legislation, do not have the financial resources adequate for the discharge of their functions. The delegation takes note of the point made by both the Government and the Union of Municipalities that, in some measure, the current situation in Montenegro reflects the wider problems of the global financial crisis but the Rapporteur is not persuaded that that is the sole or even the main cause.

(c) Structures and internal relationships

The delegation has expressed concerns about the operation of the electoral system for councillors and for mayors in Montenegro and the relationships thereby created between those two elements in the internal structures of the municipalities. Although the formal rules might deliver a Charter compatible system, it is the prior dominance of the party system which has the effect of undermining the relationships of accountability between the mayor and council, and then between the municipal bodies as a whole and the people they serve. Reform of the voting system would be a good start in the direction of a healthier system as a whole. Separately, the workforce capacity of municipalities should be enhanced – something which is closely related to earlier comments on financial capacity.

(d) Central-local relations

Although the language used of the desired relationship between the Central Government in Montenegro and the municipalities is one of "partnership" and some of the institutions and procedures established for managing the relationship are also designed to achieve valuable partnership working, the Rapporteur believes that the financial dependency of the municipalities, coupled with their other weaknesses and operating in combination with a political dependency, leaves the local government side of the relationship very fragile.

(e) Extent of Montenegro's Charter commitment

As an overall conclusion the Rapporteur believes it would be highly beneficial for the development of the local self-government of Montenegro, that the country's authorities reconsider the restrictions on the extent of the Charter articles by which Montenegro is bound with a view to lifting some or all of them.

**CONGRESS' MONITORING VISIT TO MONTENEGRO
Podgorica, Kotor (22-24 March 2010)**

Programme

Congress delegation:

Mr Nigel MERMAGEN	Rapporteur, member of the Institutional Committee of the Congress, South Somerset District Council, United Kingdom
Professor Chris HIMSWORTH	Consultant, Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress
Ms Lilit NIKOGHOSYAN	Co-Secretary of the Institutional Committee of the Congress

Meetings in Podgorica

22 March 2010

Mr Ivan Brajović, Minister of Interior Affairs and Public Administration of Montenegro

Mr Miomir Mugoša, Mayor of Podgorica, representatives of the Office of the Mayor of Podgorica

Mrs Biljana Šćekić, Deputy Minister, Ministry of Finance of Montenegro

Mrs Ana Zec, Council of Europe Office in Montenegro

Mrs Nataša Kraljević, Council of Europe Office in Montenegro

Mr Željko Šturanović, Vice-President of the Parliament of Montenegro

Mr Dragan Pejanović, Deputy Minister for Local Authorities, Ministry of Interior Affairs and Public Administration of Montenegro

23 March 2010

Mr Pierre-Yves Bellot, Project Manager, Delegation of the European Union to Montenegro

Mr Ambassador Paraschiva Badescu, Head of Mission, OSCE Mission to Montenegro

Mr Waldemar Figaj, Deputy Head of Mission

Mr Lloyd Tudyk, Head of Democratization Section

Mrs Raffaella Zoratti, Senior Democratization Officer

Mr Slaven Lekić, Member of the Group of Independent Experts on the European Charter of Local Self-Government of the Congress

Mr Stanko Marić, former Secretary of the Union of Municipalities of Montenegro

Mr Rajko Golubović, Secretary General of the Union of Municipalities of Montenegro

Mr Tarzan Milosević, Mayor of Bijelo Polje

Mrs Vanja Starovlah, Advisor, Union of Municipalities of Montenegro

Mr Goran Djurović, Resident advisor for Montenegro in a regional EC-funded project "Technical Assistance to Civil Society" (TACSO), Former Executive Director of Center for Development of Non-Governmental Organizations

Prof. Djordjije Blazić, Professor, Faculty of Administrative and European Studies, University of Podgorica

Meetings in Kotor

24 March 2010

Meeting with representatives of **NGOs**
Mrs Ljilja Radunović, “EKO CENTAR DELIFN”
Mrs Tatjana Rajić, NGO “EXPEDITIO”

Mr Nikola Konjević, President, Municipal Assembly of Kotor
Mrs Duška Banicević, Secretary, Municipal Assembly of Kotor

Mrs Marija Čatović, Mayor of Kotor
Mr Zeljko Avramović, Vice-Mayor
Mr Andrija Popović, Vice-Mayor
Mr Filo Biskupović, Vice-Mayor
Mr Djordjije Vukčević, Chief Administrator
Mrs Snezana Mačić Stanacev, Advisor
Mr Ivo Magud, Advisor for economy