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Local democracy in Montenegro

Monitoring Committee

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Summary

This is the second report on the state of local democracy in Montenegro since the country ratified the Charter in 2008. The report notes the positive legislative steps taken in the framework of the ongoing public administration reform. In this context, the report underlines the importance to put into practice the objectives set out in the reform papers, in order to effectively overcome the challenges Montenegro continues to face. The rapporteurs pointed out remaining matters of concern as regards the implementation of the European Charter of Local Self-Government, notably the inadequate human resources management, lack of sufficient financial resources of municipalities as well as the remaining shortcomings of the consultation procedures and inter-municipal co-operation.

The report stresses the need to ensure adequate concomitant financial resources for the transfer of competences to local self-government units, which they may dispose of freely within the framework of their powers. In the light of the difficult financial situation of a considerable number of municipalities, there is a need to implement a sustainable model of refinancing debts and liabilities of local government units towards financial institutions. In order to fully comply with the Charter, the Government is furthermore invited to improve the consultation process with municipalities and to review its policies on the rationalisation of local administrative capacities and the management of municipalities. Finally, the report invites the Government to ratify the currently non-ratified provisions of the Charter which appear to be applied in Montenegro.

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

Local democracy in Montenegro

RECOMMENDATION 379 (2015)²

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

a. Article 2, paragraph 1.b. of Statutory Resolution CM/Res(2011)2 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(2011)2 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. Resolution 307 (2010) REV2 on procedures for monitoring the obligations and commitments entered into by the Council of Europe member States in respect of their ratification of the European Charter of Local Self-Government;

d. Recommendation 293 (2010) on local democracy in Montenegro;

e. The attached explanatory memorandum on local democracy in Montenegro.

2. The Congress reminds members that:

a. Montenegro first joined the Council of Europe as part of the Union which it formed with Serbia. As an independent state, Montenegro became a member of the Council of Europe on 11 May 2007. Montenegro³ signed the European Charter of Local Self-Government (ETS No. 122, hereinafter “the Charter”) on 24 June 2005 and ratified it on 12 September 2008. The Charter entered into force with respect to Montenegro on 1 January 2009. Pursuant to Article 12, paragraph 2 of the Charter, Montenegro declared itself not to be bound by Article 4, paragraphs 3 and 5, Article 6 paragraph 2; Article 7 paragraph 2; Article 8 paragraphs 2 and 3.

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 (ETS No. 207) on 16 November 2009 and ratified it on 1 October 2010 with entry into force on 1 June 2012.

c. the Monitoring Committee decided to monitor the state of local self-government in Montenegro and its compliance with the European Charter of Local Self-Government. It instructed Ms Gaye Doganoglu, Turkey (L, EPP/CCE) and Mr Henrik Brade Johansen, Denmark (L, ILDG) to prepare and submit to the Congress, as rapporteurs, the report on local democracy in Montenegro;⁴

d. the monitoring visit took place from 9 to 11 June 2015 in Podgorica, Tuzi, Niksic and Danilovgrad. During this visit, the delegation of the Congress held meetings with representatives of several local authorities, including members of the Union of Municipalities of Montenegro, State institutions and the Ombudsman. The detailed programme of the visit is appended to this report.

e. The delegation would like to thank the Permanent Representation of Montenegro to the Council of Europe and the Montenegrin Union of Municipalities for their warm welcome and helpful assistance during the visit.

2. Discussed and approved by the Chamber of Local Authorities on 21 October 2015 and adopted by the Congress on 22 October 2015, 3rd sitting (see document [CPL/2015\(29\)7FINAL](#), explanatory memorandum), rapporteurs: Gaye DOGANOGLU, Turkey (L, EPP/CCE) and Henrik Brade JOHANSEN, Denmark (L, ILDG).

3. Date of signature by the State Union of Serbia and Montenegro.

4. They were assisted in their work by Mr Veith MEHDE, consultant and member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress secretariat.

3. The Congress notes with satisfaction:

- a. the generally positive nature of local democracy in Montenegro as regards the implementation of the principles enshrined in the Charter;
- b. the adoption and implementation of new laws on local self-government and local self-government finance since the Congress' previous Recommendation (293) in 2010;
- c. the efforts made by the Parliament as well as the Government to improve the legal framework in which local democracy can be exercised, particularly in regard to the on-going public administration reform (AURUM), which suggests a set of promising legal developments for the state of local democracy in Montenegro;
- d. the preparation by the Ministry of Interior together with the Union of Municipalities, NGOs and the OSCE of the Model Action Plan for the Fight against Corruption in Local Self-Government and the fact that all municipalities in Montenegro have adopted, or are in process of preparing and adopting, updated Action Plans for the Fight against Corruption in Local Self-Government for the period 2015-2016;
- e. the compliance with Articles 2,3,5,7,8 and 11 of the Charter and the respect *de facto* of the non-ratified provisions;
- f. the signature, ratification, and application of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

4. The Congress expresses its concern about the following:

- a. the imprecise definition of municipal competences, notably concerning education and healthcare, which leads to a difficult implementation in practice;
- b. the insufficient use in practice of the existing consultation mechanisms between the State and local self-government units on all matters that concern them directly;
- c. the inadequate administrative structure of local authorities, related to the inefficient management of human resources and lack of capacity to develop a sustainable internal administrative structure of local self-government units;
- d. the municipalities' lack of financial resources commensurate with their competences;
- e. the high level of debt and unsettled liabilities of municipalities.

5. In the light of the above, the Congress asks the Committee of Ministers to invite the authorities of Montenegro to:

- a. further pursue the declared objectives of the public administration reform (AURUM) by completing the legislative projects related to local democracy in Montenegro and ensuring their effective implementation in practice;
- b. re-assess and clearly define the scope of competences of municipalities, notably regarding education and healthcare (Article 4 paragraph 2);
- c. endorse and effectively make use of the consultation mechanisms between the State and municipalities on all matters which concern them directly by setting up a regular consultation procedure (Article 4 paragraph 6, and Article 9 paragraph 6);
- d. ensure the implementation in practice, in the framework of the adopted Strategy for Professional Development of Local Civil Servants and Employees in Montenegro for the period 2015-2018 of a sustainable system of development of human resources in local self-government units, which should be adapted to local needs (Article 6 paragraph 1);
- e. allocate to local authorities financial resources which are commensurate with their powers and responsibilities (Article 9 paragraph 2);

f. create and put into practice a sustainable model of refinancing debts and liabilities of local government units towards financial institutions (Article 9 paragraph 3);

g. consider changes in the legal framework of inter-municipal co-operation with a view to clarifying the role of central government in the creation of institutionalised forms of co-operation between municipalities (Article 10 paragraph 1);

h. reconsider the ratification of those provisions of the Charter that have yet not been ratified and appear already *de facto* to be applied.

6. The Congress invites the Committee of Ministers of the Council of Europe to take account of the present recommendation on local democracy in Montenegro, as well as its explanatory memorandum, in its activities relevant to this member State.

Local democracy in Montenegro

EXPLANATORY MEMORANDUM

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1. Introduction: Objective of the visit, terms of reference, scope

1. Pursuant to Article 2, paragraph 3 of Statutory Resolution (2011) 2 of the Council of Europe Committee of Ministers, the Congress of Local and Regional Authorities (hereinafter referred to as "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 on Local Self-Government are implemented.

2. Montenegro first joined the Council of Europe as part of the Union which it formed with Serbia. As an independent state, Montenegro became a member of the Council of Europe on 11 May 2007. Montenegro signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 24 June 2005 and ratified it on 12 September 2008. The Charter entered into force with respect to the Montenegro on 1 January 2009. Pursuant to Article 12, paragraph 2 of the Charter, Montenegro declared itself not bound by Article 4, paragraphs 3 and 5, Article 6 paragraph 2; Article 7 paragraph 2; Article 8 paragraphs 2 and 3.

3. In the domain of local democracy, Montenegro has also signed and ratified other Council of Europe conventions, namely the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106; ratified on 8 December 2010 with entry into force on 9 March 2011), the Additional Protocol to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No.159, also ratified on 8 December 2010 with entry into force on 9 March 2011) and the Protocol No. 2 to the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities concerning interterritorial co-operation (ETS No. 169: also ratified on 8 December 2010 with entry into force on 9 March 2011).

4. 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 (ETS No. 207) on 16 November 2009 and ratified it on 1 October 2010 with entry into force on 1 June 2012.

5. Ms Gaye Doganoglu (Turkey, L, EPP/CCE) and Mr Henrik Brade Johansen (Denmark, L, ILDG), both rapporteurs on local democracy, were instructed by the Monitoring Committee to prepare a report on Montenegro and to submit it to the Congress.⁵

6. A visit was made by a Congress delegation to Montenegro from 9 to 11 June 2015, in Podgorica, Tuzi, Niksic and Danilovgrad.

7. During this visit, the delegation of the Congress held meetings with representatives of State institutions, the Ombudsman and several local authorities, including members of the Union of Municipalities of Montenegro. The detailed programme of the visit is appended to this report.

8. The present report has been drafted on the basis of the information received during and after the visit to Montenegro, on the relevant legislation and on other information and documents provided by the representatives of the Montenegrin authorities. Information provided by experts and international institutions has also been used.

9. The delegation would like to thank the Permanent Representation of Montenegro to the Council of Europe and the Montenegrin Union of Municipalities for their warm welcome and for helpful assistance during the visit.

2. Political context and main political developments since Congress Recommendation 293 (2010)

2.1 International context and relations with neighbours

10. Montenegro became an independent state in 2006, following a referendum in which 55% of Montenegrin citizens voted for independence from Serbia. In addition to joining the United Nations and other international institutions, on 11 May 2007 it became the youngest member state of the Council of Europe to date.

5. The rapporteurs were assisted in their work by Mr Veith Mehde, consultant with the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress Secretariat.

Montenegro was officially granted candidate status by the European Union in December 2010. Accession negotiations were opened in June 2012 and have firmly progressed since then. At the same time, there are also plans for membership of NATO. The ambition to get further involved with international organisations and to comply with major international standards was clearly noticed by the delegation of the Congress. SIGMA, who prepares annual assessments of EU candidate countries in regard to public administration reform, has even raised concerns in this respect. In its 2011 report on Montenegro it states: “The over-abundance of international organisations and donors is placing a strain on state administrative structures, which are overloaded and overstretched. This state of affairs may lead to ‘reform fatigue’, which could be devastating for the country”.⁶

2.2 Internal political and economic context

11. The present constitution was proclaimed in 2007 and defines Montenegro as a parliamentary democracy. Montenegro’s parliament is unicameral and currently has 81 members, each elected for a four-year term.

12. The president is directly elected for a five-year term and serves as the head of state, to which the Constitution gives a rather limited political role (Article 95). The current president, Filip Vujanović (Democratic Party of Socialists, DPS), was elected in 2013 for a second term in office with 51.2% of the votes in the first round. The 2012 elections to the Parliament were won by the Coalition for a European Montenegro, comprising the Democratic Party of Socialists (DPS), the Liberal Party (LP) and the Social Democratic Party (SDS). Following this election, Milo Đukanović (DPS) was appointed as prime minister, a post that he currently holds for the seventh time. Montenegro’s political system is characterized by a political continuity that is rather unique in the region. Since the introduction of multiparty politics in 1990 and throughout the transitional period leading to independence, the country was governed by the Democratic Party of Socialists (DPS). On the other side of the political spectrum, there are several smaller parties represented in the parliament that are explicitly focused on ethnic minorities (Albanians, Croats, Bosniaks and Serbs).

13. The GDP per capita places Montenegro among middle-income countries, with \$ 4.583 billion in 2014.⁷ Montenegro registered strong economic growth in the period prior the global crisis. This was partly due to introducing the euro as the official currency; increased foreign investments in the tourism sector, privatization and a tax reform. However, the global crisis starting in 2008 slashed growth, which remained at a low level until 2012. Since the onset of the crisis, the unemployment rate has ranged between 16% and 21%, with a current decline to 15% (April 2015). The average income per capita (purchasing power parity) is at 43% of the EU average. At the end of 2014, the public debt was just under 60% of GDP, whereas the current account deficit was at 14.6 % of GDP. This is mainly caused by a decrease in foreign direct investment since the beginning of the financial crisis (from 37.26% in 2009 to 10.8 % of GDP in 2013).

14. The economic situation shows massive differences between a relatively wealthy south/coastal area and in economic terms – a much less developed north. Montenegro’s on-going reform process includes several initiatives with the aim of investing in infrastructure in order to make the north more accessible. During the visit, the Congress delegation was informed about the Regional Development Strategy of Montenegro 2014 – 2020, which indeed aims at improving the competitiveness of areas with a need for further development. A special focus seems to lie on the implementation of development programmes, namely improved systems of co-ordination and inter-municipal co-ordination. In the north, a system of incentives (including tax incentives) is designed to encourage investments in the region, thereby improving the business environment and reducing the unemployment rate that has become one of the key concerns in the lesser developed areas. Agriculture, tourism, wood processing and energy production are identified as potential areas of business with a positive potential for the region.

15. The delegation of the Congress was informed during the visit that the economic situation of municipalities is not necessarily reflected by the actual state of their local finances. In other words, the economic development does not always go hand in hand with the financial stability of municipalities. As several interlocutors pointed out, comparatively rich municipalities located in the country’s coastal region are at same time among the most indebted ones. Financial differences between municipalities are addressed by an equalisation fund. The delegation of the Congress received the impression that this mechanism does indeed help to ameliorate the problems of the worst-off municipalities, but it can hardly be more than an initial step towards a sustainable improvement of the budgetary situation of the concerned municipalities.

6. SIGMA Assessment Montenegro, May 2011, p. 3.

7. <http://data.worldbank.org/country/montenegro>

16. In the “Strategy for Professional Development of Local Civil Servants and Employees in Montenegro for the period 2015-2018” the Government of Montenegro describes the situation – without referring to any geographical particularities – as follows: “Local self-government units are characterized by different level of development which is in direct correlation with their administrative capacities. Evident is a chronic employee surplus, unfavourable age and qualification employee structure, a lack of motivation, knowledge, abilities and skills, which is a prerequisite for the performance of local self-government functions in modern conditions. There is also a deficit of personnel of the appropriate level of education in some local self-government units”.⁸

17. As was most recently reaffirmed by GRECO’s Evaluation Report on Montenegro, corruption continues to be an important concern in Montenegro.⁹ According to the Progress Report 2013 by the European Commission “corruption remains prevalent in many areas and continues to be a serious problem”.¹⁰ Under the influence of international organizations, the Government and the Parliament of Montenegro have taken various steps to intensify the fight against corruption. This includes both a more effective prosecution of cases that have taken place and the prevention of corruption. The government has identified the fight against corruption as one of the key objectives in its Public Administration Reform Strategy in Montenegro for the period 2011-2016 (“AURUM”). A number of activities were summarized under the headline “Achieve a high level of transparency of local self-government, observance of ethics standards ensured and united fight against corruption”. Accordingly, Montenegro implemented the Strategy to Fight against Corruption and Organized Crime for the period 2010-2014 as well as a corresponding action plan for the periods 2010-2012 and 2012-2014. Both documents oblige local self-government units to set up local action plans for the fight against corruption. The Ministry of Interior together with the Union of Municipalities, NGOs and the OSCE prepared the Model Action Plan for the Fight against Corruption in the Local Self-Government in order to help municipalities to prepare, develop and adopt such action plans. According to the Union of Municipalities, 19 of the 21 municipalities at the time, adopted Action Plans, underwent a monitoring and reported to the central authorities about the implementation. The delegation was informed that at the time of the visit, all municipalities in Montenegro were in the process of preparing and adopting updated Action Plans for the period 2015-2016.

2.3 Previous reports and recommendations

18. The first monitoring visit on the situation of local democracy in Montenegro took place in 2010, which resulted in the adoption of Recommendation 293 (2010). The Congress recommended that the Montenegrin authorities: (6) take account of the suggestion to initiate a reform of the voting system for the election of mayors and municipal councillors (a), to aim to achieve a full separation of the laws of the national and local elections (b), to take steps to enhance the workforce capacity of municipalities by continuing to provide adequate training and technical support for municipal staff (c), to create the necessary conditions and take appropriate measures, in co-operation 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 (d), to encourage and promote, in co-operation with the Union of Municipalities of Montenegro, better inter-regional co-operation between Montenegrin municipalities and their neighbouring counterparts (e), 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 (f), 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 (f). The Congress recommended to the Union of Municipalities of Montenegro (7) that it uses its political influence to the full and strikes the right balance between co-operation with central government and the robust maintenance of the autonomy of local self-government.

19. Since the previous Recommendation 293 (2010), several legislative developments took place within the framework of Montenegro’s “Public Administration Reform Strategy” (AURUM) that was set out for a period from 2011-2016. The three key areas for reform in the current Reform Strategy comprise public administration, local self-government as well as public services and other organisations exercising public authority. In this context, legislative developments since 2011 include the passing of the Act on Territorial Organization of Montenegro and the consequently enacted Act on Changes and Amendments of the former, which permitted the creation of the new municipalities of Petnjica (2013) and Gusinje (2014). Furthermore, the Government issued several strategies and corresponding action plans as part of the AURUM reform process, such as the Strategy for development of inter-municipal cooperation in Montenegro 2011-2015; the

8. Strategy for Professional Development of Local Civil Servants and Employees in Montenegro for the period 2015-2018, p. 10.

9. Greco Eval IV Rep (2014) 6E, p.3.

10. COM(2013) 700 final, p. 9, 44.

Strategy of Professional Development of Local Civil Servants and Government Employees in Montenegro for the period 2015-2018, the Plan of Internal Reorganization of the Public Sector as well as the previously mentioned Strategy to Fight Against Corruption and Organized Crime for the period 2010-2014. Likewise, information provided by several interlocutors indicated that various laws relating to local self-governance are currently in process of being adopted or amended. This concerns in particular the Law on Local Self-Government and the Act on Territorial Organization, which are in process of being amended as well as the Act on Communal Affairs, the Law on Local Self-Government Financing and the Act on Legalization of Illegally Built Structures, which are currently in the adaptation or preparation phase. In this regard, the Government emphasized during the consultations that the Law on Local Self-Government is still in the parliamentary procedure, due to the fact that it was submitted to the European Commission for further advice.

3. Honouring of obligations and commitments: basic features of local authorities

3.1 Legal framework

20. The legal cornerstones of local self-government in Montenegro consist of Chapter IV of the Constitution, the Law on Local Self-Government, the Law on Local Self-Government Financing and the Act on Territorial Organization of Montenegro. Article 22 of the Constitution guarantees the right to local self-government, which is further developed in Article 113 ff. Article 113, paragraph 2 provides a material definition of self-government: it “shall include the right of citizens and local self-government bodies to regulate and manage certain public and other affairs, based on their own responsibility and in the interest of the local population”. The autonomy of municipalities to perform their duties is also guaranteed (Article 117, paragraph 1). Municipalities are described as the “basic form of the local self-government”, although it is “possible to establish other forms of local self-government” (Article 114). Article 115 paragraph 3 defines the assembly and the president as the two authorities of the municipalities that have to be established. According to Article 116, paragraph 3 municipalities have to have their own resources as well as being financed by assets of the state.

21. The Law on Local Self-Government provides the basis for the work of municipalities. It establishes the main features of the relationship between the national government and the municipalities, the essential rights and the legal status of municipalities and the institutional framework in which these rights can be exercised. The Law on Local-Government Finances sets also the basis for the funding of municipalities of Montenegro.

22. Details of the legal framework are established by a number of laws that have been under almost constant review. The several amendments and adoptions of laws relating to local self-government that are currently taking place reflect Montenegro’s positive efforts to advance the necessary reforms. The central objectives of the current legislative developments relate in particular to the improvement of the internal structure and workforce capacity of local authorities, the reinforcement of inter-municipal cooperation, the introduction of a polytypic model of organization of local self-government units and the introduction of a system of more stable sources of revenue for local authorities.

3.2 Local self-government: basic features of municipalities

3.2.1 Institutional structure

23. Montenegro is a unitary state. The only sub-national level is formed by 23 municipalities and there are no regions or other intermediary levels of governance. In the course of Montenegro’s reform process, the “Regional Development Law” of 2011 divided the country into three regions for statistical purposes, with no legislative or implementing powers vested in those regions. In accordance with the legal framework, all municipalities – *de jure* – have the same competences, the same institutional structure (although different numbers of councillors, and – perhaps – a different number of deputy mayors) and, in principle, the same sources of revenue. The historical capital and the administrative capital have a slightly different status that will be mentioned in the context of the respective subject-matter.

24. The Law on Local Self-Government establishes the municipal assembly (“representative body”) and the mayor (“executive body”) as the two municipal authorities. The assembly consists of 30 councillors (and an additional one per every 5.000 voters) who are elected for a four-year period. The assembly has to perform a number of fundamental functions enumerated in Article 45, relating most importantly to the adoption of regulations; general acts; the budget, certain basic plans and programmes. It is also the body that provides

the “authentic interpretation of its own regulations”. The assembly elects one of its councillors as its president and appoints a secretary for the exercise of further administrative tasks. The formal legal requirements for the post of secretary of the municipal assembly are relatively high: He/she needs to hold a law degree, must have passed a professional exam for the work in the state administration and has to have at least five years of experience.

25. The mayor is the professional head of the local administration. He/she is elected by the assembly (with a majority of councillors needed) for a period of four years. The competences/duties of the Mayor are enumerated in Article 57 of the Law on Local Self-Government and include amongst others the representation of the municipality; taking care of and being responsible for the implementation of laws, regulations and general acts; the execution of delegated affairs, defining “the organization and methods of functioning of municipal administration, based on the opinion of the Chief Administrator”, and the supervision of the performance of the local administration. The mayor also has the competence to appoint and dismiss the “chiefs of local administration bodies, vocational and other services, directors of agencies and the Manager”. The deputy mayor and the chief administrator are appointed and dismissed by the mayor who needs the consent of the assembly. Under certain, very strict, conditions, he/she can pass acts that form part of the competences of the assembly. The mayor is accountable to the assembly, in the case of delegated competences to the government. If he/she fails to perform his/her duties, dismissal by the assembly by means of a majority vote (Article 60a – with an enumeration of the types of duties relevant in this respect) or by the Government of Montenegro is possible.

26. The third pillar of the institutional arrangement for decision-making constitutes citizen participation. The law establishes a number of different forms for citizens to participate in the political process, including petitions, complaints and initiatives launched before the bodies responsible for a certain matter. Citizens can take formal decisions in a referendum, following a civil initiative. Referendums can take the form of a community referendum or a municipal referendum.

27. A special section of the Law on Local Self-Government is dedicated to the promotion of local communities. In fact, the Assembly can establish an institutional framework that allows citizens to govern their affairs independently from the official structures at the municipal level. These local communities can gain the status of a legal entity with its own funds and can set up community centres.

3.2.2 Relations between central and local authorities

28. Municipalities in Montenegro fulfil tasks both falling within the exclusive competence of local self-government and the ones entrusted by the Government. In the area of self-government, the law restricts the supervision by the state to the question of legality. Other forms of supervision are in place but do not seem to be regarded as a particularly strong pressure on local governments in the exercise of their rights.

29. The Law on Local Self-Government stipulates that the municipal-state-relations “shall be based on principles of mutual cooperation, in accordance with the law”. The relationship and the co-operation between public services, state bodies and the municipalities is the subject of two chapters of the Law on Local Self-Government. The provisions oblige both levels to co-operate, to inform each other about new developments, to submit data and other information if required and to provide support to their respective counterparts. Furthermore, there are instruments the government can use if local assemblies fail to exercise their duties. During its visit, the delegation of the Congress received the impression that the relationship between the local and the national level does indeed qualify as a co-operative relationship, as specified in the Law on Local Self-Government.

3.2.3 Status of the capital city

30. The concept of an Administrative Capital City–Podgorica – and a Historical Capital –Cetinje – are laid out in Article 2, paragraph 1 of the Constitution and specified in more detail in the Law on the Administrative Capital (2005) and the Law on the Historical Capital (2008). Both enjoy somewhat of a special status although formally, they have the same legal responsibilities as any other municipality. According to Article 2, paragraph 2 of the constitution, Podgorica does obtain the exclusive right to create an urban municipality, as a special form of exercising local self-government. Entities with the special status of an urban municipality obtain an administration of their own and certain self-governing rights. Despite this special status, they are part of the capital, which obtains the full right to self-government. Tuzi and Golubovci are currently the only two urban municipalities in Podgorica.

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

3.3.1 *Articles 2 and 3: Principle and concept of local self-government*

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

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

Article 2: Legal recognition of local self-government

31. In Montenegro, the principle of local self-government is recognised in the Constitution of Montenegro, the Law on Local Self-Government, the Law on Local Self-Government Financing, the Act on Territorial Organization of Montenegro, as well as in internal regulations, rulebooks of ministries and acts of local communities.

32. The right to local self-government is guaranteed by Article 22 of the Constitution: *“The right to local self-government shall be guaranteed”* and by constitutional Articles 113-117 of Chapter IV on Local self-government. In this respect, the representatives of the Constitutional Court, stressed to the rapporteurs that this right is equal to all other human rights and fundamental freedoms (including personal, political, economic, social and cultural rights).

33. The principles of local self-government are also guaranteed by the Act on Ratification of the European Charter of Local Self-Government, the Act on Ratification of Additional Protocol to the European Charter of Local Self-Government, the Act on Ratification of the European Framework Convention on Cross-Border Cooperation of Territorial Communities and Authorities. According to Article 9 of the Constitution of Montenegro, international agreements are not only “an integral part of the internal legal order”, but “have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation”. Interlocutors from the Constitutional Court emphasised to the delegation that the European Charter is always considered in its decisions in relation to a legal question which has a legal basis in the European Charter or indeed when applicants indicate a violation of the rights set forth within it.

34. The rapporteurs noted the constant concern of Montenegro’s legislature to take account of the fundamental principles of local government. They consider that Article 2 of the Charter is fully complied with in Montenegro.

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.

35. Paragraph 1 of Article 3, contains three requirements: first, a “substantial share of public affairs” as the material basis of local self-government, second, the own-responsibility of municipalities in the regulation and management of these affairs and third, the focus on the local population as the beneficiary. The paragraph sees these requirements as a definition not only of the “right” to act in a certain way but also of the “ability” to do so. Therefore, compliance cannot merely be a formality, local governments must also – *de facto* – be able to use these rights in the stated way.

36. The Constitution defines the form of local self-government, guarantees the status of the municipality as a legal entity, defines which acts local self-government and municipal bodies can adopt, defines the property-related powers of municipalities and their financing, as well as the autonomy of municipalities in the performance of their duties.

37. Article 1 of the Law on Local Self-Government, states that: “Local self-government includes the right of citizens and local self-government bodies to regulate and administrate, within the limits of the law, certain public and other affairs based on their own responsibility and in the interest of the local population”. Article 3 of the same law stipulates that: “Local self-government shall be exercised following the principles of democracy, decentralization, depolitization, autonomy, legality, professionalism, efficiency of the local self-government authorities and mutual co-operation between the State and the Municipality”. According to Article 28 of the above- mentioned law “The Municipality shall perform affairs of the local self-government that are of direct and common interest to the local population”.

38. As regards paragraph 2 of Article 3 of the Charter, it should be noted that the Montenegrin system does not include direct elections of mayors. They are elected by the municipal assemblies, by majority vote of all the members of the municipal assembly. It should be stressed that until 2009 the mayors of municipalities were elected directly by citizens but this provision was abolished and now it is the local assembly who decides on the appointment of the mayor. Some interlocutors consider this measure as a backwards step towards centralisation.

39. The Law on Election of Councillors and Representatives include the rules for a direct election of municipal councils. The dates for the elections are not harmonised, so that there is no single election day in Montenegro. In May 2014, 15 of the 23 municipalities held elections of their assemblies.

40. In addition to the mayor, a number of other administrative positions are awarded by political decision. In the case of Podgorica following the election of May 2014, it took until October 2014 to agree on the candidate for the position of mayor as well as the selection for all of the other positions awarded by majority decision in the assembly.

41. As concerns direct citizen participation and the civil sector, the Union of Municipalities of Montenegro informed the delegation that a set of models establishes a general legal and institutional framework for participation of citizens in local self-government. It creates the conditions for enabling environment and for building the environment for strengthening of the role and accountability of local self-government authorities, and citizens and non-governmental organisations as well, and of all other key players in the local self-government. Citizen participation in the decision-making process is also guaranteed by Article 6 of the Law on Local Self-Government which stipulates in Paragraph 1: “*Citizens shall participate in decision-making processes related to their needs and interests, directly and through freely elected representatives in local self-government authorities*”. The rapporteurs heard local representatives, in particular the mayor of Tuzi municipality, affirm this participation by citizens in local affairs.

42. The rapporteurs conclude that Article 3 is generally respected in Montenegro.

3.3.2 Article 4: Scope of local self-government

Article 4 – Scope of local self-government

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

43. Montenegro is not bound by Article 4, paragraphs 3 and 5.

44. As regards paragraph 1, the Montenegrin Constitution conveys only a preliminary idea of the basic powers and responsibilities of municipalities. It does, however, set out the principle of local self-government

in a way that leaves no doubt that the legislative framework has to follow a path that is compatible with the Charter.

45. The principal competences of municipalities in Montenegro are stipulated in Articles 32 and 33 of the Law on Local Self-Government. According to Article 8 of the same law: "The Municipality shall be autonomous in performing affairs of local self-government and its rights may not be denied or limited by any act of state authorities, except in cases and under the conditions provided for by the law and in accordance with the Constitution". Certain affairs that fall under competences of the state administration may be delegated by law to the municipality, if that ensures their more efficient and economic performance. The exercise of certain affairs that fall within the jurisdiction of the state administration may also be entrusted to the municipality by means of a government regulation. The law defines the conditions and terms under which such affairs may be transferred, or entrusted, to the Municipality.

46. Regarding Article 4, paragraph 2, the Law on Local Self-Government ensures the status of a legal entity to municipalities that shall accordingly have their own statutes and other general acts. The Municipality shall also perform affairs that are transferred to it by law or entrusted by means of a Government's regulation. The Municipality may also perform other affairs of interest for the local population that do not fall within jurisdiction of State authorities or other bodies and organisations. The interpretation seems to be that the interest of the local population serves as the triggering point for tasks falling within the competence of local self-government. In the absence of laws transferring the competence to other authorities, the municipalities have the right to decide that it should be for them to provide the service or otherwise to make decisions on the respective matter. This rule is reiterated by Article 33(10) that gives municipalities the right to "perform other affairs in accordance with the needs and interests of the local population". Despite a normative compliance with this provision it appears that in practice there is a problem as regards the process of fiscal decentralisation in Montenegro which is closely related to the precise definition of municipal tasks or competences, namely concerning the competences in education and healthcare and the financial situation of municipalities. This is a question that will be developed in the analysis of Article 9 of this report.

47. As far as Article 4, paragraph 3 is concerned; Montenegro refrained from ratifying the respective provision. The Constitution does however indirectly provide for the principle of subsidiarity. According to Article 16(4) of the Constitution, the system of local self-government shall be regulated by law. In this way and according to the interpretation provided by the Constitutional Court in its written reply to a request made by the Congress, Montenegro has accepted the basic principle of the Charter, which specifies that local authorities are the fundamental basis of any democratic system and that public responsibilities shall generally be exercised by those authorities which are closest to the citizen. In other words, the Constitutional Court affirms that the legislator has the obligation, when deciding which public duties will be performed on the local or state level, to give priority to the level of government that is closer to the citizens. The principle of subsidiarity is also guaranteed by paragraph 2 of Article 4 of the Law on Local Self-Government: "Local self-government shall also be exercised at the level of local community in order to create conditions for the most direct and efficient performance of affairs and of addressing the needs of citizens".

48. Concerning Article 4, paragraph 4, the rapporteurs are of the opinion that the law is based on the assumption that competences are full and exclusive. This provision of the Charter is better reflected by Article 36 of the Law on Local Self-Government, stating that the municipality "shall exercise methods and conditions for performing its own affairs in accordance with possibilities, interests, and needs of the local population". According to Article 37 of the same law, "When the Government estimates that performance of affairs of municipal own jurisdiction is of common interest for two or more municipalities, it may demand that the municipalities perform jointly such affairs or it may determine that such performance is of public interest and provide conditions for its implementation". Generally, the rules provide for a clear understanding under which circumstances the authorities at the national level have a right to interfere with the actions of local governments. Consequently, the rapporteurs consider that the situation complies with this paragraph.

49. Montenegro has not ratified the provision of Article 4, paragraph 5 of the Charter, but the rapporteurs would like to mention that during its visit, they were not approached with any substantiated demands for increased competences or delegated competences from central to local level. On the contrary, the interlocutors generally seemed to be content with the present scope of competences and of the associated self-governing rights on the side of municipalities. At the same time, the political actors at the national level seem to be prepared to think about more decentralisation. At least, there does not appear to be any fundamental opposition against further transfers of competences to municipalities as long as the effective and efficient performance by the respective local governments is regarded as guaranteed.

50. With regard to Article 4, paragraph 6 of the Law on Local Self-Government provides an obligation of the State authorities to consult and include local self-government units in the process of adopting legal, strategic and other documents that define the status, rights and duties of local self-government units. Namely, Article 13 of the Law on Local Self-Government provides that when laws and regulations that define the status, rights and duties of the local self-government are being drafted, in particular in relation to activities that are regulated by the present law, the municipality shall be entitled to express its views. Furthermore Article 122a lays down the obligation of the State bodies, in the process of preparation of laws and other regulations and general documents that regulate the status, rights and duties of the local self-government, to provide drafts or Bills and other documents to the municipality for consideration within a period which may not be less than 15 days from the day of submission.

51. The rapporteurs were also informed that the Agreement on cooperation between the Union of Municipalities and the Government of Montenegro provides an obligation of the central government and its authorities to ensure involvement of representatives of the Union of Municipalities in working groups or organs who are preparing legal documents, regulations, strategic and other documents regulating the local self-government system (establishing rights or duties). Despite the fact that from a legal point of view, the obligation to consult and include representatives of the Union of Municipalities by central authorities is mostly respected, this principle is not fully applied in practice, and the government does not always consult local authorities. The rapporteurs have been told that the Union of Municipalities informed the Government of Montenegro in writing thereof and requested that the Government ensures implementation of the law with regard to compliance with the obligation of state authorities to present to municipalities all acts that define the status, rights and duties of local self-government units for consultation.

52. Representatives of the Union of Municipalities informed the rapporteurs that they are present in the most important Government bodies (Council for Improvement of Business Environment, Structural and Regulatory Reforms, Coordination Team for Local Self-Government Reform, National Council for Sustainable Development, Privatisation Council, Commission for Equalisation System, Commission for Concessions, etc.). However this presence does by itself not ensure a consultation or cooperation on all matters that concern them directly. Moreover, in order to improve the situation and accelerate the process of reform in the field of the local self-government, the Union of Municipalities has proposed to establish a separate state authority, other than the Ministry of Interior, which is actually responsible for local government. These new proposed institution would work predominantly on the matters of local self-government in Montenegro. The necessity of such institution results also from a too wide range of tasks that are under the actual portfolio of the Minister of Interior who is often not able to deal in detail with all problems relating to the functioning of local government. In that respect, the Union of Municipalities presented, at the beginning of 2014, the initiative to the Government and the Ministry of Interior for the establishment of a separate Ministry of State Administration and Local Self-Government. There has been no feedback regarding this initiative so far.

53. In conclusion, Article 4, paragraph 2 requires special attention by the national authorities. Also in regard to Article 4, paragraph 6, the local authorities must be consulted, as far as possible, in due time and in an appropriate way, in the planning and decision-making processes for all matters that concern them directly. This primarily refers to the application of this principle in practice, since legal framework and mechanisms are established. The rapporteurs believe that the non-ratified paragraphs 3 and 5 of Article 4 should be ratified, as they are already *de facto* applied.

3.3.3 Article 5: Protection of boundaries

Article 5 – Protection of local authority boundaries

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

54. Article 21 of the Law on Local Self-Government prescribes that the municipality shall have the name and territory as determined by the law.

55. Montenegro has a single administrative level for local communities, namely the municipal level. As already mentioned Montenegro has 23 municipalities. In November 2011, the Parliament of Montenegro passed the Act on Territorial Organization of Montenegro¹¹. This Act lays down the conditions and the

11. Official Gazette of Montenegro 54/11
14/31

procedure for initiating a territorial change. Accordingly, any change to municipal boundaries will only be made in conformity with this law. In 2013¹² and in 2014¹³ the act was amended by two Acts on Changes and Amendments to the Act on Territorial Organization of Montenegro. These changes granted municipality status to Petnjica and to the municipality of Gusinje. The rapporteurs were informed that initiatives for the establishment of municipalities in Sutomore and Petrovac are under consideration.

56. Article 5 of the Charter is therefore complied with by Montenegro.

3.3.4 Article 6: Administrative structures

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

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| 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. |

57. Montenegro has declared not to be bound by Article 6, paragraph 2.

58. As the Law on Local Self-Government prescribes in its Article 20, the municipality shall have the capacity of a legal entity. It can be interpreted that this legal entity shall be able to determine its own internal administrative structures in order to adapt them to local needs and ensure effective management. Also Article 34 of the same law stipulates that the municipality shall establish local administrative bodies.

59. The municipal administration is divided into two branches: executive (with the mayor being the central figure of this branch) and parliamentary (the local parliament, or the assembly is a fundamental institution within this branch). The assembly is a legislative body and adopts: the statute; regulations and other general acts. The assembly also establishes: the level of municipal taxes, fees and charges and public services. Two important positions at the local level are the local manager and the administrator, the latter with responsibilities to manage major projects and capital investments. Local administration bodies (secretariats, offices, directorates, bureaux, etc.) are established to perform administrative affairs. The mayor may decide to establish agencies to perform affairs that require specific expert and technical knowledge.

60. Consequently, it seems from a legal point of view, that municipalities are able to determine their own administrative structures. In practice the operational capacities and management at local level still present great challenges. These challenges are mostly related to insufficient fiscal decentralisation; lack of transparency and accountability; inadequate human resource capacities; lack of knowledge, skills and experiences in assuming new and complex tasks, limited capacities for drafting and implementing of local development strategies and inability to adapt quickly to the needs of a modern society.

61. The rapporteurs heard that a major problem at the local level is under-qualified or under-skilled local employees who may not be capable of assuming responsibilities acquired through the decentralisation process. Moreover, certain interlocutors pointed to the high cost of funding over-staffed local-government units as one of the causes leading to their difficult financial situation. According to the Ministry of Finance, the numbers of employees in local self-government units is steadily increasing. Consequently, the total number of employees at the end of 2013 was 11 304, and the number of employees in local government authorities, public enterprises and institutions founded by local self-government units at the end of 2014 was 11 778. In this respect, national authorities have instructed the Union of Municipalities by to introduce a system of merit into municipalities, which would be the basis for a system of appraisal, reward and promotion according to results, and which would also improve accountability. During the consultation process the rapporteurs have been informed by the national delegation of Montenegro that the Government has accepted this initiative and it is integrated in the Bill of the law which is in the procedure of adopting.

62. The rapporteurs also heard that the Government of Montenegro adopted, on 15 January 2015, the *Strategy of Professional Development of Local Civil Servants and Government Employees in Montenegro for the period 2015-2018 with the Action Plan for the implementation thereof*. This Action Plan envisages that municipalities harmonise their statutes and decisions on the organisation of local government authorities

12. Official Gazette of Montenegro 27/13

13. Official Gazette of Montenegro 12/14

including the setting up a strategic framework to establish, by the third quarter of 2015, an equivalent and sustainable system of development of human resources at local level. In addition guidelines on creating a system of employment positions with relation to the Act on Changes and Amendments to the Law on Local Self-Government will be submitted to the European Commission for opinion. In the “Strategy for Professional Development of Local Civil Servants and Employees in Montenegro for the period 2015-2018”, the Government of Montenegro analysed the situation in local governments and set out a plan for further development. The Ministry refers to Article 6 of the Charter. This can be interpreted as an expression of the commitment to comply with the rules although Montenegro is not bound by paragraph 2.

63. The provisions of Article 6, paragraph 2 relate to adequate working conditions of employees in local government authorities and provide for employment of high quality staff on the basis of merit and competence. Currently adequate opportunities for training, remuneration and prospects of career advancement are lacking in Montenegro. Solutions may be proposed through the Act on Changes and Amendments to the Law on Local Self-Government, currently in its drafting procedure, and will provide a legal framework for quality management of human resources, employment of appropriate expert staff, planning and training, etc. A system of employee reward and promotion based on performance and merit will also greatly depend on the establishment of an adequate legislative framework to regulate the system of local self-government organisation. According to the Union of Municipalities of Montenegro the reform will be a great improvement in this regard.

64. The rapporteurs see as a positive development the provisions of the draft Act on Changes and Amendments to the Law on Local Self-Government that concern the development of new solutions which will introduce a system of merits and rewarding of staff members who are ready to provide quality services to citizens.

65. The rapporteurs are concerned about the fact that operational capacities and management of local level encounters great challenges. In this respect, they consider that a development and rationalisation of the local administrative capacities in the next period has to be a priority for the Government.

3.3.5 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.

66. Montenegro is not bound by Article 7, paragraph 2.

67. The mayor and deputy mayor of a municipality, as well as the president of the assembly and the chief administrator, are local officials. Employees in local administration bodies have the status of civil servants and professional employees.¹⁴ Legislation that regulates the status of state officials, civil servants and employees is also applied to the legal status of local officials, local civil servants and employees - unless otherwise provided for bylaw. The conflict of interest clause is stipulated in Article 91 of the Law on local self-government.

68. With regard to paragraph 2 of Article 7, the Union of Municipalities informed the rapporteurs that the Assemblies of Municipalities define, in their internal regulations, the amount of wages for elected representatives and officials. The statute of the municipality and decisions of the municipal assembly provide the right to remunerate councillors from €120 to 200 per month. The Union of Municipalities confirmed that this right is respected in practice. Irrespective of this, the Congress’ delegation heard no claims that the payment of mayors and other key representatives of the municipalities were regarded as insufficient.

69. The rapporteurs are of the opinion that the situation in Montenegro is in compliance with the provisions of Article 7. The rapporteurs believe that the Article 7, paragraph 2 should be ratified as it is *de facto* applied.

14. Article 88(1) Law on local self-government
16/31

3.3.6 Article 8: Administrative supervision

Article 8 – Administrative supervision of local authorities' activities

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

70. Montenegro is not bound by Article 8, paragraphs 2 and 3.

71. The legal framework for auditing financial statements of local self-government units is prescribed mainly by Constitution of Montenegro and the Law on State Audit Institution. The audit on the financial statement of local self-government units is also performed in line with the following: Law on Budget; Law on Local Self-Government Financing; Law on Local Self-Government; Regulation on uniform classification of accounts for the budget; Extra-budgetary funds and budgets of municipalities; Instruction on methodology of performing financial audit and regularity audit, International accounting standards and International standards of supreme audit institutions etc.

72. The audit of financial statements of local self-government units consists of: a preparatory audit phase (planning and adoption of the budget of local self-government units), execution of the budget (audit of final statement), as well as compliance with laws and internal legal acts of the local self-government units). The State Audit Institution performs the financial audit of the annual final statement of the local self-government units as well as a compliance audit (compliance of the operations of the local self-government unit with law and internal legal acts).

73. There are two types of supervision: external administrative supervision and hierarchy (administrative) supervision. Article 55 of the Law on Local Self-Government financing prescribes the structure of the final budget statement of the municipality. Apart from the basic structure, the final budget statement consists of an external auditing report on financial reports, which is carried out by a private audit firm.

74. The proposal of the final budget statement is determined by the mayor who submits it to the municipal assembly by the end of May of the current year. The final budget statement is delivered to the Ministry of Finance within 30 days from the day of its enactment. Along with the final budget statement, the bills of profits and losses of public enterprises and institutions, permanent reserves and the balance of property dated on December 31st of the year the budget refers to are also submitted to the municipal assembly. The municipal assembly supervises the budget execution and purposeful utilisation of the funds that are appropriated for certain purposes in the budget, as determined by the Statute. The mayor supervises financial, material and accountancy management of the budget users regarding the purpose, extent and dynamic of the use of the funds, as determined by the Statute. The competent local administration body performs an administrative supervision of the implementation of the Law on Local Self-Government financing.

75. The State Audit Institution informed the rapporteurs of the performed audits in the municipalities of Nikšić, Danilovgrad, Ulcinj, Kolašin, Rožaje, Herceg Novi, Tivat, Kotor, Plav, Bar, Bijelo Polje, Plužine, Mojkovac and Cetinje. The key irregularities identified in the audit of the local self-government units refer to the following areas:

a. Legal inconsistencies:

- Internal control and internal audit within the municipalities – the procedures are not prescribed or prescribed procedures are not implemented;
- Propriety – the management of state propriety (records and management) is not appropriate due to inconsistency with the real estate cadaster,¹⁵ and in many cases the value of the assets is underestimated.
- Documentation – it is insufficient and incomplete. Some legal acts are missing at the level of the municipality. A number of the municipalities did not require an approval from the Government on borrowings according to the Law on Budget;

15. Property register for tax purposes

- Public procurement – the procedures related to a number of audited entities do not comply with the legal regulations.

b. Financial issues:

- The Treasury General Ledger does not include the data on changes in assets, liabilities and equity;
- Incorrect records of expenditures on the basis of incomplete documentation;
- The liabilities are not recorded upon their incurrence, but upon the timing of their payment;
- Non-financial assets – incomplete records, non-compliance with the real estate cadaster;
- Long term financial assets – the share is not recorded in the equity of the public enterprises;
- Ancillary books – are not maintained for assets; the current value expressed is unrealistic;
- Borrowings – adjustments are not made.

c. Unrealistic forecasting and planning:

- The comprehensive collection of own source revenues is not achieved – local taxes, fees, and charges;
- The Cooperation between local and state bodies is not completely adequate: the local self-government bodies and Tax Administration and Propriety administration are not adequately interlinked;
- The process of planning and adoption of the budget and final budget account is not always performed in due time, or in accordance with prescribed deadlines;
- There are no long-term investment plans – which form the basis for adequate planning of the annual capital budget.

76. The issue of supervision raised in Articles 124 of the Law on Local Self-Government gives the Government the role to interfere with local governments' decisions in cases of a legally relevant misconduct within municipalities, namely the right "to suspend from execution a regulation or general act of the Assembly or the Mayor, if it estimates that such regulation or general act is not in accordance with the Constitution or it restricts freedoms, rights and duties of citizens as prescribed by the Constitution or laws". In Article 125 and 126, the cases of misconduct that may lead to supervision are the failure of the assembly to perform its functions in a legal way and non-compliance of the mayor with her/his obligation to call elections.

77. The rapporteurs heard that good communication exists between the State Audit Institution and the audited entities (for example self-government unit). The process begins with the adoption of the decision on performing the audit and notices given in writing. The preliminary audit report on the financial statement is submitted to the audited entity for comment and suggestions. On receipt of this opinion the State Audit Institution may organize a meeting with the representatives of the audited entity to clarify disputable issues. Its written response includes: its approved suggestions and proposals on the preliminary report and reasons for declining some proposals from its opinion. The draft final audit report takes account of the opinion of the audited entity.

78. Some interlocutors felt that certain procedures entail an administrative supervision that is too onerous for municipalities, such as the right of local self-government to manage its own properties. One hand the Constitution guarantees the right of local self-government to manage its own properties, but on the other the Law on State Property breaches this right. As municipalities require the approval from state authorities in order to sell municipal property. A further example is that municipalities cannot acquire loans without the approval of the state authorities.

79. The rapporteurs believe that the audit system of municipalities in Montenegro is a well-defined procedure involving the co-operation of local authorities. They therefore consider that Article 8, paragraph 1 is respected in Montenegro and believe that the non-ratified Articles 8, paragraphs 2 and 3 should be the subject of ratification as they seem de facto to be complied with.

3.3.7 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.

80. According to Article 116 paragraph 3 of the Constitution of Montenegro, the municipality “*shall be financed from its own resources and the assets of the stat*”. The article also calls for municipalities to have their own property and their own budget.

81. The Municipality acquires funds from: its own resources; revenues transferred by the law; the equalization fund; and the state budget. According to Article 5 of the Law on Local Self-Government financing (which came into force in 2011), the municipality’s own resources are: real estate tax, surtax on personal income tax; local administrative charges; local communal charges; fees for utility equipment; fees for the use of municipal roads; fees for environmental protection and improvement; resources from sale and rent of municipal property; capital income; fines from misdemeanour proceedings and confiscated gain from these proceedings; concession fees for performing communal affairs, revenues from activities of municipal bodies, services and organizations and revenues from grants and subsidies. The article also refers to other laws which may provide additional revenues.

82. The municipality has its own budget. The municipal budget is adopted for a fiscal year starting from 1 January until 31 December of a calendar year. The municipal budget includes all revenues that belong to a municipality and all the expenditures from its jurisdiction. The municipal budget includes revenue by source and expenditure as well as by functional and economic classifications.

83. The process of fiscal decentralisation in Montenegro is closely related to the precise definition of municipal tasks or competences in the terms of the paragraphs 1 and 2 of Article 9. The Law on Local Self-Government prescribes that municipalities are responsible for: the passing of development plans and programmes; spatial-urban and other plans; multiannual investment plans; budgets; organisation and ensuring of carrying out and development of utilities, maintenance and protection of local and uncategorised roads and management, disposal of and protection of its property, etc. Local self-governments in Montenegro currently have no competences in education and healthcare, although the Law on Local Self-Government lays down that a municipality, in accordance with its abilities, participates in ensuring the conditions for and improvement of the following activities: healthcare; education; social and child protection; employment, and other fields of interest for the local population, and exercises the rights and obligations as founder of the institutions it establishes in these fields Whilst the above law concerns only primary healthcare, the Draft Healthcare Act introduces obligations for municipalities at secondary and tertiary healthcare levels as well, without defining, at the same time, the revenues which would be used to finance them. Further, the Act on Emergency Medical Assistance states that local self-government will use its own funds to finance the operation of temporary emergency assistance subunits, with their additionally hired staff, in areas where the number of healthcare users is increased due to the transit and accommodation of tourists. This constitutes a transfer of affairs from the state to local self-government, i.e. a "decentralisation of affairs", which should be supported by appropriate financial decentralisation requiring new, additional sources of revenues for performing the new activities. In the existing financial situation of municipalities, characterised by limited sources of funds for implementing activities assigned to its jurisdiction under applicable regulations, it is unlikely that municipalities will be able to perform additional work as proposed by the said legal provision, unless new sources of funds are established.

84. Further acts, mostly of an administrative nature (such as issuing approvals, keeping records etc.) have also been transferred to local government (via regulation) without establishing additional sources of financing – although they imply employing additional staff. These include the Rafting Act, the Act on Alcohol and Liquor, the Wine Act, etc.

85. In other examples the transfer of responsibility is accompanied by the transfer of finance: Over a period of 7 years (2008-2014) the capital city was entrusted by decree to inspect supervision of space protection (that is, to prevent illegal construction) for which funds were transferred from the state budget to the budget of the capital city, taking account of the salaries of inspectors recruited for these tasks.

86. With regards to paragraph 3 of Article 9, the rapporteurs could grasp during practically all consultations that the majority of municipalities are in a difficult financial situation, characterised by a high level of debt and unsettled liabilities, which causes numerous problems in their functioning and fulfilling of their duties under the law. Reasons that have led to the increase in unsettled liabilities and debt of local self-governments, particularly after the investment boom in Montenegro, are primarily: the economic and financial crisis; changes to legislation which regulate the local self-government financing system and a high level of public spending at local level.

87. The greatest negative effect on revenues of local self-governments has derived from abolishing fees for the use of construction land (as of 1 January 2009). The Union of Municipalities of Montenegro informed the delegation that overall revenues generated by this fee for all municipalities in 2008 amounted to € 29.013.631. Consequently, the calculated revenues on these grounds for the period 2009-2014, would be around € 174 million. Bearing in mind that the total debt of local self-governments at the end of 2014 amounted to €166.94 million EUR,¹⁶ the negative effect of abolishing the said levy becomes evident, as well as its deleterious effect on the stability of local finances.

88. The Act on Local Utility Fees (which entered into force on 1st January 2008) abolished local utility fees for exploitation of facilities used for electricity transmission, use of telecommunication facilities, and installation of TV and radio transceivers, i.e. abolished local utility fees for the most profitable entities. The Union of Municipalities of Montenegro would like to draw attention to the fact that, prior to these changes, local self-governments generated the following revenue from these local utility fees: €9.309.775 (in 2007), €6.079.575 (in 2008), whereas the amount generated in 2009 from this fee was only €3.638.497, The legal changes have deprived municipalities of minimum 3 million per year since 2008, which amounted to the total of €21 million EUR for the seven-year period until 2014.

89. Furthermore, the Act on Local Self-Government Financing abolished taxes on: consumption; registration of company name and games of chance and entertainment games (lotteries), which generated around €5.5 million for municipalities in 2010, which amounts to the total of around €22 million not collected by municipalities over a four-year period. Furthermore in 2011, the fee for the use of road motor vehicles and trailers (eco fee), was abolished. This fee, which earned a value of €926.831,40 in 2011, defined in the Act on Local Self-Government Financing as one of transferred incomes of municipalities, was nevertheless abolished by the Decree on Changes and Amendments to the Decree on the amount, method of calculation and payment of the fee for pollution of the environment.

90. The changes to the Law on Roads also diminish local self-government revenues regarding municipal road tax, by obliging prior government approval for the amount of these fees. Such revenue generated €6.214.159 for local government in 2009 as compared to €2.765.753 in 2010 to 2014 with slight variations. The income lost for the period to 2014 has been calculated at approximately €17,5 million. In any case the revenue generated by the municipalities from this fee is totally inadequate for the maintenance and protection of roads, which is its central purpose.

91. It is important to underline that the Law on Local Self-Government Financing, whose most recent changes entered into force on 1 January 2011, gives to municipalities a higher percentage of transferred income and a higher amount of funds from the Equalization Fund. Also, the Act on Immovable Property Tax, whose most recent changes entered into force also, on 1 January 2011, establishes a new, higher immovable property tax rate and provides for a wider range of tax payers. In the meantime, on 17 February 2015, the Parliament of Montenegro passed the Act on Changes and Amendments to the Act on Immovable Property Tax, which will enter into force on 1 January 2016.

92. Local governments have further increased revenues in the period 2011-2014, as compared to 2010, in the following areas (amounts are approximate: immovable property tax, €32.5 million; personal income tax, €8.82 million (it should be noted that the Act on Personal Income Tax – the so-called “crisis tax” -, introduced in 2013, , has certainly affected the increase of the tax base for calculation of this tax); immovable property

16. Information provided by the Union of Municipalities of Montenegro including through their document “*Financing of Local Self-Government: Assessment of the Situation*”
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transfer tax, €8.5 million, concession fees – €12,72 million and the Equalization Fund – €24.38 million. This amounts to approximately €87 million in total, which is not even closely sufficient to compensate for the revenues lost in the previous period.¹⁷

93. These changes and their effect of on total revenue for local government are self-explanatory: €347.848.909 in 2008, €238.010.575 in 2010, €227.350.223 in 2013 and €230.256.314,61 in 2014.¹⁸

94. From this it is clear that municipalities did not have sufficient funds to implement initiated projects and perform their increased duties. They made up the shortfall by selling land and engaging in expensive credits, leading quickly to substantial debts and high, unsettled liabilities, which amounted to €119.19 million in total at the end of 2014, € 116.80 million in 2013, €109.81 million in 2012 and €98.53 million in 2011. The total debt of local self-governments also showed increasing tendency and amounted to €166.94 million in 2014 (with a peak in 2013 of €170.54 million).

95. The central authorities have recognized the problem of balancing municipal budgets and have taken a number of actions to address this issue. Such measures include amongst others, the reprogramming of tax debt and the provision of state guarantees for the refinancing of concerned areas. Furthermore, the Government informed the Congress delegation of its joint efforts with the Union of Municipalities in preparing an analysis of the sustainability of local public finances, by assessing in particular the adequacy of available financial resources in light of municipalities' competences. Accordingly, the Union of Municipalities of Montenegro has initiated a number of activities aimed at a substantial improvement in local public finances. In this regard, the Executive Board of the Union of Municipalities adopted the "Proposed measures for overcoming the difficult financial situation in local self-governments", sent to all competent state authorities, and the implementation of which has begun. Measures are proposed in three areas: rationalisation of operation costs, improvement of the legal framework and refinancing of debts and unsettled liabilities.

96. Rationalisation of operation costs: According to the conclusions of the Government, local self-government units must provide a strong contribution to stabilisation of local public finances by increasing the efficiency of their work and to rationalisation of operating costs. In those terms, the following is primarily needed at local level: Establish optimum and functional organisation of municipal authorities and public services for the purpose of rationalisation of costs; pass municipal regulations to introduce all legally defined own revenues of the local self-government unit; undertake all legally defined measures for the purpose of efficient collecting of local public revenues; prepare a plan for optimisation of the number of employees in local self-governments, in accordance with obligations under the Plan of internal reorganisation of the public sector adopted by the Government of Montenegro in July 2013, which envisages a reduction in the number of employees in municipalities by 10% by the end of 2016.

97. Improvement of the legal framework: According to the conclusions of the Executive Board of the Union of Municipalities, sustainability and stabilisation of public finances at local level requires improvement of the legal framework regulating the system of local self-government financing. In those terms, the Parliament of Montenegro passed the Act on Changes and Amendments to the Immovable Property Tax at the session held on 17 February 2015, which improved substantially the individual solutions regulating the system of establishing and collecting of immovable property tax as the main source of revenue of local self-government. The Act on Changes and Amendments to the Law on local Self-Government Financing is in drafting phase, as planned by the Work Programme of Government for the second quarter of 2015, which is an opportunity to improve and to strengthen municipal finances.

98. With regard to the Law on local self-government financing, the Union of Municipalities has submitted, through the competent Commission and members of the mixed Working Group, a number of proposals and suggestions aimed at the definition of a model to ensure compensation of revenues to local self-governments that have been abolished by numerous changes in the law. It is proposed to transfer a higher percentage of income to municipalities; to re-define individual provisions whose practical implementation have demonstrated certain deficiencies; to adopt the regulations necessary for introducing certain revenues of local self-governments (fee for the protection and improvement of the environment, tax on uncultivated agricultural land); to regulate matters relating to the inclusion in the Equalisation Fund of newly-formed municipalities which do not have sufficient fiscal capacity etc.

17. Data provided by the Union of Municipalities of Montenegro

18. Data provided by the Union of Municipalities of Montenegro

99. The Union of Municipalities also sent an urgent initiative to Parliament for its 2015 session proposing an Act on communal affairs, and an Act on legalisation of informal structures, emphasising their importance for the functional and financial aspects of local government.

100. **Refinancing of debts and unsettled liabilities:** in order to create a long-term sustainability of public finances at local level, it is particularly important to create a sustainable model of refinancing of debts and liabilities of local self-government units towards financial institutions, other suppliers, employees, etc., and to finance an awareness programme in order to optimise the number of employees at local level. According to information that local self-government units provided to the Ministry of Finance, the total unsettled liabilities of municipalities at the end of 2014 amounted to €119,19 million, while the consolidated debt of municipalities on the same day amounted to €166,94 million. Since these are the amounts that show increasing tendency compared to previous years, urgent measures are needed to ensure lower expenditures for servicing debts, i.e. ensure refinancing of existing debt due to high interest rates and short repayment periods. Therefore, addressing the settlement of these liabilities is possible only under more favourable credit arrangements with banks, with lower interest rate and more favourable maturity, of 10 to 15 years.

101. The Government of Montenegro adopted, at its session of 26 March 2015, the Report on the status of debt and unsettled liabilities of local self-governments dated 31st December 2014, and concluded that refinancing of debts and unsettled liabilities for capital expenditures in municipalities, which are beneficiaries of the Equalisation Fund, is to be managed, in such a way that a municipality - beneficiary will sign a Cession Agreement with the Ministry of Finance and the creditor, under which the funds will be used for repayment of refinanced liabilities and credits.

102. The Government also entrusted the Investment and Development Fund of Montenegro with ensuring funds, or a guarantee, to local self-government units for the purpose of ensuring a favourable credit arrangement for the refinancing of debts.

103. As the financial standing of most local self-government units is insufficient, the Government of Montenegro, on proposal of the Executive Board of the Union of Municipalities, at the session of 30 April 2015, proposed to local self-government units, who plan refinancing of debts and unsettled liabilities, that the competent municipality authority takes a decision to authorise the Ministry of Finance to dispose of their share of the Fund bearing in mind the nature of revenues ensured by the Fund so as to provide a stable and safe instrument for the financing of local self-governments.

104. The Government further authorised the Ministry of Finance to prepare Cession Agreements with local self-government units and the Investment and Development Fund of Montenegro or with other financial institutions, to allow the Ministry of Finance to dispose of the funds from the Equalisation Fund so as to ensure settlement of municipalities' liabilities arising from credits for refinancing of debts and unsettled liabilities.

105. Most of the local self-government units have already adopted appropriate decisions to that end and have undertaken activities towards contracting a credit arrangement with financial institutions which offered the most favourable conditions, under which debts to banks and liabilities towards other suppliers will be refinanced.

106. According to Article 9, paragraph 5, the financial system shall be of a sufficiently diversified and buoyant nature in order "to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks". The Article 5 of the Law on Local Self-Government financing enumerates the different sources of municipal revenues. The tax base certainly is diverse: Municipalities receive 12% of the income tax, 80% of the tax on real estate transfer collected on their territory, as well as 70% of concessions and fees for the use of resources located in the municipality. Of course, these different sources of revenue cannot provide complete protection especially in cases of weak economic growth or even recession. Nevertheless, the situation seems to give municipalities a part to play in the overall dynamics of the economic development.

107. As regards Article 9, paragraph 5 of the Law on Local Self-Government financing prescribes that financial equalisation or equalisation of financing of municipalities is to be done through the Equalisation Fund a particularly important source of revenue for municipalities in the northern region of Montenegro where it constitutes up to 60% of their budgets.

108. The Law on local self-government financing establishes the Equalisation Fund on the basis of fiscal capacity per capita. The rapid decrease in the number of inhabitants in the municipalities in the north of the

country creates a distorted impression of the development level of a municipality when calculating fiscal capacity per capita based on the most recent census of 2011, and legal solutions are required.

109. The criteria used in the distribution of the Equalisation Fund may be assessed as correct, while changes to legal solutions should ensure a higher share of the Equalisation Fund, whether by introducing a new income or by increasing the percentage of allocation of existing revenues. Therefore, it can be concluded that Montenegro has a coherent concept in place to meet the requirement of Article 9 paragraph 5 of the Charter.

110. Further to Article 4, paragraph 6, the consultation procedure, as required by paragraph 6 of Article 9, relates to the distribution of resources to local self-government units. In this respect local authorities in Montenegro shall be “consulted in an appropriate manner on the way in which redistributed resources are allocated to them”. As a matter of fact, the problems of consultation identified in the analysis of Article 4, paragraph 6 do also extend to the allocation of resources to municipalities. In other words, the discrepancies between the legal framework and the actual praxis of consultation procedures in Montenegro equally exist in regard to financial resources, as covered by Article 9, paragraph 6. From the information provided by the Union of Municipalities of Montenegro at the Congress,¹⁹ the rapporteurs could deduce that despite the fact that the legal foundation for a consultation mechanism covering the allocation of resources is in place, this principle is not fully applied in practice, as the government does not sufficiently consult local authorities when it comes to the allocation of redistributed resources. In reference to the findings made under Article 4, paragraph 6, it needs to be reaffirmed that the mere presence of elected representatives of local authorities in a consultative body does not by itself trigger a compliance with the principle of consultation enshrined in Article 9, paragraph 6. The rapporteurs are thus not of the opinion that the current status quo fulfils the requirements of article 9, paragraph 6.

111. As regards Article 9, paragraph 7 of the provision does not prohibit earmarked funds in general. On the contrary, it cannot be regarded as an aim of the Charter to prohibit help from the national governments for specific projects at the local level. Grants given do not challenge the basic concept of independent decision-making by local governments with regard to their own affairs. With regard to earmarked grants the Montenegrin Law of Local Self-Government Financing regulates the right of local governments to receive conditional grants from the central government for the financing or co-financing of investment projects of a special interest for one or several municipalities. The amount of the conditional grant is restricted to 50% of the funds needed for the whole investment project.²⁰ It is the explicit aim of the law to make sure that this conditional grant is separated from the funds the municipality has at its disposal. This shows that earmarked grants are the exception used for specific projects while the budgetary independence as such is not in jeopardy. Consequently, there is no reason to suggest that compliance with the provision of paragraph 7 is in doubt.

112. Access to the capital market (Article 9, paragraph 8) seems to be a realistic option for the Montenegrin municipalities. They have the right to issue securities and to take out loans. Loans with a principle repayment schedule of less than a year may be taken for the purpose of guaranteeing liquidity with a short-term perspective. Long-term loans are allowed for capital infrastructure projects and for purchasing capital assets but not for the purpose of financing the current expenditure. Therefore, it seems that there are no problems for municipalities in Montenegro to have access to the market in order to borrow money.

113. The rapporteurs therefore consider that the situation is only partly compliant with Article 9, namely as regards paragraphs 4, 5, 7 and 8 of Article 9. A particular attention needs to be paid to paragraphs 1, 2, 3 and 6 of Article 9. Moreover, an improvement of the legal framework is necessary on all legislative projects already submitted by local authorities to state authorities.

19 See document provided by the Union of Municipalities of Montenegro, 9 June 2015.

20. Article 38 paragraph 1 Law of Local Self-Government Financing.

3.3.8 Article 10: Right to associate

Article 10 – Local authorities' right to associate

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

114. Inter-municipal co-operation in Montenegro is regulated by the Law on Local Self-Government and the Strategy of Development of Inter-Municipal Cooperation in Montenegro for the period 2011–2015, together with the Action Plan for implementation for the period 2014–2015.

115. Montenegro has a legal and institutional framework for inter-municipal cooperation, which is legally harmonised with the European Charter of Local Self-Government. Experience in the co-operation of local self-governments in Montenegro has indicated the complexity of inherited problems with a necessity to define a new concept of regional development and inter-municipal co-operation. New institutional frameworks have now been established and a new system of regulatory mechanisms has been promoted. Main objectives of the regulatory policy include a reduction of the disparity among local communities and the building of an institutional and inter-municipal infrastructure. The Strategy of Public Administration Reform in Montenegro for the period 2011–2016, "AURUM", envisages one of the directions of future activities to be "Strengthening inter-municipal cooperation and cooperation with public services and agencies".

116. Article 127 of the Law on Local Self-Government explicitly accepts the right of municipalities to "freely co-operate and associate their resources in the execution of tasks of their common interest and for the purpose of addressing the needs of the local population". Municipalities can establish a legal entity "Community" performing certain affairs for them. Article 131 paragraph 1 describes these as "affairs related to administration and public services". The aim stipulated by the law is to perform them in a "common and more economic and efficient manner". The agreement leading to establishing the community has to be passed by the respective assemblies of the municipalities. The Community may employ staff.

117. Articles 131-137 of the above mentioned law relate to the establishment of inter-municipal associations which allow municipalities jointly to perform certain administrative tasks and tasks of public services in a more economical and more efficient manner. Article 133 indicates the role performed by the central government in the field of inter-municipal cooperation: "The Government shall give consent to the regulations on establishing the Community or termination of activities of the Community".

118. The Government, according to Article 133 of the Law on Local Self-Government has to give its "consent to the acts on establishing the Community or termination of work of the Community from Article 131 of this law". It does not seem to be clear under which conditions the government is obliged to give its consent and under which circumstances consent might be rejected. If rejection can only be based on reasons of legality – which, of course, should be the case – new questions arise as the law, as already mentioned, only prescribes that a common interest is pursued. Nevertheless, a clarification of the law in this respect might be useful in order to demonstrate that the forming of a Community constitutes part of the right of local self-government and that the national government can reject such plans only on the basis of clearly stated grounds of legality. According to the above-mentioned draft proposal for a Law on Changes and Amendments to the Law on Local Self-Government, Article 133 would be deleted.

119. Concerning the entitlement of municipalities to form an association (Article 10 paragraph 2), it should be noted that the municipalities of Montenegro "have the status of a legal entity" (Article 115, paragraph 1 of the Constitution). This status does not forbid the forming of associations and the rights and duties of the local governments are not put into question. Art. 128 of the Law on Local Self-Government explicitly expresses that municipalities "may found their own association". The condition for the acceptance of the Association by the state of Montenegro is that it is founded by more than half of the municipalities.

120. The delegation of the Congress felt that the Union of Municipalities is given access to the processes of decision-making at the national level and that, *vice versa*, government and parliament at the national level have an interest in involving the Union in their discussions in order better to understand the position of local governments.

121. The right to co-operate across borders is accepted by Article 130 of the Law on Local Self-Government both for municipalities and the Association of Municipalities. They can co-operate both with municipalities and other associations. The purpose of this co-operation is to realise common interests. Therefore, it can be concluded that there are no legal boundaries for a rational use of this option and the situation complies with Article 10, paragraph 3.

122. The rapporteurs thus conclude that the requirements of Article 10 of the Charter are met partially by Montenegro. Thereby, they invite the Government and the legislature of Montenegro to reconsider the rules which describe the role of the central level in the creation of institutionalised forms of co-operation between municipalities. In particular, the conditions to be met by the municipalities should be clearly stated in the law and in the light of Article 10, paragraph 1 of the Charter. The delegation was informed by the interlocutors that as part of the current reform of the Law on Local Self-Government the requirement of government consent might be abolished altogether. The rapporteurs welcome those legal developments and are optimistic of the positive effects this reform could have for local authorities' right to associate once they are applied in practice and in this sense, Montenegro's full compliance with article 10, paragraph 1. They underline however that monitoring a country's abidance to the principles enshrined in the Charter is by definition an assessment of the actual situation at the time of the visit and does not allow speculating on the implementation in practice of laws that are yet in the process of being adopted. Accordingly the rapporteurs intend to follow closely the legislative developments of the Law on Local Self-Government.

3.3.9 Article 11: Legal protection of local governments

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.

123. The constitution of Montenegro provides a framework for a coherent system of legal protection of local self-government. As already mentioned, local self-government is guaranteed by the constitution and Law on Local Self-Government. The question if this constitution is violated by laws or other acts by the state is the key element of the jurisdiction of the Constitutional Court: According to Article 149, paragraph 1 the Constitutional Court shall decide on the "Conformity of laws with the Constitution and confirmed and published international agreements". According to paragraph 2 of the same article, the Court's jurisdiction includes the question of "Conformity of other regulations and general acts with the Constitution and the law". In this sense, the Court is given the very far-reaching role of a guardian of the legality of all rules if they are not restricted to single cases but have a more general character.

124. Constitutional Court is also given a far-reaching jurisdiction in all matters of competences. This applies to conflicts between state authorities and local governments as well as between different authorities within local self-government units. This provision shows that the relationship between the central and the local level is defined as one determined by law. The competences given to local governments by the constitution and by the law in general are regarded as subjective positions that are of a similar nature as enforceable individual rights.

125. The Constitution establishes the following judicial remedies for the protection of local governments:

- a. The initiation of proceedings before the Constitutional Court to review the constitutionality of laws or constitutionality and legality of regulations which violate the right of local government by local self-government bodies. Firstly, local self-government bodies (the Assembly and the President), pursuant to Article 150, paragraph 2 of the Constitution and article 54, paragraph 1, item 2 of the Law on the Constitutional Court of Montenegro, are authorised to initiate proceedings to review the constitutionality of law or the constitutionality and legality of other regulations and general acts regulating issues related to local self-government. Secondly, pursuant to the provisions of Article 124 of the Law on Local Self-Government, the Government of Montenegro, may, before the Constitutional Court has reached a decision, suspend the implementation of regulations or general acts of the Local Assembly or the Mayor of a municipality, if it considers that act is not in accordance with the Constitution and the law, or if it limits the constitutionally and legally protected freedoms, rights and duties of citizens. If the execution of a regulation or general act is suspended, the Government shall without delay and no later than eight days, initiate proceedings before the Constitutional Court. If within eight days, the Government does not take action, the regulation or general act shall be applied.

- b. A further judicial remedy provides for a constitutional complaint against the individual act of a state body that violates the exercise of the right to local self-government. Bodies of local self-government can lodge a constitutional complaint before the Constitutional Court of Montenegro against an individual act, action or inaction of state organs or organs of state administration, or organs of local authorities, if they violated their right to local self-government under the conditions prescribed by Article 68 of the Law on the constitutional court of Montenegro.
- c. Within its nine competences the Constitutional Court directly decides on the following proceedings relating to local self-government:
- The conflict of responsibilities between courts and other state authorities, between state authorities and local self-government authorities, and between the authorities of the local self-government units;²¹
 - Electoral disputes and disputes related to the referendum, which are not the responsibility of other courts;²²
 - On violation of rights during the election of Mayor of City Capital, Mayor of Old Royal Capital or Mayor of municipality, if elected in direct elections (Article 104, paragraph 4 of the Law on the Constitutional Court of Montenegro).

126. The legal protection of local self-government is respected in Montenegro.

3.3.10 Article 12: Undertakings – reservations formulated by States, if any

Article 12 – Undertakings

- 1 Each Party undertakes to consider itself bound by at least twenty paragraphs of Part I of the Charter, at least ten of which shall be selected from among the following paragraphs:
 - Article 2,
 - Article 3, paragraphs 1 and 2,
 - Article 4, paragraphs 1, 2 and 4,
 - Article 5,
 - Article 7, paragraph 1,
 - Article 8, paragraph 2,
 - Article 9, paragraphs 1, 2 and 3,
 - Article 10, paragraph 1,
 - Article 11.
- 2 Each Contracting State, when depositing its instrument of ratification, acceptance or approval, shall notify to the Secretary General of the Council of Europe of the paragraphs selected in accordance with the provisions of paragraph 1 of this article.
- 3 Any Party may, at any later time, notify the Secretary General that it considers itself bound by any paragraphs of this Charter which it has not already accepted under the terms of paragraph 1 of this article. Such undertakings subsequently given shall be deemed to be an integral part of the ratification, acceptance or approval of the Party so notifying, and shall have the same effect as from the first day of the month following the expiration of a period of three months after the date of the receipt of the notification by the Secretary General.

127. As already mentioned, Montenegro became a member of the Council of Europe on 11 May 2007. Montenegro signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 24 June 2005 and ratified it on 12 September 2008. The Charter entered into force with respect to Montenegro on 1 January 2009. The commitment to observe the Charter was restricted to Articles 2; Article 3 paragraphs 1 and 2; Art. 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, paragraph 1, 2 and 3; Article 11. Consequently, Montenegro is not bound by Article 4, paragraph 3 and 5, Article 6 paragraph 2; Article 7 paragraph 2; Article 8 paragraph 2 and 3.

128. In the context of its international obligations as well as its internal legislation, Montenegro is a very young country. The institutions are still faced with a situation in which not many routines in the exercise of the legal framework have been established. This might, for example, have an impact on the need for supervision. It can be expected that in the context of further consolidation, the different provisions of the Charter might be seen in a different light. During its visit, the delegation received the impression that there is a very serious intention to live up to the standards of the Charter without restricting the provisions that Montenegro is formally bound by.

21. Article 149, paragraph. 1, item 5 of the Constitution

22. Article 149, paragraph. 1, item 7 of the Constitution

129. The delegation of the Congress was told that the ratification of the paragraphs of the Charter that Montenegro has not ratified so far is considered as a realistic option. It seems that the respective legal acts will be under discussion in the context of the reform legislation that is being discussed at present (2015). The delegation also has reason to believe that Montenegro will be able fulfil the requirements of the rules that it is not bound by to date. Even if the law might not express some of the rules explicitly, the state institutions generally seem to accept them in practice.

4. Conclusions and further steps of the monitoring procedure

130. Since the last monitoring visit in 2010, Montenegro has continued to demonstrate a firm willingness to comply with the Charter and other international standards, which served as a catalyst for various reform processes. The legal framework relating to Local Self-Government is in constant flux, particularly in regard to the on-going public administration reform (AURUM), which suggests a promising legal evolution for the state of local democracy in Montenegro. At the outset, the rapporteurs state that the constitutional and legal foundations, as well as the actual concept of local self-government, are duly in place in Montenegro (Article 2, 3). Moreover, the situation in regard to Articles 5, 7, 8 and 11 is overall in compliance with the Charter. In the light of those positive observations, there are nevertheless some issues that would require closer attention.

131. In regard to Article 4, it can be concluded that even if local authorities are mostly consulted on matters which are of immediate interest to them, this process requires further improvement in practice. In particular Article 4, paragraph 2, which affords local authorities the full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority, needs special attention by the national authorities. Likewise, closer attention should be given to Article 4, paragraph 6, according to which local authorities must be consulted, as far as possible, in due time and in an appropriate way, in the planning and decision-making processes for all matters that concern them directly. This primarily refers to the application of this principle in practice, since legal framework and mechanisms are established.

132. Concerning the administrative structure and resources for the tasks of local authorities (Article 6), the rapporteurs emphasize that human capacities remain insufficient, thus leading to the conclusion that there is only a partial compliance with this article. They see as a positive development the provisions of the draft Act on Changes and Amendments to the Law on local self-government that concern the development of new solutions which will introduce a system of merits and reward of staff members who are ready to provide quality services to citizens. Yet, the rapporteurs are concerned that operational capacities and management of the local level encounter great challenges. In this respect, they consider that a development and rationalisation of the local administrative capacities in the next period has to be a priority for the Government.

133. Furthermore the situation in Montenegro does only partly comply with the requirements of Article 9 of the Charter. Particular attention needs to be paid to paragraphs 1, 2, 3 and 6 of Article 9. During the visit, the rapporteurs were able to grasp the fundamental differences in financial, administrative and economic capacity. In fact, a large share of Montenegro's municipalities does not dispose of adequate financial resources of their own and lack commensurate funding for implementing additional activities assigned to them (Article 9 paragraphs 1, 2). With regards to paragraph 3 of Article 9, the general assessment of the financial situation is that a majority of municipalities are in a difficult financial situation which is characterised by a high level of debt and unsettled liabilities, causing numerous problems in their functioning and fulfilment of duties under the law. Globally, the criteria used in distribution of funds of the Equalisation Fund may be assessed as correct and the fund does indeed serve as an indispensable tool for many municipalities, particularly in the economically weaker north of the country (Article 9 paragraph 5). Nevertheless, further legal solutions should ensure a higher level of funds of the Equalisation Fund, whether by introducing a new form of income into its structure, or by increasing the percentage of allocation of existing revenues constituting the fund. Lastly, there is a need for a further improvement in the consultation process regarding the allocation of redistributed resources in Montenegro (Article 9 paragraph 6).

134. Generally, the rapporteurs can conclude that the requirements of Local Authorities' right to associate, as specified in Article 10 of the Charter are met by Montenegro. Nevertheless, they invite the Government and the legislature of Montenegro to reconsider the rules which describe the role of the central level in the creation of institutionalised forms of co-operation between municipalities. In particular the conditions that have to be met in order for the municipalities to receive the necessary permission should be clearly stated in the law and in the light of the Article 10, paragraph 1 of the Charter. In this sense, the fact that the requirement of governmental consent might be abolished altogether seems to be a positive step. The

rapporteurs intend to follow closely the legislative developments of the Law on local self-government and its impacts on this issue.

135. As for the non-ratified provisions, relating to Article 4, paragraph 3 and 5, Article 6 paragraph 2; Article 7 paragraph 2 and Article 8 paragraph 2 and 3, the Congress delegation was informed that the ratification of those paragraphs constitutes a realistic option, as they will be under discussion in the context of the reform legislation that is discussed at present. The delegation also has reason to believe that Montenegro will be able fulfil the requirements of the rules, to which it is not bound by to this date. Even if the law might not express some of the rules explicitly, the state institutions generally seem to accept them in practice.

Appendix 1 – Programme of the Congress monitoring visit in Montenegro

CONGRESS MONITORING VISIT TO THE REPUBLIC OF MONTENEGRO
Podgorica, Nikšić, Tuzi and Danilovgrad
(9–11 June 2015)

PROGRAMME**Congress delegation:****Rapporteurs:**

Ms Gaye DOGANOGLU	Rapporteur on local democracy Chamber of Local Authorities, EPP/CCE ²³ Member of the Municipal Council of Konyaalti/ Antalya (Turkey)
Mr Henrik Brade JOHANSEN	Rapporteur on local democracy Chamber of Local Authorities, ILDG ²⁴ City councillor of Lyngby-Taarbaek (Denmark)

Congress Secretariat:

Ms Stephanie POIREL	Secretary to the Monitoring Committee
Mr Fritz BÖHM	Co-secretary to the Monitoring Committee

Consultant:

Mr Veith MEHDE	Member of the Group of Independent Experts on the European Charter of Local Self-Government Professor of Law at Leibniz University of Hanover (Germany)
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Interpreters:

Ms Vesna BULATOVIĆ
Ms Jelena PRALAS
Mr Igor LAKIĆ

23. EPP/CCE: European People's Party in the Congress

24. ILDG/DILG Independent and Liberal Democrat Group in the Congress

**Tuesday, 9 June 2015
Podgorica**

National Delegation of Montenegro to the Congress & the Union of Municipalities of Montenegro

Mr Aleksandar ŽURIĆ, Head of Delegation, Mayor of Bijelo Polje
Mr Aleksandar BOGDANOVIĆ, President of the Governing Board of the Union of Municipalities of Montenegro, Mayor of the Municipality of Cetinje
Mr Refik BOJADZIĆ, Secretary General of the Union of Municipalities
Mrs Sonja NIKČEVIĆ, President of the Municipal Council of Nikšić
Mrs Zenepa LIKA, Deputy President of the Municipality of Ulcinj

Meeting with Expert

Mr Slaven LEKIĆ, Member of the Group of Independent Experts on the European Charter of local self-government (Montenegro)

City of Podgorica

Mr Boris MUGOŠA, Deputy Mayor
Mr Časlav VEŠOVIĆ, Deputy Mayor
Mr Goran PETROVIĆ, Chief Administrator
Mrs Mišela MANOJLOVIĆ, Secretary of the Secretariat for Local Self-government

Ministry of Interior

Ms Jadranka VOJINOVIĆ, State Secretary at the Ministry of the Interior
Ms Dragana RANITOVIĆ, Director General of the Directorate for state administration and local self-government
Mr Ivan IVANIŠEVIĆ, Director General of the Directorate for international cooperation and EU integration

Ministry of Finance

Mr Radoje ŽUGIĆ, Minister of Finance

**Wednesday, 10 June 2015
Podgorica, Tuzi**

State Audit Institution

Mr Dragiša PEŠIĆ, Member

Parliament of Montenegro

Mr Rifat RASTODER, Chair to the Committee on Political System, Justice and Administration
Mr Halil DUKOVIĆ, Chair to the Committee on Human Rights and Freedoms
Mr Suljo MUSTAFIĆ, Vice President of the Parliament

Constitutional Court

Mr Budimir ŠĆEPANOVIĆ, Judge at the Constitutional Court
Ms Biljana DAMJANOVIĆ, Secretary General of the Constitutional Court
Ms Dragica DAVIDOVIĆ, Deputy Secretary General of the Constitutional Court

Ombudsman

Mr Šučko BAKOVIĆ, Protector of Human Rights and Freedoms of Montenegro
Mr Petar IVEZIĆ, Deputy Protector of Human Rights and Freedoms

Tuzi City District (subdivision of Podgorica, urban municipality)

Mr Abedin ADŽOVIĆ, President of the City District of Tuzi
Mr Fadil KAJOŠAJ, President of the Assembly

Thursday, 11 June 2015
Nikšić, Danilovgrad

City of Nikšić

Mr Veselin GRBOVIĆ, Mayor of Nikšić

City of Danilovgrad

Mr Branislav ĐURANOVIĆ, Mayor of Danilovgrad