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Local democracy in “the former Yugoslav Republic of Macedonia”

Monitoring Committee

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Summary

The present report on local and regional democracy in “the former Yugoslav Republic of Macedonia” follows upon Recommendation 217 adopted in 2007. It expresses satisfaction that “the former Yugoslav Republic of Macedonia” has made marked progress towards better local democracy and decentralisation and that cooperation between municipalities and the central government works well. It takes note, however, that legislation needs improvement as regards the competences of local authorities and financial equalisation and that the great disparity in wealth and development between urban and rural municipalities is cause for concern. It also takes note of the low level of citizen participation in local affairs and particularly of women in local political life.

The Congress recommends that the government of “the former Yugoslav Republic of Macedonia” enhance the portfolio of the Ministry of Local Self-Government as the main actor in the decentralisation process, clarify the issue of overlapping competences, adopt a clear legislation on equalisation providing precise guidelines, increase the own-source taxes in local budgets and transfer property of land to local authorities in an effort to increase local autonomy. It also recommends that the role and functions of Skopje as capital city and as local authority dealing with 10 sub-entities be clarified. It encourages the government to sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) as well as the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144).

¹ The co-rapporteur Mr Ian Micallef will no longer be a member of the Congress as of 16 October 2012.

² L: Chamber of Local Authorities / R: Chamber of Regions

ILDG: Independent and Liberal Democrat Group of the Congress

EPP/CD: European People’s Party – Christian Democrats of the Congress

SOC: Socialist Group of the Congress

ECR: European Conservatives and Reformists Group

NR: Members not belonging to a political group of the Congress

NPA: No political affiliation



Local democracy in “the former Yugoslav Republic of Macedonia”

RECOMMENDATION 329 (2012)³

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 of the Committee of Ministers relating to the Congress of Local and Regional Authorities of the Council of Europe, which provides that one of the aims of the Congress shall be “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 2, paragraph 3 of the above-mentioned Statutory Resolution CM/Res(2011)2, 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. its Resolution 299 (2010) on the follow-up by the Congress of the Council of Europe Conference of Ministers responsible for Local and Regional Authorities (Utrecht, Netherlands, 16-17 November 2009), which provides that the Congress will use the Council of Europe Reference Framework for Regional Democracy in its monitoring activities, as well as the reply given by the Committee of Ministers to Congress Recommendation 282 (2010) (CM/Cong(2011)Rec282final) encouraging the governments of member States to take account of the aforementioned reference framework in their policies and reforms;

d. the explanatory memorandum on local democracy in “the former Yugoslav Republic of Macedonia” drawn up by the rapporteurs, Mr Ian Micallef⁴ and Ms Andrée Buchmann, following a monitoring visit to “the former Yugoslav Republic of Macedonia” from 5 to 7 December 2011. In their work, the rapporteurs were assisted by Dr Jens Woelk, consultant, who is a member of the Group of Independent Experts on the European Charter of Local Self-Government, and by the secretariat of the Congress.

2. The Congress notes that:

a. “the former Yugoslav Republic of Macedonia” signed the European Charter of Local Self-Government (ETS No. 122) on 14 June 1996 and ratified it on 6 June 1997 without making any declarations upon the deposit of the instrument of ratification. The charter entered into force on 1 October 1997;

b. “the former Yugoslav Republic of Macedonia” has not signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);

c. the Monitoring Committee decided on 23 March 2011 to carry out the second monitoring of the state of local and regional self-government in “the former Yugoslav Republic of Macedonia” and its compliance with the European Charter of Local Self-Government. It instructed I. Micallef and A. Buchmann to prepare and submit to the Congress, as rapporteurs, the report on local democracy in this country;

d. the Congress delegation carried out a monitoring visit from 5 to 7 December 2011 visiting Skopje, Strumica and Zhelino.

3. The Congress wishes to thank the Permanent Representation of “the former Yugoslav Republic of Macedonia” to the Council of Europe and the Macedonian authorities at central, regional and local

³ Debated and approved by the Chamber of Local Authorities on 17 October 2012 and adopted by the Congress on 18 October 2012, 3rd Sitting, rapporteurs: S. James, United Kingdom (L, ILDG) and A. Buchmann, France (R, SOC).

⁴ Mr Ian Micallef has not been a member of the Congress since 16 October 2012.

levels, the Association of the Units of Local Self-Government (ZELS) and experts, as well as other interlocutors, for their valuable co-operation at different stages of the monitoring procedure and the information conveyed to the delegation.

4. The Congress notes with satisfaction that:

a. the measures taken since its Recommendation 217 (2007) represent further improvement and marked progress towards local democracy;

b. consultation of local authorities by the State in matters concerning local self-government is in line with the requirements of Article 4, paragraph 6, of the European Charter of Local Self-Government, given that it is guaranteed by law and the parliamentary local government committee is involved in the legislative procedure;

c. the role of ZELS in consultation and co-operation between local authorities and the central government has been enshrined in Article 81 of the law on local self-government as well as by a memorandum of understanding with the Ministry of Local Self-Government on co-operation in the context of decentralisation;

d. a reasonable policy to strengthen municipalities' financial resources gradually, along with proper monitoring and audit procedures, has been adopted and transparency regarding municipalities' tax resources and allocations from central government appear to have improved, including requirements for municipal borrowing;

e. several promising steps have been taken in the right direction to ensure a more equitable distribution of revenues, including the application of the new formula for a "guaranteed minimum-income" for municipalities and the establishment of a committee (in which mayors and ZELS participate) to monitor the redistribution among and allocation of financial resources to local authorities;

f. a new "Balanced Regional Development" policy has been adopted for better co-ordination of regional policy and the involvement of municipalities is guaranteed by the regional institutions and the mechanisms of participation between central government and regions' municipalities;

g. the signature of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, as well as the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144), are on the agenda of the government for 2012.

5. The Congress nevertheless expresses its concerns that:

a. although municipalities are assigned powers of their own, these are supplemented by an array of tasks transferred in the decentralisation process, creating areas where local and central responsibilities overlap and are co-financed, bearing the risk of continuous State influence;

b. the ambiguity in law regarding competences, already noted in the previous recommendation, has not been resolved and while the law on local self-government formally gives local authorities great powers and responsibilities, numerous special laws set out detailed rules interfering with local autonomy;

c. municipalities still depend very strongly on government grants, have little discretion with regard to local taxes and the proportion of own-source taxes in their revenues remains comparatively low;

d. there are great wealth and development disparities between municipalities;

e. the property transfer of land to local authorities in order to allow them to pursue a municipal development policy has still not been undertaken;

f. municipalities are subject to supervision by different central authorities alongside the State Inspectorate, which increases the risk of going beyond the supervision of lawfulness;

g. there are no procedures in place for measures against mayors with serious incapacity or who are in violation of their obligations;

h. the distinction between the competences of the City of Skopje as capital city and as local authority dealing with 10 sub-entities is not sufficiently clear, although the city is subject to special regulations (law on the City of Skopje);

i. the instruments of direct and public participation of citizens at local level are not frequently used in practice;

j. the participation of women in local political life remains low;

k. consultation with the Ombudsman's office in the legislative procedure is still not regular and has been very limited since the last elections, while local authorities continue to be among the least responsive authorities to the Ombudsman's instructions and recommendations.

6. In the light of the above, the Congress requests the Committee of Ministers to invite the authorities of "the former Yugoslav Republic of Macedonia" to:

a. consolidate and finalise the decentralisation process, which is one of gradual transfer of competences, clarifying and consolidating the text of the law on local self-government so that it remains the reference text on these issues;

b. enhance the portfolio of the Ministry of Local Self-Government as the main actor in the decentralisation process, giving it a prominent co-ordination and oversight function in the process;

c. take into account the diverging interests of urban and rural municipalities and develop distinct strategies for them in order to reduce the great wealth and development disparities between these municipalities;

d. adopt clear legislation on equalisation in order to provide transparent guidelines for equalisation procedures to be implemented between local authorities, in the light of Article 9, paragraph 5, of the European Charter of Local Self-Government and also taking inspiration from the guidelines provided by the Reference Framework for Regional Democracy;

e. establish the legal framework and procedures to increase the proportion of own-source taxes as well as the share of value-added tax (VAT) and income tax in local budget revenues, and reduce State grants correspondingly, ensuring that the latter do not impinge on local government fiscal autonomy;

f. as regards consultation, draw up a law establishing the procedure, in the light of Article 5 of the European Charter of Local Self-Government, for consultation of local authorities through their associations on the procedures for modification of local authority boundaries, and to strengthen the existing procedure on consultation on the way in which redistributed resources are to be allocated to them as foreseen by Article 9, paragraph 6, of the charter, including government investments in their localities;

g. envisage the property transfer of land to local authorities, in order to increase their autonomy and improve their financial situation;

h. strengthen the administrative capacity of municipalities both at central and local level, particularly in the areas of financial control, strategic planning, human resources management and economic development;

i. draw up a law which would establish clearly the sanctions, and their implementation, against mayors with serious incapacity or who are in violation of their obligations;

j. clarify the competences and distinguish between the functions of the capital city of Skopje as capital city on the one hand, and as a local authority dealing with 10 sub-entities on the other hand;

k. raise public awareness of citizen participation in local political life and take the necessary measures in this respect;

l. promote the participation of women in local political life by introducing an electoral system favouring gender parity (for example through close lists with a “zipper system”) and facilitating the access of women to local political life in the light of Congress Recommendation 273 (2009) on equal access to local and regional elections;

m. promote the office of the Ombudsman and its role vis-à-vis the local authorities;

n. finally, sign and ratify the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority as well as the Convention on the Participation of Foreigners in Public Life at Local Level, given that the provisions of the first are already part of the legislation, and that an impact analysis and an action plan for the signature of both is on the government’s agenda for 2012.

Local democracy in “the former Yugoslav Republic of Macedonia”

EXPLANATORY MEMORANDUM⁵

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⁵ Adopted by the Monitoring Committee on 6 July 2012.

1. INTRODUCTION

1. Article 2 of the Statutory Resolution CM/Res(2011)2 of the Committee of Ministers states that the Congress of Local and Regional Authorities of Europe (hereafter « 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”.

2. “The former Yugoslav Republic of Macedonia” became a member of the Council of Europe on 9 November 1995 and ratified the European Charter of Local Self-Government (hereafter « the Charter », ETS No. 122) on 6 June 1997 without making any particular declarations upon the deposit of the instrument of ratification. The Charter entered into force on 1 October 1997.

3. The situation of local democracy in “the former Yugoslav Republic of Macedonia” has already been covered in several Congress reports. There are reports on the trials of the mayors of Gostivar and Tetovo (1998) and on the evaluation of the situation under the programme for stability in South-eastern Europe (1999). In 2000, the Congress adopted its Recommendation 82 and Resolution 100 on the situation of local democracy in the country. In 2001, a fact-finding visit on the conditions for implementation of the Ohrid agreement on local self-government was carried out. Finally in 2007, on the basis of a report on local democracy, the Congress expressed its Recommendation 217 (2007).

4. It should also be noted that “the former Yugoslav Republic of Macedonia” is one of the countries for which the Monitoring Committee of the Parliamentary Assembly of the Council of Europe (PACE) has established a post-monitoring dialogue, which also covers local and regional democracy issues where appropriate.

5. The present report relates to the visit of the Congress delegation from 5 to 7 December 2011, to monitor the situation of local and regional democracy in “the former Yugoslav Republic of Macedonia” on the basis of the Charter. The Monitoring Committee appointed Mr Ian MICALLEF (Malta, L, EPP/CD) and Ms Andrée BUCHMANN (France, R, SOC), as co-rapporteurs on local and regional democracy respectively. They were assisted by Professor Jens Woelk, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government and the Secretariat of the Congress.

6. The Congress delegation met with the Minister of Local Self-Government, the State Secretary of the Ministry of Finance, chairs of parliamentary committees on local self-government, on budget and finance and for the protection of civil freedoms and rights respectively, as well as with members of the Constitutional Court and the State Audit Office, Deputies to the Ombudsman, the Mayors of Skopje, Zhelino and Strumica, and representatives of the Association of the Units of Local Self-Government (ZELS). The detailed programme is appended to the present report.

7. This report has been prepared on the basis of the information gathered during the visit to the country and of excerpts from the relevant legislation and other information and documents provided by the representatives of the national and local authorities, international organisations and experts.

8. The co-rapporteurs wish to thank the Permanent Representation of “the former Yugoslav Republic of Macedonia” to the Council of Europe and all those whom it met during the visit, for their readiness to assist the delegation and for the information they so willingly supplied. They also thank the national delegation of “the former Yugoslav Republic of Macedonia” to the Congress and ZELS for contributing to the organisation and smooth running of the visit.

2. POLITICAL CONTEXT

2.1. *International context and relations with neighbours*

9. In 1991, “the former Yugoslav Republic of Macedonia” gained its independence peacefully from Socialist Federal Republic of Yugoslavia. Since 2005, it is officially a candidate for accession to the European Union. In its annual progress Reports, the EU Commission publishes the results of the reforms adopted and implemented in preparation for EU accession. In the context of the reform of the public administration, the local self-government units are also involved in the reform-process.

10. The country is an active participant in NATO's Partnership for Peace and Membership Action Plan, the OSCE, and the United Nations, and was accepted as a member of the World Trade Organisation in October 2002. In May 2003, the "former Yugoslav Republic of Macedonia", Albania, Croatia, and the United States created the Adriatic Charter, modelled on the Baltic Charter, as a mechanism for promoting regional cooperation to advance each country's NATO candidacy. However, "the former Yugoslav Republic of Macedonia" is still not a member of NATO because of the name-dispute.

11. The new republic enjoys good relations with its neighbours, namely Albania (mutual recognition of ethnic minorities), Kosovo⁶ (demarcation of their mutual boundary completed; free trade agreement between the two since 2005; the former has recognised Kosovo as an independent state), Bulgaria (was the first state to recognise the former's independence but issues relating to Macedonian language rests a bone of contention) and Serbia (main trading partner; the non-recognition of the [Macedonian Orthodox Church](#) by the [Serbian Orthodox Church](#) and the former's recognition of [Kosovo](#) as an independent state are cause for disturbance in the relations between the two countries).

2.2. Internal political context

12. In 2001, an insurgency started by ethnic Albanians on the ground of perceived political and economic inequities was tapped before developing into a full-fledged civil war. Negotiations led to the internationally brokered Ohrid Framework Agreement (OFA), which became the new basis for organising the cohabitation of Macedonian, Albanian and other minority populations in the country.

13. As a consequence of the OFA, "there are no territorial solutions to ethnic issues" (Article 1.2), nor a corresponding regional structure in the country,⁷ although in 2007, in the context of preparations for EU accession, eight economic "Planning Regions" were established by the "Law on Balanced Regional Development" for better coordination of the regional policy. Thus, local self-government is not only the main characteristic feature of the country's administrative organisation, but is also central for ensuring social and cultural pluralism as well as the peaceful cohabitation of the different communities.

14. Constitutional amendments and a new set of laws guaranteeing minority rights, local self-government and a new territorial structure of the country as well as decentralisation was adopted in order to implement the OFA. Among these, the Law on Local Self-Government (2002) and the Law on Territorial Division of the Country (December 2004) are the most important ones.

15. By re-drawing local boundaries, ethnic Albanians (and other groups) have received greater local autonomy in areas where they constitute a local majority, and the number of bilingual municipalities has increased.

The notion of "double majority" or the "Badinter principle"

16. Special cross-community voting requirements apply to the adoption of important legislation and the amendment of constitutional and legislative provisions concerning culture, religion, the use of language and education as well as local government.⁸ Both at central level and in localities where different communities live together, the "Badinter principle" is applied. This principle, also called the "double majority", requires for all levels of government both a majority and the consent of communities that represent at least 20% of the population as expressed through the majority of the representatives of that community. These procedural guarantees are to ensure the stability of the Ohrid agreement's substance for all communities and at all levels of government. Consequently, the "double majority"

⁶ All references to Kosovo, whether the territory, institutions or population, in this text shall be understood in full compliance with United Nation's Security Council Resolution 1244 and without prejudice to the status of Kosovo.

⁷ See section 4.3 for an analysis of regional development.

⁸ The decision to change the Constitution is made by the Parliament by a two-third majority vote of the total number of Deputies. The constitutional amendments of 2001 introduced a change in the required majority with respect to the adoption of any future constitutional amendments to the Preamble of the Constitution, provisions on the local self-government and to all other provisions that affects the rights of the members of the communities. For adopting constitutional amendments to these constitutional provisions, a two third majority vote of the total number of Deputies, including majority of the total number of the Deputies belonging to the communities that are not majority in "the former Yugoslav Republic of Macedonia", is required.

requirement also applies to the adoption of laws on local self-government, on local finances, local elections, boundaries of municipalities and the City of Skopje.

2.3. Recent presidential, parliamentary and local elections

17. The Head of State is directly elected. The present incumbent of the post (since 12 May 2009) is Gjorge Ivanov. Prime Minister Nikola Gruevski leads a coalition government formed by VMRO-DPMNE (Macedonian)⁹ and BDI/DUI (Albanian)¹⁰ and several smaller parties; early parliamentary elections for the unicameral Parliament (*Sobranie*) were held, for the second time in a row, in order to resolve the political crisis facing the country since January 2011.

2.3.1. National elections

18. The legal framework for the elections is provided by the Electoral Code, which came into force in 2006 and was amended twice, in 2008 and on 5 April 2011 respectively. The recent amendments were adopted by the Parliament by a small majority, in the opposition's absence, and only 68 out of the 120 members of Parliament took part in the vote. The Electoral Code was thus amended two months before polling day, contrary to the spirit of Article 65 of the Venice Commission's Code of Good Practice in Electoral Matters concerning the stability of the electoral law (II.2.b, paragraph 65).

19. According to the preliminary results announced on 6 June 2011, the turnout was 63.48% and the distribution of seats as follows: the VMRO-DPMNE coalition 56 (including 3 seats for the diaspora); the SDSM coalition 42; the Democratic Union for Integration (DUI) 15, the Democratic Party of Albanians (DPA) 8; and the National Democratic Party (NDP) 2.

20. The new governing coalition was formed swiftly after the elections and was sworn in on 28 July 2011. According to the EU Commission, the government coalition has overcome difficulties and strengthened its internal cooperation. The new government has given fresh impetus to the EU reform process (Progress Report, October 2011, p. 10).

2.3.2. Local elections

21. The last elections for municipal mayors and for members of municipal councils were held on Sunday 22 March 2009. Invited by the national authorities to observe the elections, the Congress and the EU Committee of Regions observers noted that, in general, the elections were technically well organised and in line with international and European electoral standards. However, they regretted that local campaigns had been overshadowed by the presidential election; they encouraged the government to consider separating local and national elections to afford municipal elections their due importance. They also regretted that there were only 14 women candidates for the position of mayor, out of a total 364 candidates.¹¹

22. The legal framework for municipal elections is consolidated in an Electoral Code adopted in 2006 and amended by the Parliament in October 2008. The amendments addressed several recommendations put forward by the OSCE/ODIHR and the Venice Commission of the Council of Europe, including more specific regulation of campaign financing and clarification of the role and responsibilities of different bodies in charge of adjudication of election complaints.

23. The Code provides that mayoral and municipal council elections be held every four years, with a special arrangement for the City of Skopje, where voters elect the mayor and council of the city of Skopje as well as the mayor and municipal council of their individual municipality. Mayors are elected in the first round if they win more than 50% of the votes cast, provided that at least one third of the voters registered in that municipality turn out to vote. If there is no first-round winner, a second round is held within two weeks between the two candidates who received the highest number of votes.

⁹ *Внатрешна македонска револуционерна организација – Демократска партија за македонско национално единство*: The Internal "the former Yugoslav Republic of Macedonia"n Revolutionary Organisation – Democratic Party for "the former Yugoslav Republic of Macedonia"n National Unity.

¹⁰ *Bashkimi Demokratik për Integrim/Demokratska Unija za Integracija*: Democratic Union for Integration.

¹¹ Congress of Local and Regional Authorities, Standing Committee, Local elections in "the former Yugoslav Republic of Macedonia" (observed on 22 March 2009), CG(16)16REP, 11 May 2009, Rapporteur Paolo Rondelli (sub 47 - 50).

Municipal councillors are elected by a proportional representation system with closed lists, without any turnout requirement.

24. The Electoral Code establishes a three-tier system for election administration: the State Election Commission, 84 Municipal Election Commissions, and the Election Commission of the City of Skopje with 2,976 Electoral Boards (EBs). National minorities which make up at least 20 per cent of the population must be included on election commissions in all areas and election materials must be provided in minority languages in such areas.¹²

25. In the 2009 elections (the turnout was approximately 57% in the first round), 35 mayoral candidates were elected in the first round; in 43 municipalities including the City of Skopje, a second round was held on 5 April because no candidate received the required majority in the first round.¹³ The results of the 2009 local election¹⁴ were as follows:

Party	Number of municipalities where party won by a majority (see paras. 23 and 25 above for vote counting system)
VMRO-DPMNE	55
Democratic Union for Integration (DUI)	13
SDSM	6
Democratic Party of Albanians	1
Turks Movement for National Unity of Turks	1
Roma Union of Macedonia	1
Party of New Democracy	1
SDSM in coalition with smaller parties	2
Independent candidates for mayor	3
Total	83

26. Altogether, VMRO-DPMNE gained 57 municipalities (25 in the first round) plus the City of Skopje. The co-ruling ethnic-Albanian DUI won in 13 municipalities (four in the first round), followed by the Social Democratic Union of Macedonia Party (SDSM) which gained seven municipalities (four in the first round). The Democratic Party of Turks, the Movement for National Unity of Turks, the DPA, the Roma Alliance, the Radical Party of Serbs and three independent candidates won one municipality each.

27. Regarding the bigger municipalities the SDSM candidates won Kumanovo and Strumica in the first round; in the second round, the VMRO-DPMNE candidate was elected in the City of Skopje, the DPA candidate in Tetovo and the DUI candidate in Struga; DUI lost Tetovo and Gostivar.

28. As regards the direct election of mayors, a general problem seems to be the potential loss of efficiency and a slow decision-making process, when Mayor and majority in the Council belong to opposing political parties. On the other hand, the strong democratic legitimacy for mayors through their direct election might lead to “presidential” tendencies which have to be checked by the Council and/or public participation.

29. Currently, there are no female mayors in the 84 municipalities and the City of Skopje. Until the last local elections there have been at least three women serving as Mayors. The Law on (Local) Elections contains an obligation for political parties to present at least every third candidate on the list from other sex; the aim is to guarantee at least 30% of female councillors. The impression reported by the delegation’s interlocutors was that women generally make up around 40% of the local councils, which contrasts with the assessment by the EU Commission that “participation of women in political life at local level remains low”.

¹² Idem, (sub 7 - 12).

¹³ Idem (sub 36 - 46).

¹⁴ Source: http://www.europeanforum.net/country/fyr_macedonia.

3. PREVIOUS REPORT AND RECOMMENDATIONS

30. In its most recent Recommendation 217 (2007) on Local and Regional Democracy in “the former Yugoslav Republic of Macedonia”, the Congress noted with satisfaction the marked progress towards better local democracy. However, the Congress was concerned about the high number of special laws on local self-government which restrict the powers conferred in the general legislation and that, often, available resources are not sufficient to allow for full implementation of the powers transferred.

31. On the basis of these findings, recommendations were made, *inter alia*, to provide local authorities with additional resources and their staff with vocational training, to increase the share of local taxes and reduce state subsidies, to ensure transparency regarding municipalities’ tax resources and allocations from central government, to adopt the principle of concomitant financing and to increase the municipalities’ share of total public resources, also ensuring that municipalities hold a reasonable proportion of public property within their boundaries.

32. There were also recommendations to make provision for a single ministerial authority to direct and supervise the whole decentralisation process as well as setting up a body for settling specific disputes and disagreements between municipalities and central government departments and finally to sign and ratify the Council of Europe’s Convention on the Participation of Foreigners in Public Life at Local Level. The Congress also recommended that the municipalities make full use of the powers transferred to them, by strengthening their administrative services and recruiting qualified staff, mainly specialists in town-planning law, schools inspectors and financial administrators.

4. HONOURING OF OBLIGATIONS AND COMMITMENTS

33. The legal system of “the former Yugoslav Republic of Macedonia” follows a monistic approach as regards how international law is taken into account in the domestic law. Consequently, Article 18 of the Constitution provides protection against subsequent legislative changes that contradict the obligations taken under the Charter (“The international agreements ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law”).

4.1 *Constitutional developments and the Decentralisation Process*

34. Local Self-Government and decentralisation are intrinsically related to a successful and sustainable implementation of the OFA and, therefore, are part of the fundamental principles of the State in its current form. Municipalities should gradually receive greater responsibility for managing their own affairs as well as the capacity and resources to do so. Overall, the changes required for implementing the OFA have produced positive effects, as confirmed and underlined by all interlocutors. This impression is matched by the wide consensus over the OFA which cuts across political parties, and represents the general attitude within the institutions and among Mayors as confirmed by the interviews.

4.1.1 *Constitutional Provisions*

35. Local Self-Government is considered as one of the fundamental constitutional values (Article 8) and is directly regulated in Section V of the Constitution. Articles 114-117 provide, *inter alia*, for the right of citizens to local self-government, the establishment of municipalities and the possibility to establish forms of neighbourhood self-government within municipalities, autonomy as regards competences, guarantee for “own” financial sources as well as State funding for municipalities, and the definition of the City of Skopje as a separate unit of local self-government to be regulated by a separate law.

4.1.2 *Legislative Provisions*

36. The Law no. 5/2002 on Local Self-Government (hereafter LSG Law) is an organic law and the central piece of legislation implementing the above constitutional provisions. According to the LSG Law, municipalities are legal entities which have their own territory and name (and may have a coat of arms), their own regulations among which the statute is the one of highest rank, their own and

delegated competences, their own and other sources of financing, their own organs elected by the citizens and inhabitants who are citizens with permanent residence on the territory of the municipality.

37. The system of local self-government is also regulated by a series of further ordinary laws, among which can be cited three important laws adopted in 2004: the Law on Financing of the Units of Local Self-Government, Law on Territorial Organisation no 55/2004, and the Law on the City of Skopje of 16 August 2004. Further laws include the Law on local elections, the Law on participation of citizens in the decision-making process, the Law on inter-municipality cooperation, the Law on the State Inspectorate for Local-Self Government, and the Law on Balanced Regional Development.

38. The process of decentralisation, which started on 1 July 2005 after the establishment of the normative and institutional framework, has not yet been completed.

39. Responsibilities in the areas of urban planning and development, education, water, agricultural land and economic development were to be transferred together with - parts of - the relevant staff to local authorities. In order to achieve these objectives, more than 30 laws have been adopted to provide for the transfer of competences in conformity with Article 22 of the LSG Law, but also for the transfer of funds, facilities and personnel from central to local level. Altogether, more than 80 laws contain provisions related to local self-government.

40. In the Rapporteurs' opinion, this splitting into numerous legal bases bears the risk of fragmentation and confusion. While formally extensive powers and responsibilities are attributed to municipalities by the LSG Law, numerous special laws determine important details for their effective use. Among the special regulations there might also be some reservations regarding the conferred powers as well as the parallel transfer of sufficient resources (e.g. education and transport of pupils, see below) – despite the principle of concomitant financing anchored in Article 21 para. 2 of LSG Law.

41. Not only the LSG Law, but also the Laws on local finances, on territorial organisation and on the City of Skopje as well as laws related to culture, language, education, personal documents and the use of symbols are subject to the double majority requirement (see para. 17).

42. The guarantees for all communities, such as those regarding language rights and political participation of different communities, provided at municipal (and central) level by the constitutional changes through the OFA, constitute the basis of the current constitutional and legal system.

43. Decentralisation should further improve the conditions for democratisation, peaceful co-existence of different communities, economic stability and prosperity through development as well as for accession to the EU. Its importance for local democracy lies in its objectives: Enhancing the quality of political decision-making through the inclusion of local authorities and through strengthening their autonomy, and for increasing political participation by reaching out to the citizens.

4.1.3. *Administrative structure*

44. The country, which has a population of 2, 077,000 according to 2011 estimates, has a single tier system of local self-government, with municipalities as the basic unit. Currently, the country counts 8 statistical regions, 84 municipalities (plus the capital City of Skopje which is subject to its own regulations under the Law on the City of Skopje (Article 117 of the Constitution) and 1776 settlements.

45. The organs of the municipality are the Council and the Mayor. The Council is the representative body of the citizens. The number of councillors (whose term of office is 4 years) depends on the number of inhabitants of the municipality (not less than 9 if the population is less than 5.000 and not more than 33 members if population is above 100.000). The only exception to this rule is the Council of the City of Skopje, which consists of 45 members. Councillors are elected by proportional voting, according to the D'Hondt method. It works in sessions, which are convened by the President of the Council (elected with the majority votes of the total number of councillors) and which must be attended by a majority of the total number of councillors. It decides by a majority of those attending, unless the law and the Statute determine otherwise. The sessions of the Council are open to the public. The Council can be dismissed by a majority of the total number of its members.

46. The office of Mayor is the executive body in the municipality and is responsible to the citizens (for their election see paras. 21 to 23 above). A vote of no confidence may be initiated by at least 20% of

the total number of voters and adopted by a simple majority vote of all voters in the local government unit. The mayor's term is terminated in the case of resignation, death, illness longer than a year, absence longer than six months without a justifiable reason or conviction for criminal charges. The government establishes the reason for and enacts the termination of the mayor's office. It then informs the National Assembly so that the latter may initiate new mayoral elections in the respective municipality.

47. The fields in which local authorities can decide on issues of local relevance comprise public services, urban and rural planning, environmental protection, local economic development, local finances, communal activities, culture, sport, education and health care ; but there might be also further fields determined by law (Article 115 of the Constitution as amended in 2001: Amendment XVII).

48. The constitutional provision is implemented by Title III of the LSG Law 2002 (Articles 20-24) which contains principles as well as general regulation provisions regarding the competences of municipalities. Referring expressly to the principle of subsidiarity, Article 20 of the law grants local authorities "the right to perform activities of local importance at their territory that are not excluded from their competency or are not under the competency of the organs of the State administration in an exclusive and comprehensive way. The principle of concomitant financing between new competences and financial means is also established (Article 21).

4.2. Local self-government: issues and developments

4.2.1. Territorial issues

49. According to the Law on Territorial Organisation (2004), all changes of municipalities' boundaries have always to be preceded by comprehensive consultations between political actors and citizens (Article 2).

50. Under this law, a number of small municipalities have been merged into bigger ones, and neighbourhood self-governments lost their legal status, while new urban and local communities were established within towns and settlements, enabling citizens to continue their involvement in the process of establishing priorities in their immediate local community (some citizens have perceived this negatively, as being deprived of their guaranteed right to (a unit of) local self-government).

51. The merger process is now completed, although some municipalities are yet to be included in the Kichevo municipality.

4.2.2. Consultation: relations between central and local authorities

52. The LSG Law obliges the central Government to consult with municipalities when drafting laws related to local government (Article 80). A report must be drafted, containing all issues that need to be agreed upon (para.3). The Parliament has established a Committee for Local-Self-Government which is involved in the legislative procedure. Prior to the adoption of the proposed law, the presence of the representatives of the Association of Units for Local Self-Government (ZELS) is required at the meetings of this committee.

53. A recent example of consultation with local authorities is the Law on Construction Land in which the municipalities received jurisdiction over state-managed, undeveloped land. The law was actually drafted by a working group consisting of two representatives from the Ministry of Transport and Communications and three representatives from local authorities (the Mayors from Ohrid, Struga and Prilep).

54. The Rapporteurs have noted that, clearly, ZELS is a key actor and the central interface in the relations with the central authorities. It represents municipal interests and provides them with technical assistance (sometimes even with equipment, e.g. for translation and interpreters). ZELS has existed since 1974; all municipalities are its members and have confirmed their membership in 2010.

55. Following the regular procedure for consultations with the government, Ministries send draft laws and other documents to ZELS, which in turn forwards them to all municipalities and asks for their opinion. Simultaneously, the draft law is forwarded to the relevant network within ZELS, which has

established 13 networks of professionals from municipalities covering various areas such as financial or educational issues, urbanism, human resources, environment, etc. Subsequently, the competent commission within ZELS, composed of Mayors, is convened to discuss and dispute the draft law and review opinions thereon.

56. There is also consultation through regular meetings between the ZELS Management Board and the Government, held at least once per year, where the former presents a document which states all current needs and problems of municipalities (the "ZELS Systematized Positions"). All competent Ministers attending the meeting (including the Prime Minister) need to provide answers as to the solutions for the questions raised.

57. For consultation on issues of redistribution among and allocation of financial resources to local authorities, the Law on Financing Units of Local Self-Government provides for the establishment of a committee to monitor the development of the system for financing local government.

58. This committee consists of five Mayors, proposed by ZELS, and four civil servants from the Ministries of Finance, Local Self-Government, Education, Labour and Social Policy (Welfare). The Committee deals, *inter alia*, with distribution of VAT, monitors the application of criteria for the allocation of block grants for education, culture and social activities at the local level, and the spending of earmarked grants, ensures the transparency of procedures and prepares semi-annual and annual reports on the development of the system for financing municipalities.

59. In the Rapporteurs opinion, consultation procedures in "the former Yugoslav Republic of Macedonia" are fully in line with Articles 4 (para.6) and 10 of the Charter.

4.2.3. *Financial situation (for details, see section 5.6)*

60. The economic crisis had relatively little impact on the country and did not pose particular problems. There have been no changes in the division of powers and responsibilities between the central and local levels as a consequence of the world economic crisis.

61. The delegation has been informed that municipalities still do not use the capital market; few take loans from the private sector where the shocks are, usually, milder. The industry and the banking sector are not directly related to the European capital flows, but greater uncertainty in the loan activity by the banks towards the private sector risk to be reflected in the revenue inflow from the financing sources. Recently, efforts have been made for reviving financing by means of alternative asset sources such as municipal bonds.

62. The principle of concomitant financing, which ensures that all transfers of responsibilities to local authorities are accompanied by the transfer of resources equal to those which central government allocated to the activities in question, is anchored in Article 21 para. 2 of LSG Law. However insufficiency of local authorities' financial (own or shared) resources remains a problem.

63. The country's macroeconomic situation is considered "sound" by the Ministry of Finance and although cuts have been introduced by an anti-crisis package, these could be limited. Small and medium enterprise (SME) development was promoted by 150 million Euros (World Bank) and the central government is financing projects for the improvement of services in 20 municipalities (18.9 million Euros, World Bank). Further projects focus on water supply: 50 million Euros from the European Investment Bank for 84 municipalities, and 8.6 million Euros from the *Kreditanstalt für Wiederaufbau* (bank for reconstruction) for 8 municipalities; data provided by the Ministry of Finance during the visit.

64. The Law on management of state-owned land was adopted and entered into force in July 2011. Since public land is owned by the State, the management of the land has to be transferred to local authorities (including right to sell or lease on behalf of the State), provided the latter meet certain conditions, in particular, the technical preparation of their staff. 14 municipalities have already been included in the transfers from the Ministry for Transport and Communication to local authorities. According to the plans, 66 municipalities in total will have this right. The income from the sale or lease of land is to be divided between the State (20%) and the municipality concerned (80%). This source of income will be important in terms of revenue and will also permit the municipalities to autonomously manage the public land situated on their territories.

4.2.4. *Citizen participation*

65. Title IV of the LSG Law 2002 provides for direct participation of citizens in decision-making on matters of local relevance. According to Article 25 thereof, the forms of citizens' participation are civil initiative (Article 26), citizens' gatherings (Article 27) and referendums (Article 28). In addition, citizens have the right, individually or together with others, to submit appeals and proposals regarding the work of the municipal organs or administration (Article 29). The instruments of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) are thus already part of the legislation, raising the question why it has not been ratified so far.

66. According to the Local Self-Government Committee of the Parliament, an analysis on the impact of the Additional Protocol (CETS No. 207) and the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144) upon the legal system of country are on the agenda for 2012. The delegation was made to understand that, based on this analysis, an action plan will be prepared for signature and ratification of the Protocol and the Convention.

67. The Rapporteurs noted that no immediate knowledge could be provided to the delegation regarding the number of foreigners residing permanently on the territory of the respective municipality. Although the number of foreigners might still be comparatively small, awareness regarding this issue should be raised since it would seem that, so far, foreigners are not considered an issue at all.

68. Non-participation of the local population seems to be a real problem. A survey of local government showed already in 2004 that "citizens clearly feel that the municipal government is not listening to them, and therefore is not representing their interests".¹⁵ Although the Law on Proposals and Motions of Citizens (2006) is formally well established, in practice it is hardly applied at all. According to interlocutors the instruments are used only "once or twice in two or three years, and in specific municipalities". The reasons are a lack of awareness and a weak civil society within a generally fragmented, consociationally organized society (power-sharing and guaranteed group representation), but also the lack of funds at local level. The 10% threshold for a citizens' initiative might be too high and the procedures might be too complicated and long. The result is that no initiative or referendum has been promoted so far, not even regarding controversial projects such as "Skopje 2014".¹⁶ The delegation could not obtain information or data on the effective use of applications regarding the Appeals and Proposals-procedure (Article 29 of the LSG Law).

69. This is reflected by a general lack of interest regarding public discussion, sometimes leading to the avoidance of gathering public opinion on plans. Against the decisions by the Council of Skopje-Centar for realizing the Skopje 2014 project, a complaint has been lodged to the Constitutional Court on the grounds of insufficient participation by the other municipal councils of the capital and the lack of citizens' participation.

4.2.5. *Transfrontier cooperation*

70. In application of the EU Instrument for Pre-Accession Assistance (IPA) Cross-Border Cooperation Component, the country participates in five programmes, including the IPA Programme for cross-border cooperation with Albania, Bulgaria, Greece, Kosovo and the Program for transitional cooperation between the countries of South-East Europe. Within the call for submission of proposals for cross-border cooperation, which are published for each IPA Program, the municipalities and centres for development of the planning regions are eligible to submit their proposals for cross-border cooperation, bearing partner from the other side of the border, or from another EU member State. Municipalities can thus take part in international cooperation through the IPA.

¹⁵ Adams, Joanne (2004) "Assessment of Intra-Municipal Relations and the Role of Neighbourhood Self Government", OSCE Spillover Monitor Mission to Skopje, p. 11 (available at http://www.osce.org/documents/mms/2004/07/3396_en.pdf).

¹⁶ "Skopje 2014" is an urban planning project envisaging the construction of almost 20 buildings, including, museums, theatres, concert halls, hotels and administrative offices, giving the centre of Skopje a new look. It has attracted controversy. The project's cost is also in question, estimates ranging from 80 (government) to 5000 million Euros (opposition).

71. In 2010, the government agreed with Bulgaria to make the (long-standing) project for the Pan-European Transport Corridor No. 8 a priority, linking Skopje to Sofia by railway.

72. Examples of IPA funded projects concern various areas: In 2011 two bilateral cross-border projects were in preparation with Bulgaria: One of them aims at improving the conditions for economic cooperation between the border region of Blagoevgrad (Bulgaria) with Strumica and Stip (involving the Regional Chambers of Crafts of Stip and Strumica). The second one focuses on supporting artisans in order to bring their products to international markets and on their training for new marketing skills. Activities planned include the establishment of a common business information centre, the preparation of a manual on the legal framework and requirements for business start-ups in neighbouring countries and the training of craftspeople. As regards cooperation with Kosovo, a financing agreement was signed in 2011 for the construction of a new joint border crossing point near Belanovc/Kumanovo and Stancic on the side of Kosovo. A cross-border cooperation programme with Albania is also ongoing with the aim to foster sustainable economic development of the region, to develop long term partnerships and networking between civil society organisations. The cross-border component of IPA projects is under the responsibility of the Ministry of Local Self-Government.

73. Another example is the Women In Network for Innovation and Entrepreneurship (WIN-WIN for Women: Crossing the borders, breaking the barriers) project which focuses on promoting the active involvement of women in regional development. It involves, on the Greek side, the Ergani Centre and the Region of Western Macedonia, and on "the former Yugoslav Republic of Macedonia" side, the municipality of Resen, as well as the Association of Craft Artists Macedonian Handicrafts of Bitola and Civil Society Organisation for development of Alternative tourism of Ljubojno.

4.2.6 *Status of the capital city*

74. Skopje as capital city is a separate unit of local self-government, in addition to the 10 municipalities which make up the "City of Skopje". It is subject to the regulation by a Special Law ("Law on the City of Skopje", 16 August 2004) which basically contains the substance of the general Law on LSG (2002), adding rules and procedures on the coordination between the City of Skopje and its 10 municipalities. So, the City of Skopje, in which 30% of the country's population lives (more than 500.000 inhabitants), is subject to special regulations but does not have a truly particular status as capital city.

75. Responsibilities and authorisations concerning road construction, reconstruction and maintenance are clearly divided between the City of Skopje and its municipalities. Regarding urban spatial planning, the City of Skopje adopts the General Urban Plan, and the municipalities arrange their areas with a Detailed Urban Plan.

76. In order to perform public activities of local significance, and within the framework of its competencies, the City of Skopje has established public services covering the entire city territory, so that its municipalities are not exposed to any related functional, technical, administrative or financial expenditure. The City of Skopje is obliged by the Law to take a stance on all initiatives and proposals by the city municipalities, and notify the relevant municipality thereof.

77. In performing activities under their mandate, the City of Skopje and its municipalities cooperate, informing each other of activities that are of mutual interest. They undertake joint action and measures to resolve and enforce activities within their mandate and provide expert assistance for the implementation of laws and regulations.

78. Their revenue sources are the same as for other municipalities, but it is true that they are producing more income due to their wealthier population, investment activities and more land sale. However, these sources do not provide a stable base of income. Revenues established by law and based on the lowest tax rate concerning taxes on property, personal income, inheritance and property sales, is divided in a 50/50 ratio between the City of Skopje and the relevant municipalities within the city. So are the revenues from communal taxes, from income from donations and from administrative fees, depending on the subject of the administrative activities.

79. For the purpose of coordination, a specific body composed of the Mayors of the 10 municipalities is established (Article 31). Headed by the Mayor of the City of Skopje and meeting at least once a month, it coordinates the municipalities' positions on most competences and might also resolve

disputes between them. It reviews matters of mutual interest and gives recommendations in order to provide sustainable and harmonised development and to align strategies and plans for the development of the city as a single spatial and functional unity. Matters for discussion include the Detailed and the General Urban Plan, the plans for public transport, technical and infrastructural plans, administrating and collecting own revenue, income and disbursement needs of the city and its municipalities.

80. In the Rapporteurs' opinion, more clarification and distinction between the roles and functions, at local/municipal level on the one hand, and at capital city level, on the other, seems desirable. For instance, the delegation could not fully clarify how the financial resources are actually divided between the City and its 10 municipalities, i.e. whether a formula based upon agreement is used (as stipulated in Articles 26 and 31 of the Law on the City of Skopje) or whether a pre-determined division by law is applied between the City and its 10 municipalities (as is the case, according to the Law on Financing of LSG, for building permits and property tax : this ratio is 60-40 for the sale of construction land and 50-50 for other resources).¹⁷

4.3. A new regional policy: "balanced regional development"

4.3.1. Legislative base and objectives

81. As mentioned in paragraph 13 above, there is no regional structure in "the former Yugoslav Republic of Macedonia". There are, however, eight planning regions established on the basis of NUTS III¹⁸ territorial and statistical units, for coordinated planning and development above the municipal level. These are not legal entities in international relations, although they might cooperate with local and regional authorities from other countries, e.g. in cross-border activities.

82. Regional development is a commitment included in the Constitution (Article 57) and the legal framework for regional policy has been created with the adoption of the Law on Balanced Regional Development adopted in May 2007. Its main objectives are (a) balanced and sustainable development of the entire territory of the country, based on a polycentric model of development, and (b) reducing disparities between and within the planning regions and improvement of the quality of life of all citizens. It establishes Regional Development Centres (RDCs) for developing planning regions to implement projects related to their development, using funds from the EU and other international sources.

83. In 2008, the government adopted a decision on developing criteria and indicators in order to classify the planning regions according to their degree of development for the period of 2008-2012 (Official Gazette, no. 162/08). This degree is calculated by the index for socio-economic development and the demographic index; it determines the participation of each region in the allocation of funds.

4.3.2. Internal organisation and coordination at national level

84. The Councils for Development of the Planning Regions have been established for each region. These are composed of mayors from the municipalities belonging to the region and determine the regional development plans for five-yearly period. The plans are implemented through annual action plans and project proposals financed from the national budget. The councils also organise and coordinate monitoring and evaluation activities regarding the state of the implementation.

85. The RDCs are located in the municipality with the largest number of inhabitants in each region and carry out the administrative and technical tasks on behalf of the Council, such as drafting and coordination of implementation activities. They also assist municipalities. RDCs are financed by the municipalities of the region, which contribute in proportion to their number of inhabitants (in the first five years of their operation, the State participates covering 50% of their current expenditure).

¹⁷ The latter – i.e. formula established by law – was sustained by the Mayor as a general rule during the interview with the delegation of the Congress despite the opposite wording in the Law on the City of Skopje.

¹⁸ According to the EU categorisation of regions under the Nomenclatura of Territorial Units for Statistics, used by Eurostat and EU bodies, and based on population size, NUTS III corresponds to an administrative unit of minimum 150 000 and maximum 800 000 inhabitants. The NUTS is the smallest of the three NUTS levels.

86. At national level, regional development and sectorial as well as macroeconomic policies are coordinated by the National Council for Regional Development (NCRD) composed of 9 representatives from the responsible Ministries and of the 8 Presidents of the Regional Council representing the Regions plus the President of ZELS (ensuring parity between representatives of central and municipal authorities). The NCRD is chaired by the Deputy Prime Minister responsible for Economic Affairs, while the Ministry of Local Self-Government is the key operating actor for the government regarding regional development. The priorities for the distribution of funds are established within the planning regions, but the list of projects is decided by the NCRD based on criteria established by a specific by-law.

87. A new Committee for regional development has been established within ZELS in order to facilitate the transfer of experience between the Planning Regions and to express their interests at national level.

4.3.3 *Financing and allocation of development funds*

88. Regional development is jointly financed through the budgets of the State, of local self-government units, through EU funds and other international sources, donations, sponsorships and other sources. In the State budget, the equivalent of 1% of GDP is allocated every year as funds for regional development. However, some interlocutors informed the delegation that this quota had not yet been reached¹⁹.

89. From these funds (within the Budget of the Ministry for Local Self-Government and the Regional Development Bureau for promoting a balanced regional development), 70% are allocated in order to finance development projects for the planning regions, 20% for projects of areas with specific development needs and 10% for the development of rural settlements (villages).

90. The participation of each planning region in the allocation of funds for projects in the period 2009-2012 has been calculated based on the classification of the degree of development, according to which, almost all regions receive twice as much in terms of funds than the Skopje Planning Region, which is 6,4% of the total of annually available funds.

91. In addition, areas with specific development needs have been determined. These are border, rural, mountainous and other areas lagging behind in development, areas of natural resources and cultural heritage protected by law, as well as other areas designated by law. The list of these areas is defined by the Council for regional development and approved by the Government; it is valid for 5 years (currently for the period of 2009-2013).

92. The mountainous, border and rural areas, designated as areas with specific development needs, are located in 68 local government units and dispersed throughout all eight planning regions. As to areas with natural resources and of cultural heritage protected by Law, these include the national park "Mavrovo", "Galičica" and "Pelister", and areas of cultural heritage protected by Law, such as the village Gari as a rural entity, the village Smilevo as a historical entity and village Konsko as an urban entity. Other areas with specific development needs determined by law are the mountain Vodno as an area of special beauty, Katlanovo region for its special natural features and the river Beleštica as a natural monument.

4.3.4 *A first evaluation*

93. Balanced Regional Development is a promising policy for coordinating and supporting the current decentralisation process through measures decided jointly by the central authorities and the concerned municipal authorities of a certain region. The regional approach allows for differentiation

¹⁹ The Ministry of Local Self-Government, responsible for implementing the Law on BRD, drew the attention of the delegation to a disagreement on this percentage regarding the sum allocated for the regions: Although this sum is indeed below 1% of the GDP, as stipulated in the law, the Government apparently claims that the transfers from various line Ministries assisting municipalities in performing decentralised functions (roads, schools, infrastructure) are higher than the specified 1%. The Ministry says that this Government claim does not take into account the fact that the transfers do not necessarily address issues for regional development.

and targeted measures, in particular in favour of areas economically lagging behind. It seems also in line with general EU regional policy and thus serves for the preparation of accession.

94. A critical evaluation of the BRD Law and its first implementation shows the need to involve more stakeholders in regional development as well as the need to cooperate better between the central and the local levels (in particular regarding quick responses by the central level). In addition, capacity building in the Ministry of Local-Self Government is needed to establish efficient management structures for the coordination and implementation of the regional development policy and of related IPA components. The new Regional Centres also need support for their institution and capacity building.

95. The close link between the national regional development policy and EU policy is essential for the success. In fact, according to the EU, all municipalities in the country are rural, except the City of Skopje. Although considerable funds are available through the IPA, the effective utilisation of these funds by municipalities is extremely low (3%, as compared, for example, to Bosnia and Herzegovina's 17-18%). Project application problems seem to arise from the lack of technical preparation of the municipal staff and mayors and also because, often, initial investments or co-funding is necessary.

5. ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY IN LIGHT OF THE EUROPEAN CHARTER ON LOCAL SELF-GOVERNMENT ON AN ARTICLE BY ARTICLE BASIS

5.1. 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 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.

96. For the illustration of the constitutional framework and principles as well as of the legislation concerning local self-government in "the former Yugoslav Republic of Macedonia", (see above 4.1. Constitutional developments).

5.2. Article 4: Scope of local self-government

Article 4 – Scope of local self-government

- 1 The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
- 2 Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
- 3 Public responsibilities shall generally be exercised, in preference, by those authorities 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.

97. In practice, local authorities have full discretion to take initiatives within the scope of their competence regarding some competencies among which communal activities, the issuance of construction permits, or questions related to urbanism, local economic development, own finances and finance planning, legal acts.

98. Shared competences between the local and central government primarily concern the mandates of the inspection bodies. For example, there is a State Construction Inspectorate as well as a local one. The same is true for the Education Inspectorate, the Communal Inspectorate, and the Traffic Inspectorate. In some cases, mandates have been clearly defined by means of bye-laws, but there are also cases of overlapping mandates whereby local authorities must address central government inspectorates for advice. For example, should one municipality plan to open a new school or close an existing one, the municipality needs to obtain advice and opinion from the central government in addition to the decision of the Municipal Council. In order to clearly distinguish the mandates of both instances, a joint working group between ZELS and the Ministry of Education and Science was set up, tasked with the drafting a bye-law.

99. For the performance of the so-called obligatory (social) competences, the State must provide minimal standards and equal access to the services for all citizens and to withdraw transferred powers in single cases, if these minimum standards are not guaranteed (Article 21 para. 3 of the LSG Law and specific laws, e.g. education and health services).

100. According to ZELS and other interlocutors and based on the assessment of the EU Commission's 2011 Progress Report, decentralisation should be encouraged to a greater extent by the central government and vis-à-vis the line ministries which are often still attached to the ideas of central spending and control, and more competences should be transferred to local authorities in social services (housing,²⁰ and primary health care as delegated competence), public security (e.g. local order and traffic regulation), agricultural land and cultural matters.

101. The delegation was informed during the visit of coordination problems between the Ministry of the Interior and municipalities, an example of which is the appointment of the (local) Chief of Uniformed Police. Normally, the decision of choice between the candidates proposed by the Ministry remains with the municipal council, but there are cases where due to the politicisation of the decision, the position has remained vacant for years. It seems to the rapporteurs that problems of this nature could be resolved by a different procedure.

102. The "own" competences of municipalities are listed and specified in Article 22 of the law; they comprise urban and rural planning, protection of the environment, nature and space regulation, local economic development, communal activities, culture, sport and recreation, social welfare and child-protection, education, healthcare, civil protection, fire-fighting, supervision of municipal activities as well as "other activities determined by law".

103. Article 23 of the law provides for the delegation of "the execution of certain tasks" by and from "public administration bodies", linking these delegated competences with the obligation of transferring funds from the central budget. However, so far no delegation according to this article has yet been made.

104. The allocation of competences is symmetrical for all municipalities: there is no difference in competences and functions among them. The only differentiation concerns the City of Skopje and the ten municipalities within it and is regulated by a special law. For example, the City of Skopje has authority over secondary schools, whereas its ten municipalities have authority over primary education (elementary schools).

105. The Law provides for a division of local authority competences in line with the principles of the Charter. The Mayor is responsible for the organisation and operation of the administration and also proposes acts for adoption, while the Council adopts decisions to be implemented by the Mayor.

²⁰ Transfer of competencies in the area of Social Housing is included in the Strategy 2020 of the Ministry of Labour and Social Affairs.

5.3. **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.

106. According to the LSG Law, a "municipality shall be established on the territory of one or more populated places where the citizens are connected by common needs and interests, where there are conditions for material and social development and for participation of the citizens in the decision-making process on their local needs and interests" (Article 16). The territory on which a municipality is established should represent a naturally, geographically and economically linked entity, with communication among populated places and gravitation towards the common centre, and it should have infrastructure facilities as well as facilities of social standard built therein (Article 17).

107. With the territorial re-organisation as part of the implementation of the OFA (Article 116 of the Constitution providing the constitutional base for an organic Law on Territorial Division, which was adopted in 2004), the number of municipalities has been reduced from 124 to 84. The logic behind the new territorial division was to create larger and thus more functional municipalities, but also to have more bilingual ones by reaching the necessary 20% threshold for communities. Although the reform had met fierce criticism, a series of referendums against the new Law did not pass. As further legislation or amendments are subject to the double-majority requirement, smaller communities are protected against unilateral changes of the new territorial design.

108. These mergers have created problems in some cases. In particular, the co-existence of urban and rural units within the same municipality is often difficult due to the disparity in their situations. The rural parts of the new and bigger municipalities often need to improve their infrastructure, waste management and water supply, but these are not perceived as priorities by the urban municipalities, which already provide these services and functions to the majority of the population in the urban parts (which also constitutes the majority of the voters).

109. In the Rapporteurs' opinion, these problems could probably be resolved by a systemic approach which takes the differences between urban and rural units fully into account. One way to do so would be to determine mandatory tasks or essential services each municipality has to fulfil before engaging in other fields of its competences. The Rapporteurs have noted that Article 22 para. 3 of the LSG Law which contains a reference to such a possibility, has not been used so far by the legislator.

110. In addition, special funds for the development of rural areas might be set up in order to provide financial incentives to municipalities for the development of these areas. Although the LSG Law already provides for such an option (Article 12), again this has not been used. It has now been replaced by the Law on Balanced Regional Development (BRD). According to the BRD Law, 70% of funds available under the law shall be devolved to the new Planning Regions, while 20% are to be reserved for poorer Regions and the rest (10%) is to be used for underdeveloped municipalities. The Rapporteurs think that reserving specific funds for the underdeveloped parts of municipalities should be considered within this new framework, permitting to treat urban and rural areas (merged into one municipality) differently, i.e. according to clear criteria with the objective to create cohesive and sustainable units of local self-government.

111. According to Article 19 of the LSG Law, a special law (i.e. the 2004 Law on territorial organisation) determines the territory, names, seats and borders of the municipalities, the procedure for their establishment and other issues regarding the territorial division.

112. The principle of prior consultation of the concerned population in case of a change of boundary is not expressly included in the LSG Law 2002 (as opposed to its predecessor from 1995, Article 15). It could however be considered as a binding principle in the (monistic) legal system of "the former Yugoslav Republic of Macedonia", due to the binding force of Article. 5 of the Charter. This being said, a procedure for consultation of the populations concerned on the modalities of such modification would benefit from being clearly laid out in the law to ensure the smooth running of consultations. The Rapporteurs have noted that, although the adoption of the Law on territorial organization in 2004 has been criticised for insufficient prior consultation before its adoption, the principle is contained in the provisions of Article 2 of the same law: "A new municipality can be established (amalgamated, divided

and the boundaries can be changed) after prior consultation with the citizens in the municipality concerned”.

5.4. Article 6: Administrative structures

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

- 1 Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
- 2 The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

113. Capacity-building programmes are being implemented to assist municipalities in the areas of property tax administration, human resources and financial control. Financial affairs units were established in three more municipalities; 52 municipalities set up internal audit units and, in 46 municipalities, an internal auditor is operating. More than 1000 municipal civil servants have been trained, and progress was made in implementing annual training programmes.

5.5. Articles 7 and 8: Exercising responsibilities and government supervision

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.

Article 8 – Administrative supervision of local authorities' activities

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

114. Municipalities perform part of the public services through local public institutions and public enterprises.

115. Local public institutions perform the competences in the field of education, culture, child protection and protection of elderly people, which have been transferred on the basis of special laws. Funds for the performance of these competences are provided from the central budget.

116. Public enterprises are established by municipalities for the purpose of performing services in the field of utilities infrastructure (water supply, sewerage waste, transportation, etc). Municipalities can use their own property pursuant to the Law on Local Self-Government and the Public Procurement Law.

117. Supervision over the operation of municipal authorities and their organs is regulated in Title IX of the LSG Law 2002 (Articles 69-73): In the sphere of “own” competences, supervision is limited to the legality and verification of local authorities’ financial operations in the performance of their functions. It is carried out by the Ministry responsible for the fulfilment of functions related to local self-government and by the State Audit Bureau as regards financial operations. With regard to the performance of delegated competences, supervision also includes an efficiency-control which is carried out by the State administration whose competencies are delegated. Prior supervision is possible in cases determined by law. Municipal organs are obliged to cooperate with the supervisory authorities.

118. The Law on the State Inspectorate for Local Self-Government (2010) establishes a supervisory authority controlling the legality of all acts adopted by the municipal council or the Mayor. The State Inspectorate for Local Self-government is a body within the Ministry for Local Self-government. Subject to its control is the legality of regulations adopted by the municipalities in order to guarantee conformity of all activities and decisions with the Constitution and with the relevant laws, international agreements and other legal regulations. The surveillance takes regular and unannounced forms and includes checking the removal of contested irregularities (Article 17). Should the Inspectorate determine that there is reasonable suspicion for a violation or a criminal act, i.e. that administrative or other measures have to be taken, it is obliged to initiate offence or criminal procedures, and to immediately notify the competent body for proceeding with the measures in question.

119. According to the information provided to the delegation, it is not clear whether and how it is possible to remove a Mayor from office or to apply sanctions against a Mayor who does not fulfil his/her obligations. The Rapporteurs believe that, for legal certainty, procedures and conditions under which such measures can be adopted in extreme cases should be determined and regulated in legislation.

120. However, there are other types of administrative control as well, especially regarding the areas of education, environmental protection, communal activities, urbanism and spatial planning, financial works, auditing, etc. Specific laws regulate the procedures in these special areas, such as urbanism and spatial planning, education, protection of the environment, communal activities, etc.

121. Administrative acts of municipalities that are adopted in violation of public interest or protection of personal data are annulled. Should a municipality fail to assume its responsibilities, the obligation to act is taken over by a relevant state body. Article 21 para. 3 of the LSG Law authorises the withdrawal of transferred powers in single cases, if established in specific laws. For example, education and health services are under the surveillance of State inspectors and penalties and procedures for withdrawal are established in case minimum standards are not fulfilled. The same applies to specific laws on construction, urban planning and taxation. These are temporary measures, until municipalities are able to fulfil these functions properly.

122. The Directorate for Personal Data Protection also has separate competences and authorities; it ensures that regulations are respected and verifies alleged violations of citizens' personal information. The procedures are established and regulated by specific laws. Regarding general administrative law, the Law on Inspection Control might also be applicable to the supervision of local authorities. The employees of local authorities might be subject to supervision by the State Inspectorate for Public Administration as well. The latter performs the supervision of administrative acts in a special procedure.

123. Financial audit of municipalities and public enterprises at local level is carried out according to the Law on State Audit. The State Audit Office (SAO) carries out different types of audits: compliance audits, performance audits and horizontal audits (e.g. regarding construction land) and thematic audits for a systematic inquiry of weaknesses, e.g. regarding the establishment and collection of municipal taxes. All resulting reports are published on the SAO website and submitted to the Parliament (they are also sent to the Ministries of Local Self-Government and of Finance). The delegation was informed during the visit that the SAO conducted performance audits in 12 municipalities, examining the efficiency of procedures for determining and collecting revenues such as local taxes and fees etc. While international standards incorporated in national legislation serve as a framework, the compliance with procedures is examined as well as the compliance with the indicators set by the municipality concerned itself. In 2012, the SAO will conduct a performance audit of regional development. The audit will encompass the eight planning regions in addition to the Ministry for Local Self-Government and the Bureau for Regional Development.

124. Having noted the progress made in setting up and developing supervision processes, the Rapporteurs have also taken note of the EU Commission's assessment, according to which "significant additional efforts are needed at central and local levels in order to strengthen the administrative capacity of certain municipalities, particularly in the areas of financial control, strategic planning, human resources management and economic development. The State Audit Office reported numerous shortcomings by the Ministry of LSG in applying financial control standards and procurement rules, as well as poor follow-up of previous recommendations." (EU Commission, Progress Report, October 2011).

125. To sum up, three main problems concerning supervision can be identified:

i) Although the State LSG-Inspectorate created within the Ministry of Local Self-Government is the main supervisory authority monitoring the legality of municipalities' activities, line Ministries remain involved in some kind of monitoring and supervision related to their specific competences (in particular related to transferred competencies, such as currently land-management, transport, education, etc.). These parallel tracks imply a high number of interlocutors for municipalities and might require coordination or concentration in one supervisory authority.

ii) A general procedure for reacting to cases of incapacity or serious mismanagement by Mayors does not seem to exist (e.g. temporary removal and substitution by an appointed commissioner). The lack of pre-established procedures and measured might carry the risk of political pressure from central government and/or lead to an early use of the criminal law, not always suited for these cases.

iii) Regarding the internal audits, technical qualification and capacity still seems to be a major problem. Strengthening the administrative capacity of municipalities in this field is important also for the transfer to the next stage in the decentralisation process.

5.6. 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.

126. Municipal property contains land, facilities, financial resources (money) and rights. With the exception of possible delegated functions (in future), all municipalities have the same expenditure responsibilities; only the City of Skopje has special legal provisions for sharing the competencies with its 10 constituent municipalities.

127. Legislation determines how municipalities may dispose and manage their assets. The Law on Financing Units of Local Self-Government of 2004 (hereafter the "Finance Law") has re-opened the process of fiscal decentralisation.

128. In 2005, in accordance with the above Law, municipalities received the authority to fully administer and collect property tax and the tax on sale of property as well as certain local fees. The level of taxes and fees is determined by a lower and upper limit allowed by laws and the Municipal Councils are responsible for determining the exact percentage of these charges. For example, the Law on property taxes determines that property taxes can range from 0.1 to 0.2% of the estimated value of the property of a citizen. Each Municipal Council can decide what the amount applied in the

respective municipality will be. Only one municipality (Gjorče Petrov) has actually determined the maximum amount of 0.2%, while all other municipalities apply the minimum amount.

5.6.1. *Local resources and taxes*

129. Municipal sources of revenues and their comparative size are (Article 4 of Finance Law):

- Local taxes established by law and administered by local bodies are the property tax, the inheritance and donation tax, the real estate transaction tax, and 100% of the personal income tax of individual craftsmen.
- Local fees which the local authorities determine and are entitled to collect are communal fees and administrative fees.
- Local charges, in particular construction land arrangement charge, charges for urban and spatial plans and communal services utilisation charges.
- Property revenues: revenues from property sale or rent and interest rate revenues.
- Penalty revenues which are determined and collected as sanctions for the violations of municipalities' regulations.
- Donations (currently foreign donations are relevant).
- Loans (upon authorization by the central government).
- Subsidies from various funds, e.g. fund for economically underdeveloped areas, fund for communal activities and roads, fund for water pipes and sewages.
- Grants: purpose grants, non-purpose grants, block grants for expenditure, grants for capital investments, grants for delegated competencies.

5.6.2. *Shared revenues, in particular share in national taxes*

130. Shared revenues are coming from the personal income tax and the Value Added Tax (VAT): municipalities receive a share of 3% from both. By 2013, the VAT share is to be increased to 4.5% (in practice, by the end of 2011, the quota had already reached 3.7%).

131. VAT grants are general grants which are not subject to any conditions and which can be fully used in line with the needs of a municipality. Their distribution is in line with the criteria determined in the Decree on Methodology for Distribution of VAT Revenues by Municipality. Total VAT revenues, collected in the previous fiscal year, are to be distributed both by a fixed amount (3,000,000 Denars, approximately 48,580 Euros) to all municipalities (including Skopje and its municipalities), and as a variable portion (12% goes to Skopje and its municipalities and 88% to all the others). The latter portion is distributed according to the following criteria: 65% according to the number of inhabitants, 27% according to the area of the municipality and 8% according to the number of settlements.

132. The average share of tax revenues in the local authority budgets has been around 30%. In 2007, they participated with 37.8%; in 2008, they accounted for 21.2% of the total and, in 2010, they amounted to 24.6%, as a result of the increase of transfers from the central budget in the form of block grants to the municipalities which had moved to the second stage of fiscal decentralisation.

133. Provisions in special laws have further increased the revenue of municipalities, in particular by sharing the income from concessions for exploitation of mineral resources (22% State – 78% municipalities) and for the sale of construction land (20% State – 80% municipalities) which is transferred from the Ministry for Transportation and Communication to those municipalities which fulfil certain administrative criteria. Currently 14 municipalities are entitled to manage land.

5.6.3. *Grants*

134. Grants from the State budget and the budgets of various funds provide additional revenues. Capital grants are used to finance investment projects on the basis of a program determined by the Government and their use are monitored by line Ministries and the Agency for State Roads. Earmarked grants are used for financing specific activities of municipalities that are in the first stage of fiscal decentralisation for education, culture, social policy and child protection as well as fire-fighting. Line Ministries propose and monitor the distribution of earmarked grants by municipality, project, institution and/or program.

135. Municipalities argue that this financial instrument should be transferred to them so that they themselves can decide which investments will be financed (instead of a decision by central authorities). In fact, cases have been reported where central government decided to build a school in a municipality without prior consultation, although the municipality had other priorities.

136. In the second stage of the fiscal decentralisation process, municipalities finance the transferred competences with block grants which include expenditure related to salaries and costs pertaining to maintenance of buildings, goods and services. Line Ministries propose the methodology for determining the criteria for the distribution of block grants. Each year the central government adopts a Decree on Methodology and Criteria for Distribution of Block Grants, the total amount of which may not be less than the amount of funds from the central budget used for the same purpose in the year before the transfer of a certain competence.

5.6.4. *Fiscal decentralisation*

137. Fiscal decentralisation is an important part of the whole decentralisation process as budget and fund transfers to municipalities must accompany the transfer of (new) competences.

138. The Finance Law provides for the implementation of fiscal decentralisation in two phases (starting on 1 July 2005). In the first phase the fulfilment of two conditions is required (Article 46) according to which, municipal administrations should have at least two employees qualified to work on financial management, budget preparation, budget execution, accounting and financial reporting, and three employees qualified to work on determination and collection of taxes.

139. In order to access the second phase (which was supposed to start in July 2007, but had been postponed to January 2008), municipalities have to meet the following criteria:

- a) fulfilment of the two conditions of the first phase;
- b) good financial results in the previous 24 months;
- c) adequate staff capacity for financial management;
- d) timely and regular notification to the Ministry of Finance regarding good results and verification by the same Ministry;
- e) no outstanding liabilities vis-à-vis suppliers or other creditors that overcome the usual payment condition.

140. For monitoring and assessing compliance with these conditions, a Commission has been established in January 2007 which meets four or five times a year. It consists of a President, nine members and a secretary. Among the members there are the President and Vice-President of ZELS, Mayors, representatives of line Ministries, academics and international experts. There is also an inter-ministerial working group meeting regularly, every two months.

141. According to the information provided to delegation during the visit, by the end of 2011, 79 out of 85 municipalities had entered the second phase of decentralisation, and only six (all from the Western part of the country) remained in the first phase. However, four of these six municipalities have sizeable debts, and two of them lack financial management capacity. Additional efforts are needed in order to prepare them for moving to the second phase.

5.6.5. *Municipal debts, borrowing and financial equalisation*

142. Before the adoption of the Finance Law, there was no instrument envisaged for the purposes of equalising the financial situation of local governments set in the legislation on local self-government. However, there were transfers and funds. Although not originally designed for this purpose, in practice they were used for equalisation purposes. Under the new law, the only defined equalisation instrument is the revenue that will be transferred from the yield of the value added tax. Although not explicitly mentioned, block grants are also considered as instruments the government can use to equalise the financial situation of local authorities. In the City of Skopje and its municipalities, a joint fund has been established for the purposes of equalisation (in accordance with a specific methodology for distribution of the funds).

143. In order to overcome the liquidity problems of the municipalities, a new instrument has been introduced in the form of short- and long-term loans (up to ten years) from the central budget. The Government has approved 23 such loans, 13 out of which are short-term and 10 are long-term (with a

repayment period of up to five years). By approving long-term loans, a positive effect has been achieved, overcoming liquidity problems.

144. Pursuant to the Law on Local Government, municipalities cannot go bankrupt, but the Finance Law has provisions for declaring a state of financial distress. In the latter case, the Mayor adopts a decision to declare financial distress and informs the Municipal Council, the Ministry of Finance, the Ministry of Local Government and ZELS thereof within three days. A Coordinating Body consisting of five members monitors the coordination of the process to overcome financial distress. The Mayor then submits a draft plan of measures, which are implemented through the supplementary budget or the budget of the municipality for the respective fiscal year. The Mayor decides when to declare the situation of distress over.

145. In order to take loans, municipalities must consult with the Ministry of Finance, which controls the level of borrowings and loans, as well as deficits of local budgets. The criticism made of the restrictions created by a case-by-case authorisation system which goes contrary to the Charter's Article 9 para. 8 has been met with the adoption of new Law on Public Debt and the Law on Local Financing. In June 2011, the Ministry of Finance adopted two Rulebooks (published in the Official Gazette, no. 83/2011) on the form and content of borrowing by the public institutions and public enterprises owned by public institutions, respectively.

146. The Parliament is also involved in this situation because indebted municipalities are considered to be part of the general public debt and therefore, all municipal borrowing has to be approved by the Parliament. The latest example is of a loan from the European Bank for Reconstruction and Development (EBRD) to the City of Skopje approved by the Parliament. In cases where municipalities are charged by commercial banks, only the opinion from the Ministry of Finance is required, i.e. the Parliament does not get involved.

147. Municipalities borrow on a long-term basis for financing capital projects and investments, for re-financing debts incurred to finance capital projects and investments, for liabilities incurred under "sovereign guarantees" or on the basis of loans from the central budget and protection and elimination of consequences caused by natural disasters or environmental disasters. Borrowing is limited: annual instalments must not be higher than one third of the budget of the previous year.

148. Municipalities have access to the capital market in order to realise capital projects for the improvement of infrastructure and utility services. They can also issue municipal bonds to be used for planned development projects. A "Guide for Issuance of Municipal Bonds" has been prepared for the purpose of informing the municipalities as regards the manner, procedure and the advantages of issuance of municipal bonds.

5.6.6. *Evaluation of the financial situation*

149. Although local self-government spending results in 17.2% of the total budget,²¹ municipal revenue does not seem sufficient for addressing the assigned tasks efficiently. Most municipalities, therefore, are still struggling to harvest their own income and the State still finances most of them.

150. This is illustrated by the example of the city of Zhelino: 25 Euros per capita (compared to 100 Euros in the City of Skopje) are simply not enough for fulfilling the municipality's competences. The municipal administration does not employ an architect for urbanism, an internal inspector (or auditing unit), or an environmental inspector. Maintaining infrastructure for services is problematic: there are still private homes and settlements without electricity; only 2 out of 18 settlements have water-pipelines and the school building which was destroyed by a fire will only be replaced next year when the replacement is included in the budget of the Ministry of Education.

151. Among the main causes of the insufficiency of financial resources figure the – still – centralised management of State-owned land, the inadequately monitored or insufficiently implemented property tax collection and tax-payer databases which are not updated. The administrative capacity of some municipalities, in particular the smaller ones, remains low in the areas of financial management, tax

²¹ 2010, data provided by the Ministry of Finance.

administration and financial control. Transparency and accountability of local government administrations is still inadequate.²²

152. The Rapporteurs have noted that, in order to improve the situation of small and rural municipalities, the application of the new formula for a “guaranteed minimum-income” appears to be a promising step in the right direction: a minimum of 3 million Denars is guaranteed for each municipality. Further resources are added according to the VAT and income-tax quotas (criteria: 50% per capita, size of the area and the number of settlements). With this new method of calculation and allocation, no municipality should have an income of less than 4 million Denars.

153. ZELS position paper for 2011 requests an increasing share in VAT for municipalities from the current 3% to 6% (against the 4,5% actually envisaged as objective for 2013) as well as an increase in the amount of personal income tax-share from the current 3% to 15%.²³

154. Despite the achievement of some important results in the decentralisation process, several problems remain, such as the great disparities among the municipalities and in their capacity to perform specific functions. As a consequence of their budgetary problems it is difficult for local authorities to participate in EU funded projects which necessitate co-financing of resources. Consequently, rural municipalities in particular are dependent on grants, since they cannot rely on taxes from buildings or resources from land. Although criteria for grants for capital investment (infrastructure) are well-defined by international donors (IMF, World Bank), this does not always seem to be so in the case of State grants.

155. In the opinion of the Rapporteurs, more central coordination, support and supervision is necessary in the area of transferred competences. This is illustrated by the frequently mentioned example of education-related competences: once secondary education became mandatory, the problem of covering the additional costs for pupils’ transport has emerged everywhere, but the Ministry of Finance seems to ignore it, referring to block grants for these functions, which are not earmarked. The Ministry’s message seems to be: “Just organize procurement better and save!”.

156. The Rapporteurs are of the opinion that local authorities should be duly consulted in respect of Government investments in their localities whilst the grants afforded to them should not impinge on the fiscal autonomy as provided under the Charter.

157. The Rapporteurs also note that the planning of expenses regarding education seems to be inadequate and prone to coordination problems. While the Ministry of Finance transfers earmarked funds to municipalities for maintenance and heating expenses of school buildings, the salaries of employees and transportation of pupils and priorities of capital investment for schools are defined in the annual program prepared by the Ministry of Education which transfers funds directly to the schools, depriving municipalities of the financial means to invest in the schools.

158. To overcome these problems, ZELS has suggested the establishment of criteria for the allocation of funds for capital investments in schools as well as its own involvement in the planning process of the central authorities regarding these funds.

5.7. Article 10: Right to associate

Article 10 – Local authorities' right to associate

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

²² Srgjan Dimitrievik, Analysis of the decentralization process in Macedonia, SeeNet, December 2010, and EU Commission, Progress Report, October 2011.

²³ See ZELS website at: www.zels.org.mk.

159. The LSG Law 2002 promotes various voluntary forms of cooperation between municipalities. The instruments therefore are regulated in detail in the Law on inter-municipal cooperation (2009) and include (Article 9 of the law):

- forming joint working or administrative bodies;
- establishing of mutual public services; and
- concluding agreements on joining of funds and performance of certain work by one municipality on the behalf of another or more municipalities.

160. In practice, inter-municipal cooperation seems to be widely used. According to the delegation's various interlocutors, 80% of the municipalities engage in such cooperation agreements, which are also necessary for entering the second stage of the fiscal decentralisation process.

161. There are numerous examples of cooperation between municipalities in order to make savings in financial and human resources, among which can be cited the cooperation between three small municipalities near Strumica: Vasilevo, Bosilovo and Novo Selo.

162. All 84 municipalities of "the former Yugoslav Republic of Macedonia" and the City of Skopje are members of ZELS, the internal organisation of which comprises

- an assembly (85 Mayors gathering once or twice a year),
- a managing board (19 Mayors from different political parties comprising opposition at national level; decision-making by consensus),
- one President and two Vice-Presidents (one of which, by statute, has to be a member of an opposition party; one is Albanian),
- 13 committees (Mayors) and networks (municipal administrative staff).

163. ZELS carries out training activities for elected officials as well as for civil servants and administrative staff through its own Training Centre for about 1 500 persons per year. Currently, the main topic for training is management of (construction) land in order to prepare municipal staff for the required certification in that area. ZELS has also provided translation-equipment for 32 municipalities for meetings as well as training (including the publication of a handbook) for the Committees of Inter-ethnic Relations. In the field of "e-government/e-municipality", ZELS is developing an ICT-strategy and provides web-design services and software on its server. Problem-communication by citizens, energy efficiency software and construction land are the main areas covered. By 2012, software for the electronic issuance of building permits, the register for underground cadastre and for electronic payments to the municipality by citizens will follow.

164. Agreements on transfrontier cooperation as well as membership in international organisations of local government is regulated by several laws, including the law on the ratification of the Charter which contains, in its article 10, the principles laid down by the Charter regarding intermunicipal and transfrontier cooperation and the law on local self-government which provides for cooperation with local authorities of other countries and international organisations of local communities and local authorities (Article 14 para. 4). Hence the collaboration with NALAS, the Network of Associations of Local Authorities in South-Eastern Europe, of which ZELS is a founding member.

165. Since 2010, ZELS (together with the City of Skopje) has an EU office in Brussels. ZELS is also one of the founding members of NALAS, the Network of Associations of Local Authorities in South Eastern Europe, and actively participates in its activities; it acted for one year as NALAS Secretariat in 2007.

5.8. 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.

166. The LSG Law (2002) distinguishes between the protection of the constitutional position of municipalities and the "ordinary" judicial protection.

167. The constitutional position of municipalities can be protected through the submission of an initiative, by the municipal council or the mayor, before the Constitutional Court in order to assess the

constitutionality of a law, or the constitutionality and legality of general acts of the Ministries and other organs of the State administration which might infringe upon the constitutional position or constitutionally guaranteed rights of municipalities (Article 87). In practice, there have not been any constitutional complaints for alleged violations of LSG rights (Article 110); conflicts of competence between the State and local authorities have not given rise to controversies.

168. The notion of “general legal acts”, which are examined by the Constitutional Court on procedural conformity with the Constitution, includes acts adopted by municipal councils. Based on Article 87 of the Constitution, mayors have frequently challenged acts adopted by municipal councils granting additional benefits or fees, mostly with success.

169. Individuals can also submit an initiative for constitutional review before the Constitutional Court (*actio popularis*). This has occurred in only few occasions. The Constitutional Court only controls the formal and legitimacy of procedures, while details and discrimination in single cases is left to the administrative courts. One such complaint regarding procedural consultation rights has led to the annulment of the “Skopje 2014” urban planning procedure by the Constitutional Court and the procedure had to be repeated.

170. Against acts and activities of the organs of the State administration and the Government, which impede the performance of municipal competences determined by the Constitution and law, municipalities are guaranteed judicial protection before competent Courts (Article 88).

171. The Law on Administrative Disputes was amended in order to establish a High Administrative Court with jurisdiction to decide on appeals against decisions of the Administrative Court, which itself hears appeals against decisions of misdemeanour commissions in the administrative bodies, government second instance commissions and the acts of local authorities. The court became operational in July 2011.

172. As mentioned before, international treaties are taken into consideration as integral parts of the legal system. Thus, direct reference to the Charter has been made in two cases before the Constitutional Court regarding budget issues quoting large parts of the Charter.

173. There is no special commission or procedure for disputes between municipalities. There has been one exception which arose due to different interpretations of the provisions of a law and it was overcome by forming a joint committee of the affected municipalities and the proposed amendment helped in overcoming the reasons of their disagreement.

7. CONCLUSIONS

174. The measures taken since Recommendation 217 (2007) of the Congress represent further improvement and marked progress towards better local democracy. On the whole, local authorities are coping satisfactorily with their new responsibilities and standards of local public service have improved. As the decentralisation process is one of gradual transfer, it has to be taken further and completed.

175. Good consultation practices between central and local authorities and their association appear as the high spot of the developments since 2007 as regards local autonomy, for which many guarantees are in place: consultation is guaranteed by law; the parliament has a local government committee involved in the legislative procedure; ZELS is a key partner and the central interface in the relations with the central authorities.²⁴ The role of ZELS is confirmed by Article 81 of the Law on Local Self-Government as well as by a memorandum of understanding with the Ministry on Local Self-Government on cooperation in the context of decentralisation (March 2003). Participation of (representatives of) ZELS in various committees also guarantees the representation of municipal interests vis-à-vis central authorities. The Rapporteurs consider that, in this respect, the procedures in “the former Yugoslav Republic of Macedonia” are in line with Article 4 para. 6 of the Charter. They commend this good practice and propose that ZELS’s role be further supported and strengthened.

²⁴ Notwithstanding situations – as the delegation was informed - where local authorities were not consulted on the investments made by the Government in their localities.

176. The Ministry of Local Self-Government, the prominent actor in the implementation of the decentralisation process, does not have the corresponding coordination and oversight function in this process. The delegation have the feeling, based on comments made by its interlocutors during the visit, that in the transfer of competencies, Line Ministries sometimes seem reluctant to accept decentralisation, using their influence and supervisory powers in order to keep some influence on transferred powers. The Rapporteurs believe that, one should take a step in the opposite direction and raise the profile of the Ministry of Local Self-Government, consolidating its role as the main actor in the decentralisation process.

177. The Rapporteurs have noted the great wealth and development disparities between urban and rural municipalities (a fact already observed in 2007 and not improved since then). The new policy of Balanced Regional Development includes the first steps towards an improvement but in the Rapporteurs' opinion special measures are called for to reduce this disparity. They therefore invite the Government to consider establishing two distinct development strategies, one for the urban municipalities and the other for rural and deprived areas to address this problem.

178. As regards competences, although municipalities are assigned powers of their own and there are currently no delegated tasks which municipalities have to fulfil on behalf of central authorities, their "own" powers are supplemented by an array of tasks transferred in the decentralisation process. While the Law on Local Self-Government formally gives local authorities great powers and responsibilities, numerous special laws set out detailed rules, interfering with these powers and creating confusion. In practice, there are several important areas where responsibilities overlap, where closely related activities are performed and co-financed by central government authorities. A clarification and distinction of own competences would be beneficial. In addition, the Rapporteurs would recommend a review of the text of the LLSG, clarifying and reinforcing its status as the law governing local self-government.

179. Municipalities are subject to supervision by different central authorities alongside the State Inspectorate, bearing the risk of continuous central influence by the latter on local authorities and the risk of this supervision going beyond that of lawfulness in breach of Article 8 of the Charter if not given an appropriate framework. In the Rapporteurs' opinion (endorsing the EU Commission's assessment), significant additional efforts are needed at central and local levels in order to strengthen the administrative capacity of municipalities, particularly in the areas of financial control, strategic planning, human resources management and economic development.

180. However, this move towards consolidating the powers of local authorities should go hand in hand with measures in the opposite direction, establishing procedures for measures or sanctions for mayors with serious incapacity or who are in violation of their obligations. The Rapporteurs underline the necessity for a legal framework fixing the procedures and conditions under which such measures can be adopted against elected representatives, in particular cases where they contravene their duties and functions, as well as procedures governing the imposition of relevant sanctions.

181. Local governments are, by definition, closer to citizens and more aware of local conditions and also more accountable to their residents. Hence the degree of fiscal autonomy normally required to allow local governments to adapt properly to the needs of their residents. However, municipalities in "the former Yugoslav Republic of Macedonia" still depend very strongly on grants and have little discretion with regard to local taxes. The proportion of own-source taxes in the budget revenue is comparatively low. The Rapporteurs consider that it would be appropriate to increase the share of local taxes as well as the share of value-added tax (VAT) and income tax, reducing state grants correspondingly.

182. The Rapporteurs also recommend that local authorities be duly consulted on financial matters as provided by Article 9 para. 6 of the Charter in general, and in respect of Government investments in their localities in particular, ensuring at the same time that the grants afforded to them do not impinge on their fiscal autonomy. Care must be taken that the system of financial scrutiny by the central authorities does not turn into a new form of control. In a similar vein, to increase local autonomy, the transfer of property of land (needed to pursue a municipal development policy) seems to be the next step to take in order to improve the financial situation of municipalities.

183. As regards financial equalisation, revenue transfer from the yield of VAT and to a certain extent, block grants appear to be the only available instruments the government can use. Apparently, there have been several promising steps taken in the right direction to ensure a more equitable distribution of revenues. The application of the new formula for a “guaranteed minimum-income” for municipalities, examples of good practices such as the joint fund established in the City of Skopje, and the establishment of the committee (in which mayors and ZELS participate) to monitor the redistribution among and allocation of financial resources to local authorities can be cited in this context. The above notwithstanding, the adoption of clear legislation on equalisation would be a judicious move in the Rapporteurs’ opinion, in light of Article 9 para. 5 of the Charter, in order to provide transparent guidelines for equalisation procedures to be implemented, for which the Reference Framework for Regional Democracy could provide useful inspiration;

184. After the territorial reorganisation in 2004 and the merger of municipalities into bigger units, a further distinction between urban and rural parts or areas within municipalities needs to be considered, as their interests differ. The Rapporteurs believe that a determination of minimum mandatory tasks and services to be fulfilled before financing other competences might be considered as well as differentiation, e.g. through the flexible allocation of further powers upon request or even the – temporary - refusal of new competences. Separate budgets in the case of merged units comprising both rural and urban areas could be an additional means and would open more differentiated access to the funds for underdeveloped (parts of) municipalities.

185. Although the principle of prior consultation of populations in case of boundary changes is enshrined in the Law on territorial organisation of 2004 (Article 2) and it is a binding principle in the country’s monistic legal system, the Rapporteurs consider that it would be necessary to include in the law the clear and precise conditions under which such consultation should take place. Such a legal guarantee would have the advantage of providing a framework for the implementation of Article 5 of the Charter.

186. As regards the status of the City of Skopje, in which 30% of the country’s population lives, although the city is subject to special regulations (Law on the City of Skopje), the competences of Skopje as capital city and as local authority dealing with 10 sub-entities are not clearly defined. The Rapporteurs consider that more clarification and distinction of its competences is desirable (for example as regards the division of financial resources between the City of Skopje and its 10 municipalities).

187. Regarding citizen participation in local affairs, the instruments of direct and public participation are not frequently used in practice. The reasons are, once again and as mentioned earlier, a lack of awareness and a weak civil society within a generally fragmented, consociationally organised society (i.e. in which various ethnic populations within a country share power according to an agreed mechanism), but also the lack of funds at local level. This would have to be taken into account before considering the signature of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

188. Participation of women in political life at local level remains low: currently, there are no female mayors in “the former Yugoslav Republic of Macedonia”. Discriminatory customs, traditions and stereotypes are widespread and undermine women’s basic rights, starting with gender parity. A more pro-active approach is needed to implement the existing national action plans. Although the number of foreigners might still be comparatively small, awareness regarding this issue should be raised as, so far, it seems that the participation of foreigners in local political life has not been considered to be an issue at all. The Rapporteurs suggest that an adequate electoral system which would facilitate the access of women to local political life should be considered, notably in the light of Recommendation 273 (2009) on Equal Access to Local and Regional Elections;

189. The consultation with the Ombudsman office in the legislative procedure is still not regular and has been very limited since the last elections; local authorities continue to be among the least responsive authorities to the Ombudsman’s instructions and recommendations. Awareness for the work of this office and its mediating function should thus be raised.

190. Different and sometimes contrasting information has been provided about the effective work of the Committee on Interethnic Relations. Although formally established, the delegation received the impression that “below the legislative surface” a trend of division along ethnic lines is under way. Also,

it should not be overlooked that there is a third segment of the society of around 11% belonging to different minority-communities who risks to be marginalised due to the concentration on the two major communities.

191. Finally, the Rapporteurs are of the opinion that the signing and ratification (subject to the observation made in paragraph 187 above) of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) as well as the Convention on the Participation of Foreigners in Public Life at Local Level (ETS No. 144) should be encouraged, given that the provisions of the first is already part of the legislation, and that an impact analysis and an action plan for the signature of both is on the Government's agenda for 2012.

Appendix 1

**CONGRESS MONITORING VISIT TO
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”
Skopje, Zhelino and Strumica (5 - 7 December 2011)**

PROGRAMME

Congress delegation:

Rapporteurs:

Mr Ian MICALLEF
Co-rapporteur on local democracy
Member of the Monitoring Committee of the Congress
Chamber of Local Authorities, EPP/CD²⁵
Councillor, Gzira Local Council (Malta)

Ms Andrée BUCHMANN
Co-rapporteur on regional democracy
Member of the Monitoring Committee of the Congress
Chamber of Regions, SOC
Councillor, Alsace Region (France)

Expert:

Dr. Jens WOELK
Consultant (Germany)
Member of the Group of Independent Experts of the Congress
on the European Charter of Local Self-Government

Congress Secretariat:

Ms Sedef CANKOÇAK
Co-Secretary of the Monitoring Committee of the Congress
E-mail: sedef.cankocak@coe.int

Monday, 5 December 2011

National Delegation to the Congress

Mr Ivan FRANGOVIĆ, Mayor of Gevgelija
Mr Enver PAJAZITI, Mayor of Brvenica
Mr Zoran ZAEV, Mayor of Strumica
Ms Dusica PERISIC, Secretary of Delegation, Secretary General of ZELS
Mr Viktor ARNAUDOSKI, Secretary of Delegation, International Advisor of ZELS

Association of Units of Local Self-Government (ZELS)

Mr Koce TRAJANOVSKI, President, Mayor of Skopje
Mr Zoran DAMJANOVSKI, Vice President, Mayor of Kumanovo

Specialists on issues on local government

Prof. Gordana SILJANOVSKA DAVKOVA, Vice-President of the GIE
Dr Ilija TODOROVSKI, member of GIE

Minister of Local Self-Government

Mr Nevzat BEJTA, Minister

Ministry of Finance

Mrs Natasa STOJMANOVSKA, State Secretary of the Ministry of Finance

²⁵ EPP/CD: European People's Party – Christian Democrats of the Congress
SOC: Socialist Group of the Congress

Tuesday, 6 December 2011

Parliament, Standing Inquiry Committee for protection of civil freedoms and rights

Mr Bekim FAZLIU, Chairman
 Ms Vesna BENDEVSKA, Member
 Mr Gordan GEORGIEV, Member
 Ms Suzana SALIU, Member
 Ms Slavica BICEVSKA, State Advisor

Parliament, Committee of Local Self-Government

Mr Xhevat ADEMI, Chairman
 Mr Vasil PISEV, Member
 Ms Beti KUZMANOVSKA, Member
 Ms Svetlana MAZGALOSKA-VUCETIK, Member
 Mr. Pance ORCEV, Member
 Mr Samka IBRAIMOSKI, Member
 Mr Rejhan DURMISI, Member
 Mr Irfan DEARI, Member
 Ms Arlinda ZEKIRI, Associate in the Committee

Parliament, Budget and Finance Committee

Mr Mariancho NIKOLOV, Chairman
 Ms Liljana KUZMANOVSKA, Member
 Ms Vladanka AVIROVIK, Member
 Ms Lence NIKOLOVSKA, Member
 Mr Talat XHAFERI, Member
 Mr Rafet MUMINOVIK, Member
 Ms Olivera TRENGOVSKA, Advisor to the Committee

Constitutional Court

Mrs Gzime STAROVA, Ph.D., Judge
 Mrs Natasha GABER-DAMJANOVSKA, PhD., Judge
 Mrs Milica NIKOLOVSKA, Secretary General
 Mrs Tatjana JANIC-TODOROVA, State Adviser

State Audit Office (SAO)

Ms Liljana STOJANOVA, Head of Department for Audit of the Local Self Government
 Ms Tanja JANEVSKA, Head of Department for Audit Development and Quality Control

Ombudsman of the Republic

Ms Nevenka KRUSAROVSKA, Deputy to the Ombudsman
 Ms Nashide IBRAIMI, Deputy to the Ombudsman

Wednesday, 7 December 2011

Municipality of Skopje

Mr Koce TRAJANOVSKI, Mayor
 Members of the City Council

Municipality of Zhelino

Mr Fatmir IZAIRI, Mayor
 Members of the City Council

Municipality of Strumica

Mr Zoran ZAEV, Mayor
 Marjan DASKALOVSKI, President of the Municipal Council
 Mr Josif HRISTOV, Member of the Municipal Council (SDSM)
 Mr Vane MITUŠEV, Member of the Municipal Council (VMRO – DPMNE)
 Mr Kiril PARTALOV, Secretary of the Municipality of Strumica

Appendix 2 - Overview of the state of implementation of human rights at local and regional levels

- *Non-discrimination*

1. "Little progress was made on women's rights and gender equality" according to the EU Commission's assessment, because "the equal opportunity issue is not a political priority of the government. Discriminatory customs, traditions and stereotypes are widespread and undermine women's basic rights. Roma women and girls still suffer from both racial and gender discrimination. Some very limited actions targeting Roma women have been implemented and a more pro-active approach is needed to implement the existing national action plans" (EU Commission, Progress Report, October 2011, ps. 18 and 62).

2. An anti-discrimination body is established by the Law on Anti-Discrimination, but in the Public Administration no complaints have been registered despite remedies in the Law on Equal Opportunities (information by the Ombudsman-office). Overall, more men are employed in the Public Administration and although the percentage of women with higher education is higher, more men are in senior positions.

- *Human Rights*

3. Concerning the promotion of human rights at both central and local levels, the establishment and the work of the Ombudsman's Office can be considered as one of the major conquests for citizens. The constitutional amendments of 2001 (Article 77 of the Constitution and Amendment XI) provide for wide competencies regarding the protection against discrimination and the equitable representation of all communities. Easy access is guaranteed by informal procedures and the absence of fees. The Ombudsman is nominated by Parliament according to the double majority-requirement. The annual reports are discussed in Parliament and add to the non-binding recommendations in single cases. Although the recommendations are not always respected (ca. 20% are not), there seems to be an improvement, according to the Ombudsman-office. According to the EU Commission, however, local authorities continue to be among the least responsive authorities to the Ombudsman's instructions and recommendations (Progress Report, October 2011, p. 62); awareness for the work of this office and its mediating function should thus be raised.

4. The consultation of the Ombudsman-office in the legislative procedure is still not regular and has been very limited since the last elections.

5. Although there are no local or municipal Ombudsman-offices, easy access is guaranteed by six regional offices throughout the country. These are based on geographical and demographic criteria, but the difference in number raises the question whether the decentralized Ombudsman-office's services and structures might not be in future connected with the Regional Planning Bureaus of the 8 Planning Regions.

- *Rights of national minorities and the implementation of legal instruments pertaining to minorities (ethnicity and minority status; religion)*

6. The Law on Local Self-Government (2002) regulates the right to use other languages and alphabets besides Macedonian (and the Cyrillic alphabet). Another language and alphabet used by at least 20% of the citizens also becomes official language; in case the municipal organs so decide, also languages and alphabets used by less than 20% of citizens within a municipality can receive official status (Article 41 of LSG Law). Co-official status at the level of local self-government also extends to personal documents and to communication with the local offices of the ministries and other organs of the central government.

7. An official language different from Macedonian is used in 32 municipalities and in the City of Skopje; in detail these are:

- Albanian language and alphabet in 24 municipalities and in 4 municipalities of the City of Skopje (total 807 781 inhabitants);
- Turkish language and alphabet in 4 municipalities (total 21 004 inhabitants);
- Romani language and alphabet in 1 municipality (total 20 800 inhabitants);
- Serbian language and alphabet in 1 municipality (total 8 493 inhabitants).

8. Article 59 of LSG Law 2002 stipulates that, during recruitment at all levels of employment for the municipal administration and institutions established by the municipalities, appropriate and equitable representation of citizens belonging to all ethnic communities should be respected as well as their professionalism and competence. The Ombudsman Office has informed the delegation that there has been improvement in this respect, although full compliance is not yet attained.

9. Communities of more than 20% of the citizens in a municipality are guaranteed a veto right regarding regulations referring to culture, the use of languages and alphabets as well as to the coat of arms and the flag of the municipality. For the adoption of regulations on these issues, the double majority-requirement applies in the Council, making the approval by a majority of Councillors representing the smaller Community necessary (the "Badinter principle", Article 41 para. 3 of LSG Law 2002).

10. In municipalities where more than 20% of the inhabitants belong to a different community, a Committee for Interethnic Relations should be established (Article 55 of the LSG Law 2002). So far, in 19 municipalities, such committees have effectively been established. They receive technical support and equipment from ZELS (e.g. for interpretation). However, different and sometimes contrasting information has been provided to the delegation about the effectiveness of these committees; most have been "formally established". Although generally the cooperation between Macedonian and Albanian communities seems to work, there is the impression that "below the legislative surface" a trend of division along ethnic lines is under way. In most interviews the issue of co-existence between different communities was only briefly touched upon and immediately dismissed as satisfactorily resolved. Also, it should not be overlooked that there is a third segment of the society of around 11% belonging to different minority-communities which risks to be marginalised due to the concentration on the two major communities.

11. The socio-economic situation of the members of Roma communities is often particularly difficult. This might have a negative impact on the efforts made in other fields such as the Action Plans for the Strategy Decade for Roma signed by "the former Yugoslav Republic of Macedonia" and in part to be implemented at local level. On the other hand, "the former Yugoslav Republic of Macedonia" is one of the rare countries with a Roma municipality; however, according to information provided by interview-partners, it seems that, in this municipality, Romani language is not officially used either by the Mayor or by the Council members.