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Monitoring of the application of the European Charter of Local Self-Government in Armenia

Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (Monitoring Committee)

Rapporteurs:[1] Bryony RUDKIN, United Kingdom (L, SOC/G/PD)
Gunn Marit HELGESEN, Norway (R, EPP/CCE)

Summary

This report follows the monitoring visit which took place in May 2019 to Armenia which ratified the European Charter of Local Self-Government in 2002.

The report notes with satisfaction that Armenia has ratified all the provisions of the Charter and is bound today by all of them. In addition, the consolidation of communities through mergers has been relaunched and new legislative initiatives have been prepared by the government in areas such as local referendums, public hearings and financial assistance to municipalities.

Nevertheless, the report notes in particular that the powers of the municipalities have not been extended to allow them to regulate and manage a substantial share of public affairs under their own responsibilities; municipalities have a limited role in delivering public services; there is no legally guaranteed consultation procedure between the central government and their national associations; the administrative supervision is not limited to the legal control of local government decisions and local authorities are not provided with the adequate and concomitant funding to exercise the delegated tasks.

Consequently, national authorities are called upon to increase the share of public affairs managed by local authorities to guarantee the right of local authorities to be consulted on matters that concern them directly, to revise and clarify "own" competences of municipalities and limit the state supervision of their own tasks to the control of legality and to ensure that local authorities have access to adequate financial resources of their own and accompany the delegation of the tasks from central to local level with adequate concomitant financial resources.

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

RECOMMENDATION 456[2]

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

a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, stipulating that one of the aims of the Congress is "to submit proposals to the Committee of Ministers in order to promote local and regional democracy";

b. Article 1, paragraph 2, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1, 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 the effective implementation of the principles of the European Charter of Local Self-Government";

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

d. the Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goal 11 on sustainable cities and communities and Goal 16 on peace, justice and strong institutions;

e. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

f. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

g. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities' activities, adopted on 4 April 2019;

h. Congress Recommendation 351(2014) on local democracy in Armenia and the 2016 Post-monitoring Road map (CG/MON/2015(295));

i. the explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Armenia.

2. The Congress points out that:

a. Armenia signed the European Charter of Local Self-Government (ETS No. 122, hereinafter "the Charter") on 11 May 2001 and ratified it on 25 January 2002, with entry into force on 1 May 2002;

b. the Committee on the Honouring of Obligations and Commitments by Member States of the European Charter of Local Self-Government (hereinafter referred to as Monitoring Committee) decided to examine the situation of local democracy in Armenia. It instructed Bryony RUDKIN, United Kingdom (L, SOC/G/PD) and Gunn Marit HELGESEN, Norway (R, EPP/CCE), with the task of preparing and submitting to the Congress a report on the monitoring of the European Charter of Local Self-Government in Armenia. The delegation was assisted by Professor Zoltán SZENTE, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Congress Secretariat;

c. the monitoring visit took place from 12 to 15 May 2019. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the report;

d. the co-rapporteurs wish to thank the Permanent Representation of Armenia to the Council of Europe and all those whom they met during the visit.

2 Discussed and approved by the Chamber of Local Authorities on 15 June 2021 and adopted by the Congress on 16 June 2021, 2nd sitting (see Document CPL(2021)40-02, explanatory memorandum), co-rapporteurs Bryony RUDKIN, United Kingdom (L, SOC/G/PD) and Gunn Marit HELGESEN, Norway (R, EPP/CCE).

3. The Congress notes with satisfaction that:

a. since the last monitoring report, Armenia has ratified all the articles of the Charter and is bound today by all the Charter's provisions;

b. despite the slowing down of the territorial reform due to recent political changes, the consolidation of communities through mergers has been relaunched and new legislative initiatives have been prepared by the government in areas such as local referendums, public hearings and financial assistance to municipalities.

4. The Congress notes, however, that several points raised in the previous monitoring report and the Road map for Armenia remain valid and expresses its concerns in particular about the following issues:

a. the powers and duties of the municipalities have not been extended to allow them to regulate and manage a substantial share of public affairs under their own responsibility (Article 3.1);

b. the municipalities have a limited role in delivering public services, which runs counter to the principle of subsidiarity (Article 4.3), and a number of local government powers are not full and exclusive (Article 4.4);

c. there is no legally guaranteed consultation procedure between the central government and municipalities or their national associations (Article 4.6); local authorities are not involved in an appropriate manner in the decision-making process concerning their finances (Article 9.6) and local communities are not consulted on the changes to their boundaries (Article 5);

d. poor work conditions for municipal employees exist in a number of local government offices (Article 6.2);

e. the administrative supervision is not limited to the legal control of local government decisions, and various state authorities have overlapping supervisory activities over municipalities (Article 8.2);

f. the level of financial autonomy of local authorities is low and in particular smaller communities lack adequate financial resources of their own to carry out their tasks (Article 9.1);

g. local authorities are not provided with the adequate and concomitant funding to exercise the delegated tasks (Article 9.2);

h. the financial equalisation system does not ensure in practice the effective reduction of the financial disparities between communities (Article 9.5);

i. municipalities receive only a small amount of central grants allocated as lump sums (in a non-earmarked way) to finance their investments (Article 9.7).

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the Armenian authorities to:

a. ensure that the consolidation of the municipal system through amalgamations of smaller communities is accompanied by the allocation of new tasks and additional resources;

b. increase the share of public affairs managed by local authorities under their own responsibility through decentralisation of competences, in line with the principle of subsidiarity;

c. guarantee in law the right of local authorities to be consulted on matters that concern them directly, in particular on the changes to the local authority boundaries and on the allocation of financial resources, and ensure that consultation is held regularly and in an appropriate manner in practice;

d. improve the working conditions of municipal employees;

e. revise and clarify "own" competences of municipalities and limit the state supervision of their own tasks to the control of legality;

f. ensure that local authorities have access to adequate financial resources of their own, given different local governments' own revenue-generating capacity, which should also allow them to cover municipal capital expenditures;

g. accompany the delegation of the tasks from central to local level with adequate concomitant financial resources;

h. make sure that in practice the financial equalisation system compensates the regional discrepancies and different financial capacities of the municipalities;

i. review the calculation methods of central grants to adjust them to the real costs of the fulfilment of mandatory tasks and functions, taking into account the legitimate differences in the various municipalities, and increase the share of non-earmarked or block grants at the expense of the specific grants.

6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in Armenia and the explanatory memorandum in their activities relating to this member State.

EXPLANATORY MEMORANDUM

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

1. Armenia signed the European Charter of Local Self-Government (hereinafter "the Charter") on 11 May 2001 and ratified it on 25 January 2002, and it entered into force on 1 May 2002. Since the last monitoring report, Armenia has ratified all the articles of the Charter that it had not accepted earlier (Articles 5, 6, 7(2) and 10(3) of the Charter), so today Armenia is bound by the Charter in all its provisions. The country ratified the Additional Protocol to the Charter on the right to participate in the affairs of a local authority (CETS No. 207) on 13 May 2013. It entered into force on 1 September 2013.

2. According to Article 2, paragraph 3, of Statutory Resolution CM/Res(2015)9 of the Council of Europe Committee of Ministers and Chapter XVII of the Congress Rules and Procedures, the Congress of Local and Regional Authorities (hereinafter referred to as "the Congress") prepares reports on a regular basis on the state of local and regional democracy in all member states of the Council of Europe.

3. For the third monitoring mission, Ms Bryony Rudkin (Chamber of Local Authorities, SOC/G/PD, United Kingdom) and Ms Gunn Marit Helgesen (President of the Chamber of Regional Authorities, EPP/CCE, Norway) were appointed rapporteurs for local and regional democracy in Armenia and instructed to prepare and submit to the Congress a report on monitoring the European Charter of Local Self-Government in Armenia, in order to control the implementation of the principles and requirements of the Charter, as well as to review the progress Armenia has made since the last Congress report in 2014. The co-rapporteurs were assisted by Professor Zoltán Szente, consultant, member of the Group of Independent Experts on the European Charter of Local Self-Government, and the Secretariat of the Congress.

4. A visit to Armenia took place from 12 to 15 May 2019.The delegation met the members of the Armenian delegation to the Congress, national associations and experts from NGOs, the mayor of Yerevan, the leading officials of the Ministry of Territorial Administration and Development (reorganised in the Ministry of Territorial Administration and Infrastructures (MTAI) in June 2019) and the Ministry of Finance, the Human Rights Defender, the President and other representatives of the National Assembly, and the Chair and some high officials of the Audit Chamber. The members of the Congress delegation had the opportunity to make a visit to the Municipalities of Charentsavan and Solak, where the mayors and other local councillors gave information about the situation of their local authorities (for further details, see the programme in Appendix 2).

5. According to Rule 84 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent to all interlocutors met during the visit for comments and possible adjustments or corrections. The present report is based on the comments received that have been considered by the co-rapporteurs before submission for approval to the Monitoring Committee.

6. The co-rapporteurs wish to thank the members of the Armenian delegation to the Congress and the Permanent Representation of Armenia to the Council of Europe, the Armenian authorities at central and local level, the representatives of Armenian NGOs working in the field of municipal development, and all their interlocutors for their valuable co-operation at the different stages of the monitoring procedure, which ensured the smooth conduct of the visit, and for the information provided for the delegation.

2. ELEMENTS OF HISTORICAL AND POLITICAL BACKGROUND

7. Geographically, Armenia is located in the Caucasus region, surrounded by Georgia, Azerbaijan, Turkey and Iran; its territory is 29,743 km^2.

8. Its population numbers approximately 2 973 000 (2018). The proportion of urban population is more than 60%, the capital city is Yerevan, where more than one third of the total population lives. According to the data from the last national census of 2011, 98% of the population is Armenian, while the country's national minorities are Yezidis (1.2%), Russians (0.4%) and others (0.3%). The state language is Armenian, which is enshrined by the constitution.

9. The country was a part of the former Soviet Union and became independent in 1991, following the Referendum on Independence held in Armenia on 21 September 1991. The Constitution of Armenia was adopted by a nationwide referendum in 1995; since then it has been modified twice, in 2005 and 2015. According to the constitution, Armenia "is a sovereign, democratic, social state governed by rule of law". The country is a unitary, multi-party, democratic nation state with a rich and ancient cultural heritage. The

official name of the country is the Republic of Armenia (*Hayastani Hanrapetut'yun*, Հայաստանի Հանրապետություն).

10. As to the constitutional system of Armenia, the form of government is parliamentary. The head of state is the President who is elected by the National Assembly for a term of seven years. He or she can be elected as President of the Republic only once. The President of Republic observes the compliance with the constitution.

11. The legislative power is vested in the unicameral National Assembly (*Azgayin Zhoghov*, Ազգային Ժողով). The National Assembly exercises supervision over the executive power, adopts the state budget, ratifies, suspends and revokes international treaties. The National Assembly is composed of at least 101 members. The National Assembly is elected through a proportional electoral system for a term of five years. Since the last (extraordinary) parliamentary elections, which took place on 9 December 2018, only three political parties are represented in the National Assembly by 132 MPs: My Step Alliance (88 MPs), Prosperous Armenia (26 MPs) and Bright Armenia (18 MPs). Out of 132 MPs, 32 are women. Four representatives of national minorities – Russian, Assyrian, Yezidi and Kurdish – were elected to the Parliament through the state electoral list of the My Step Alliance.

12. The government exercises the executive power and is politically accountable to the parliament. Based on its programme, the government develops and implements the domestic and foreign policies of the state and exercises general management of the bodies of the state administration system. All the matters pertaining to the executive power and not reserved to state administration bodies or other local self-government bodies fall under the competence of the government. The government is composed of the prime minister, deputy prime ministers and ministers. The candidate elected by the parliamentary majority is appointed by the President of the Republic as a prime minister. Deputy prime ministers and ministers are appointed by the President of the Republic, upon recommendation of the prime minister.

13. According to the constitution, judicial power is exercised by the Constitutional Court, the Court of Cassation, courts of appeal, courts of first instance of general jurisdiction and the Administrative Court. The basic law provides the usual guarantees of judicial independence and enshrines the principle of a fair trial. In Armenia a three-level judicial system exists, where, apart from the constitutional justice, the highest court is the Court of Cassation. The Constitutional Court consists of nine judges elected by the National Assembly for a term of 12 years: three judges are elected upon recommendation of the President of the Republic, three judges upon recommendation of the government, and three judges upon recommendation of the General Assembly of Judges.

14. Regrettably, during its visit to Armenia, the Congress delegation did not have an opportunity to meet the representatives of the Constitutional Court.

15. It is to be noted that since the last Congress monitoring visit in 2013, significant political changes have taken place in the country, usually referred to as “revolution” in the press and in common parlance. In April 2018, after peaceful street demonstrations, the government resigned, and a snap election has brought about deep changes in internal politics. During the consultation procedure, the Ministry of Territorial Administration and Infrastructure (MTAI) underlined that the government headed by the new prime minister sought to bring about major changes in the country by addressing systemic political and administrative corruption, eliminating monopolies and establishing rule of law, and strengthening democratic systems and institutions. According to the MTAI, this objective was to be achieved, *inter alia*, by applying strong public pressure for their increased transparency and accountability, restoring public trust in the authorities, increased responsiveness, effectiveness and efficiency, corruption-free political systems and processes (e.g. elections) and local administration, in short, promoting good governance principles and local democracy. The ministry also stressed that the very ambitious reform programme of the country’s new political leadership was also to be extended to the local levels, demanding rethinking and reconsideration of their missions and roles, existing initiatives and programmes, which created some new challenges for local self-governments. These events have impacted on the situation of local authorities; some mayors resigned from office or found themselves under criminal investigation and some local government development projects and ongoing legislative reforms have slowed down. However, new programmes and initiatives have been commenced recently – the new government has prepared a draft law on a territorial administrative division of Armenia, with a proposal for the next round of amalgamation, draft legislation on local referendums, public hearings and financial assistance (state subventions) to municipalities.

3. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

3.1 Local government system

3.1.1 Constitutional and legislative frameworks

16. The Constitution of the Republic of Armenia contains a separate chapter on local self-governance (Chapter 9), in which it establishes local governments in communities and specifies their legal status and determines the basic principles of their functions and operation. The detailed rules are laid down in the Act on Local Self-Government [hereinafter, "the LGA"]. Besides that, some other laws contain provisions on the operation and economic management of local authorities.

17. The Constitution of the Republic of Armenia defines local self-governance by declaring that local self-governance shall be the right and capacity of local self-government bodies to decide, under their own responsibility, on public issues of community importance – in the interests of residents of the community and in compliance with the Constitution and laws.[3] Local self-governance is exercised in communities of residents of one or several settlements. As to their legal status, communities are legal persons under public law.

18. According to the constitution, communities have democratically elected self-governments. Their democratic character is ensured by the fact that their major bodies are elected by local residents. These are the Community Council, which is the main decision-making and representative body of the community, and the Chief of Community, who is the executive body of the community, represents it and is elected in a direct or indirect way. Local elections are regulated by the electoral code, which provides for universal and equal right to vote and secret and direct or indirect voting systems.

19. The general principles of local self-government are entrenched in the LGA,[4] which are the most important rights and safeguards of local self-governance. Among these principles are the local authorities' entitlement to carry out their tasks and functions in an autonomous way, their independence and own responsibility for implementing local governance and their right to adequate financial resources that are proportionate not only to their own functions but to their delegated powers. The LGA explicitly recognises the principle of subsidiarity, as well as the judicial protection of the rights, legitimate interests and the property of the communities. The financially weak local governments must be supported through financial adjustment (financial equalisation). In addition, local governments have the right to create intermunicipal associations with other communities with the objective of jointly solving individual problems. Finally, the LGA specifies the principle of accountability of local governments to the community residents, and the publicity and transparency of the activities of local self-government bodies.

20. The constitutional reform of December 2015 aimed at, among other things, encouraging a comprehensive territorial and local government reform in order to create new relationships between central government, regional state administration and sub-national entities. In this field, the main objective of the territorial reform was to restructure the fragmented system of municipalities by amalgamations. The development of the functioning of local governments, the system of local finance, the improvement of the supervision over local authorities and the regulation of consultation and intermunicipal associations were also planned. During the visit, the rapporteurs heard from some interlocutors that some reform projects have come to a halt, mainly due to recent political changes. On the other hand, according to the information received from some interlocutors a few months after the visit, the reform process was moving forward, and the government has recently announced its plans to continue with amalgamations.

21. As a consequence of the constitutional amendment, the Law on Local Self-government was also amended on 6 December 2016. However, the legislature has not fully implemented the intentions of the constitutional reform, which means that in some respects the detailed rules have not yet been established. For example, the right of municipalities affected by changes to boundaries to be heard is not guaranteed in the ordinary legislation, although this requirement is entrenched in the constitution (Article 190 stipulates "When adopting a relevant law (on mergers or changes), the National Assembly shall be obliged to hear the opinion of these communities"). However, in accordance with the information provided by the CAA during the consultation procedure, the National Assembly of the Republic of Armenia, after the constitutional amendments came into force, has repealed the norm on appointing local

3 Article 179, paragraph 1, of the constitution.
4 Article 9 of the Local Government Act.

referendums (Second Paragraph of Article 7) by the HO-238-N Law "On Amending the RA Law 'On Local Referendum'" and has not adopted any other norms, which has created a legal gap. Consequently, at the moment, the legislation does not define the ways, mechanisms or procedure for the implementation of the right of communities to be consulted, nor the responsibilities of relevant bodies in this regard.

22. It appears that there is currently an ongoing debate on the mechanisms of consultation, and the government and the National Assembly are discussing the corresponding legal instruments to address this issue. In 2017, the government took the position that a hearing at the National Assembly is what is prescribed by the constitution (see the reference above, Article 190 of the constitution). At the same time, the CAA criticised such ''narrow interpretation'' of the constitutional norm as leading to the formation of the non-democratic legal practice of viewing the right of communities to be heard as simply "the right to participate in parliamentary hearing" or "the right to attend a plenary session".

23. The CAA considers that the obligation of the state to hear the opinion of communities can only be considered properly fulfilled if:

- it has taken place beforehand (that is, before the draft law was debated in the National Assembly);
- it has taken place directly (discussions with community members, opinion polls, local referendums) and/or indirectly (through community council decision making);
- the state has ensured the participation of communities/their representatives in the whole process of changing the boundaries of communities, starting from the preparatory phase;
- communities have had a real opportunity to express their positive or negative opinion about changes to community boundaries.

Therefore, as underlined by the CAA, Article 190 of the Constitution of the Republic of Armenia cannot be considered as only a process within the jurisdiction of the National Assembly but should also cover the whole process of drafting the law by the government.

24. When arguing that hearings in the National Assembly are not sufficient and do not necessarily impact on the decision on mergers, the CAA and many other communities referred in particular to the case with referendums, when, in 2015, referendums were held in three clusters to be amalgamated and the amalgamation took place in some of them despite the popular vote being against this happening. According to the information provided by the CAA during the consultation procedure, in the first phase of the amalgamation process of Armenian communities, local referendums[5] were held on 17 May 2015, with 6 out of 22 communities (Atan, Ahnidzor, Shamut (Lori), Haghartsin, Teghut, Gosh (Tavush)) being against the change to community boundaries.[6] However, the negative opinion of these communities was not taken into account when deciding on the merger of the communities by making the relevant amendment to the RA Law on administrative-territorial division. In the second phase, when the relevant constitutional amendments came into force and the legislative provision on the local referendum was no longer in force, in 2016, 118 communities were merged, and 15 multi-settlement communities were formed. In the third phase, in 2017, 325 communities were merged, and 34 multi-settlement communities were formed. The CAA pointed out that in three phases together 465 communities were merged forming 52 multi-settlement communities, and in the second and third phases community opinion was not heard by the use of any legal mechanism.

25. It should be noted that during the consultation procedure the Ministry of Territorial Administration and Infrastructures argued that the official results of the above-mentioned referendums in the three proposed clusters (taken as one electoral area) were not against the amalgamation, that the referendums were advisory only and that it should not be realistic to expect that the local communities have the power to veto changes to boundaries. According to the MTAI, this mixed picture proves that there is a need for a broader consensus in the country over the meaning and practical consequences of public consultation and the right of municipalities to be heard (in addition to the constitutional provision): defining the expectations of all key stakeholders, agreement on key consultation systems and processes, and the roles and responsibilities of all concerned parties.

26. During the consultation procedure, the MTAI underlined that in practice the consultations with representatives of local authorities, the Union of Communities of Armenia, the union of community finance officers and other interested NGOs and government bodies are conducted on a regular basis. It pointed out

5 N 269-N, 270-N and 271-N decisions of the Armenian Government on holding a local referendum in 22 communities of Lori, Tavush and Syunik *marzes* respectively: www.e-gov.am/gov-decrees/calendar/2015/03/page/6/.
6 www.elections.am/electionsview/type-8/.

that the government-created website www.e-draft.am contains all legislative drafts, including the ones related to local self-government, and that various conferences, discussions and community visits are regularly organised with the participation of local and international experts from the Council of Europe, to discuss legislative drafts, concepts, strategies and guidelines about the activities of local self-governments. According to the MTAI, all legislative drafts related to local self-government bodies are discussed with the representatives of local governments, the Union of Communities of Armenia, the union of community finance officers and other interested NGOs and government bodies in the Standing Committee of the National Assembly on Territorial Administration, Local Self-Government, Agriculture and Environment. The MTAI also indicated that the Ministry of Finance provides methodological support on the issues related to the process of budget planning and execution by the Armenian communities by providing clarifications on specific issues raised by the latter (usually within a 10-day period).

27. The CAA informed the rapporteurs that the National Assembly has adopted at the first reading a law on amendments to the RA Law on Local Referendum, according to which, in case of legislative initiative by the government on the unification or division of communities, the residents of the respective communities may initiate a local referendum on the issue of unification or division of communities.

3.1.2 Communities and the amalgamation process

28. In Armenia, local governments exist only at municipal level. From an administrative point of view, each province is divided into communities (*Hamaynks*). A community can consist of one or more settlements. The latter are the multi-settlement municipalities. The centres and names of municipalities are defined by law.

29. Originally, the country had a fragmented local government system in a sense that almost all settlements had their own local self-government. After the last monitoring visit, an administrative-territorial reform was launched in 2015 in order to establish a more integrated local government system by merging the smallest communes. The objective of this reform was to establish more powerful municipalities that would be capable of carrying out a larger share of public tasks. In theory, the mergers took place with regard to geographical, historical and social links between the respective communities, also taking into account their economic capabilities.

30. As a result of this reform process, 18 new multi-settlement municipalities were formed in 2016 and 34 in 2017. So far, 465 communities have been merged into 52 local governments (consolidated communities). Today, there are 502 municipalities (including Yerevan), which include 1 005 settlements (on 1 January 2018). Sixty-eight out of 502 local governments are multi-settlement municipalities, 54 of which consist of more than three settlements.

31. As a result of these territorial changes, the average size of administrative area of a municipality is 56.7 km^2, while the average population size amounts to 5 922 (including Yerevan).[7] However, these data can be a little bit misleading, as more than a third of the whole Armenian population live in the capital city Yerevan, so the average population of municipalities is 3 785 people if the inhabitants of Yerevan are not counted.

32. It appears that the amalgamation process stopped for a moment after the political changes in the country, to restart at the end of 2019. It appears that both the current and previous governments had accepted that the territorial and administrative reform was one of the major strategies for addressing the current structural weaknesses of communities, and this opinion is widely shared among the key partners and stakeholders, including international donors and partners.

33. However, some interlocutors saw political motifs behind the planned amalgamations, namely, to replace the local political elites connected to the previous (pre-revolutionary) government. In any case, the rapporteurs heard from some interlocutors that the amalgamation process lacked two important things: objective criteria that would be widely discussed and agreed upon; and good communication of the rationale behind the reform and its potential benefits.

34. Although the government has underlined the progress in implementing the mergers, it appears that the practical benefits of mergers are not yet sufficiently apparent to local authorities and the general public. It is certain that municipal mergers have not been followed by the decentralisation of tasks and functions

7 Vahram Shahbazyan (ed.), *Local Government in Armenia. Book 10.* Yerevan, 2018, p. 106.

as no additional powers and duties have yet been transferred to the newly created consolidated communities.

35. During the consultation procedure, the MTAI pointed out that 45 out of 502 communities in Armenia implemented delegated powers and so the next step of the amalgamation reforms should be decentralisation of the state bodies' powers and, based on that, the development of fiscal decentralisation strategies and the adoption of legislative acts for their implementation.

36. The rapporteurs had the opportunity to visit Charentsavan, which in 2017 merged with five other municipalities. The area once had significant industrial capacity, with 15 major factories (mainly in heavy industry), of which only three operate now. The representatives of the united municipality said that it was a problem that different types of municipalities had merged. It appears that the merits of the merger are not yet visible as the new, integrated municipalities have not been given new tasks or additional resources so far. It is also to be noted that the amalgamation of municipalities, their continuous human and institutional capacity development and the transfer of tasks, and sufficient financial sources should go hand in hand, because without adequate resources and capacities even a consolidated self-government would not be able to carry out the additional tasks.

37. However, during the consultation procedure, the MTAI underscored the existence of multiple examples of benefits reported by many municipalities on new or expanded public services, increased human and financial capacity in managing big infrastructure projects, increased government subventions and decreases in administrative costs. According to the MTAI, all these benefits are provided within the existing mandate of local self-government, without necessarily transferring new tasks. The ministry has taken the position that a more coherent and integrated approach to decentralisation was required in Armenia that would go beyond the legal transfer of tasks and functions, the approach predominantly employed by the government in recent years (for example, a number of new mandatory tasks defined in the latest revision of the LGA).

38. Another concern about the scarcity or lack of capital investment in the newly formed municipalities was raised by the local interlocutors. While there have been some new capital investments in the recent years in the formerly merged communities (mostly with the support of international organisations), capital revenues have not risen significantly in the 34 newly established multi-settlement communities since the amalgamation.

39. It is not surprising, therefore, that there is some distrust from the community leadership towards the central government's plans for further mergers. The rapporteurs were informed by the members of the Community Council of Solak, whom they met during the monitoring visit, that although this small municipality is able to provide only a few public services, they would vehemently oppose any merger with neighbouring municipalities because of a lack of transparency of the whole process and the different characteristics of the potentially affected communities.

40. During the consultation procedure, the MTAI agreed that there is a need for increased transparency about the reforms and for a more effective communication strategy by the government. At the same time, it also stressed that some local leaders need to undertake a more constructive approach to delivering their mandate and the performance level of providing public services should be increased as expected by their constituencies. The rapporteurs share this view.

3.1.3 Administrative regions

41. As stated above, Armenia has a one-tier local government system in the sense of the Charter, which means that local authorities, directly elected by voters, exist only at municipal level.

42. According to the law on the administrative and territorial division of Armenia, the territory of the country is divided into 10 administrative regions (*marzes*), which are headed by regional governors, and the capital city of Yerevan, which is a community.

43. Each administrative region has a deliberative body, the Regional Council, which consists of the mayors of communities located in the administrative area of the respective *marz*, and the Regional Governor (*marzpet*), who is the head of the council.

44. Although the earlier Congress reports proposed that the Armenian authorities consider the possibility of a regional reform that involved restructuring regional governments in such a way as to establish

democratically elected regional councils,[8] for the moment it seems that this option is not on the government agenda

45. The rapporteurs noted however that the issue of powers of administrative regions versus local self-government had been widely discussed in Armenia in the past, both in the context of constitutional changes and amalgamation. Since the new constitution does not explicitly refer to regional administrations, many claimed that this created a legitimacy crisis for those entities. Some argued that there was no point in having strong regional administrations since Armenian communities will grow in size. The question also arose about the interaction of local governments and state-appointed bodies. During the consultation procedure, the MTAI informed the rapporteurs that some stakeholders have argued that the regional administrations should change their mandate (but not necessarily weaken it) to become vital regional development agents while maintaining certain tasks for delivering the government's regional policy. The ministry pointed out that when the main phase of amalgamation reform is completed, the government should initiate changes in the framework and structure of regional administrations to better reflect the new realities.

46. The draft law on territorial administration, which defines the role of governors and their powers vis-à-vis local governments, sought to address those issues.

Table 1. The number of municipalities in Armenia and their population

Marz	**Centre of *marz***	**Area**	**Number of municipalities**	**Number of settlements**	**Population**	
					Population size	**Share of total population**
Yerevan[9]	-	0.8%	1	1	1076.4	36.2%
Aragatsotn	Ashtarak	9.3%	72	120	127.9	4.3%
Ararat	Artashat	7.0%	95	99	257.4	8.7%
Armavir	Armavir	4.2%	97	98	265.4	8.9%
Gegharquniq	Gavar	18.0%	57	98	229.2	7.7%
Lori	Vanadzor	12.8%	56	130	217.8	7.3%
Kotayq	Hrazdan	7.0%	42	69	250.7	8.4%
Shirak	Gyumri	9.0%	42	131	236.3	7.9%
Syuniq	Kapan	15.1%	8	138	138.6	4.7%
Vayots Dzor	Yeghegnadzor	7.8%	8	55	49.8	1.7%
Tavush	Ijevan	9.1%	24	66	123.4	4.2%
TOTAL		**100%**	**502**	**1005**	**2972.9**	**100%**

3.1.4 Elections of local self-government bodies

47. According to the LGA, local self-government bodies are the Council of the Community and the Chief of Community (mayors), which are elected for a term of five years. Both the local councils and the mayors are elected by universal and equal suffrage in a secret ballot. However, the manner in which the mayors are elected is not uniform – in the greatest three municipalities (Yerevan, Vanadzor and Gyumri), the mayors are elected in an indirect way, while in the other municipalities the Chief of Community is elected directly by local voters. The procedure for elections of local self-government bodies is regulated by the Electoral Code.

48. The number of council members depends on the number of voters in each community. Thus, the community council of aldermen consists of:

- 5 members up to 1 000 voters;
- 7 members from 1 000 to 2 000 voters;
- 9 members from 2 000 to 4 000 voters;
- 11 members from 4 000 to 10 000 voters.
- 15 members from 10 000 to 70 000 voters; and
- 33 members if the community has more than 70 000 voters.
- Yerevan Council consists of 65 members.

8 See point 132 of the Explanatory Memorandum to Recommendation 351 (2014).
9 Yerevan is a community.

49. According to the Electoral Code, local elections must be held every five years. An act of parliament was adopted by the National Assembly on 9 June 2017, according to which local elections were to be held on 5 November of that year in the recently amalgamated communities. It also stated that the powers of the former bodies were to be terminated the day after the official announcement of the election results.[10] As a result of this election, among the 34 newly created consolidated communities, 22 former mayors (65%) of the centre-settlements were elected as mayors. Five other new mayors had also been mayors beforehand in a non-centre settlement, while in the remaining seven municipalities those elected to the post of mayor had not previously held such a position in the merged municipalities.

50. In previous years, the turnout for local elections had varied between 49 and 53%, while in 2017 56.15% of the voters cast their votes in the elections for the municipality mayors, and 48.95% voted for the members of the Community Councils.

3.1.5 Powers and duties of local authorities

51. The powers of local governments are divided into their own powers and those powers delegated by the state. The community tasks and powers also have two categories: the mandatory and voluntary tasks in local public affairs.

3.1.5.1 Mandatory tasks and functions

52. The constitution includes only a general and indirect reference to the tasks and functions of local communities when it defines the concept of local self-government.[11] According to this provision, local self-governance embodies the "right and capacity of local self-government bodies to decide, under their own responsibility, on public issues of community importance – in the interests of residents of the community and in compliance with the Constitution and laws". Nevertheless, Article 182, part 1, of the Constitution of Armenia states that: "The powers of the local self-governing bodies are their own in order to solve the obligatory and voluntary tasks of the community, as well as delegated by the state. Mandatory community tasks are set by law, and voluntary tasks are determined by community councils". Article 12 of the RA Law on Local Self-Government defines 20 obligatory community tasks. Particular mandatory tasks and functions are specified by several acts of parliament.

53. Although the wording of the constitution might suggest that local governments have a wide range of responsibilities, communities do not play an essential role in practice. They fulfil only some mandatory powers in public-service areas, like the maintenance and running of kindergartens, maintenance of cemeteries or waste collection, in addition to a number of administrative powers for managing and regulating local matters (such as permits, licences or taxation). Although the municipalities take part in some costly public-service delivery, these are mostly delegated powers or shared responsibilities with central government bodies or their regional units. From the point of view of the Charter, it means that most public functions of "local significance", like primary and secondary education, public health, social welfare, housing, public transport, water, gas and electricity and environmental protection, are basically state functions. In particular, the small municipalities can assume only very few responsibilities in the provision of local public services. However, the local public services are stated in the law on local duties and payments (20 services linked with duties and 19 services linked with local payments). For example, in Solak, which the delegation visited during the mission, the municipality's task is limited to managing the kindergarten, the cultural centre and the local bus service and to providing public lighting. It also participates in sewage disposal in co-operation with a state agency. It is obvious that Solak objectively cannot deliver many assigned services because of a lack of capacity and not because of a limited legal mandate.

54. As a matter of fact, there are some municipal powers without real significance. Thus, municipalities have to make five-year municipal development plans. This is required by law, which also defines development and management methodology and methodological guidelines for these plans. However, according to some local government officials, the implementation of these plans and the evaluation of results is impossible and meaningless.

10 During the consultation procedure, the MTAI underlined that new elections are also to be held in the case of any reorganisation of the municipality (merger, for example) in accordance with the specific legislation on implementing the mergers. So, similar legislation was adopted for all merged municipalities and not only for the 34 mentioned.
11 Article 179 of the constitution.

3.1.5.2 Voluntary tasks

55. The Council of the Community may undertake, within the limits of laws, voluntary tasks related to the interests of the population of the community. These are fulfilled in conformity with the regulations defined by the council and in accordance with the financing provided for by the community budget. According to the law, communities may implement the powers attributed to the local government bodies by other laws solely as optional ones. The LGA provides that mandatory powers and powers delegated by the state are "subject to priority implementation as prescribed by the law", which presumably means that the fulfilment of voluntary tasks cannot endanger the performance of compulsory and delegated functions.

56. Nevertheless, due to the poor financial situation of most of the local authorities, usually only the economically more powerful bigger cities and consolidated municipalities can provide funding for such tasks.

3.1.5.3 Delegated powers

57. The LGA declares that the implementation of the powers ascribed to the state authorities may be delegated to communities, as powers delegated by the state.[12]

58. According to Article 186.2 of the Constitution of the Republic of Armenia, powers delegated to the communities by the state are subject to mandatory financing from the state budget. Pursuant to that constitutional provision, Article 8.8 of the Law on Local Self-Government stipulates that the powers delegated by the state are subject to mandatory financing from the state budget at the expense of the appropriations intended to finance the powers delegated by the state.

59. A number of the delegated powers are transferred to local communities in a differentiated way, having regard to their size and economic capacity.

60. During the consultation procedure, the CAA indicated that, in general, the Law on Local Self-Government specifies as many as 33 delegated powers for local authorities, and another four delegated powers for the mayors of Gyumri and Vanadzor. Apart from the Law on Local Self-Government, delegated powers are also defined for the local authorities by the Civil Code, Electoral Code, Land Code, water and environmental regulations, and numerous sectoral laws such as those in agriculture and urban development and in many other fields.

61. Remarkably, while Yerevan was granted local self-government status a couple of years ago, it fulfils a number of delegated powers, even though the capital city's financial, personnel and technical capacity seems to be sufficient to perform these tasks as real local government functions.

62. During the consultation procedure, the CAA complained that the Law on Local Self-Government and other legislative acts provide for many delegated powers to local authorities, the arrangement and implementation of which are not financed by the state and, in the absence of appropriate funding, most powers delegated to local authorities by law are not exercised by them. It also indicated that some delegated tasks are financed from the communities' own resources in the absence of adequate funding from the state. The CAA also pointed to the lack of procedures for the exercise of most of the delegated powers, although Article 10.7 of the Law on Local Self-Government states: "Powers delegated by the state shall be exercised in accordance with the procedure established by the Government of the Republic of Armenia".

3.1.6 The organisational structure of local authorities

3.1.6.1 The Community Council

63. As indicated above, the main decision-making body of the municipalities is the Community Council. Its members are elected in local elections for a five-year term. The members of the council may not work at the same time as their term of office in the staff of the mayor (chief) of the same community or in the regional governor's office or as a director of any company or organisation subordinate to the community or the region,

12 Article 10.5 of the Law on Local Self-Government states: "The powers of local self-government bodies shall be divided into their own powers, to solve mandatory and voluntary issues and powers delegated by State for more effective exercise of the powers of public authorities".

and they may not act as a mayor or a member of the council of any other community. Finally, the conflict of interest rules prevent the councillors from working in law enforcement, national security or judicial bodies. The mandate of a member of the Community Council is terminated prematurely if: i. his/her Armenian citizenship is terminated; ii. he/she ceases to be a resident of the community; iii. a condemnation sentence passed by the court has come into legal force in respect of that member, and the latter bears the penalty; iv. he/she has been called up for military service or commenced service in the armed forces; v. he/she has been declared incapacitated, semi-incapacitated, absent or deceased by a court decision entered into legal force; vi. he/she occupies a post inconsistent with membership of the council; vii. he/she has been absent from more than half of council meetings or voting or standing committee meetings (which must be reflected in the signatures of documents adopted during the Council meetings) in one year; viii. he/she resigns.

64. As to the powers and duties of the Community Council, the LGA contains an open-ended list of its competences. Under this provision, the council, among other things, adopts the statute on its own organisation and operation, approves the budget of the local government and supervises its implementation. The council also approves the development programme of the community. It may decide to undertake voluntary tasks and may initiate local referendums. It may take decisions to form intermunicipal associations, and, with the objective of co-ordinating the activities of the communities and representing and protecting common interests, may join national associations of local authorities. Besides, the council may submit a proposal to the authorised state body on the establishment of a new community through a merger with another community. It may decide on the establishment, restructuring and/or liquidation of budgetary institutions of community subordination, and of commercial and non-commercial organisations with community participation, in accordance with the legislation.

65. In the scope of economic and financial management, the council defines the rates of local taxes within the limits set by law. The representative body also determines the rates of duties and fees for local public services delivered by the community. It may take decisions on loans and other legitimately borrowed resources, as well as on the lease or alienation of the property owned by the community. The local authorities are required to approve an annual inventory list of the property of the community.

66. According to Article 18, paragraph 18, of the RA Law on Local self-government[13] the Community Council defines the types and rates of local taxes, duties and fees as prescribed by law. In this respect, during the consultation procedure, the rapporteurs received criticism from the CAA about the ability in practice to exercise this power by the council, as a result of a combination of some legislative acts and contradictory regulations in the legislative acts. As an example, the CAA referred to the hotel tax, which, according to Article 86 of the same law, is considered as a variety of tax revenues for the formation of the community budget. The CAA pointed out that although the power to define a hotel tax is set by the RA Law on Local Self-Government, it is not enshrined as a type of local tax in the Tax Code (paragraph 1 of Article 6 of the Tax Code, which came into force on January 1, 2018) and that according to paragraph 2 of the same article "Taxes not provided by Paragraphs 1 and 2 of this Article may not be established in the Republic of Armenia". In this respect, the rapporteurs refer to their conclusion on Article 9.3 (see paragraph 208 of this report).

67. Finally, the council has the power to decide on the naming or renaming of streets, squares, parks of community importance and educational, cultural and other community enterprises and organisations, as well as on the coat of arms of the community.

68. Among the operational rules of the Community Council, it is to be noted that the first session of the newly elected Community Council is convened no later than within 20 days of assuming its responsibilities. The sessions are convened and presided over by the mayor.

69. An extraordinary session of the Community Council may be convened by the Chief of Community on their own initiative or on the initiative of at least one third of the members of the council. The sessions of the Community Council, which must be held at least once every two months, are valid in the presence of a simple majority of its members. As a major rule, the sessions of Community Council are public. In some cases, however, according to a decision of the Community Council on which a two-thirds majority of the members present must vote, the session may be held in camera.

70. The Community Council, for the purpose of performing its functions, may decide on the establishment of permanent or ad hoc commissions.

13 www.arlis.am/DocumentView.aspx?DocID=114406.

71. The council adopts its own procedural rules by a majority vote of the council members present at the session.

72. The Chief of Community can present to the Community Council his objections to the decisions in an extraordinary session convened by him or her within a period of three days from the adoption of the contested council decision. On this occasion, the Community Council discusses such objections and takes respective decisions by a simple majority of the present members. Decisions of the Community Council may also be appealed against in a legal manner by the Chief of Community.

3.1.6.2 The Chief of Community (mayor)

73. The head of the local executive is the Chief of Community (mayor). He or she prepares most of the decisions of the Community Council and executes its decisions.

74. Any Armenian citizen who has the right to vote and has been a resident of the respective community for at least one year, and who is no younger than 25 years old and meets the qualification requirements (he or she must have secondary vocational or higher education), may be elected Chief of Community. The same person may not be elected for more than two consecutive terms.

75. The Chief of Community may not simultaneously occupy any other state post or perform any other paid work, except creative, scientific and pedagogical activities.

76. The mandate of the Chief of Community may be terminated by the government before the expiration of its term, when:
- he or she resigns;
- his/her Armenian citizenship is terminated;
- he or she stopped being a resident of the community;
- he or she has been declared incapacitated, semi-incapacitated, absent or deceased by a court decision entered into legal force;
- as a consequence of a final judicial decision;
- in case of death; and
- conflict of interest.

Interestingly, the LGA specifies that the government may terminate the powers of the Chief of Community early when, in accordance with the procedure defined by the law, the community is reorganised into another administrative territorial unit.

77. The LGA circumscribes the scope of responsibility empowering the mayor to convene and preside the sessions of the Community Council in accordance with the procedure in this law and local procedural rules defined by the Community Council. He or she proposes the charters of the budgetary and non-commercial agencies and institutions. The Chief of Community submits the draft decisions on the structures of the staff and budget institutions to the Community Council for approval. He/she has a decisive role in managing the property and budget of the community preparing the respective decisions of the council.

78. The mayor manages staff (the office of the municipality) proposing its charter, appointing (and removing from office) the Deputy Chief of Community, Secretary of the Staff and the heads of structural subdivisions.

79. When the mayor performs delegated state administration tasks, he or she is independent of the council, and organises and governs the process of implementation of the duties delegated by the state in accordance with the legislation or procedure defined by the government. In this scope, the mayor, in accordance with the legislation or procedure defined by the government, is responsible for urban development, nature protection, agricultural and other cadastres of community importance, and takes measures in respect of the organisation of civil defence or anti-epidemic responses.

80. Although the European Charter of Local Self-Government does not require gender equality in local authorities, it is notable that in Armenia the proportion of women in elected local government bodies is conspicuously low; In 2017 only 8 out of 501 communities had female mayors, while the proportion of the female local representatives was only 10.1%.

3.1.6.3 The relationship between the Community Council and the Chief of Community

81. As to the relationship between the Community Council and the mayor, the council supervises the decisions taken by the Chief of Community in respect of their compliance with the existing legislation and its own decisions. According to the constitution, the Chief of community is responsible to the Community Council.[14] This constitutional provision seems to refer to the political responsibility of the local executive to the council, whose detailed rules are specified by the LGA.[15] According to these rules, the Community Council discusses a motion for dismissal of the Chief of Community if so requested in writing by at least one third of the total number of the council members. The council may discuss such a proposal not earlier than one year after the Chief of Community accepts his or her office. On the basis of a properly submitted initiative, the council may decide on such a motion for dismissal of the Chief of Community by more than half of the votes of the total number of the council members. However, this procedure does not imply real political responsibility of the mayor to the local council, as a vote of no confidence of the Community Council has to be delivered to the regional governor within a period of three days in *marzes*. The *marzpet* forwards such a submittal to the government within three days, attaching thereto a statement of his or her own opinion. The government, after a discussion of the initiative of the Community Council or regional governor, decides on the dismissal of a Chief of Community within a period of one month.

82. There is a similar procedure for removing the mayor from his/her office, when the Community Council as such proposes the dismissal of the Chief of Community if he or she has breached the constitution, legislation or decisions of the Community Council. In cases when the Chief of Community fails to be present at the session without satisfactory justification for the absence, the Community Council compiles minutes, which will, within a period of three days, be submitted to the regional governor. The minutes may serve as a basis for the *marzpet* to initiate the dismissal procedure against the Chief of Community to the government. If the government approves the initiative, the Chief of Community concerned may appeal to the court against his or her dismissal within a period of 10 days after the government decision has been received.

83. In case of premature dismissal of a mayor in accordance with the procedure defined by the LGA, the government must appoint an acting Chief of Community within three days and hold extraordinary elections for a new mayor. It is worth noting that in such cases the acting Chief of Community may not be a candidate in the by-election of the mayor.

84. According to some interlocutors, in 2017 the government tried to introduce legislative amendments to the Law on Local Self-Government to be able to dismiss mayors in certain situations, but they were not adopted. The rapporteurs heard that different ways are also being currently explored to give greater dismissal powers to the government. For instance, the Association of Armenian Communities voiced concerns about changes in tax legislation, which, as they claim, would facilitate a mayor's prosecution for tax collection irregularities.

85. It should also be mentioned that since the change in the government in 2018, a number of mayors have resigned or, reportedly, were put under pressure to resign. Some mayors have remained in power despite harsh criticisms and campaigns for their resignation. It appears however that only in very few cases the mayors who faced pressure were taken to court for accusations of corruption or other criminal charges, and in most cases no legal proceedings were initiated against mayors who resigned.

86. Moreover, it is important to note that, at least in theory, municipal amalgamations can also provide opportunities for "removing" mayors of the previously separate municipalities, since when communities are amalgamated only one mayor (instead of several former mayors) is to be elected. The experience shows, however, that the majority of administrative heads of settlements in amalgamated municipalities are former mayors. Nevertheless, most of the former mayors are extremely dissatisfied with their new and, in their opinion, "uncertain" status. During the consultation procedure, the MTAI underlined that it does not consider this mayoral dissatisfaction as an indication of a negative consequence of the reform since the reform serves the general public interest to have more powerful local authorities capable of delivering more and better-quality services. It argued that the fact that many of the former mayors continued their mission in the sector (even if with a different role) was evidence enough that their individual competences and personal characteristics had been well acknowledged and appreciated by the new municipalities.

14 Article 182, paragraph 4, of the constitution.
15 Article 17 of the Local Government Act.

3.1.6.4 The administrative staff of municipalities

87. The function and legal duty of the communities' administrative staff (the municipal office) is to ensure the complete and effective execution of the decisions of the council and the Chief of Community. The office is managed by the mayor but is led by the secretary. The secretary of the office carries out the tasks and functions conferred on him/her by law or the charter of the office; in particular, to prepare the sessions of the Community Council and their minutes and to supervise the performance of council decisions.

88. In the scope of managing the administrative staff, the mayor must, within a month of his/her assumption of office, submit a proposal on the number of the staff and official rates of remuneration of the staff to the Community Council for approval.

3.1.7 Local government finance

3.1.7.1 The guarantees of economic and budgetary autonomy of municipalities

89. Both the constitution and the LGA guarantee the municipalities' autonomy in their financial management. The community property, for example, enjoys constitutional and legal protection, and a municipality may only be deprived of its property in exceptional cases on the basis of legislation prescribing adequate compensation to be given in advance of such a transaction. However, it should be noted that municipal property is only very limited. Its elements are listed by the LGA. Thus, the state-owned kindergartens, communal utilities and other communications, water supply and removal, sewage, heating and waste-removal utilities located within the community, together with all their internal community networks, may fall within the scope of municipal property.

90. The LGA recognises the principle of adequate of local authorities, declaring that "the state may not, by virtue of its laws, increase the powers of communities or reduce their revenues without adequate financial compensation".[16]

91. Communities may independently decide on their annual budget. The draft of the community budget is prepared by the mayor who submits it to the council for approval on a yearly basis. If the state budget is not accepted before the beginning of the next year, and, consequently, the local budget cannot be adopted in due time, local expenditures are to be funded in accordance with the previous budget year's proportions. The statement on execution of the community budget is also approved by the Community Council. The community budget must have a reserve fund to be used for incurring expenses not envisaged in the given year's budget, or additional funding of the envisaged expenditures. A reserve fund of the community operating budget may be envisaged as being 5 to 20 per cent of the revenues attributable to the operating budget of a community.

3.1.7.2 Local revenues

92. In 2017, the municipalities' own revenues amounted to 39 003 300 dram (AMD) (versus AMD 34 658 100 in 2016), or 30.8% of total revenues (versus 26.9% in the previous year). These changes are reported by the MTAI as positive consequences of territorial reform resulting from better tax administration and increased staff capacities of new municipalities.

93. Most important local or "own" revenues come from local taxes and duties, which may be established by the municipalities within the scope of rates prescribed by law. Article 86 of the Law on Local Self-Government defines the sources of community budget formation, according to which the budget of the community shall be formed from the revenue provided for in the budgets of the communities by law and other legal acts, including:

Tax revenues:

a. from local taxes:
- land tax for the land located in the administrative territory of the community;
- property tax for the property located in the administrative territory of the community;
- hotel tax;

b. reasonable share of income tax;

16 Article 71 of the Law on Local Self-Government.

c. reasonable share of profit tax;
d. reasonable share of environmental tax;
e. penalties levied on taxpayers for violations of tax legislation disclosed in the area of community tax and property tax payments. The percentages of contributions to community budgets from income tax, profit tax and environmental payments are set by the state budget law for each year.

94. It is to be noted that some interlocutors reported to the Congress delegates that the "hotel tax" was a form of local tax but is missing in the list of taxes in the Tax Code and is not being enforced yet. The rates of local taxes are defined, within the limits set by law, by the Community Council in the annual budget of the community.

95. Duties are fees to be paid for using public services delivered by the communities. The local public services are stated in the law on local duties and payments (20 services linked to duties and 19 services linked to local payments). Notably, communities may define, in accordance with the legislation, payments for water supply and removal, irrigation, heating, waste removal, servicing apartment buildings and other services. Presumably, "stamp duties" may also be classified in this group of local resources, as they are fees paid to cover the costs of certain administrative actions, like the registration of civil status titles, issuing copies to physical persons, introduction of amendments, additions and changes in the records and notary services.

96. Communities may earn local revenue from the exploitation of municipal property, such as payments collected for the leasing and use of community lands, as well as the state reserve lands located within the administrative borders of the community, rents for the use of assets held in the balance sheets of organisations under the jurisdiction of the community, or profit shares of municipal corporations. Furthermore, capital revenues may come from the alienation of community-owned assets.

97. Paragraph one of Article 30 of the RA Law on the RA Budgetary System stipulates that the head of community, by a decision of the Community Council and duly agreed with the state-authorised body (the Ministry of Finance), may receive budget loans (when borrowing from the budget of another community the agreement of the council of the lending community is also needed) for carrying out the expenditures defined by the administrative budget (current expenditures). The community may receive a new loan after the full repayment of the previous one. The legislation enables committing budget loans for both recurrent and capital expenditures, credited to fund and/or administrative items of community budget.

98. The loans from the state budget to the communities are provided according to the Law on Local Self-Government, the Law on the Budgetary System and the Law on the State Budget for each year and the government decision No. 168 of 9 March 1998 on approving the procedure of providing loans from the state budget of the Republic of Armenia. According to Article 10 of the Law on Budgetary System, "Budgetary loans are monetary funds given to communities from the state budget on the principle of return, maturity, valuation and ability to pay".

99. Thus, the chief of community, by the decision of the Community Council and duly agreed with the Ministry of Finance, may receive budget loans aimed at carrying out the expenditures defined by the community's administrative budget (current expenditures, including operational expenditures).

100. The same applies to communities' borrowing arrangements with commercial banks.

101. According to the LGA, "under the decision of the Community Council and duly agreed by the state-authorised agency, the Chief of Community may conclude loan agreements for investments in [the] social infrastructure of the community, or issue securities in accordance with legal requirements", and the council, with the consent of the competent state agency may conclude the loan agreement with the conditions that the annual repayments of such loans (total of the principal and interest) prescribed by the loan repayment schedule shall not exceed the value of 20% of the revenues collected to the capital budget of the community in the year in question.
In addition, municipalities may also get loans to complete repayment of existing loan obligations.

3.1.7.3 Central government grants and financial equalisation

102. A system of financial equalisation is in place in Armenia and it is regulated by the new Law on Financial Equalisation, which was supported by the Council of Europe experts and adopted on 20 October 2016 to replace the previous law of 1998.

103. The law defines that financial equalisation subsidies are not earmarked and municipalities are free to decide on spending. In particular, Article 3 of the Law on Financial Equalisation sets out the principles of financial equalisation, such as:

a. mitigating the disproportion between the financial resources of the communities;
b. gratuitous and inappropriate endowment provided to the communities from the state budget;
c. maintaining the freedom and independence to exercise the powers of the communities and the use of financial resources;
d. definition by law of the minimum amount of the total amount of endowment provided from the state budget;
e. approval by individual communities of the amount of endowment provided to the communities from the state budget in the manner prescribed by this law, by the Law on the State Budget of the Republic of Armenia.

104. The objective of this law was to take into account different financial and economic capacities of municipalities and to handle the existing differences through the system of budgetary contributions, according to factors and formulas defined in the mentioned law.

105. The performance of mandatory tasks and functions is financed by the municipal budget. During their visit, the rapporteurs received contradictory information about the nature of central grants. While some supposed that the communities are not obliged to spend the financial resources received from the state budget to cover specific expenses, others claimed that state subsidies are earmarked, assigned to specific expenditures. During the consultation procedure, the MTAI underlined that the Law on Financial Equalisation specifies the way financial equalisation subsidies are regulated and calculated and that these subsidies are different from government subventions, which are earmarked grants allocated for specific projects and purposes. It also informed the rapporteurs that the new policy of subvention funds from the state budget is currently being implemented in order to build and improve different community infrastructures, within which the communities make decisions on the selection of infrastructure and submit applications. The MTAI specified that over the past two years, about 8.5 billion AMD (€16.2 million) has been allocated annually from the state budget as a targeted subvention.

106. The fulfilment of delegated tasks is financed by the state budget.

107. According to the information received in Yerevan, the share of central grants in the budget of this city is about 60 per cent.

3.1.7.4 Local government expenditures

108. According to the LGA, the expenditure side of the municipal budget is divided into two parts: current and capital expenditures. While current spending of the communities is covered by local revenues and state budget subsidies for the fulfilment of delegated powers and central grants, capital expenditures are financed by earmarked governmental or other grants for capital expenditures, selling community property, bank interests, etc.

109. During the consultation procedure, MTAI informed the rapporteurs that a tangible share of municipal investments has been made in co-operation between the central government and the local governments concerned, with the funding of the state budget. It also stressed that the process of allocation of government earmarked grants (subventions) starts with the municipality presenting its proposal to the central authorities and that the municipalities have an opportunity to participate in making decisions on projects to be co-financed by the state budget.

110. According to the available data, the share of capital expenditures was 13.8% in 2017. Consequently, current expenditures should account for 86.2% of the municipal budgets nationwide. The largest share in total municipal spending is attributed to the education sector, 34.2% (including pre-school education, 14.0%, elementary general education, 5.5%, secondary general education, 7.5%, extra-curricular training, 6.4%, and education not classified elsewhere, 0.8%), but these data probably include the central subsidies allocated to municipalities for the fulfilment of delegated tasks, because among these tasks only the maintenance of kindergartens falls within the scope of responsibility of local authorities. The share of transport services in expenditures is 11.8%, while 9.8% of the total local government spending goes to environmental protection (including waste disposal). The share of recreation, culture and religion in total expenditures of municipal budgets is 7%, while 3% of total spending goes to social services, and 0.2% to health care (all data relate to 2017).

3.1.7.5 General assessment of local government finance

111. As to the share of the whole local government sector in the national financial system, the share of municipal revenues was 9.9%, while the local government expenditures amounted to 8.1% in the consolidated state budget of Armenia in 2017.

112. Municipal revenues increased six times during the period between 2000-2010, whereas their increase was 45% in the period between 2011-2017. In 2017, the total revenues of municipalities were AMD 126 554 million (AMD 128 623.6 million in 2016), showing some decline (1.6%) for the first time since the local government system was established in Armenia in 1996. This decrease was due to the considerable reduction of state budget allocation for the implementation of delegated tasks.

113. As to the local government expenditures, their share in GDP fluctuated within the range of 1.4 to 1.7% and 2.3 to 2.57% between 2004 and 2009, and 2010 and 2016, respectively, while in 2017, in comparison with 2016, it decreased by 0.33%, amounting to 2.24% of the GDP of Armenia.

114. In practice, however limited the scope of responsibilities of the municipalities is, the fulfilment of municipal tasks and functions is underfunded. During its visit, the Congress delegation met with the opinions that, because of the lack of sufficient resources, some public tasks are not fulfilled at all, or are carried out only partially by a number of municipalities, including public services of vital importance such as water supply, sewerage, environmental protection and communal utilities.

115. In many small communities, even the maintenance of the local government staff causes serious difficulties.

116. It is also worth noting that in the area of local government financial management, some opportunities do not have any relevance; in 2017, for example, no municipality received loans from external sources. Article 82, part 1, of the Law on Local Self-Government defines the five-year Community Development Programme, according to which: “A five-year community development plan is a document reflecting the socio-economic situation of the community and identifying existing problems, evaluating the financial, economic, natural and human resources needed for a complete set of targeted development steps, providing a strategic solution to community problems”.

3.1.8 Supervision of municipalities

117. According to the LGA, the state exercises, “through National Assembly and Government”, supervision over communities, and intercommunity associations. In fact, under the authorisation of the same law, the regional governors exercise legal control over local authorities. In theory, this power covers primarily only the lawfulness of the actions of municipalities. However, the LGA empowers the regional governors to carry out financial and economic supervision actions in communities and intercommunity associations. If the regional governor finds that a community decision violates law, he or she may bring the case to court.

118. Accordingly, the rapporteurs have heard from several different sources that, in reality, *marzpet*s exercise far more extensive – financial and professional – supervision over the communities than a pure legality control. The latter – professional oversight – may not be objected to as regards the supervision of the performance of the delegated tasks, but in the case of local government powers and duties, its practice clearly violates the relevant principle of the Charter, which allows only the supervision of lawfulness, even if the LGA authorises *marzpet*s to supervise economic and financial issues.

119. The financial supervisory power of the regional governors is slightly surprising as the Audit Chamber conducts financial audits. It is true, however, that this authority does not control systematically the financial management of local authorities.[17]

120. The legality control of the execution of powers of the Yerevan mayor and council is exercised by the authorised governmental agency in the area of territorial administration, while legality control of their legal norms is exercised by the Ministry of Justice.

121. In some larger municipalities, internal audit systems are in place. In 2017, these kinds of control (introduced in 2012) existed in 43 communities, while in municipalities internal auditing was delegated to

17 Article 3, paragraph 1, of the Law on Audit Chamber.

private companies. Small and medium-sized municipalities are not able to provide internal audits from their own resources.

3.1.9 Intermunicipal associations

122. The constitution explicitly recognises the communities' right to establish intercommunity unions for the purpose of "raising the efficiency of local self-governance" (Article 189 of the constitution). Such kinds of associations may also be set up by law, on the proposal of the government, in the case of a delegated power. An intercommunity union may exercise only the powers reserved thereto by law or by the decisions of the councils of the founding communities. An intercommunity union is a legal person under public law, which might mean that public powers and duties may be conferred on them.

123. The legal status of intermunicipal associations are specified by the LGA and a special law on intermunicipal unions was adopted on 7 March 2017. According to this law, the main purpose of establishing such unions is to jointly resolve various community problems and to reduce expenses. Intercommunity unions may be established by contract between the respective communities.

124. The associations have a council consisting of the Chiefs of Communities, who elect the council chairperson from their members.

125. The rapporteurs have been informed that despite the original purpose of the constitutional amendment of 2015 to encourage the formation of such co-operation between local authorities, this clause has not been implemented yet; no intermunicipal association have been created under the new regulation. However, there are some local government associations that were established beforehand for the joint exercise of certain powers, such as to maintain land tax databases or to collect local taxes, even though there are no available statistical data about these co-operations.

3.1.10 Consultation mechanism between central and local governments

126. As far as consultation between municipal associations and the government is concerned, the situation has not changed substantially since the previous monitoring report. It means that there are still no formalised procedures for intergovernmental consultations.

127. The constitution has, since its amendment in 2015, prescribed that in the case of mergers or divisions of communities, the National Assembly is obliged to hear the opinion of the affected communities (Article 190). However, the necessary legislation specifying this kind of consultation has not been adopted since the constitutional amendment. During the consultation procedure, the MTAI indicated that the government and the National Assembly are currently discussing the possibility of adopting a new package of legislation regulating the consultation mechanisms by the National Assembly (parliamentary hearings) and organisation of local referendums.

128. The rapporteurs would like to stress that in the first phase of municipal amalgamations in 2015, there were local referendums on the planned mergers in 22 municipalities and all planned amalgamations were implemented. In 2017, when 34 multi-settlement municipalities were formed through the mergers of 325 communities, no local referendums were held. The MTAI referred to the Congress monitoring report on Armenia dated 26 March 2014, which stated that consolidation of the human, financial and material resources available to the local government system is possible only via a merger of the smaller, weaker communities. So, the ministry underlined that as a result of recent administrative-territorial reforms in Armenia, 465 municipalities have been amalgamated and 52 amalgamated communities have been formed. Prior to the communities' amalgamation, there were 915 communities in the Republic of Armenia, 48% of which had a population of less than 1 000. The MTAI explained that during the community amalgamation process, consultations and discussions were held several times in each municipality, with direct participation by the political leadership of the ministry. It claimed that the representatives of amalgamated local self-governments also participated in all hearings on amalgamation of communities at the National Assembly of Armenia. It also indicated that as part of the next phase of the reforms, a road map for the decentralisation of powers of the state bodies has been developed. Currently, within the framework of the "Democracy Development, Decentralisation and Good Governance in Armenia" project of the Council of Europe, strategies and legislative regulations are drafted in view of its implementation.

129. However, the rapporteurs are aware that in some cases, the local population were informed about the ongoing amalgamation of their community only at a later stage, when the respective draft law had been published. The delegation has found that there was uncertainty among municipalities and municipal

associations because, while they were aware of the central government's intention that mergers would continue in the near future, they had no information on specific plans, and, in the absence of institutionalised consultation mechanisms – i.e. legally guaranteed – they could not find any information from credible sources.

130. During the consultation procedure, the CAA underlined that legal arrangements for consultation processes should clearly define issues such as the purpose of the consultation, the rights and responsibilities of the parties involved in the consultation process, the timing of the consultation process, the specific forms of consultation, the outcome of the consultation and their legal implications. Local authorities should also have the right to judicial protection if their right to be consulted is violated. The CAA stressed that there are currently no legislative guarantees ensuring *de facto* consultation of local authorities/their associations at the legislative or executive level of power in Armenia. The rapporteurs agree with this analysis and refer to the conclusions on Articles 4.6, 5 and 9.6.

3.1.11 Forms of direct citizen participation

131. The direct participation of the residents of municipalities in the administration of local public affairs is formally guaranteed by the constitution, which states that they may take part in "resolving public issues of community importance through a local referendum". According to the LGA, the Community Council, on the proposal of the Chief of Community, may initiate and appoint a local referendum in accordance with the law. This is the Law on Local Referendum adopted on 16 December 2016. Nevertheless, as mentioned above, at the moment there is no legislative basis for holding a mandatory local referendum on the changes to the borders of municipalities. During the consultation procedure, the rapporteurs were informed that the government and the National Assembly are currently discussing the possibility of adopting such legislation (local referendum and parliamentary hearings), bearing in mind that the results of the referendum will not be binding.

132. Indeed, apart from the local referendums held in 2015 on the municipal amalgamations, none of the interlocutors with whom the rapporteurs met knew about local referendums. Presumably, this institution of citizen's participation is out of practice today in Armenia.

133. Some interlocutors mentioned public hearings that may be organised by the community councils for local inhabitants about local public affairs. The local councils establish the rules and regulations for such hearings. Such events must be announced 14 days in advance. As the rapporteurs have been told, public hearings are held in practice only in the bigger municipalities.

3.2 Status of the capital city

134. Yerevan, the capital city of Armenia, had been a part of state administration as a *marz* until the constitutional amendment of 2005, when it became a community, while its 12 districts lost their separate local governments.

135. The local self-government bodies in Yerevan are the Council and the Mayor. The former is the supreme local self-governing body, which supervises the activity of the mayor.

3.3 Legal status of the European Charter of Local Self-Government

136. In respect of the relationship between international law and domestic law, Armenia has a dualist system, according to which the National Assembly may, upon recommendation of the government, ratify, suspend and revoke international treaties by law. The European Charter of Local Self-Government appears as an international treaty in the Armenian legal order, which was ratified by the parliament in 2002. According to Article 5(3) of the constitution, in the case of conflict between the norms of international treaties ratified by the Republic of Armenia (such as the Charter) and the legal norms of domestic law, the norms of international treaties must apply. This constitutional provision guarantees the supremacy of the Charter's principles and rules over the conflicting domestic legislation.

137. The rapporteurs are pleased to note that Armenia has recognised all provisions of the European Charter of Local Self-Government as binding.

3.4 Previous Congress reports and recommendations

138. Up to now, two monitoring reports and Congress recommendations have been made on Armenia, the first in 2003 (Recommendation 140 (2003) on local democracy in Armenia, adopted by the Congress in November 2003) and the second in 2014 (Recommendation 351 (2014) on local democracy in Armenia, adopted in March 2014), while a Post-monitoring Road Map was signed in 2016 (CG/MON/2015(295)).

139. Both the recommendations of the last monitoring report and the post-monitoring mission formulated a number of proposals for the Armenian authorities in order to develop local democracy.

140. The road map, taking note on the ongoing constitutional amendment affecting the regulation of local governments, emphasised that the proper implementation of the Charter required, among other things, the establishment of procedures for consultation in the case of mergers of communities by law, guaranteeing transparency and inclusion in reasonable time, a clear distinction between mandatory and delegated powers of municipalities, considering the transformation of certain delegated powers into mandatory own powers of (consolidated) communities, and the improvement and reinforcement of their capacity through intermunicipal co-operation. In addition, the rapporteurs have proposed to provide a stable revenue source for communities, as well as sufficient funds commensurate with responsibilities provided for by law. They also considered necessary to create a regulation on the detailed mechanism for the transfer of earmarked funds that provides the criteria and the equalisation formula for creating certainty and respecting discretion in use of these funds.

141. Having regard to the fact that the proposals of the road map were largely in line with those of Recommendation 351 (2014) on local democracy in Armenia, the follow-up monitoring found only modest progress in the implementation of the Charter. For this reason, during the new monitoring procedure, rapporteurs also looked at the implementation of the 2014 and 2016 recommendations with particular care.

4. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER

4.1 Article 2: Foundation of local self-government

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

142. Article 2 of the Charter requires signatory countries to recognise the principle of local self-government in their domestic legislation.

143. In Armenia, both the constitution and the LGA recognise the principle of local self-government. As has been shown above, Article 179, paragraph 1, of the constitution and Article 3 of the Local Government Act recognise and define local self-governments. By their definitions, local self-government means the right and capacity of democratically elected local bodies to manage, under their scope of responsibility, the local public affairs in the interests of the local population.

144. On this basis, the legal system comprises several guarantees of autonomy of local government bodies, so it can be concluded that Armenia complies with Article 2 of the Charter.

4.2 Article 3: Concept of local self-government

4.2.1 Article 3.1

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.

145. Article 3, paragraph 1, requires that local authorities should have “a substantial share of public affairs under their own responsibility”. Although the Charter does not specify which tasks and functions must fall within the remit of local government, it should regulate and administer primarily those public affairs that affect the local community most and that it can carry out more effectively.

146. The rapporteurs did not find any evidence that the powers and duties of the municipalities had been extended since the previous monitoring report, which found that “the most important and costly local public

services are provided by the state. Local authorities take part in service delivery only to a limited extent".[18] Even municipal amalgamations, implemented since 2015, have not played a more prominent role in the provision of public services, despite the fact that the purpose of merger procedures was precisely to create more efficient and powerful municipalities. But the amalgamation processes have not been followed by the transfer of central government powers and duties in line with the principle of subsidiarity. Even if the term "a substantial share of public affairs" is a fairly broad expression, it requires that local authorities not only have just residual powers or secondary tasks, but that they should be able to shape effective local policies within their scope of responsibility, and should be able to provide a certain number of public services for the benefit of the local population. It should be remembered though that the amalgamation reform is not yet complete.

147. It should also be noted that while some municipalities (especially Yerevan and larger municipalities) also carry out delegated state responsibilities, this does not imply the application of the principle of subsidiarity, as these public tasks and functions are carried out under full state control.

148. Therefore, according to the information provided to the rapporteurs during the visit, Article 3, paragraph 1, of the Charter is not complied with in Armenia.

4.2.2 Article 3.2

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.

149. The democratic character of local authorities, based on their direct legitimacy and the holding of free elections, is a core value of the Charter as it is entrenched in Article 3, paragraph 2.

150. In Armenia, the main legislative and decision-making body of municipalities, the Community Council, is elected by secret ballot, on the basis of a direct, equal and universal right to vote.

151. In each community, the Chief of Community (the mayor) is the main executive body. In a formal sense, he or she is responsible to the council, as far as the representative body, under certain conditions (for example, no council meeting is summoned in a six-month period), may initiate the removal of the mayor (LGA, Article 26). A decision is sent to the government for follow-up and for planning the election of a new mayor. However, the local council does not have a final say in this highly important matter, as the government decides on the initiative. Such an intervention by the central government in the organisational affairs of the local government seems unjustified. In principle, this power could arise from the government's oversight over local governments, but even in this case, the possibility of the removal of a democratically elected mayor by central government would be problematic in respect of the Charter. When the community is reorganised by law into another administrative unit, early termination of powers of the mayor may also occur and is followed by local elections.

152. In sum, Article 3, paragraph 2, is complied with in Armenia.

4.3 Article 4: Scope of local self-government

4.3.1 Article 4.1

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.

153. It is an important guarantee of local autonomy that only the national constitution or legislative acts may specify mandatory tasks for local authorities.

154. As a matter of fact, Article 182, part 1, of the Constitution of Armenia states that: The powers of the local self-governing bodies are their own in order to solve the obligatory and voluntary tasks of the community, as well as delegated by the state. Mandatory community tasks are set by law, and voluntary tasks are determined by community councils. In addition, Article 12 of the Law on Local Self-Government defines 20 obligatory community tasks.

18 CG/MON(25)5prov, Explanatory memorandum on local and regional democracy in Armenia, point 99.

155. Still, other pieces of legislation, such as sectoral laws, assign compulsory tasks to local authorities, so it can be said that this requirement is, at least formally, met by the Armenian legal system, as Article 182(5) declares that “the powers of local self-government bodies shall be prescribed by law”.

4.3.2 Article 4.2

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.

156. This paragraph refers to the local governments’ right to undertake voluntary tasks, if they have sufficient capacity for doing so.

157. As explained in point 3.1.5.2. of this report, in Armenia, there is the legal right for municipalities to undertake voluntary tasks, if they do not fall within the scope of responsibility of other public authorities, and the fulfilment of voluntary tasks cannot endanger the performance of compulsory and delegated functions. In fact, communities are generally empowered by the LGA to undertake tasks of local interest.

158. So, this principle of the Charter is implemented, even if mostly only on paper, since the vast majority of communities, considering the lack of adequate resources and capacity, are not in a position to undertake non-mandatory tasks and functions. The formal implementation of this point is therefore justified by the rapporteurs, despite the lack of progress in this area compared to the experiences of the previous monitoring procedures.

4.3.3 Article 4.3

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.

159. This requirement of the Charter lays down the principle of subsidiarity, without which no democratic local government system may exist. The principle allows the assignment of public tasks and functions to administrative agencies not established on the basis of elected local authorities, for the sake of efficiency and social expediency.

160. In practice, the realisation of this principle can only be examined together with the scope of the responsibility of local authorities. As we have seen, most public affairs of local interest are managed by state administration bodies in Armenia, or, even if some of them are conferred on municipalities, they are administered as delegated powers and duties under strict central professional control. It is hardly defensible that public affairs, such as education, health and social care, which have a profound impact on the lives of local communities, can be more effectively managed from a central level or more democratically operated by non-elected public bodies.

161. The rapporteurs do not question that the small and financially weak communities are not able to provide public services requiring special expertise, personnel and institutions. However, it should also be noted that the amalgamation processes have aimed at creating bigger and more powerful consolidated communities exactly to enable them to carry out such functions. In any way, it is circular reasoning to argue that municipalities should not get more revenues as they are not able to deliver costly public services, as well as supposing that more tasks and functions should not be transferred to municipalities because they do not have sufficient financial, personnel and technical resources to provide such local services. During the consultation procedure, the MTAI argued that several improvements in enlarged municipalities are already visible, such as expanded public services, new or renovated public infrastructure, the introduction of new services, a decrease in administrative costs and an increase in service delivery units, and increased organisational capacity in managing human resources, financial resources, tax administration and provision of administrative services.

162. However, experience shows that effective reforms are still needed to make municipalities more capable of performing more public tasks and functions, in particular the rolling out and completion of territorial reforms, continuing human and institutional capacity development measures and designing and implementing a coherent decentralisation strategy aimed at strengthening local capacities and local democracy.

163. Until those tasks are completed, the rapporteurs cannot conclude that Armenia is in compliance with Article 4, paragraph 3.

4.3.4 Article 4.4

> 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.

164. Full and exclusive powers are a precondition of local self-government, which means that municipalities should be able to decide autonomously how they fulfil their mandatory tasks, and to have sufficient resources to carry out those tasks. The full and exclusive nature of these powers allows only a legal supervision exercised by central agencies over local authorities.

165. There is no doubt that there are some less important public services that municipalities deliver themselves, but there are only a few such functions (like the maintenance of kindergartens or cultural facilities). However, the rapporteurs' experience has been that many tasks performed by municipalities, such as the maintenance of public utilities or the operation of local transport, are often carried out jointly by municipalities and administrative agencies of central government. In these cases, municipalities have only complementary or secondary functions (like maintaining waterworks or waste disposal), sometimes without real decision-making competence.

166. So, according to the assessment of the rapporteurs, this paragraph of the Charter is only partially complied with.

4.3.5 Article 4.5

> 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.

167. The inherent nature of delegated powers is to allow some discretion for local authorities to decide on the best way to perform such tasks in the local circumstances. Although municipalities have very small executive functions in the range of delegated powers and functions, the rapporteurs were still left with the impression during the visit that local authorities can adapt the implementation of delegated powers to local contexts.

4.3.6 Article 4.6

> 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.

168. The Charter requirement concerning the right of local authorities to be consulted "in due time and in an appropriate way" in matters which concern them directly is not reflected in the LGA, either in general or specific cases.

169. As explained above (see section 3.1.10), there are still no institutionalised mechanisms of consultation between the central government and municipalities in Armenia. The government regularly circulates draft legislative proposals to public organisations, including the associations of local authorities, for opinion. The public council, operating under the authority of the MTAI, does not provide exclusivity in consulting local authorities, as it represents the platform for all public organisations. Although there is direct contact between the government and the national association of communities, it cannot replace a well-regulated, effective system of consultation that would provide not only relevant information to the municipalities about the issues relating to them but would also ensure their real involvement in the decision-making process prior to the relevant decisions being taken.

170. During the consultation procedure, the MTAI opposed this view and underlined that legal issues are addressed through parliamentary channels (the Standing Committee of the National Assembly, meetings with the electorate, awareness campaigns, pooling of feedback from municipalities, exchange with the central and local authorities, analyses and reporting at panel sessions, etc.) and, in addition, administrative procedural and application issues are tackled through methodological support, circulation of elucidatory materials by line ministries co-ordinated by the MTAI, and topical meetings (on site and centrally). It also pointed to the website www.e-draft.am, established by the government as an online platform for gathering feedback from municipalities, and to the Official Gazette (Bulletin) of the government periodical *Procurement*

Bulleting. It further argued that there are various specific consultation practices established by law that regulate a number of important aspects of interaction between the government and municipalities, for example in the area of legislation development, budgeting and local socio-economic development. The MTAI stressed that several initiatives were proposed by municipalities themselves through those channels (for example, the LED project proposals for joint funding of specific projects and the subventions).

171. The MTAI pointed out that although no association can play an exclusive role in these consultations, the quality of consultations should be improved to establish a better dialogue between the parties concerning public policy making.

172. However, although there are specialist national community organisations, financial officers and community council members, the Association of Communities of Armenia is the only nationwide association representing the interests of the municipalities. The rapporteurs heard that contact between the government, its line ministries and the national association is occasional and depends on the governmental will, which makes local authorities vulnerable. As the rapporteurs were made aware, in some cases the municipalities concerned learned about the ongoing amalgamation process from the press.

173. The rapporteurs would like to underline that in the absence of the formally established, clear and transparent consultation process, neither communities nor their inhabitants have any chance to influence the government decisions affecting their interests, or to be heard before these decisions are made. In summary, the rapporteurs are of the view that this provision of the Charter is not respected in Armenia.

4.4 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.

174. The Charter requires that a change to local authority boundaries should give rise to prior consultation with the local communities concerned, possibly by means of a referendum where this is permitted by statute.

175. As has been mentioned above, the amalgamation process has slowed down since the recent political changes but is expected to continue. In this light, despite the related constitutional provision (Article 190), the absence of legal guarantees to hear the opinions of the affected communities and local inhabitants is worrying. Occasionally held hearings and the practice of sporadic communication or informal consultation may not be enough to substitute the real and legally guaranteed prior consultation and involvement of local inhabitants.

176. During the consultation procedure, the MTAI expressed their view that the consultation on the territorial reform through an institutionalised consultation mechanism between the government and the national association is questionable and has certain limitations because of vested interests of community leaders and members of the national association. However, it also informed the delegation that the two draft legal instruments are currently being discussed in the National Assembly to address the official hearings held in the National Assembly when it discusses amalgamation legislation, as is the possibility of holding local referendums concerning the amalgamation.

177. The rapporteurs welcome such initiatives aimed at improving consultation process and trust they will be adopted soon. However, they would like to reaffirm that monitoring is an instant snapshot of the moment of a visit and, accordingly, the assessment of a country's compatibility with the Charter is made in regard to the actual situation that they encounter and cannot be based on laws that are in the process of being created or that are earmarked for enactment at a future stage.

178. Based on the exchanges the rapporteurs had with various local interlocutors during the visit, they are of the opinion that the present situation in Armenia is not in compliance with Article 5 of the Charter.

4.5 Article 6: Appropriate administrative structures and resources

4.5.1 Article 6.1 (analysis and conclusion)

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.

179. Local authorities shall have the right to determine their internal administrative structures and they should be able to adapt them to local needs and ensure effective management. Apparently, this organisational autonomy can be restricted only by law, in order to ensure the democratic operation of all local governments. The Charter requires that the right conditions must be provided for the office of local elected representatives in order to ensure free exercise of their functions.

180. In Armenia, according to data from the MTAI, in 2017 the total number of municipal servants was 6 324, while the total number of public employees in the local government sector was 39 324.[19] It means that the average number of administrative staff in the communities is 12.6, which seems to be extremely low considering that the data also includes the figures for the larger municipalities.

181. During the visit, the rapporteurs were left with the impression that in Armenia there is a highly centralised system, under the management of the Ministry of Territorial Administration and Infrastructures. During the consultation procedure, however, this ministry argued that the role of the government is only to assist and provide methodological guidance to municipalities with regard to staffing and recruitment of municipality staff. The numbers of local community staff are set by the Community Council.

182. The rapporteurs note positively that in recent years several international development programmes have been launched in the country to provide professional training for local officials, and, according to the existing legislation, each municipal servant is bound to participate in professional training at least once every three years.

183. Despite the fact that the rapporteurs' attention has been drawn to the poor financial and personnel conditions of a number of local communities, there is no evidence for them to conclude that this provision of the Charter is not complied with.

4.5.2 Article 6.2

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.

184. Referring back to the preceding point, the rapporteurs note that the administrative capacities in the vast majority of municipalities are not sufficient to deliver public services fully and with due quality, and scarce budget resources are only sufficient for remunerating municipal staff. The limited administrative capacity and the lack of qualified human resources are serious problems in particular in small municipalities. For example, in Solak, a municipality with approximately 2 700 inhabitants, fewer than 20 people are employed by the community, and even local taxes are difficult to collect. During the consultation procedure, the Ministry of Territorial Administration and Infrastructures indicated that the territorial reform and the consolidation of communities aim at, among other things, improving organisational capacity and that there are several new initiatives that directly support development of staff competences in municipalities in various functional areas and disciplines, following the new realities (enlarged municipalities) and increased public pressure for good governance and increased responsiveness. The ministry also underlined that it is currently reviewing the existing training system to make it more adequate and up to date, which is based on real needs and linked to employees' performance, and which strikes a balance between central and decentralised components of the system, among other things.

185. The rapporteurs trust that the ongoing initiatives will improve the situation with regard to the conditions of service of local government employees and will demonstrate the awareness of the government about the importance of these issues. However, under the current circumstances, most local authorities are still not able to provide adequate training services for their staff members and offer a long-term career in public service. Therefore, in the opinion of the rapporteurs, this provision of the Charter is only partially complied with in Armenia.

19 Source: Ministry of Territorial Administration and Development.

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

4.6.1 Article 7.1

1 The conditions of office of local elected representatives shall provide for free exercise of their functions.

186. Having regard to the findings of the previous paragraph, the poor conditions for administrative staff in the municipalities and the current political climate, which some interlocutors have described as “uncertain”, local councillors in a number of municipalities are hardly in a position to exercise their functions freely. However, this experience cannot be generalised.

187. According to the LGA, it is an obligation of the Chief of Community to create necessary conditions within the community residence building to ensure the activities of the Community Council in accordance with this law and the council regulations.

188. Acknowledging the legal guarantee of the necessary conditions of the Community Council’s work, the rapporteurs’ conclusion is that this paragraph is complied with.

4.6.2 Article 7.2

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.

189. The weak financial situation in which most local authorities find themselves apparently makes it difficult to compensate for all legitimate costs of the exercising of the rights and functions of council members.

190. It is worth noting however that the members of the Community Council are entitled to receive reimbursement against the costs incurred by them while fulfilling their duties, although the law does not guarantee salary even in the greater municipalities.

191. Nevertheless, the rapporteurs have not heard well-established criticisms in this regard and can conclude that this paragraph seems to be implemented.

4.6.3 Article 7.3

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.

192. Since the conflict of interest rules are defined in the LGA in sufficient detail and seem to be applied in practice without entailing any criticism from local authorities, this provision of the Charter is correctly executed.

4.7 Article 8: Administrative supervision of local authorities’ activities

4.7.1 Article 8.1

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.

193. Supervision provides for a direct influence by central government on the management of local authorities. It is therefore very important that the scope of oversight be limited to ensuring the legality of the operation of the municipalities.

194. Since the constitution, the LGA and other legislation (for example, that relating to the Audit Chamber) determine the content of central supervision and specify which public bodies are authorised to exert it, this requirement is met by the Armenian legal system.

4.7.2 Article 8.2

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.

195. Any administrative supervision of the activities of local authorities can only aim at ensuring compliance with the law and constitutional principles. Administrative supervision may, however, be exercised by higher-level authorities with regard to expediency in respect of the tasks delegated to local authorities. Another important requirement that can be inferred from the Charter provisions is that the law should precisely define the administrative authorities empowered to exercise legal supervision over municipalities, thus eliminating the uncertainty inherent in the current legislation.

196. As has been explained above (see section 3.1.8), the control exercised by regional governors goes far beyond the legal supervision of local government decisions, as far as mandatory local government tasks and functions are concerned.

197. As far as the rapporteurs have been informed, in particular in the field of financial management of local authorities, there are overlapping supervisory powers of the regional governors and the Audit Chamber. This situation may create uncertainty among municipalities and makes it difficult for communities to prepare properly for the supervisory investigations.

198. That is why the current regulation and practice of administrative supervision in the Armenian local government system does not comply with this requirement of the Charter.

4.7.3 Article 8.3

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.

199. As regards the proportionality of the intervention of the supervisory body, it must be emphasised that if the regional governors exercising legality control also exert financial control over the municipalities and, besides, exercise considerable administrative power in their own jurisdiction, there is a high risk that the influence of the centralised state administration will be decisive not only at regional but also at local level and that municipalities will inevitably become subordinate. There are signs that this risk may have materialised in Armenia.

200. Central government supervision is evidently stronger and more intensive in the case of delegated powers where the key aspect must be to allow some discretion for municipalities. Otherwise they function as an off-site agency of central government. Although the rapporteurs perceived that, in certain cases, communities have for the most part only a minor role in exercising delegated powers, during the monitoring visit no objection to the disproportionality of central government supervision was raised; therefore the rapporteurs can conclude that there is compliance with this provision of the Charter.

4.8 Article 9: Financial resources

4.8.1 Article 9.1

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.

201. According to Article 9, paragraph 1, of the Charter, local authorities should have adequate financial resources of their own, of which they may dispose freely within the framework of their powers. Financial autonomy is an essential component of the principle of local self-government and an important condition for the exercise of a wide range of responsibilities in the field of local public affairs. These elements are cumulative and not alternative, which means that all the conditions laid down in Article 9 of the Charter are mandatory.

202. Recognising that local authorities, through local taxes and duties, as well as some other resources, are entitled by the constitution and legislation to receive financial resources of their own, the rapporteurs however observed that in practice one of the major characteristics of the Armenian municipalities is the permanent lack of financial resources.

203. The total budget revenues of municipalities amounted to AMD 126 554 million in 2017, which was a little less than in the previous year (however, since 1996, when the local government system was established in Armenia, it is the only year when total revenues declined). Of the total amount of municipal revenues, the share of local or "own" revenues was only 30.4% in that year, which shows that municipalities are highly dependent on central grants and other budgetary transfers.

204. Although the 45% increase in the total revenues of the whole local government sector between 2011 and 2017 is spectacular, it should also be taken into account that the share of local government expenditures remains low both in total government spending (8.3%) and GDP (2.24%).[20]

205. The permanent lack of sufficient finance does not give most municipalities the opportunity to pursue autonomous local policies. In this light, this provision of the Charter is only partially fulfilled.

4.8.2 Article 9.2

2 Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.

206. This article means that the resources available to local authorities should be sufficient and proportionate to their mandatory tasks and functions. This principle also implies that any new task assigned to local governments must be accompanied by the corresponding funding to cover the costs of the fulfilment of the new function.

207. Article 186 of the Armenian Constitution defines that for the purpose of performing the mandatory tasks of a community, the law shall prescribe tax and non-tax sources that are necessary for ensuring the implementation of these tasks. The powers delegated to communities by the state shall be subject to mandatory financing from the state budget. According to the experience of the rapporteurs, in practice in Armenia many local authorities lack adequate financial resources and the lack of resources of municipalities is not only due to the fact that many communities, especially smaller ones, have only very limited opportunities to generate their own revenues, but also because central grants allocated for the fulfilment of compulsory tasks, according to most interlocutors heard by the rapporteurs, do not fully cover the costs of their performance. During the consultation procedure, the MTAI argued that the new policy of subvention funds from the state budget is currently being implemented in order to build and improve different infrastructures within the communities, as part of which the communities make decisions about infrastructure selection and submit applications, and, over the last two years, about AMD 8.5 billion (€16.2 million) of targeted subventions have been provided from the state budget.

208. However, in particular, state subsidies paid for fulfilling delegated tasks are insufficient. This is not a negligible problem, as the financing of the fulfilment of delegated powers amounted to 24% of all municipal revenues in 2017.The lack of sufficient finance of delegated tasks generates more problems as a number of communities are not able to compensate for the missing funds from their own revenues.

209. As already mentioned in section 3.1.5.3, during the consultation procedure, the CAA also pointed out that in the area of local self-government most of the powers delegated to local authorities by law are not exercised, as the state budget does not allocate adequate financial resources and the government has not established procedures for implementing them.

210. In view of the above mentioned, the rapporteurs conclude that Article 9.2 of the Charter is not complied with in Armenia.

4.8.3 Article 9.3

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.

20 Source: http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=gov_10a_main&lang=en.

211. The municipalities' power to impose local taxes and duties is recognised at both constitutional[21] and legislative levels.[22] Local authorities have the freedom to set the rate of local taxes within the limits of the law.

212. As a consequence, this requirement is met formally in Armenia, even though some of these taxes cannot really be considered as local, inasmuch as they are not imposed, or their rate is not legally specified by municipalities within the limits of law.

4.8.4 Article 9.4

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.

213. In the proper understanding of the Charter, the diversification of revenues helps local authorities to react promptly to changes in costs of local services and protects them from unexpected economic difficulties, while the requirement of "buoyant" resources means the ability of local authorities to adjust their revenues to new circumstances, more plausibly, to increase their own resources.

214. According to the assessment of the rapporteurs, in a formal sense, this requirement of the Charter is fulfilled as far as the existing laws empower local authorities to obtain revenues from different sources, including local taxes and duties, borrowing, utilisation of local government property, general and specific grants, etc.

215. The problem remains, as has already been mentioned, that the income from these multiple sources is insufficient, and in many cases, such as borrowing, the mere possibility is only of a formal nature without any practical importance. In addition, having regard particularly to the absence of capital revenues (except for Yerevan and the largest cities), municipalities do not have enough financial and technical potential to make adequate local development strategies or follow the changing social requirements. The lack of sufficient resources makes them vulnerable to central influence, even if primary local interests are at stake.

4.8.5 Article 9.5

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.

216. Financial equalisation is a conventional method of assistance for the economically weaker local authorities, a well-known redistribution mechanism for counterbalancing regional disparities and diverse financial capacity of municipalities.

217. As has been found, in Armenia there is a separate system of financial equalisation that is designed to compensate the economic disadvantages of the financially weak communities. In addition, the regional discrepancies, as well as the economic and social differences of the municipalities, are also handled indirectly, through the general system of state grants.

218. Although financial equalisation has different possible methods and ways, designed to redress the effects of uneven economic development and capacity of local governments, the rapporteurs are of the opinion that in Armenia, the great differences between communities are not effectively counterbalanced in practice.

219. Accordingly, in view of the rapporteurs, the situation in Armenia only partially complies with this requirement of the Charter.

4.8.6 Article 9.6

6 Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

21 Article 185(3) of the constitution.
22 Article 57 of the LGA.

220. Having regard to the Charter's basic function to establish and promote the rights of local authorities, consultation between central and the local governments (or their associations) can be defined as a process by which the parties seek information, advice or the opinion of each other about particular topics, and/or discuss them. From the point of view of local governments, the main functions of consultation is to obtain relevant information on the decision-making process of central authorities affecting their interests; to provide an opportunity for local authorities to express their views and opinions on the relevant statutory laws and regulations at all stages of the decision-making process; and to make proposals and submit claims or complaints to central government, with the latter's obligation to respond to them.

221. The requirements of "appropriate way" and "due time" mean that consultation should take place in a way that provides real opportunity for local authorities to create and articulate their own views and proposals. During the consultation procedure, the MTAI highlighted that consultations with representatives of local authorities, the Union of Communities of Armenia, the union of community financial officers, and other interested NGOs and government bodies, are conducted on a regular basis. It mentioned the government-created website www.e-draft.am, which contains all legislative drafts including the ones related to local self-government and discussions in the Standing Committee of the National Assembly on Territorial Administration, Local Self-Government, Agriculture and Environment. The ministry specifically pointed out that the Ministry of Finance provides methodological support on the issues related to the process of budget planning and execution by Armenian communities by providing clarifications on specific issues raised by the latter (usually within a 10-day period).

222. As the analysis has shown above (see paragraph 20, sections 3.1.10 and 4.3.6), there is no institutionalised and legally guaranteed mechanism of regular consultation between central and local governments. Referring again to the fragmentation of the Armenian local government system and the constant lack of sufficient financial resources of the municipalities, Article 9.6 is not complied with in Armenia.

4.8.7 Article 9.7

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.

223. In the terminology of the Charter, one of the forms of central grant is the "earmarked" grant, which means that state subsidies are allocated to local authorities for specific tasks. In this article, it is specified for capital expenditures when the central grant is transferred to specific investment projects. The Charter prefers the non-earmarked grant, because this way of funding allows local authorities to decide on the use of these funds on the basis of strategic decisions and expenditure preferences.

224. During the visit, the rapporteurs received contradictory information from local authorities about the nature of central grants. However, during the consultation procedure, the MTAI informed the rapporteurs that a large share of central grants are not earmarked grants, without specifying the purpose, via financial equalisation mechanisms. Other central grants are earmarked, what are known as subventions. It also indicated that it is the municipality that proposes specific projects to the government to finance and that the new policy of subvention funds from the state budget is currently being implemented in order to build and improve different infrastructures within the communities, as part of which the communities make decisions on the selection of infrastructure and submit applications. Nonetheless, the rapporteurs would like to note that even if it is a municipality that proposes specific projects to the government to finance, under circumstances where there is a constant lack of resources, municipalities appear to have only minimal room for manoeuvre to decide how to spend their revenues, whatever the system of central grants is.

225. The rapporteurs are of the opinion that the requirements of Article 9.7 of the Charter are only partially met.

4.8.8 Article 9.8

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.

226. In this respect, while the legal frameworks of municipal borrowing are provided, experience shows that only the largest municipalities can afford to borrow, subject to government approval. Thus, this form of obtaining additional financial resources, although legally planned, does not provide additional resources for the vast majority of municipalities. Nevertheless, local authorities have access to financial markets to secure financial means, so this requirement of the Charter is formally met.

4.9 Article 10: Local authorities' right to associate

4.9.1 Article 10.1

> 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.

227. The Charter requires signatory countries to provide for the right of local governments 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. Each member state is required to recognise 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.

228. Both the constitution and the LGA empower municipalities to form associations for fulfilling their tasks and functions in a better and more effective way. The latter act, for instance, specifies the right of communities to create intercommunity associations with other communities with the objective of jointly solving individual problems as a basic principle of local self-government.

229. At the moment, there are some existing intermunicipal co-operation frameworks, but there could be many more, given the fragmented municipal structure. As far as the rapporteurs have learned, since the last constitutional amendment in 2015, despite the intention to do so, no new associations have been established. Taking advantage of this opportunity could help to counterbalance the disadvantages of municipal fragmentation, and to overcome some difficulties of small municipalities, and could even be a kind of alternative to unpopular amalgamations. However, this would obviously require financial incentives.

230. Nevertheless, the legal frameworks are provided, so this paragraph is complied with in Armenia.

4.9.2 Article 10.2

> 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.

231. Although only in an indirect way, the LGA recognises the right of communities to form and join associations with the objective of co-ordinating the activities of the communities, as well as representing and protecting common interests, when it authorises the community councils to take a decision on these issues (Article 16(22)).

232. There is a national association of Armenian municipalities that any community may freely join. For further detail on this issue, see Part 5. There is also an association of municipal councillors that formally exists.

233. Thus, the right of municipalities to form and belong to associations in order to protect and promote their interests is guaranteed.

4.9.3 Article 10.3

> 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.

234. In Armenia, there are some international development projects that demonstrate that local authorities are not excluded from international co-operation.

4.10 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.

235. As far as the legal protection of local authorities is concerned, the rapporteurs regret to say that they have not had an opportunity to meet with representatives of the Constitutional Court, so they have no information on the judicial protection of local government rights in Armenia and how the available procedures work in practice.

236. Having regard to the fact that municipalities are public law entities, they presumably have access to the ordinary courts to protect their rights in compliance with Article 11 of the Charter.

5. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT

237. Both the Congress and the government have on many occasions emphasised the need to have well-functioning associations of local and regional authorities representing and defending the interests of its members and providing a platform for dialogue and consultations with national authorities. Such associations play a major role in the system of local self-government, in particular as regards mechanisms for consultations with local authorities envisaged under the European Charter of Local Self-Government. In its guidelines on the consultation of local authorities by higher levels of government, adopted in November 2018, the Congress stresses that "local authorities need institutions that are capable of representing and protecting their interests, such as national associations of local authorities that can allocate the appropriate resources and time to ensure effective representation of local authorities in consultation procedures".

238. All 502 local communities in Armenia are members of the Association of Armenian Communities (CAA), created in 1997. The governing body of the association is the Republican Council (that includes almost 100 communities from all regions), which elects the board (with 31 members).

239. Since 2014, the CAA's organisational development has been supported by the Congress through a project, "Institutional support to the Communities Association of Armenia", funded by the Government of Switzerland. Among the project's objectives have been improving the association's governance system, promoting a culture of participation involving all members and fostering participatory internal decision making, in order to change a perception held by MTAI and other stakeholders (including some of its members) that the association is dominated by the interests of a select group of people. In 2018, the evaluation by Switzerland recognised the positive change in the internal governance and decision making within the CAA.

240. However, the Territorial Administrative Reform in Armenia (TARA), launched in 2015, has left MTAI and the CAA in conflicting positions. The relationship between the ministry and the association has been largely influenced by the CAA's critical position regarding some aspects of the proposed reforms, and despite the official Call to the Government endorsed by the CAA Republican Council, MTAI has been consistent in its assertions that the CAA leadership manipulates the opinion of its members, and is persistent in its view that the CAA President expresses his personal position and not that of CAA members. During the consultation procedure, in this respect the ministry shared with the rapporteurs its concerns about the possible vested interests of some mayors (members of the CAA governance bodies) against this reform, which, in the ministerial view, would limit the chances of the establishment of a genuine dialogue on proposed changes and its importance in developing local governance in Armenia.

241. In its turn, the CAA complained during the consultation procedure about the attempts to falsely present the association as an antagonist against amalgamation and to overshadow and minimise the public influence of the association's voice. It also underlined its unwavering support, since 1999, for the necessity of administrative changes in Armenia and the recognition of the government's exclusive right to implement administrative-territorial changes, while upholding the right of communities to be heard during the implementation of administrative-territorial changes.

242. Since a healthy relationship between the government and associations of local and regional authorities is a precondition for efficient multi-level governance, the Congress insists on the need for national authorities and such associations to enter into regular and effective consultations on all matters that concern local authorities directly and maintain functional relations regardless of all possible differences of views, in order to ensure the proper application of the European Charter of Local Self-Government.

243. The rapporteurs therefore strongly hope that MTAI and the associations of local authorities will be able to establish a new dynamic in their relationship and engage in a more constructive dialogue over the future development of local government in Armenia.

6. CONCLUSIONS

244. The previous monitoring and post-monitoring reports on the implementation of the European Charter of Local Self-Government in Armenia evaluated the progress that had been made by the country and suggested further reforms to strengthen local and regional democracy. These proposals took into account the time needed for the reforms and acknowledged the ideas and plans of the Armenian authorities for the future. However, as a result of 2019 monitoring visit, the rapporteurs found that only relatively little progress has been made compared to the situation that was identified five years ago. Although the representatives of central government pointed out that the political changes of 2018 have delayed the improvement of the situation of local governments, the rapporteurs still consider that more significant development could have been expected since the last monitoring, as could the signature of the road map in 2016 for the implementation of the Congress recommendations. At the same time, the 2018 changes have opened new perspectives and opportunities for democratic transformations in Armenia that could directly influence local self-government system too.

245. The consolidation of the municipal system through amalgamations of the smaller communities has started and proceeded since the previous country report, but the newly created consolidated communities have not yet been given new tasks and additional resources. The amalgamation process continues, and its final results are yet to be seen. However, some assistance channels and additional resources that have been made available to merged municipalities, including donors and state budget, are reported to have increased the performance of those municipalities.

246. No new intermunicipal communities were formed in the recent years, and the territorial reform has been interrupted erstwhile, and relaunched only some time ago. In some respects, some say that the situation of municipalities is even more unfavourable now than before. Thus, for example, during the recent amalgamation processes, there were no prior consultations with the municipalities concerned. It is clear that the benefits and advantages of amalgamation should also be identified and communicated widely.

247. It should also be noted that local authorities still have only very few powers and duties of their own, and they have to cope with a constant lack of resources.

248. The main elements of concern pointed out by the report are the following:
- in the practice of the allocation of powers and duties concerning local public affairs, the subsidiarity principle does not prevail in most cases (Article 4.3);
- a number of local government powers are not full and exclusive (Article 4.4);
- there is no legally guaranteed, regular, clear and transparent consultation process between central government and the municipalities or their national association (Article 4.6);
- local authorities are not involved in the changes to their boundaries through prior consultation (Article 5);
- municipal employees work in poor conditions in a number of local government offices (Article 6.2);
- the administrative supervision is not limited to the legal control of local government decisions, and various state authorities have overlapping supervisory activities over municipalities (Article 8.2);
- a lot of municipalities, especially the smaller communities, do not have adequate financial resources of their own (Article 9.1);
- in the case of delegated functions, municipalities do not receive sufficient resources to carry them out (Article 9.2);
- local authorities are not involved in the decision-making process concerning their finances through a consultation mechanism in an appropriate manner (Article 9.6).

249. All in all, it can be said that most of the recommendations made in previous reports are still valid today and it would be advisable if they were carefully considered by the Armenian authorities.

250. The principle of subsidiarity could be better achieved if more public tasks were assigned to the municipalities, or, in other words, the delegation of tasks took place as much as possible through decentralisation rather than de-concentration and delegation. The rapporteurs, of course, are aware that this can only be the result of a long process and requires proper preparation, enabling local governments to be addressees of tasks that are currently performed by state administration bodies. But this process should start by gradually increasing the financial support to municipalities, developing their technical and human resources and increasing their functions.

251. This kind of allocation of public tasks and functions cannot be replaced by delegated powers whereby local authorities carry out purely executive tasks under direct central control.

252. The “own” powers and duties of municipalities should be revised and clarified so that the role of state administration bodies (mainly regional governors) is limited to the legal control of local acts. Of course, this does not apply to delegated powers where direct central management can be justified.

253. Regular consultation should be guaranteed by law and should be held prior to the decision-making process in all strategic issues that affect the common interests of municipalities in an appropriate manner, which ensures that local government interests are taken into consideration. Consultation between central government and the municipalities concerned is indispensable in each case when the boundaries of communities are changed. It would be even better if, prior to all amalgamation processes, the opinion of the affected community councils is heard, and the local population is also involved in the decision-making process. Consultation should also cover the principles, methods and amount of central support allocated to local authorities, to enable them to draw up well-established local budgets and development plans in the medium term.

254. As to the amalgamation process, before the centrally planned integration of small communities continues, the experiences of the completed amalgamations should be carefully examined. It is to be feared that in many cases the benefits of mergers will not be detectable or perceptible. This is not expected to change as long as the consolidated communities do not receive additional tasks and financial resources commensurate with them. In any case, the rapporteurs will be following closely the advancement of the reform and its results.

255. The different types of supervisory powers should be distinguished from each other based on the principle that state authorities should only exercise legality control over the mandatory powers of communities. It is of particular importance that financial and economic oversight be carried out by the Audit Chambers, while the professional and administrative supervision should be limited to the performance of the delegated tasks.

256. The calculation methods for central grants should be reviewed in order to adjust them to the real costs of the fulfilment of mandatory tasks and functions, taking into account the legitimate differences in the various municipalities. Beyond the mere acknowledgement of the principle of proportionate funding, effective mechanisms should be established to ensure sufficient financial resources necessary for the tasks to be carried out in a verifiable manner (which of course should also take into account local governments' own revenue-generating capacity).

APPENDIX – Programme of the Congress monitoring visit to Armenia

CONGRESS MONITORING VISIT TO THE REPUBLIC OF ARMENIA
***Yerevan*, *Charentsavan, Solak* (13-14 May 2019)**

FINAL PROGRAMME

Congress delegation

Rapporteurs

Ms Bryony RUDKIN	Rapporteur on local democracy Chamber of Local Authorities, SOC/G/PD[23] Councillor, Ipswich Borough Council, United Kingdom
Ms Gunn Marit HELGESEN	Rapporteur on regional democracy President of the Chamber of Regional Authorities, EPP/CCE[24] Vice-President of the Congress Telemark County Councillor, Norway

Congress Secretariat

Ms Stéphanie POIREL	Secretary to the Monitoring Committee

Expert

Mr Zoltán SZENTE	Vice-Chair of the Group of Independent Experts of the Congress on the European Charter of Local Self-Government

Interpreters

Mr Guevork GUEVORKIAN
Mr Aram BAYANDURYAN

The working language of the meetings will be English. Interpretation from and into Armenian will be provided.

23 SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.
24 EPP/CCE: European People's Party Group in the Congress.

Monday, 13 May 2019
Yerevan

- **JOINT MEETING WITH MEMBERS OF THE ARMENIAN DELEGATION TO THE CONGRESS, NATIONAL ASSOCIATIONS AND EXPERTS**

  NATIONAL DELEGATION OF ARMENIA TO THE CONGRESS

  Mr Emin YERITSYAN, Head of the Armenian delegation to the Congress, Councillor, Community of Parakar
  Mr Vardan HOVHANNISYAN, Deputy Head of the Armenian Delegation to the Congress, Mayor of the City of Jermuk
  Mr Alina HARUTYUNYAN, Head, Community of Nor-Yerznka
  Ms Jemma HARUTYUNYAN, Mayor, Amasia Community
  Mr Kamo KAKOYAN, Mayor of Nor Kharbert Community
  Ms Arevik LOKYAN, Councillor, City of Vanadzor

  ASSOCIATION OF ARMENIAN COMMUNITIES

  Mr Emin YERITSYAN, President
  Ms Natalya LAPAURI, Executive Director

  EXPERTS

  Mr Marat ATOVMYAN, Lawyer, Lecturer, Member of the Group of Independent Experts of the Congress on the European Charter of Local Self-Government
  Dr Narine ALEKSANYAN, Associate Professor, International Consultant on Local Government, Council of Europe Office in Tirana
  Mr Vahagn PETROSYAN, Expert on local self-government, Lecturer, Head of the Department of Law at the Yerevan College of Law
  Mr Artak YERGANYAN, Financial expert

  ASSOCIATION OF LOCAL DEMOCRACY AGENCIES OF ARMENIA (ALDA)

  Ms Lusine ALEKSANDRYAN, Director

- **YEREVAN CITY HALL**

  Mr Hayk MARUTYAN, Mayor of Yerevan

- **MINISTRY OF TERRITORIAL ADMINISTRATION AND DEVELOPMENT**

  Mr Suren PAPIKYAN, Minister

- **MINISTRY OF FINANCE**

  Mr Edgar MKRTCHYAN, Head of the Public Internal Financial Control Policy Division, Deputy Head of the Public Financial Management Policy Department
  Ms Ruzanna GABRIELYAN, Acting Budget Process Organisation Department
  Mr Gor HAKOBYAN, Leading Specialist of the Public Internal Financial Control Policy Division of the Public Financial Management Policy Department
  Ms Tatevik BARSEGHYAN, First Class Specialist of the Public Internal Financial Control Policy Division of the Public Financial Management Policy Department

- **HUMAN RIGHTS DEFENDER**

  Mr Mikayel KHACHATRYAN, Head of International Co-operation Department
  Ms Nina PIRUMYAN, Adviser to the Defender

Tuesday, 14 May 2019
Yerevan, Charentsavan, Solak

- **NATIONAL ASSEMBLY**

  Mr Varazdat KARAPETYAN, Chair of the Standing Committee on Territorial Administration, Local Self-Government, Agriculture and Environment

- **AUDIT CHAMBER**

  Mr Levon YOLYAN, Chair

- **CHARENTSAVAN**

  Mr Hakob SHAHGALDYAN, Mayor

- **SOLAK**

  Mr Edgar KHACHATRYAN, Mayor