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

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

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Summary

This report follows the third monitoring visit carried out in Montenegro since the country ratified the European Charter of Local Self-Government in 2008.

The report acknowledges the establishment of strategic initiatives aimed at reforming the public administration, with a declared focus on decentralisation and digitalisation, exemplified by initiatives like the Public Administration Reform Strategy 2022-2026. It also welcomes the positive practice of minority language use in the execution of local public functions in municipalities where the majority of the population belongs to ethnic minorities, and the Union of Municipalities of Montenegro's right to apply directly to the Constitutional Court.

However, the rapporteurs express concerns about the overall trend towards recentralisation of local competencies, including in the essential area of spatial planning, and restricted financial autonomy at the local level. Smaller municipalities lack the financial capacity to ensure the high-quality performance of their functions, while the share of tax revenue for most municipalities was diminished following the enactment of the 2021 Law on Personal Income Tax, also known as the “Europe Now” programme.

Furthermore, municipalities must receive authorisation from the central level to perform some municipal functions and have little room to adapt local responsibilities to local needs due to an overregulation of competences. In addition, there are considerable shortcomings in the practice of the consultation process, including on financial matters and with regard to municipal boundary changes.

Consequently, the recommendation invites national authorities to resume the previous decentralisation efforts and pursue the declared local self-government reform in consultation with municipalities and the Union of Municipalities of Montenegro. They rapporteurs also suggest strengthening local fiscal autonomy, ensuring that task assignments come with commensurate resources, and making sure that local authorities can exercise their own competences without ministerial approval. Lastly, local authorities should be consulted systematically and effectively, particularly through the Union of Municipalities, on all matters that concern them.

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

RECOMMENDATION 506 (2024)[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 relating to the Congress, 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 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that "the Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure 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 Contemporary Commentary on the explanatory report to the European Charter of Local Self-Government adopted by the Congress Statutory Forum on 7 December 2020;

e. the Congress priorities set up for 2021-26, in particular priority 6b which concerns the quality of representative democracy and citizen participation;

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

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

h. 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;

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

j. The previous Congress Recommendation on the monitoring of the European Charter of Local Self-Government in Montenegro [Recommendation 379(2015)];

k. The Explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Montenegro;

2. The Congress points out that:

a. Montenegro joined the Council of Europe on 11/05/2007, signed the European Charter of Local Self-Government (ETS No. 122, "the Charter") on 24/06/2005 and ratified it with reservations on 12/09/2008. The Charter entered into force in Montenegro on 01/01/2009;

b. the Committee on the Honouring of Obligations and Commitments by member States of the European Charter of Local Self-Government (Monitoring Committee) decided to examine the situation of local democracy in Montenegro in the light of the Charter. It instructed Çemal Baş, Türkiye (L, EPP/CCE) and Sören Schumacher, Germany (R, SOC/G/PD), with the task of preparing and submitting to the Congress a report on monitoring of the application of the Charter in Montenegro;

c. the monitoring visit took place from 3 to 5 October 2023. 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 explanatory memorandum;

2. Debated by the Chamber of Local Authorities during the 46th Session on 27 March 2024 and adopted by the Congress on 27 March 2024 (see document CPL (2024)46-03, explanatory memorandum), co-rapporteurs: Cemal BAŞ, Türkiye (L, EPP/CCE) and Sören SCHUMACHER, Germany (R, SOC/G/PD).

d. the rapporteurs wish to thank the Permanent Representation of Montenegro to the Council of Europe and all those whom they had exchanges with during these meetings.

3. The Congress notes with satisfaction:

a. the establishment of strategic initiatives for reforming the public administration, with a declared focus on decentralisation and digitalisation, such as the Public Administration Reform Strategy 2022-2026 and the Strategy of Regional Development 2023-2027 as well as the ongoing analysis of the functioning of local self-government, which may serve to the assessment of future local self-government reform.

b. the establishment in 2017 of the Ministry of Public Administration and Local Self-Government as the competent authority for local government, which strengthens the institutional focus on local self-government at the central level;

c. the good practice of minority language use in the performance of local public functions in municipalities where the majority of the population belongs to ethnic minorities;

d. the existence of a right of the Union of Municipalities of Montenegro to apply directly to the Constitutional Court.

4. The Congress expresses its concerns on the following issues:

a. the general trend towards recentralisation of local competencies, including but not limited to the essential area of spatial planning;

b. the practice of *ad-hoc* assignment of competencies to municipalities without allocating adequate funding for the assigned tasks ;

c. the insufficient financial capacity of smaller municipalities to guarantee the high-quality performance of their functions and the reduction in the share of tax revenue for most municipalities following the adoption of the 2021 Law on Personal Income Tax (known as the “Europe Now” programme);

d. the lack of decision-making powers at local level regarding local taxes or fees coupled with the limited right of local authorities to dispose of their property, which restricts local financial autonomy;

e. the obligation of municipalities to receive authorisation from central level to perform some municipal functions, such as to spend funds received from the state budget to finance municipal capital projects;

f. an overregulation of local responsibilities that leaves little room for their adaptation to local needs. This also concerns the freedom of municipalities to determine their own internal administrative structures;

g. the considerable shortcomings in the practice of the consultation process, which, although it is prescribed by law, does not take place in a timely manner and on all questions that concern local authorities, including on financial matters;

h. the lack of consultation of local authorities and local populations concerned by municipal boundary changes;

i. the lack of clarity and transparency of the procedure for allocating grants.

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

a. resume the previous decentralisation efforts and pursue the declared local self-government reform in consultation with municipalities and the Union of Municipalities;

b. make sure that the assignment of tasks to municipalities is carried out in accordance with the law and is accompanied by the funds necessary for their execution;

c. refrain from re-allocating local competences to the State administration and reconsider the allocation of planning competences to enable local authorities to manage a substantial share of public affairs under their own responsibility and in the interests of the local population;

d. conduct the financial impact assessment of policies and laws, that affect local self-government resources, in order to ensure the proper compensation of the loss of revenues;

e. strengthen local fiscal autonomy by increasing the decision-making power of local authorities in the area of local taxation and fees;

f. make sure that local authorities can exercise their own competences, without ministerial approval, and that they have a sufficient margin of appreciation to determine their own internal administrative structures for effective management;

g. systematically and effectively consult local authorities, notably through the Union of Municipalities, to give effect to the legally defined “spirit of partnership” in relations between municipalities and central government. To this end, establish a permanent consultation mechanism at the level of ministries to involve local authorities in consultations on the draft legislation affecting them;

h. consult the local authorities and citizens concerned on municipal boundary changes, and resolve the issue of demarcation of boundaries of Zeta municipality to ensure its effective operation;

i. clarify the criteria for allocating grants and make sure that all municipalities have equal access to grants;

j. ratify the non-ratified Articles 6.2, 7.2 and 8.2, which are already complied with in practice;

k. re-consider the introduction of a single election day for all municipalities.

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 Charter in Montenegro and the accompanying 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. The Congress of Local and Regional Authorities (hereinafter referred to as “the Congress”) shall prepare on a regular basis country by country reports on the situation of local and regional democracy in all member states and in states which have applied to join the Council of Europe and shall ensure, in particular, that the principles of the European Charter of Local Self-Government are implemented.

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

3. Montenegro signed the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (ETS No. 207) on 16 November 2009 and ratified it on 1 October 2010, with entry into force on 1 June 2012.

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

5. Cemal Baş (Türkiye, L, EPP/CCE[3]), Municipal Councillor, Keçioren, Türkiye, and Sören Schumacher (Germany, R, SOC/G/PD[4]), Member of the Hamburgische Bürgerschaft, Germany, both rapporteurs on local democracy, were instructed by the Monitoring Committee to prepare a report on the monitoring of the application of the European Charter on Local Self-Government in Montenegro and to submit it to the Congress. The rapporteurs were assisted in their work by Prof. Dr.jur. Jens Woelk, member the Group of Independent Experts on the European Charter of Local Self-Government, and by the Congress Secretariat.

6. A visit was made by a Congress delegation to Montenegro from 3 to 5 October 2023, in Podgorica, Cetinje, Bar, and Ulcinj.

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

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

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

10. According to Rule 88.3 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent on 12 December 2023 to all interlocutors met during the visit for their comments and possible adjustments or corrections (hereinafter “consultation procedure”). The present report is based on the comments received, which have been considered by the rapporteurs before submission for approval to the Monitoring Committee.

3. EPP/CCE: European People’s Party Group in the Congress
4. SOC/G/PD: Group of Socialists, Greens and Progressive Democrats

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

11. The Constitution of 2007 defines Montenegro as a parliamentary democracy. Its unicameral Parliament has 81 members, each elected for a four-year term (Articles 82 – 84 Constitution). The President is directly elected for a five-year term and serves as the head of state with a rather limited political role (Articles 95 and 96 Constitution).

12. Montenegro is an independent State since 2006. Once a Republic of Federal and Socialist Yugoslavia, it entered into a State Union with Serbia, from which it declared its independence in a referendum (55% votes in favour). After joining the United Nations and other international institutions, since 11 May 2007 Montenegro is a member of the Council of Europe. On 5 June 2017, Montenegro joined NATO as its 29th member after a failed coup orchestrated by Russia and enacted by pro-Serbian forces.

13. The process of accession to the European Union began with the official application to join the EU on 15 December 2008; it is based upon a Stabilisation and Association Agreement with the EU (in force since 1 May 2010). Membership negotiations began on 29 June 2012. With all the negotiating chapters opened, the country enjoys a widespread support among EU members' officials. However, in its latest report from October 2022,[5] the European Commission underlined that progress in many areas is limited, in part due to a tense political situation. Montenegro has been negotiating EU membership for 11 years, and European sources often cited a lack of political will to implement necessary reforms, primarily in Chapters 23 and 24, which pertain to the judiciary and the rule of law, as the reason for the prolonged negotiation period. Despite still being the most successful country in the European integration process, since 2020, a political crisis that has been ongoing for two years, has slowed down the pace of reforms. Montenegro even faced the threat of a blockage of accession negotiations, due to an institutional blockade of the Constitutional Court, which left the court for months without a quorum for decision-making (this was resolved in February 2023, when the Assembly appointed three constitutional judges).

14. The division between a pro-EU and pro-NATO majority, a large pro-Russia and pro-Serbia minority and an Albanian minority contributes to the polarisation of society. Following the 2020 elections, the country fell into a political stalemate as two coalition governments lost the parliament's confidence. The crisis was determined by a controversial law recognizing the properties claimed by the Serbian Orthodox Church. Administrative elections held in October 2020 confirmed the stalemate.

15. In 2023, a major political change has occurred in Montenegro. Presidential elections were held on 19 March 2023. Long-ruling incumbent president Milo Đukanović (DPS), who had dominated the political scene in Montenegro since the 1990'ies, came first in the first round, but did not receive a majority. Đukanović's DPS had already lost the Parliamentary elections in 2020, and two interim governments had been formed. In the second-round vote of the Presidential elections, on 2 April, Jakov Milatović, candidate of the newly formed centrist Europe Now! Movement (PES), running on an anti-corruption platform, defeated Milo Đukanović in a landslide (60%), becoming the first elected president not being a member of the Đukanović's DPS since introduction of the multi-party system in 1990. The presidential election was followed by the 2023 Montenegrin parliamentary election, held on 11 June 2023. The Europe Now! movement won 24 of the 81 seats while the DPS led Together! coalition came in second with 21 seats. Voter turnout was 56%, the lowest turnout since 1990. In August, the mandate to form the 44th Government of Montenegro was assigned to Milojko Spajić, the President of the Europe Now Movement (PES) who formed the government, which received the Parliament's confidence vote on 31 October 2023.

2.1 Local government system (constitutional and legislative framework, reforms)

16. Montenegro is a unitary state. At sub-national level there are 25 local self-government units: 23 municipalities plus the (administrative) Capital City Podgorica ad the Royal Capital Cetinje. There is no regional or other intermediate, subnational level of governance (a "Regional Development Law" of 2011 established three regions for statistical purposes, only; without any legislative or administrative powers). According to the legislative framework, all municipalities have the same competences, the same institutional structure and, in principle, the same sources of revenue. Only the historical capital Cetinje and the administrative capital Podgorica have a slightly different status.

5. https://neighbourhood-enlargement.ec.europa.eu/system/files/2022-10/Montenegro%20Report%202022.pdf

Legal framework

17. The legal framework of local self-government in Montenegro has its basis in the Constitution and is further developed in detail in ordinary legislation: the Law on Local Self-Government (which is based upon the European Charter of Local Self-Government), the Law on Local Self-Government Financing and the Law on Territorial Organization of Montenegro. The right to local self-government is guaranteed by Article 22 of the Constitution, and further developed in its Chapter IV (articles 113 - 117). The Constitution itself provides a definition of the right to local self-government, which "shall include the right of citizens and local self-government bodies to regulate and manage certain public and other affairs, based on their own responsibility and in the interest of the local population" (Article 113, paragraph 2). Municipalities are described as the "basic form of the local self-government"; however, it is also "possible to establish other forms of local self-government" (Article 114). The Constitution expressly guarantees the autonomy of municipalities to perform their duties (Article 117, paragraph 1). As mandatory authorities within a municipality, an assembly, and the president (i.e. mayor), have to be established (Article 115, paragraph 3). Municipalities shall have their own resources as well as rely on finances coming from assets of the state (Article 116, paragraph 3).

18. The Law on Local Self-Government establishes the main features of the relationship between the national government and the municipalities, the essential rights, functions, and the legal status of municipalities as well as the institutional framework in which these rights can be exercised. The complementary Law on Local-Government Finances is the framework for the funding of municipalities of Montenegro. The Law on the Territorial Organization of Montenegro establishes the names of municipalities, their borders, and headquarters.

19. In addition, a number of sectoral laws integrate this framework with details. Legislation is also under constant review, as part of the necessary reforms for Montenegro's compliance with EU conditionality. The central objectives of legislative developments in the past relate to the improvement of the internal structure and staff capacity of local authorities, the strengthening of inter-municipal cooperation, and the introduction of a more stable revenue system for local authorities.

Institutional structure

20. According to the Constitution and the Law on Local Self-Government (LSG Law) two municipal authorities need to be established: the municipal assembly as the "representative body" and the mayor – or "president of municipality" – as the "executive body" (Article 41 LSG Law). The municipal assembly is elected for a four-year period and consists of 30 councillors (plus one for every 5.000 voters). The functions of the municipal assembly, listed in Article 45 LSG Law, comprise: the adoption of regulations and general acts; the adoption of the budget, and of certain basic plans and programmes; the "authentic interpretation of its own regulations". The assembly elects its president among its councillors and appoints a secretary for further administrative tasks. This secretary needs to hold a law degree, must have passed a professional exam for the work in the state administration and has to have at least five years of experience (Article 55 LSG Law).

21. The mayor is the professional head of the local administration. He/she is elected by a majority of councillors in the assembly for a period of four years (Article 56 LSG Law). The Mayor has the following duties: the representation of the municipality; taking care of and being responsible for the implementation of laws, regulations and general acts; the execution of delegated affairs; the definition of "the organization and methods of functioning of the municipal administration, based on the opinion of the Chief Administrator"; and the supervision of the performance of the local administration (according to the list of competences in Article 57 LSG Law). The mayor also appoints and dismisses the deputy mayor and the chief administrator (both with the consent of the municipal assembly) as well as the "chiefs of local administration bodies, vocational and other services, directors of agencies and the manager"(the latter for development programmes). In certain circumstances and subject to strict conditions, the mayor can pass acts on behalf of the assembly (Article 58 LSG Law). The mayor is accountable to the assembly, and for the exercise of delegated competences to the government (Article 59 LSG Law). In case of failure to perform specific duties, a recall procedure may be initiated by voters (Article 61 LSG Law) or the assembly may dismiss the mayor by majority vote (Article 62 LSG Law, with a closed list of the relevant duties).

22. Citizen shall participate directly and through their freely elected representatives in local self-government bodies (Article 6 LSG Law). Citizen participation in the decision-making process at local

level, which may include foreigners, is established in different forms which include petitions, complaints, and initiatives, but also formal decisions in a referendum (community referendum or municipal referendum), following a civil initiative (Articles 99 – 110 LSG Law).

23. Local communities, in parts of the municipality, are promoted by the LSG Law "for the most direct and efficient performance of affairs and of addressing the needs of citizens" (Article 4, paragraph 2). The municipal assembly can establish local communities as a legal entity that allows citizens to govern their affairs independently from the municipal level. These local communities have their own funds and can set up community centres (Articles 95 – 98 LSG Law.

24. Municipalities in Montenegro fulfil self-government tasks (their own tasks) and tasks transferred to it by law or entrusted by a government's regulation (delegated tasks) (Article 28 LSG Law). This distinction also applies to supervision. While in the area of self-government, supervision by the state is restricted to the question of legality, other forms of supervision are foreseen in the area of delegated tasks. In general, the relations between local and central authorities "shall be based on the principles of mutual co-operation, in accordance with the law" (Article 15 LSG Law). Two chapters of the Law on Local Self-Government are dedicated to the relations and the co-operation between public services, state bodies and municipalities (Articles 117- 118, and 119 - 126 LSG Law) obliging both levels to co-operate, to inform each other about new developments, to submit data and other information if required and to provide support to their respective counterparts. This framework is completed by a list of the instruments to be used by the government in case of failure of municipal assemblies to exercise their duties.

Developments relating to local self-government since 2015

25. The following important legislative and institutional changes have occurred since the previous Congress Recommendation on local democracy in Montenegro in 2015.

26. The Ministry of Public Administration and Local Self-Government has been established in 2017 as the competent authority for local government, taking over the competence from the Ministries of Interior and Justice. The concentration in one new Ministry promises greater recognition of local self-government at central level and is certainly positive.

27. However, regarding new legislation, the picture is mixed, from the perspective of local self-government, with some positive, but also negative developments.

28. In 2017, the Law on Local Self-Government was amended (29 December 2017) and the Law on Spatial Planning and Construction of Structures was adopted, which stripped municipalities of all powers in this area and centralised the adoption of local plans. This had a negative impact on the development of municipalities, as in many cases investments slowed down or stopped, because central authorities did not have the capacity to cope with the quantity of requests in the area of spatial planning and address all local needs. In 2019, the Law on Local Self-Government Financing was adopted, which significantly improved municipal funding and introduced a new support mechanism for the pre-financing of local donor projects. However, the 2021 Law on Personal Income Tax has negatively impacted on these positive effects, as the generous tax exemptions foreseen have drastically reduced the share of revenue from this tax for most municipalities (without prior consultation on the law or its probable consequences). In 2022, the Law on Local Self-Government was amended regarding the election in 13 number of municipalities to be held on the same day. The Constitutional Court repealed this law as contrary to the Constitution of Montenegro and to the Law on Election of Councillors and Members of Parliament.[6] Further amendments in the same year reduced the length of professional experience required to take up professional managerial positions in the local administration. The amendment is identical to those regarding the Law on Civil Servants and State Employees and contradicts the position of the Venice Commission on the matter. Although this law was adopted in the State Parliament, the President of Montenegro has not yet promulgated it, so it has not yet entered into force.

29. Since April 2022, the new government has launched two important strategic initiatives for reforming the public administration, with a declared focus on decentralisation and digitalisation. Both have a direct impact on local self-government: the Public Administration Reform Strategy 2022-2026 and the Strategy of Regional Development 2023-2027. The previous PAR Strategy covered the five years from 2016 to

6. By Decision U-I No. 13/22,14/22,16/22 of July 28, 2022, the Constitutional Court of Montenegro repealed the Law on Amendments to the Law on Local Self-Government "Official Gazette of Montenegro". B.50/20).

2020; the gap of two years is due to the political instability and the recent changes in the political institutions. The Public Administration Reform Strategy 2022-2026 focuses on the civil sector and free access to information rather than on municipalities, which is reflected in the Strategy's operational objectives and the number of activities dedicated to the development of municipalities and improving civil sector development. In the part relating to municipalities, the Strategy notes a lack of fiscal discipline and a high level of debt (EUR 78 mil at the end of 2020). Without analysing the reasons for this situation, the Strategy emphasizes the need for greater oversight of municipalities, especially regarding financial management, for digitalisation and for inter-municipal cooperation. The Strategy of Regional Development 2023-2027 envisages measures for equal development,[7] but it also lowers the level to be reached by defining "underdevelopment" with only 75% compared to the average in Montenegro does. It also does not seem to secure adequate financial resources for the municipalities that are beneficiaries of the Equalisation Fund. The Ministry of Public Administration initiated the reform process by carrying out an Analysis of the Functioning of Local Self-Government in order to thoroughly assess the situation for future reform of the local self-government system. The analysis includes an evaluation of the mono-type system of local self-government and of the collection of local public revenues. More in detail, clear indicators regarding the status of decentralization shall be provided as well as on the functional responsibility of local self-governments (competences), on fiscal autonomy, on the quality of human resources, on the coordination and cooperation at central and local levels and between them, as well as on inter-municipal cooperation. A large working group from all sectors of the Montenegrin society has been established in November 2022 (36 members from Ministries, Union of Municipalities, academics, NGOs, …) and has met three times. In April 2023, a questionnaire for collecting data has been sent to municipalities with the answers to be processed until October 2023; focus groups and research work shall add insights to the results. Thus, this important functional analysis is still underway.

2.2 Status of the capital city

30. There are two capital cities in Montenegro according to Article 5 of the Constitution: the capital of Montenegro, Podgorica, i.e. the administrative capital city, and the historical capital city: "Old Royal Capital" Cetinje. Their status is determined in more detail in the Law on the Administrative Capital (2005) and in the Law on the Royal Capital (2017). While formally, they have the same legal responsibilities as any other municipality, and procedures as well as internal structures are basically the same, both cities enjoy some special features regarding their status, e.g., with Podgorica having the exclusive right to create an urban municipality as a local administration of its own, part of the Capital City, exercising certain self-governing rights. Tuzi and Golubovci were the only two urban municipalities in Podgorica but have become independent municipalities in August 2022. Thus, it may be necessary to adapt the Law on the Capital City accordingly.

31. The Law on the Royal Capital (2017) confers special status to Cetinje, regulates the State's activities in the historical capital and directly includes financial aspects. It reserves financial resources directly in the State budget for the development of Cetinje allocating 1% to the city (i.e. on average EUR 12 million/p.a.). Of these, 0.6% are for financing capital investment, including jobs, tourism (ca. EUR 7-8 million) and 0.4% for the current operational costs of the municipality.

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

32. Montenegro signed the European Charter of Local Self-Government (ETS No. 122) on 24 June 2005 and ratified it on 12 September 2008.[8] The Charter entered into force with respect to Montenegro on
1 January 2009. Montenegro's commitment to observe the Charter was restricted to Articles 2; Article 3 paragraphs 1 and 2; Art. 4 paragraphs 1, 2, 4 and 6; Article 5; Article 6 paragraph 1; Article 7 paragraphs 1 and 3; Article 8 paragraph 1; Article 9 paragraphs 1, 2, 3, 4, 5, 6, 7, and 8; Article 10, paragraphs 1, 2 and 3; Article 11. By consequence, Montenegro is currently not bound by Article 4, paragraph 3 and 5, Article 6 paragraph 2; Article 7 paragraph 2; Article 8 paragraph 2 and 3. However, the previous monitoring visit has found that although not a legal requirement, the respective obligations appeared to be generally accepted in practice.

33. In addition to the described constitutional and legal framework, the principles of the Charter are also guaranteed by the Laws on Ratification of the Additional Protocol to the European Charter of Local

7. In Montenegrin language aAvailable at (https://www.gov.me/dokumenta/4b0f63fd-e49d-4f0c-9f09-99426dc8d51b).
8. O.G. "Službeni list CG – Međunarodni ugovori ", br. 5/08, i.e.. Official Gazette of Montenegro - International Treaties, no. 5/08 (2008).

Self-Government and the European Outline Convention on Transfrontier Cooperation of Territorial Communities and Authorities.

34. In Montenegro, international agreements are not only “an integral part of the internal legal order”, but “have supremacy over national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation” (Article 9 Constitution). Thus, the Charter and its principles need to be considered; this appears to be practice in decisions by the Constitutional Court (Monitoring report 2015, para 33).

2.4 Previous Congress reports and recommendations

35. Two monitoring visits have taken place in Montenegro, so far. The first visit took place from 22 to 24 March 2010, the report was adopted on 28 October 2010 (Report CPL(19)4) and resulted in the adoption of Recommendation 293 (2010). The second monitoring visit took place from 9 to 11 June 2015, the report was adopted on 21 October 2015 (Report CPL/2015(29)7) and resulted in the adoption of Recommendation 379 (2015).

36. The second monitoring report on the application of the European Charter of Local Self-Government (2015) notes the positive legislative steps taken in the framework of the ongoing public administration reform underlining the importance to put into practice the objectives set out in the reform papers. Matters of concern regard the inadequate human resources management, lack of sufficient and commensurate financial resources of municipalities as well as shortcomings of the consultation procedures and inter-municipal
co-operation.

37. More specifically, Recommendation 379 (2015) invited the Montenegrin authorities to:

a. further pursue the declared objectives of the public administration reform (AURUM) by completing the legislative projects related to local democracy in Montenegro and ensuring their effective implementation in practice;
b. re-assess and clearly define the scope of competences of municipalities, notably regarding education and healthcare (Article 4 paragraph 2);
c. endorse and effectively make use of the consultation mechanisms between the State and municipalities on all matters which concern them directly by setting up a regular consultation procedure (Article 4 paragraph 6, and Article 9 paragraph 6);
d. ensure the implementation in practice, in the framework of the adopted Strategy for Professional Development of Local Civil Servants and Employees in Montenegro for the period 2015-2018 of a sustainable system of development of human resources in local self-government units, which should be adapted to local needs (Article 6 paragraph 1);
e. allocate to local authorities financial resources which are commensurate with their powers and responsibilities (Article 9 paragraph 2);
f. create and put into practice a sustainable model of refinancing debts and liabilities of local government units towards financial institutions (Article 9 paragraph 3);
g. consider changes in the legal framework of inter-municipal co-operation with a view to clarifying the role of central government in the creation of institutionalised forms of co-operation between municipalities (Article 10 paragraph 1);
h. reconsider the ratification of those provisions of the Charter that have yet not been ratified and appear already de facto to be applied.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)

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

Article 2 – Constitutional and legal foundation for local self-government
The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

38. Article 2 of the Charter provides that the principle of local self-government should be enshrined in written law. Article 22 of the Constitution guarantees the right of local self-government and Chapter IV (articles 113 – 117) elaborates on the system of local self-government more in detail. The Constitution identifies municipalities as the basic form of local self-government. The Law on Local Self-Government (LSG Law) contains the details on structures, decision-making procedures and tasks of the municipalities. The right to local self-government is seen as equivalent to all other human rights and fundamental freedoms. According to the Montenegrin authorities, all the ratified paragraphs of the European Charter of Local Self-Government have been included in the Law on Local Self-Government and the Law on Financing of Local Self-Government.[9]

39. As an international treaty, the Charter enjoys supremacy over contrasting domestic law. This is guaranteed by article 9 of the Constitution according to which international agreements are not only “an integral part of the internal legal order”, but “have the supremacy over the national legislation and shall be directly applicable when they regulate the relations differently from the internal legislation”. Judges at the Constitutional Court confirmed that this is a principle respected in their judgments.

40. Thus, the principle of local self-government is recognized in the Constitution and in specific legislation which repeats and specify this status. Montenegro therefore complies with article 2 of the Charter.

3.2 Article 3 – Concept of local self-government

Article 3 – Concept of local self-government
1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

41. Article 3. of the Charter lays down the essential characteristics of local self-government.

3.2.1 Article 3.1

42. The notion of "ability" means that the legal right to regulate and manage certain public affairs must be accompanied by the means of doing so effectively. While this right and ability may be defined more closely by legislation, local authorities should not be limited to merely acting as agents of higher authorities (this is the meaning of “under their own responsibility”). The intention of the Charter is that local authorities should have a broad range of responsibilities which are capable of being carried out at local level.

43. The Constitution defines the form of local self-government, guarantees the status of the municipality as a legal entity, defines which acts local self-government and municipal bodies can adopt, defines the property- related powers of municipalities and their financing, as well as the autonomy of municipalities in the performance of their duties. Articles 1 and 3 of the Law on Local Self-Government

9. Source: Government of Montenegro, Ministry of Interior, Analysis ‘Functioning of Local Self-Government in Montenegro’, Podgorica, June 21, 2012. N.B. In the meantime, some provisions have changed through amendments of the two laws.

explain this in more detail, and 28 LSG Law summarises that “the municipality shall perform affairs of the local self-government that are of direct and common interest to the local population”.

44. However, interlocutors explained that reality often looks different due to legislative changes in the last years: They illustrated this with examples regarding schools (new building in Ulcinj necessary due to one third increase in pupils, but new construction difficult and delayed due to necessary ministerial approval) and local police (limited inspection powers).

45. A serious limit of the municipality’s autonomy in shaping the future development of the local community is the Law on Spatial Planning in 2017. It led to a centralization of the planning process and of the inspections, taking these important instruments from municipalities. No general planning documents are adopted at State level, which means that currently the planning documents in the country are more than 10 years old and that the local planning process is blocked which creates huge obstacles for investors. During the visit, the rapporteurs also heard that, apart from the serious limitation of municipal autonomy, the State does not have sufficient capacity to cope with the new tasks. For instance, in the Northern Regions, with the National Parks, there are only 3 inspectorates (for a territory covering half the country). Also, people who decide at central level do not know or visit the sites which leads to discrepancies between plans and reality. Local inspection can be carried out only regarding temporary constructions or usurpation of State property; in case a municipality files a report to national inspection services, rarely anything happens (soon), according to interlocutors. Thus, illegal construction has become a big problem.

46. The capacity for any strategic development is put into question by the serious lack of resources for many municipalities, in particular those in the North. Often, the Strategic Development Plans, the municipalities are still obliged to adopt (despite not having the planning competences anymore) remain on paper rather than being implemented. The rapporteurs were told an instructive example which illustrates the consequences of the loss of planning responsibilities: the project for constructing a swimming pool in Bar. The municipality owns a plot of land on which it planned to build a closed swimming pool plus a parking lot for 400 cars. However, compliance with central planning rules forces the municipality to design a much smaller pool, despite an existing huge parking lot for 1.000 cars just across the street (for a sports centre). In fact, the municipality intended to concentrate all major sport facilities in one area and requested an amendment of the general plan in order to build the bigger pool. Despite the positive economic development which makes the construction financially possible, the decision does not depend on the municipality, but on a person in the Ministry who has never visited the site in Bar.

47. Since 2000, a coastal company (“Morsko Dobro” or ‘sea assets’) manages the most valuable resource of the coastal municipalities, i.e. the beach. The boundary is different in each municipality and determines planning and taxation (different and usual considerably higher tariffs for the State/company compared to the municipality). In Ulcinj, this is 16% of the whole territory and only 50% of the coastal area is managed by the municipality. But while in 2015 half of the revenue of the coastal company had been devolved back to the municipality, in 2017, everything has been centralized in the whole country: the company and the Ministry manage alone, with the company renting out to privates. In 2018, the boundary the boundary between the maritime zone (i.e. the beach) managed by the coastal company and the municipalities has been consolidated in a Special Purpose Plan. The result is that important projects for the development of the municipality, such as a walking path or the building of a new Marina of Ulcinj are totally managed by the company and practically out of reach of the municipality. Apparently, there is a rule that allows changes only for whole parts of the plans, but not for single parts of projects, which reduces flexibility in adaptation. In any case, always the consent of both, company and Ministry, is required, which is why investors usually directly approach the Chief State Architect (in the Ministry of Ecology and Urbanism) with their concerns, without contacting municipal authorities at all. A controversial example for this practice is a natural reserve area on an island in front of Budva which according to the Chief State Architect is to be transformed into a luxury resort. This decision has raised a wave of public protests.

48. While the legislation clearly guarantees the right, the ability to make use of it, appears increasingly limited. By contrast with the finding in the report of 2015, the rapporteurs conclude that the current tendencies in Montenegro’s system of local self-government raise doubts on whether the local authorities still manage a substantial share of public affairs under their own responsibility and in the interests of the local population. Therefore, Montenegro only partially complies with the first paragraph

of article 3 of the Charter. The rapporteurs are of the opinion that priority should be given to reconsidering the allocation of the planning competences.

3.2.2 Article 3.2

49. The rights of self-government must be exercised by democratically constituted authorities which normally entails a representative assembly with or without executive bodies subordinate thereto. However, instruments of direct democracy may also be used where this is provided for by statute.

50. The main institution in municipalities is the directly elected municipal assembly. Local elections based on free, general, equal, and direct suffrage, in accordance with the law governing the election of councillors and deputies. Each municipal assembly is composed of 30 councillors, plus an additional councillor for every 5.000 voters (Article 44 LSG Law). The mandate of the municipal assembly and councillors lasts four years.

51. The assembly adopts the municipal statute, decisions, resolutions, conclusions, charters, recommendations, and other acts. The municipal statute is the basic act that governs the organization, work, and way of exercising local self-government. The municipal assembly decides in public sessions. Sessions are valid when the majority of all councillors are present; decisions are taken by majority of those present.

52. While the municipal assembly is directly elected, mayors are elected by the assembly (article 56 LSG Law 2017); until 2009, they were directly elected by citizens. Deputy mayors are responsible to mayors, with no direct accountability to the assembly and, consequently, also appointed by the mayors alone.

53. Montenegro has ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority. The Law on Local Self-Government provides for the direct participation of citizens in decisions at local level (articles 157 - 168 LSG Law). The municipal assembly shall regulate the procedures for participation by a special decision (article 166). Public debate is one of the means. Before the adoption of plans and programmes for certain areas, urban projects, budgets, and general acts that determine the rights and obligations of citizens, the municipality shall ensure the participation of the interested public in decision-making by conducting a public debate procedure (article 167). Other methods of direct citizen participation include the initiative, the citizens' initiative (signatures corresponding to 3% of voters necessary), the assembly of citizens, the referendum (at the levels of local communities and of the local authority), as well as other methods of expressing views and decision-making provided for in the municipal statute. Each municipality has a regulation regarding the procedures for the participation of the local population in the performance of public functions. It regulates the information of the local population about the nature, content, and objective of a public function to be performed, as well as the methods by which the local population can express its needs and interests, usually by electronic means, through local communities, in writing to the competent authority and similar. Some municipalities also conduct prior surveys before starting to draft a new local regulation and publish the survey results on their websites. In addition, they use the media and websites for the information of citizens and for submitting their comments and feedback. The report on the public debate becomes an integral part of the documents to be considered by the councillors.

54. Although most instruments of direct participation are not much used in practice, according to interlocutors, there are some very positive examples, such as the monthly "Open Parliament" initiative and the question time for youth and citizens in the municipality of Bar, which might become an inspiring model also for other municipalities.

55. In order to improve the work of local self-government, a Council for the Development and Protection of Local Self-Government can be established in the municipality as a consultative body. Its members are elected by the municipal assembly from among prominent and respected citizens of the municipality and experts in areas of importance for local self-government. The Council has the right to submit proposals for the improvement and development of local self-government to state bodies, local self-government bodies and public services, with the objectives of raising the level of quality of public services, of protecting the rights and duties of the municipality as well as the freedoms and rights of the local population. Municipal bodies and services must respond to its proposals. Details are to be regulated in the municipality statute and the act on the establishment of the Council.

56. Foreigners can exercise individual rights in local self-government under certain conditions and in a manner prescribed by law (Art. 6 ESG Law).

57. The participation or representation of members of minorities in the political and public life of Montenegro is based on article 79 of the Constitution (points 9 and 10), which guarantees the right to authentic representation of members of minorities in the Parliament and the assemblies of those municipalities in which they constitute a significant part of the population. According to the Law on Local Self-Government, the municipality has to provide the conditions for the protection and promotion of minority rights and gender equality, in accordance with the Constitution, the law and confirmed international agreements (article 11). In municipalities where members of minority communities are the majority of the population, there is an obligation to use their language in the participation process regarding the performance of public functions.

58. The participation of minorities at local level can be significantly improved by supporting the capacity of non-governmental organisations working on minority rights and the status of women, in cooperation with local government.

59. In 2022, the election procedure in local self-government units was amended in the Law on Local Self-Government. However, the Constitutional Court repealed this law as contrary to the Constitution of Montenegro and to the Law on Election of Councillors and Members of Parliament in its 2022 decision and the corrigendum to this decision (OG MNE 84/22 and 85/22).

60. During the visit, the rapporteurs heard worrying reports of the incidents regarding the repeated obstruction of sessions of the municipal assembly in Andrijevica and the blockade of polling stations during local and presidential elections in Šavnik (both municipalities situated in the North). Protection of citizens who intend to exercise their right to vote is key in a democracy. The rapporteurs emphasize that enforcement by all authorities is necessary in case of illegal disturbance of any part of the institutional activity or the electoral process.

61. However, the rapporteurs conclude on a globally functioning system of local democracy based upon democratically elected and legitimated institutions as well as on direct participation opportunities and therefore, Montenegro complies with the second paragraph of article 3 of the Charter.

3.3 Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

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

62. Article 4 lays down the general principles on which the responsibilities of local authorities and the nature of their powers should be based.

3.3.1 Article 4.1

63. For reasons of both, clarity and legal certainty, basic responsibilities should be sufficiently rooted in legislation and not be assigned to local authorities on an ad hoc basis.

64. Based on the constitutional provisions which outline the essence of local self-government, the principal competences of municipalities in Montenegro are stipulated in "Chapter III. Affairs of Local

Self-Government" of the LSG Law, with the determination of the own affairs of local self-government by enumeration (Articles 24-30). Autonomy in performance of their functions is guaranteed by article 9 LSG Law. Additional responsibilities may be delegated from the state to the municipalities by law (Article 31 LSG Law), which also defines the conditions and terms. Tasks in the fields of education, primary health care, social and child protection, employment, and other areas of interest for the local population are delegated to municipalities by Article 32 LSG Law and are to be performed in accordance with a special law. The law stipulates that the transfer of state affairs to municipalities must occur through either a law or a government decree.

65. However, during the consultation procedure the rapporteurs were told that certain responsibilities related to social care and protection have been transferred to municipalities merely based on national strategies and without the funds required for their execution. It appears that at least two strategies oblige municipalities to adopt local action plans,[10] i.e. the responsibility for planning, implementing and financing of State responsibilities, although special laws do not prescribe such an obligation (neither the Law on Social and Child Protection nor the Law on the Prohibition of Discrimination against Persons with Disabilities). While the rapporteurs understand the need of involving municipalities in social care and child protection as well as the advantages of flexible reaction, they highlight the important responsibilities, such as the elaboration and implementation of action plans in these fields, need a thorough legal as well as financial basis. The Union of Municipalities additionally highlighted that mayors are obliged to implement national strategic documents and their non-implementation may lead to their dismissal by the government. While this duty applies within the existing competence framework, the assignment of new responsibilities by a strategy (and not by law, government decree or regulation) does not meet the requirement of a clear and sufficient legal base for transfers of competencies or responsibilities. The rapporteurs are therefore of the opinion that such practice of *ad hoc* assignment of new competences runs contrary to the requirements of the Charter and should be avoided.

66. In view of the above but given the fully developed legal framework on the responsibilities of local authorities the rapporteurs conclude that Montenegro partially complies with the first paragraph of article 4 of the Charter.

3.3.2 Article 4.2

67. In addition to the responsibilities assigned by legislation, other needs or possibilities for action by public bodies may present themselves. Where these have local implications and are not excluded from the general competence, local authorities as political entities acting in their own right to promote the general welfare of their inhabitants shall also have the right to exercise their initiative in these matters. The general rules under which they may act in such cases may, however, be laid down by law.

68. In the performance of local self-government tasks, the municipality is autonomous, and its rights cannot be denied or limited by acts of state bodies, except in cases and under conditions established by law, in accordance with the Constitution (Article 9 LSG Law). Municipalities have the right to "perform other tasks in accordance with the needs and interests of the local population" (Articles 25 and 28 paragraph 11 LSG Law). While municipalities thus have the legal right to engage in other affairs, in practice it appears that their capacity to effectively do so is rather limited. The financial situation of most municipalities as well as the recent process of re-centralization limit their effective right to initiative in other issues. Also, for most activities, ministerial approvals or consents are necessary limiting local decisions and responsibility considerably.

69. While the right is guaranteed, the ability of municipalities to make use of it, appears increasingly limited. Therefore, Montenegro partially complies with the second paragraph of article 4 of the Charter.

3.3.3 Article 4.3

70. Paragraph 3 articulates the general principle, known as subsidiarity principle, that the exercise of public responsibilities should be decentralised. This implies that, unless the size or nature of a task is such that it requires to be treated within a larger territorial area or there are overriding considerations of efficiency or economy, it should generally be entrusted to the level of government closest to the citizens. Montenegro is not bound by this paragraph.

10. The "Strategy for the development of the social and child protection system for the period from 2018 to 2022" (Action plan for 2018: Task 3.1.2.), and the "Strategy for the Protection of Persons with Disabilities from Discrimination and Promotion of Equality 2022-2027" (Action Plan 2022-2023: Operational Goal 12).

71. The principle of subsidiarity is indirectly guaranteed, as the performance of certain tasks within the competence of state administration bodies can be transferred to the municipality by law when their more efficient and economical performance is ensured in this way (Article 31 LSG Law).

72. In the report of 2015, de facto compliance was stated regarding paragraph 3. However, the rapporteurs consider that today, subsidiarity can hardly be recognized as a guiding principle anymore. Too frequent and strong are the interferences by the central government, the transfer of functions to the state level, e.g. spatial planning, which together create the impression of a re-centralisation process under way, probably due to the political instability in the last years. This impression has been confirmed by various interlocutors during the visit.

73. The rapporteurs invite the Montenegrin authorities to reconsider their approach in the general debate with a view to strengthen local self-government, as the level of meaningful democratic participation closest to citizens and as an efficient basis of public administration.

3.3.4 Article 4.4

74. In the interest of clarity and for the sake of avoiding progressive dilution of responsibility, local authorities' powers should normally be full and exclusive. However, complementary action by different levels of authority is required in certain fields and it is important that in these cases of overlapping responsibilities the intervention by central or regional authorities takes place in accordance with clear legislative provisions.

75. Articles 27 and 28 LSG Law contain two lists of own competences for which the law assumes that they are generally full and exclusive (article 9 LSG Law). Municipalities have an unrestricted right to take initiatives within the scope of their competences and to implement them (Article 25 LSG and Article 28 paragraph 11 Law).

76. According to the Union of Municipalities and other interlocutors, this is true also in practice for some areas of responsibilities, but for others it is not. In many cases municipalities need approvals of ministries, as prescribed by law, which result in restrictions of the free exercise of their competences. An example is the prescription of number of local police officers depending on the number of inhabitants together with requirement to have any increase approved (Article 33 Law on Local Police). This affects the municipal task of guaranteeing local security restricting the coastal municipalities' autonomy to cope autonomously with the necessary increase of local police officers during the tourist season. Such approvals do not seem to add much in terms of quality; as a kind of preventive legality control, they rather appear as de-facto centralisation.

77. In fact, the lack of a clear demarcation of powers blurs responsibility and leads to a power shift to the benefit of higher-level authorities, especially central government.[11] There are cases, in which the delimitation of single competences is not clear which sometimes leaves citizens without protection. On more than one occasion, this issue was illustrated to rapporteurs with the problem of noise in the night. The rapporteurs were surprised to learn that loud music from students' dormitories can become an unresolvable problem for citizens. And this is because local police cannot intervene against the noise, as rapporteurs were told repeatedly, due to the understanding that dormitories are covered by the "autonomy of the university" (i.e. national powers).

78. In light of the above, particularly the frequent need for approvals by central authorities, the rapporteurs conclude that Montenegro partially complies with the fourth paragraph of Article 4 of the Charter.

3.3.5 Article 4.5

79. The administrative structures of local authorities and their familiarity with local conditions may make them appropriate bodies to implement certain functions, the ultimate responsibility for which falls on supra-local authorities. It is important, however, in order that recourse to such delegation does not excessively impinge on the sphere of independent authority of the local level, that the latter should,

11. see Contemporary Commentary to the Charter, CG/MON16(2020)09prov, para. 70.

when possible, be allowed to take account of local circumstances in exercising delegated powers. Montenegro is not bound by this paragraph.

80. Competences may be either delegated by statute, or based on Government regulations when this ensures their more efficient and economic performance is ensured. The conditions under which tasks are transferred or entrusted to the municipality are regulated by law, i.e. by Government regulation (Article 31 LSG Law). In both cases, municipalities have little room for adaptation to local conditions, as the details and conditions under which they are carried out are regulated by law or the regulation, over which the local authorities have no influence.

81. In the areas of education, primary health care, social and childcare, employment and other areas of interest to the local population, transferred tasks are carried out by municipalities in accordance with a special law (Article 32 LSG Law). However, the provision of this article is undefined, because it is not known if, when and to which municipality certain tasks will be transferred or delegated.

82. Rapporteurs were told repeatedly and by various interlocutors that when central competences are devolved or delegated to local self-governments, they are not regularly provided with the necessary financial resources for their implementation. This creates additional and serious obstacles in practice for any adaptation. The same issue seems to affect national strategies, even where the obligation to accompany the delegation of competences with the necessary funds to carry them out is explicitly stated, e.g. in the introduction to the Public Administration Reform Strategy 2022-2026. Another example for the delegation of tasks to municipalities without transferring funds for their implementation is the implementation of the national policy regarding social protection. While “article 9.2 introduces the commensurability principle in order to protect the receiving local authorities from the financial burden of tasks delegated to them (see below), Article 4.5, for its part, aims at protecting local authorities as decision-makers and provides them with a power of discretion in an effort to prevent them from becoming mere “executive” agents of higher-level authorities” (see Contemporary Commentary to the Charter, para. 74).

83. The rapporteurs take note that the trend towards decentralisation observed in the report of 2015 (paragraph 49), has been reversed in the meantime, strongly reducing the municipalities’ room for manoeuvre, contrary to the requirement of Article 4.5 of the Charter. They express their hope that the functional analysis carried out by the Ministry of Public Administration may prepare the ground for a return to previous decentralisation efforts.

3.3.6 Article 4.6

84. Paragraph 6 is concerned with the consultation on all matters which affect local authorities particularly. The manner and timing of consultation should be such that the local authorities have a real possibility to exercise influence, whilst conceding that exceptional circumstances may override the consultation requirement particularly in cases of urgency. Such consultation should take place directly with the authority or authorities concerned or indirectly through their associations where several authorities are concerned.

85. In Montenegro, consultation on local matters is legally and generally guaranteed (article 13 LSG Law). However, there are issue of implementation in practice. Until 2015, the central authorities respected the right of local authorities at least formally by submitting drafts and proposals for legislation or strategies, asking for opinion, prior to public debate, within the deadline set by the law (15 days for consideration, counting from submission to the municipality, Article 181 LSG Law (2017; Article 122a (2009)). Representatives of municipalities also participated in working groups in charge of drafting these legal acts. However, according to many interlocutors, in recent years, consultation does in most cases do not take place even formally. The rapporteurs were informed that the municipalities and the Union of Municipalities learned about new legal acts from the media, during public debates or on the Government’s website. Initiatives and opinions of the municipalities or the Union of Municipalities are not binding, but the rapporteurs were told that most proposals and suggestions were rejected without clear, logical, and legal justification. This is in contrast with the requirement of consultation, which is not only to create greater acceptance but also to improve the quality of the proposals by involving those who will be concerned in their implementation. According to the Union of Municipalities, the situation had worsened since the last report. It appears that since 2020, some ministries have ignored its proposals for participation in the working groups (primarily the Ministry of Finance under the previous government; since with the new Minister of Finance, the situation has reportedly improved). Other

ministries still ensure at least formal participation. Overall, according to the Union of Municipalities, the number of draft laws and strategies submitted to the Union of Municipalities for consideration is negligible and its views are not taken into account.

86. It appears to the rapporteurs that the Public Administration Reform Strategy 2022-2026 provides for participation of the municipalities or the Union of Municipalities only regarding the preparation of a limited number of laws, e.g. Law on Local Self-Government, Law on Public Institutions, and the Law on Wages of Employees in the Public Sector. For other laws included in the strategy, which are important for the public administration, consultation is not foreseen, although they will have an impact on local interests, e.g. Law on the Government, Law on Civil Servants and State Employees, Law on Inspection Supervision, Law on Public Internal Financial Control, Law on Personal Income Tax – to increase tax rate for temporary service contracts, Labour Law, Law on Administrative Disputes. The Union of Municipalities is preparing an initiative with the request to amend the Law on the Government, in which local self-government is not mentioned, with a view of establishing cooperation in the creation of common public policies and the implementation of the rights guaranteed in the European Charter of Local Self-Government. However, rapporteurs were told that all initiatives presented by the Union of Municipalities in 2023 have either been rejected or ignored.

87. By contrast with the report from 2015, the "partnership spirit" in the relations between municipalities and central government (Article 14 Law on LSG), seems to exist mostly on paper, although consultation would much improve things in practice. Examples discussed with interlocutors in municipalities include the National Parks and the coastal company, both in State property. While the visitor centre of the National Park of Skadar Lake collects entrance fees, the neighbouring Virpazar has neither any financial advantage nor competences, but must bear the (additional) burden of crowded roads, more garbage etc. Therefore, cooperation and coordination with neighbouring or concerned municipalities are needed around the National Park or for the immediate surroundings of the coastal zone administered by the coastal company.

88. In its previous recommendation 379/2015, the Congress observed that the Montenegrin authorities need to strengthen the participatory rights of local authorities. Effective consultation in a timely manner is key, without exceptions that are not based on objective reasons (e.g. emergency). Considering the shortcomings in practice, the rapporteurs conclude, that Montenegro partially complies with the sixth paragraph of Article 4 of the Charter.

3.4 Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries
Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

89. Proposals for changes to its boundaries (…) are obviously of fundamental importance to a local authority and the citizens whom it serves. Prior consultation, either directly or indirectly, is essential. Referendums will possibly provide an appropriate procedure for such consultations, but also other forms may be appropriate for satisfying article 5 of the Charter.

90. In the previous reporting period, Petnijca (2013) and Gusinje (2014) had been created as new municipalities and compliance with article 5 had been stated. Since 2015, the number has been further raised to 25 municipalities by amending the Law on Territorial Organization of Montenegro in 2018, and the Law on the Capital City in August 2022, the Municipalities Tuzi and Zeta have been created as independent municipalities; previously they had been local communities within the Capital City.

91. However, in both cases, Tuzi and Zeta, there has neither been a feasibility study, nor has there been any consultation with the local population, despite the procedures prescribed by the Law on Territorial Organization (article 29). In the case of Zeta, the change took place during an election process which raises additional concerns. Various interlocutors told the rapporteurs that even the demarcation of the boundaries is not yet resolved creating practical problems (for instance, deciding on who has the competence regarding roads and waste disposal) and making the exact calculation of financial resources impossible. A complaint to the Constitutional Court is pending.

92. Therefore, the rapporteurs conclude that Montenegro does not comply with Article 5.

3.5 Article 6 – Appropriate administrative structures and resources

Article 6 – Appropriate administrative structures and resources

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

3.5.1 Article 6.1

93. Paragraph 1 deals with the way in which local administrative services are organised. Whilst central or regional laws may lay down certain general principles for this organisation, local authorities must be able to order their own administrative structures to take account of local circumstances and administrative efficiency. Limited specific requirements in central or regional laws concerning are acceptable but these should not be so widespread as to impose a rigid organisational structure.

94. As municipalities are legal entities (art. 19 LSG Law), they also have the right to establish their own local administrative bodies (Article 69 LSG Law). Article 70 stipulates that the Mayor gives his consent to the act on the internal organization and systematization of the bodies and services of the municipality. Thus, the right to determine their own internal administrative structures is granted to local authorities in law and in principle.

95. However, this freedom is limited, as the Law on Local Self-Government (2017), by contrast with the previous law, directly regulates a considerable number of organisational units to be formed (chief administrator, chief city architect, municipal police, protection and rescue services). On one hand, this limits autonomy and risks to make the functioning of municipalities more complicated. On the other, it excludes the freedom of establishment of other professional services and has also led to the dissolution of specialised units that previously dealt with European integration, fundraising etc., with negative consequences for the results in these important fields. In addition, based on this law, central government also interferes directly in the management of services. It appears that the reason for the intervention by the legislator was the need to optimise the entire public administration. However, the rapporteurs understand that the obligation of having a City Architect does not make much sense, as building permits and other planning tasks are directly managed by the State, since the 2017 reform of the Law on Spatial Planning. The rapporteurs also heard that Municipal Strategic Development Plans, which are required as condition for receiving grants, are emptied of substance, as they need to foresee investments in schools, roads, etc. but do not include spatial planning anymore.

96. Considering the above limits through direct prescription, but also the general liberty stated in the LSG Law, the rapporteurs conclude that Montenegro partially complies with the provisions of article 6 paragraph 1.

3.5.2 Article 6.2

97. It is essential to the efficiency and effectiveness of a local authority that it can recruit and maintain a staff whose quality corresponds to the authority's responsibilities. This clearly depends in large degree on the local authority's ability to offer sufficiently favourable conditions of service. Montenegro is not bound by this paragraph.

98. The criteria for appointments and tasks of deputy mayor, secretary of the municipal assembly, chief city architect and chief administrator are regulated in the LSG Law. The mayor decides on the appointments of the deputy mayor, chief city architect, and chief administrator, while the secretary of the municipal assembly is directly elected by the assembly. In addition, the assembly needs to confirm the decision of appointment of the deputy mayor(s). The recruitment of the heads of the local administration services is done through public selection procedure (Article 81 LSG Law); selection and appointment procedures for the executive staff of the municipality are regulated in Law on Civil Servants and Public Employees. Thus, the municipality is responsible for the recruitment of its professional staff.

99. To avoid financial burdens, in recent years the number of local civil servants and employees has been reduced as part of the agreement on the reprogramming of debts (mentioned in the 2015 report).

In addition, ministerial consent is now necessary for hiring of staff in case of budgetary difficulties. Recruitment needs to respect the financial possibilities and functional necessities of the municipality according to a mandatory staff plan (Article 144 LSG Law: assessment whether staff is actually needed). The State Auditor confirmed that according to his assessments municipalities generally still employ too much staff. Considering the tasks to be carried out as well as the budgetary impact of staff costs, a strategy for the development of staff is necessary. However, the Strategy of Professional Development of Local Civil Servants 2015-2018 has not yet materialized. In the Public Administration Reform 2022-2026 increased attention needs to be dedicated to the implementation of staff strategy.

100. Considering the above, the rapporteurs conclude that Montenegro de facto already complies with the provisions of this paragraph and therefore might consider ratifying this provision of the Charter.

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

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

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

3.6.1 Article 7.1

101. Article 7 of the Charter aims at ensuring that elected representatives may not be prevented by the action of a third party from carrying out their functions.

102. The law determines the main conditions of office for local elected representatives and guarantees the free exercise of their functions. A councillor cannot be held responsible for the opinion expressed, the way of voting or speeches in the performance of his/her function (Article 42 LSG Law). The law also provides a list for all situations in which a councillor's mandate may end before the term: after submission of a resignation; after being sentenced to an unconditional prison sentence of at least six months or to a prison sentence for a criminal offense that makes him/her unfit to perform the function of a councillor; after being deprived of legal capacity by a legally binding decision; in cases of incompatibility of the position of councillor with another function as established by the Constitution and legislation; termination of Montenegrin citizenship.

103. Generally, it appears that elected local representatives exercise their functions freely. The rapporteurs heard no complaints or reports about undue pressure or threats. However, some interlocutors pointed to pressure in matters of political importance, when the political parties expect party discipline in first place and insist on it, independently from the benefits or consequences for citizens in the municipality.

104. The rapporteurs conclude that Montenegro complies with article 7 paragraph 1 of the Charter.

3.6.2 Article 7.2

105. Paragraph 2 aims at ensuring that some categories of persons may not be prevented by purely material considerations from standing for office. The material considerations include appropriate financial compensation for expenses flowing from the exercise of functions and, as appropriate, compensation for loss of earnings and, particularly in the case of councillors elected to full-time executive responsibilities, remuneration and corresponding social welfare protection. Montenegro is not bound by this paragraph.

106. For the performance of their function, councillors are entitled to a fee, the amount of which is determined by a special act of the assembly. Rapporteurs have been told that the fee is about EUR 150-200 per month, depending on the number of inhabitants of the municipality. The minimum is one session every three months, but in practice there is at least one session per month, plus the work in committees.

107. The mayor, the deputy mayor, as well as the president of the municipal assembly (as elected representatives) and the chief administrator are local officials (Article 89 LSG Law). The differentiation in salaries according to the number of citizens also applies to them. Employees in local administration bodies have the status of civil servants or professional employees, and the legislation regulating the status of state officials, civil servants, and employees is generally also applied to the local level. Salaries are defined in law for the whole public sector and by collective contracts with trade unions for specific sectors; a top-up is possible for municipalities. For the Union of Municipalities local officials, especially those entrusted with executive duties, do not receive adequate remuneration.

108. Apart from the last issue, the rapporteurs observe that there is already de facto compliance with paragraph 2. Therefore, Montenegro could ratify this provision.

3.6.3 Article 7.3

109. Paragraph 3 provides that disqualification from the holding of local elective office should only be based on objective legal criteria and not on ad hoc decisions. Normally this means that cases of incompatibility will be laid down by statute.

110. There is a specific conflict of interest-clause in article 90 LSG Law (together with Article 9 of the Law on Prevention of Corruption).[12] This clause seems to prohibit dual mandates for elected representatives as it declares incompatibility of local officials and mandate as councillor. However, according to different interpretations, mayors could be elected to Parliament without this being a conflict of interest. On the contrary, it is argued that a dual mandate may contribute to better visibility of local self-government in public policies and to more efficient protection of its interests. The rapporteurs have been told that for the Agency for the Prevention of Corruption, in an opinion for the Mayors of Bar and Kolašin, a double mandate is not to be considered a conflict of interest. An initiative has been submitted to the Constitutional Court regarding this question. A public and political debate on this issue is certainly desirable, given the current weaknesses in consultation of local government and the small dimensions of the country in which decisions at central level usually have a strong impact on local government.

111. As no other complaints or problems were reported, the rapporteurs conclude that Montenegro complies with article 7 paragraph 3 of the Charter.

3.7 Article 8 – Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities 'activities

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

112. Article 8 deals with supervision of local authorities' activities by other levels of government.

3.7.1 Article 8.1

113. Paragraph 1 provides that there should be an adequate legislative basis for supervision and thus rules out ad hoc supervisory procedures.

114. *Administrative supervision*: Supervision is related to legality of work in the performance of local self-government tasks (Article 177 LSG Law) and carried out by the Ministry, through the administrative inspection (Article 199 LSG Law). Procedures for supervision are foreseen in the Law on Local Self-

12. According to Article 9 of the Law on the Prevention of Corruption ("Official Gazette of Montenegro", No. 53/14), a public official can only engage in scientific, teaching, cultural, artistic and sports activities and earn income from copyrights, patents and similar rights, intellectual and industrial property, unless otherwise prescribed by law.

Government and regard the contestation of illegitimate acts as well as the inertia of the local assembly (Articles 183-185 LSG Law).

115. If the competent state administration authority considers that a general legal act adopted by the municipal assembly or by the mayor is in contrast with the law or the Constitution, it shall send a warning to the assembly or the mayor asking to take appropriate measures for harmonising the legal act within a specified period. Where the assembly or the mayor fail to comply within the deadline, the state administration authority shall inform the Ministry. If the Government considers that the contested general act violates or restricts the freedoms and rights of citizens provided for in the Constitution or the law, it shall, upon the proposal of the Ministry, suspend this legal act from execution and initiate proceedings for assessment of constitutionality and legality before the Constitutional Court of Montenegro, no later than 30 days from the day of issuing the decision on suspension. If the Government fails to initiate the proceedings for assessment of constitutionality and legality before the Constitutional Court within this period, the assembly's or mayor's general act shall be implemented.

116. In case of inertia of the municipal assembly for longer than six months, i.e. failure to hold its sessions, to enforce decisions of the competent courts or to execute its legal duties, thus preventing citizens from exercising their rights or causing an important material damage, the Government shall issue a warning to the assembly regarding the regular execution of its legal duties within a certain deadline (article 185 LSG Law). If the assembly fails to ensure the performance of its functions within the deadline, the Government shall, at the proposal of the Ministry, dissolve the Assembly. In case of the assembly's dissolution, a Board of Commissioners, appointed by the Government, shall perform its functions, until a new Assembly is constituted. In March 2022, the government made such a decision on the dissolution of the Budva municipal assembly.[13]

117. *Financial supervision*: According to the Law on Self-Government Financing, the municipal assembly shall, exercise oversight over the execution of the budget and the designated use of funds allocated in the budget (article 56), while the mayor supervises the concrete financial, material and accounting operations of the budget users.

118. The Law on Local Self-Government, the Law on Financing of Local Self-Government and the Law on Budget and Fiscal Responsibility prescribe procedures for supervision and control over the process of budget preparation and execution and the assets of municipalities. The Ministry of Finance, the State Audit Institution, the competent inspection bodies, and internal audit have significant supervisory powers over local authorities and services. The state audit institution performs the financial audit of the annual final statement of the local municipalities as well as a compliance audit. The supervision of the regular implementation of the Law on Local Self-Government Financing and the regulations adopted in this regard are carried out by the budget inspector in the form of inspections; within 15 days, the inspector prepares a report for the mayor and the Ministry of Finance (article 59). Regular reporting is sent to the government, the Ministry of Finance, the Parliament and to the municipal assembly. If established financial statements are not true, the report is also sent to the State Prosecution Service which may start criminal proceedings.

119. The main general findings in the auditing reports regard a mismatch between revenues and spending, an over-estimation of revenues as well as a surplus of employees in the municipalities. In particular, the collection of own revenues does not appear satisfactory and can be improved, thus easing the pressure for compensation under the equalisation funds. A thematic audit has been carried out in 10 municipalities on the collection of revenues. Regarding property taxes, nearly 23% of decisions had not been delivered, as a reliable registry of taxpayers does not exist everywhere. The results of enforced collection of tax obligations are weak and there were cases of claims written off due to expiration (which is bad for both, the taxpayer's morale and the Rule of Law). The rapporteurs express their hope that the identified weaknesses in the revenue collection of municipalities will lead to measures for improving their financial situation.

120. The rapporteurs conclude that Montenegro complies with article 8 paragraph 1 of the Charter.

13. The Government of Montenegro, at its session of March 29, 2021, passed a Decision on Warning the Assembly of the Municipality of Budva, which was published in the "Official Gazette of Montenegro", no. 3/2022 of March 26, 22.

3.7.2 Article 8.2

121. Administrative supervision should normally be confined to the question of the legality of local authority action and not its expediency. One particular but not the sole exception is made in the case of delegated tasks, where the authority delegating its powers may wish to exercise some supervision over the way in which the task is carried out. This should not, however, result in preventing the local authority from exercising a certain discretion as provided for in Article 4, paragraph 5 ECLSG. Montenegro is not bound by this paragraph.

122. In Montenegro, there are three types of administrative supervision according to the Law on State Administration: (a) supervision over the legality and effectiveness of the work of administrative bodies, local self-government, and other legal entities in the performance of delegated or entrusted tasks, (b) supervision over the legality of administrative acts, and (3) inspection supervision. The authorities that carry out the supervision adopt administrative and other individual acts (orders, instructions, decisions, conclusions, recommendations, minutes, opinions, etc.).

123. The rapporteurs note that there is a detailed and functioning supervision system focused on legality and financial efficiency. Thus, Montenegro already de facto complies with paragraph 2. Therefore, Montenegro should consider ratifying this provision.

3.7.3 Article 8.3

124. The text of paragraph 3 draws its inspiration from the principle of "proportionality", whereby the controlling authority, in exercising its prerogatives, is obliged to use the method which affects local autonomy the least whilst at the same time achieving the desired result. Montenegro is not bound by this paragraph.

125. Prior monitoring of the situation as well as a staged procedure are generally foreseen before recurring to coercive measures. The harshest coercive measure foreseen is the dissolution of the municipal assembly and the exercise of its tasks by a board. As the supervisory authority, the Ministry has the obligation to dissolve a municipal assembly after more than six months inertia and through a pre-established procedure which includes monitoring and warning (article 185 LSG Law). The few cases of “forced administration”, specifically in Tivat and Budva, have not been mentioned as problematic by interlocutors.

126. In this respect, the rapporteurs are of the opinion that total inertia of an elected municipal assembly can be regarded, in certain circumstances, as a valid reason for such a drastic measure as its dissolution, due to the interest of citizens in a functioning local administration. However, when the right of dissolution is vested in the central government acting without a judicial review, this may pose a problem of proportionality given the disruptive impact it may have on local democratic governance.

3.8 Article 9 – Financial resources

Article 9 – Financial resources

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.

7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

127. The main rationale behind article 9 is that legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out.

3.8.1 Article 9.1

128. Paragraph 1 local authorities guarantees the municipalities' entitlement to adequate financial resources of their own and the freedom to determine expenditure priorities.

129. The Constitution provides that the municipality "shall be financed from its resources and the assets of the State"; it shall have its own property and its own annual budget which includes all revenue by source and all expenditure (Article 116). According to Article 150 LSG Law, the municipalities' funding sources consist of own resources, transfers from the State (and regulated by law), the equalisation funds as well as further funds from the State budget (e.g. in 2023, additional revenues from sales were transferred to local self-government by the State). The municipalities' own revenues are local taxes, such as real estate tax, personal income tax surcharge, local administrative and local utility taxes; local fees, such as fee for communal equipment of construction land, fee for the use of municipal roads, fee for protection and improvement of the environment; income from concession fees for the performance of communal activities or works performed for the municipality in accordance with the law; other income determined by law. In accordance with the law, municipalities may introduce these types of local public revenues (taxes, fees and charges), determine their amount within the limits prescribed by law, prescribe exemptions, collect them and control their collection and prescribe sanctions. The main municipal income is from direct taxes (such as property tax). All taxes are established at national level and decided by Parliament. An example are tourist taxes which are the same everywhere, decided by the central government and of which 80% are devolved to municipalities. This does not provide for compensatory measures for the important seasonal population increase in summer, which adds up in Herceg Novi alone to 60.000 tourists to the regular 30.000 inhabitants. The same is true for other taxes and even the rates for hotel licenses and permits. Only utility and service fees can be decided by the municipalities themselves. The Law on Budget and Fiscal Accountability contains a legal obligation to assess the fiscal impact of proposed laws or other regulations on the revenue of municipalities. However, in practice, this legal obligation seems not respected by the central government. In recent times, in many cases, sources of revenue were reduced by various legal acts drastically and negatively affecting the liquidity of municipalities.

130. Municipalities have property (Article 33 LSG Law). However, they can only dispose of local property through its transfer to the State or after the State's consent for sale or lease (in case of property covered by urban plans). In Herceg Novi, for instance, there are more than 1.000 requests which have been unanswered for months. By contrast, paradoxically, municipalities are allowed to buy property without consent.

131. Considering the above-mentioned restrictions, the rapporteurs conclude, that Montenegro partially complies with the first paragraph of Article 9 of the Charter.

3.8.2 Article 9.2

132. There should be an adequate relationship between the financial resources available to a local authority and the tasks it performs. This relationship is particularly strong for functions which have been specifically assigned to it.

133. A new Law on Local Self-Government Financing entered into force in January 2019. It appears to the rapporteurs that the effects of its implementation have overall improved the financial situation of the local authorities, especially in the municipalities of the Northern region. This is due to the following: (a) the increase in the share of personal income tax revenue to 50% for the municipalities from the Northern region (and 20% for the Municipality of Ulcinj), and an additional 2% for the municipalities of the central region; (b) the establishment of a support fund for the pre-financing of projects financed by donations;

(c) the improvement of the criteria for the allocation of resources from the Equalisation Fund; (d) the improvement of further implementation shortcomings issues from the previous period.

134. However, the rapporteurs were informed that the Law on Changes and Amendments to the Law on Personal Income Tax (1 January 2022), known as **"**Europe Now"-programme, has considerably worsened the financial situation of municipalities. This Law exempts taxable income up to EUR 700,00 from income tax, determines a rate of 9% for the amounts of taxable income between EUR 700,01 and EUR 1.000,00, and a rate of 15% for the amount above EUR 1.000,00. As a direct consequence, the municipalities' revenue resulting from their share in the personal income tax was reduced as well as their own revenue (surtax on personal income tax), but also the Equalisation Fund (as 11% of the total personal income tax revenue collected is transferred to the Equalisation Fund). In 2022, the Ministry of Finance transferred monthly amounts from the budget reserve of the 2022 State budget to local authorities to compensate for the reduction of their revenues, due to the impact of the tax reform laws. Therefore, at the end of July 2022, a new Law on Changes and Amendments to the Law on Self-Government Financing was passed in order to systematically address the problem (in force since August 2022). It provides for a new distribution of personal income tax revenues, according to which 50% of these revenues will be allocated to the municipalities of the coastal and central regions, whereas 100% will be allocated to those of the northern region. In addition, the new Law provides for an increase of the Equalisation Fund based on the real property transfer tax from 10% to 20%. With its implementation, the problem of the losses caused has been solved for some local authorities (mainly those in the coastal and central regions). However, some smaller municipalities, which are mainly beneficiaries of the Equalisation Fund, still face the problem of lower revenues compared to the same period in 2021, and their financial capacity is still not sufficient for guaranteeing the quality performance of their functions.

135. In March 2023, the Union of Municipalities prepared an Initiative for further changes to the Law on Self-Government Financing, proposing to oblige the State to compensate the losses of municipalities caused by the legal suspension or reduction of their revenues or the increase of their expenditures. The Initiative was submitted to the Parliament of Montenegro and all Parliamentary Groups for consideration, but it has not yet been addressed at the moment of the monitoring visit, due to the non-functioning of the Parliament.

136. In case municipalities perform devolved and delegated tasks, the municipality is to be provided with funds from the State budget according to Article 151 LSG Law as well as to the Law on Local Self-Government Financing and the Law on State Administration. However, there are problems with the principle of concomitant finances, in particular in the field of social and child protection, which belongs to the State competences in which municipalities participate proportionate to their abilities, as provided for in the Law on Local Self-Government. In fact, most municipalities financed the construction of day-care centres for children and young people with developmental difficulties and disabilities in their territory as well as equipment for these facilities, organised service delivery and full operation costs. However, as local authorities are generally financially weak, they are unable to finance their regular operations. Their attempt to reach an agreement with the line ministry resulted in only a small contribution. The decentralisation of this type of services needs to be accompanied with the assignment of appropriate funds from the State budget. However, the principle of concomitant financing, despite being stipulated in three different laws, is disregarded also in other cases, where tasks are delegated through government acts without the allocation of necessary funding for their execution and leaving most of the financial burden for the delegated tasks with the municipality. A positive example is the Regulation on the Delegation of Affairs of the Police Directorate to several local authorities. It regards the removal of illegally parked vehicles and of those that are not removed from the road. The same Regulation also delegates the power of issuing misdemeanour orders and initiating misdemeanour proceedings in these cases to municipalities, which provides the funds for their implementation.

137. The rapporteurs conclude that Montenegro partially complies with article 9 paragraph 2 of the Charter.

3.8.3 Article 9.3

138. While paragraph 3 accepts that central or regional statutes may set overall limits to local authorities' powers of taxation, they must not prevent effective local accountability. The exercise of a political choice in weighing the benefit of services provided against the cost to the local taxpayer or the user is a fundamental duty of local elected representatives.

139. Revenues from own sources account for a significant share of the total revenue of local authorities. According to data for 2021 provided by the Union of Municipalities (including funds carried over from the previous year and funds from loans and credits), 51.34% of their revenue is generated from own sources, of which 30.46% from local taxes. Real property tax accounts for 23.45% of the local authorities' total revenue (in 2021). The implementation of the amended Law on Self-Government Financing, since August 2022, resulted in certain changes for 2022. Of the total revenue, 48.50% comes from own sources, i.e. 23.85% from own taxes (real property tax and surtax on personal income tax). Although this has nominally led to a slight increase based on the real property tax in 2022, they accounted for about 19.70% of the total revenues of municipalities.

140. General matters related to public revenue of all authorities are regulated by specific laws, e.g. those on taxes, while the individual municipal assembly establishes and regulates by special decisions the local public revenue for the single local authority, within the limits and in the manner specified in the law (Article 28 LSG Law). However, decisions on local taxes and fees cannot be taken autonomously but are subject to the Government's consent as provided for administrative fees (Article 2 Law on Administrative Fees) and for the decision on local utility taxes: (Article 2 par. 1 Law on Local Communal Taxes).

141. Considering that local authorities may not decide autonomously on local taxes or fees, the rapporteurs conclude that Montenegro partially complies with article 9 paragraph 3 of the Charter.

3.8.4 Article 9.4

142. In order to keep pace with the real evolution of the cost of carrying out their tasks, paragraph 4 provides that the financial resources available to local authorities shall be of a sufficiently diversified and buoyant nature.

143. Article 5 Law on LSG Financing (2011) lists the following as "own resources": real estate tax, surtax on personal income tax, local administrative charges, local communal charges, fees for utility equipment, fees for the use of municipal roads, fees for environmental protection and improvement, resources from sale and rent of municipal property, capital income, funds from misdemeanour proceedings and confiscated gains from these proceedings, concession fees for performing communal affairs, revenues from activities of municipal bodies, services, and organisations, and revenues from grants and subsidies. Other laws may provide further revenue.

144. The Law on Budget and Fiscal Responsibility stipulates that the ministry preparing the draft of a certain law is required to conduct a fiscal impact assessment, as integral part of the documentation for the Members of Parliament. The same law also provides for the proposal of other sources of municipal financing at the stage of drafting the law in the event of a reduction in revenues or expenditures. The practice in recent years has shown that this does not happen in practice. The rapporteurs were informed that this financial impact assessment did neither happen with the amendment of the Law on Income Tax (end of 2021) despite the expected reduction in local self-government resources, nor with other draft laws (on forests, on communal police, on salaries of employees in the public sector). The adoption of the Law on Amendments to the Law on Personal Income Tax has caused a reduction in the income of 16 municipalities that are beneficiaries of the Equalization Fund. Because 11% of the total collected revenues from this tax is directed to the Equalization Fund, municipalities that are beneficiaries of the Equalization Fund suffered the biggest losses. The law was passed without consultation of the municipalities (contrary to Article 181 LSG Law). The loss in revenue due to the sudden reduction has not been fully replaced so far, neither by subsequent amendments to the Law on Local Self-Government Financing nor by interventions from the Budget of Montenegro during 2022.

145. While the available resources do not appear sufficiently buoyant for absorbing sudden shocks (also inflicted by the legislator acting without proper consultation), they seem overall sufficient as well as sufficiently diversified for the current tasks of municipalities. The rapporteurs conclude that Montenegro partially complies with article 9 paragraph 4 of the Charter.

3.8.5 Article 9.5

146. Paragraph 5 calls for the institution of financial equalisation procedures or equivalent measures for the protection of financially weaker local authorities. These shall correct the effects of the unequal

distribution of potential sources of finance and of the financial burden but shall not diminish the local authorities' discretion within their own sphere of responsibility.

147. In Montenegro, there is a considerable difference in the distribution of wealth and income as well as of tax capacity between the North and the South (including the coast). The Northern municipalities have to cope with a rapid decrease in population which negatively impacts on existing problems and chances for development. The Law on Self-Government Financing provides for a system of financial equalisation for municipalities. Its latest amendments provide for new criteria regarding the resources of the Equalisation Fund and their distribution; its implementation began in January 2019. According to the Law on LSG Financing, support to lower developed municipalities depends on their status which is defined by the Law on Regional Development and byelaws. The criteria for the status of lesser developed municipalities include size (territory and number of inhabitants), services, and fiscal capacity. The classification-process is repeated every three years, and the status may be revised (e.g. Kolašin went off the list, after large infrastructure investments). Currently, 10 municipalities (all in the North) are beneficiaries of the equalization funds which make up 15-20% of their respective revenue. 7 municipalities benefit from other specific State programmes and transfers. By contrast with the previous system, the criteria are lesser in number which results in a simplified system based on official data as well as on the data of the Ministry of Finance (before, data communicated by local authorities themselves was used as a basis). According to the rules, the funds may only be used for capital investments, although this seems not always to be the case in practice.

148. However, the whole process of financial equalisation could gain much in terms of transparency, if also the calculations were published and not only the preliminary distribution of the Equalisation Fund's resources for a given year. The Ministry of Finance allocates the funds at the beginning of each year and pays them out in monthly rates. In addition, it seems that the Fund's resources need to be increased, as some smaller municipalities, despite being beneficiaries, have not managed to compensate for the losses incurred as a result of the application of "Europe Now"-programme. A better and differentiated reallocation of the EUR 50 million provided by Parliament as compensatory measure – without consultation of local self-government – would have been needed: Podgorica received EUR 20 million, although it did not really need compensation as it was less affected, while the other 24 municipalities together had to divide up the rest (EUR 30 million). In fact, manifest differences remain between big and small municipalities, as well as between the North and other parts of the country, particularly the coast. Despite all this, a new strategy of July 2023 lowers the index from 100% to 75% which will probably exclude further 8 municipalities from the system. The rapporteurs therefore conclude that the current equalisation procedures and policy need more focus to achieve their goals to fully smooth out the differences.

149. Considering the above, the rapporteurs conclude that Montenegro complies with article 9 paragraph 5 of the Charter, but there is the need to better adapt the equalisation procedures according to the needs.

3.8.6 Article 9.6

150. Where redistributed resources are allocated according to specific criteria set out in legislation, according to paragraph 6 of this Article the local authorities are to be consulted during the preparation of the relevant legislation.

151. The rapporteurs noted he above-described gap (see art. 4.6 of this report – consultation) between the consultation procedures as guaranteed by the legal framework and the actual practice with regard to financial resources.

152. An illustrative example is the "Europe Now"-programme which provides for the exemption of salaries under EUR 700 from income tax and a salary increase for all civil servants, including the employees of municipalities. There has been no consultation before, despite the negative impact for municipal budgets. For instance, in Bijelo Polje, the annual budget of EUR 15 million has been reduced by 20% (EUR 2.5 million) due to the decrease in the share of revenue from income tax, while the costs of the salary increase for employees amounts to ca. EUR 1 million. Even the allocation of EUR 50 million in July 2022, as a one-time special measure for compensating at least partially the losses in municipal revenue due to the "Europe Now" programme has been decided by Parliament without consultation of the municipalities or the Union of Municipalities.

153. Thus, the rapporteurs conclude that Montenegro does not comply with article 9 paragraph 6 of the Charter.

3.8.7 Article 9.7

154. Block grants or even sector-specific grants are preferable, from the point of view of local authority freedom of action, to grants earmarked for specific projects. Excessive recourse to specific project grants will severely restrict a local authority's freedom to exercise its discretion regarding expenditure priorities. The second sentence of paragraph 7 seeks to ensure that a grant for a specific purpose does not undermine a local authority's freedom to exercise discretion within its own sphere of competence.

155. For 2023, EUR 20 million have been allocated for grants to municipalities. The Law on Budget regulates how to distribute funds and contains the budgeting procedures. Municipalities apply for grants with projects and in July a commission examines their requests, selects, and assigns the funds to the projects. The criteria for grading the projects are defined in byelaws and depend on the development of the capital budget as well as on whether projects are ready for implementation. The amount of conditional grants is restricted to 50% of the funds needed, i.e. co-financing of projects by the municipality is necessary. The Ministry of Finance told the rapporteurs that the "Montenegrin model" was aiming at financial independence of municipalities, with no direct participation in their current costs (except from unsustainable situations). It also underlined that no further plan or programme exists for supporting municipalities through donations and grants.

156. In fact, according to interlocutors, rather than earmarked funds the problem in practice is the necessary approval or consent before spending assigned money which effectively limits their discretion ("You receive the money without conditions, but you cannot spend it without condition…"). Municipalities face difficulties in the fulfilment of tasks that depend on the central government, in terms of necessary consent for individual local acts or of financing municipal capital projects from the State budget. Interlocutors complained that where there is a political interest by the central government, local authorities develop faster and are more efficient in performing their duties, while other municipalities stagnate. The national regulation governing the method of financing municipal capital projects from the State budget does not contain criteria that would ensure equal representation of all municipalities, which leaves a wide scope for the central authorities to use this mechanism also to pursue their political goals, to the detriment of local authorities where there is no such interest. The whole issue seems to be a consequence of the last years of political instability due to a politically polarised Montenegrin society.

157. Considering that the discretion in spending is limited, the rapporteurs conclude that Montenegro partially complies with article 9 paragraph 7 of the Charter.

3.8.8 Article 9.8

158. It is important for local authorities to have access to loan finance for capital investment; procedures and conditions for access to these sources may be laid down by legislation.

159. In Montenegro, local authorities may take debt under some conditions, as provided for in a separate chapter of the Law on Self-Government Financing. During the year the municipality can borrow up to the level determined by the annual budget of the municipality by issuing securities or taking loans (article 43.1.). The total repayment of the capital and interests on an annual basis, payments under leases and other liabilities that have the character of debt may not exceed 10% of realised current revenues in the year preceding the year of borrowing. Also, prior consent of the Government is necessary (article 49), which quite often seems to limit borrowing in practice.

160. In fact, the rapporteurs were told by interlocutors that for many municipalities loans from private banks are of limited help as they are usually small loans (cash flow) and that municipal bonds are not attractive or not considered as bonds from trusted organizations. As one interlocutor put it: "You can borrow, but nobody actually does…". For large-scale infrastructure projects, such as with funds from the German Kreditanstalt für Wiederaufbau (KfW) and from the EU, State involvement is always necessary. In at least one reported case, the implementation of a project involving borrowing from the KfW was considerably delayed due to the necessary consent and State guarantees. Interlocutors warned that excessive monitoring and consents by the Ministry of Finance may lead to problems in the economic development of the entire country.

161. Considering that the legislation permits borrowing (although it does not happen in practice), the rapporteurs conclude that Montenegro complies with article 9 paragraph 8 of the Charter. They would however encourage the government to discuss in consultation with municipalities and in particular their association the reasons for the limited recourse to borrowing in practice in order to eliminate possible obstacles municipalities may encounter in this respect to ensure full compliance with Article 9.8 in law and in practice.

3.9 Article 10 – Local authorities' right to associate

Article 10 – local authorities' right to associate

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

3.9.1 Article 10.1

162. Paragraph 1 covers co-operation between local authorities on a functional basis for seeking greater efficiency through joint projects or carrying out tasks which are beyond the capacity of a single authority. Such co-operation may take the form of the creation of consortia or federations of authorities, although a legal framework for the creation of such bodies may be laid down by legislation.

163. In Montenegro, such a legal and institutional framework for inter-municipal cooperation (IMC) exists.

164. Municipalities cooperate with each other and may join together, in accordance with this law (Article 15 LSG Law): "In carrying out tasks within their own jurisdiction, municipalities may, on the principles of voluntariness and solidarity, freely cooperate and pool resources for carrying out tasks of common interest, with the aim of meeting the needs of the local population" (Article 186 LSG Law). They can also establish municipal associations (Article 187 LSG Law) and freely cooperate with local communities and associations of other countries (Article 189 LSG Law). Two or more municipalities may establish a company or a public institution in order to jointly, perform certain tasks within their jurisdiction more economically and rationally; also on the basis of special contracts (Articles 190 and 191 LSG Law).

165. However, according to interlocutors, joint projects are not frequent. One example is the landfill between Bar and Ulcinj which is managed jointly by the two municipalities but also seems to be the only one in the country run in cooperation. The government should probably provide incentives if wider use of IMC is envisaged.

166. The main areas of inter-municipal cooperation in Montenegro could be:

- the implementation of internal financial audits, as the law that regulates the powers of auditors allows larger municipalities to perform such tasks also for smaller municipalities that do not have suitable staff;
- spatial planning. The rapporteurs were told during the monitoring visit that the draft of the new Law on Spatial Planning provides for the establishment of municipal agencies to prepare local planning documents for several municipalities. This could solve the problem of the lack of qualified staff meeting the demanding legal requirements. For the same reasons, the chief municipal architect of one local authority might perform his/her duties also for another local authority;
- operational tasks of common interest for which the municipalities sign inter-municipal cooperation agreements;
- joint projects funded by donations, mainly in the fields of tourism, agriculture, and entrepreneurship development.

167. It has been brought to the rapporteurs' attention that full cooperation between the Capital City Podgorica and the newly founded municipality of Zeta is still difficult due to unresolved issues of demarcation of territory and division of property. The rapporteurs express their hope that the authorities will soon resolve the demarcation issue between Podgorica and Zeta.

168. Overall, however, the rapporteurs conclude that Montenegro complies with article 10 paragraph 1 of the Charter.

3.9.2 Article 10.2

169. Paragraph 2 is concerned with associations (…) which normally seek to represent all local authorities of a particular kind or kinds on a regional or national basis. The right of local authorities to belong to associations at the national level is accompanied by a parallel right to belong to international associations.

170. Article 187 LSG Law guarantees an express right to form such associations under the condition that a minimum of half of the municipalities are represented as members. This condition is clearly fulfilled by the Union of Municipalities as all 25 municipalities in Montenegro are members. The Union considers itself in a "partnership relation" with the Government and the Ministries, when representing its members regarding their strategic interests as well as (new) legislation affecting them. In 2016, Parliament and the Union have concluded a cooperation agreement on better cooperation and communication with municipalities. However, there have only been few dedicated meetings and few initiatives after, due to the political instability in the country. The Union also contributes to strengthening the capacities and the human resources of its members. It has six working bodies and 10 employees. The Union is financed by membership fees from municipalities.

171. The rapporteurs conclude that Montenegro complies with article 10 paragraph 2 of the Charter.

3.9.3 Article 10.3

172. According to paragraph 3, direct co-operation with individual local authorities of other countries should also be permitted, although the manner of such co-operation must respect such legal rules as may exist in each country and take place within the framework of the powers of the authorities in question.

173. Cross-border cooperation (CBC) is expressly mentioned in Article 189 LSG Law, both for single municipalities and for their association. CBC mainly takes the form of the implementation of joint projects funded by EU territorial cooperation programmes. The main areas of cooperation are:
- innovation and improvement of the competitiveness of small and medium enterprises;
- energy efficiency, climate change adaptation, risk prevention, biodiversity protection and pollution reduction;
- sustainable national, regional and local mobility;
- improvement of access to education services and strengthening of the role of culture and sustainable tourism for economic development and social inclusion;
- improvement of the cooperation between institutions to increase the effectiveness of public policies.

174. An important example for CBC are the projects under the EU's Instrument for Pre-Accession (IPA), such as the construction of a bridge over the Bojano river with Albania. In these cases, no specific government consent is necessary, as the projects are carried out within the IPA-framework, i.e. already agreed between EU and government in the IPA negotiations.

175. The rapporteurs conclude that Montenegro complies with article 10 paragraph 3 of the Charter.

3.10 Article 11 – Legal protection of local self-government

Article 11 – Legal protection of local self-government
Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

176. "Recourse to a judicial remedy" in article 11 means access by a local authority to: (a) a properly constituted court of law, or (b) an equivalent, independent, statutory body having the power to rule and advise on the ruling respectively, as to whether any action, omission, decision or other administrative act is in accordance with the law.

177. The Law on Local Self-Government contains a separate part on legal protection of local self-government: “Chapter XIX. Protection of Local Self-Government”, while Article 16 LSG Law states the general principle of legal protection. The LSG Law provides local authorities with various judicial remedies for defending the right of local self-government. The right to local self-government is framed in the Constitution and in legislation as a guarantee similar to an individual fundamental right, and as such it can be subject of a constitutional complaint. (1.) Local authorities may file a constitutional complaint to the Constitutional Court when the right of citizens to local self-government has been violated by means of a particular regulation of state bodies, state administration authorities or legal entities which hold public powers (article 196 LSG Law). (2.) In addition, every local authority and the Union of Municipalities may file a complaint to the Constitutional Court for assessing the constitutionality and legality of a general act (laws and other regulations) that violates the right to local self-government. According to article 149 of the Constitution, a constitutional complaint can be filed within 60 days from the date of adoption of the individual act deemed to violate the right of local self-government. It does not delay the execution of the individual act against which it was filed. Exceptionally, at the request of the complainant, the Constitutional Court may order to suspend the execution until the final decision, if otherwise irreversible, harmful consequences would occur. In case of a violation, the Constitutional Court will repeal the act, in whole or in part, and return the case for retrial to the authority that passed the repealed act. (3.) The Union of Municipalities may approach the President of Montenegro with an initiative not to promulgate a law adopted by the Parliament if this violates the right of citizens to local self-government. The procedure can be initiated by the Union of Municipalities in case the Parliament of Montenegro adopts such a law (articles 197 and 187 Law on LSG).

178. Together, this makes up a coherent system of legal protection of local self-government which is fully in line with article 11. According to the Constitutional Court, the European Charter of Local Self-Government is directly applied in case of contrast with domestic legislation, as its position in the Montenegrin legal system is below the Constitution but above ordinary legislation.

179. However, these remedies appear not much used by the municipalities; most cases are either initiated by citizens or concern complaints by citizens against municipalities which often regard secondary legislation. One example is a case in which a regulation had introduced fees for municipal roads without any basis in the LSG Law. The regulation has been quashed with precedent-effect for other municipalities which had passed the same regulations on additional fees. Cases regarding complaints against legislation are rare, mostly inadmissible and have concerned finances, the appointment of councillors and State property. In 2022, the Constitutional Court has also cancelled (parts of) the election procedure due to irregularities. As the number of ballots did not match the coupons, the elections were annulled and needed to be repeated.

180. The rapporteurs conclude that Montenegro complies with article 11 of the Charter.

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

181. With the onset of the Covid-19 pandemic in Montenegro, the National Coordination Body for Communicable Diseases was established, which issued a number of orders, measures and recommendations to contain the pandemic. On one hand, cooperation between the central and local levels in the implementation of measures and activities to protect the health of the population was synchronised and continuous, according to interlocutors. Local authorities did not experience any recentralisation of their competences during the health crisis. On the other hand, several packages of measures were implemented at the central level to support the economy and the citizens, focusing on the most vulnerable groups of the population and on the creation of conditions for the liquidity of the economy and the budget. Short-term and long-term measures were taken for the protection of jobs and faster recovery of the economy, but none of these measures targeted or supported local authorities or their local public enterprises.

182. Local authorities also launched their own support packages for the economy and citizens in the form of deferral of payments of property tax, exemptions from paying some local utilities, fees for the use of municipal roads, rents for business premises and various subsidies. In addition, the State measures regarding the deferral of personal income tax at the same time meant a deferral of the local surtax. Thus, the local authorities significantly contributed to overcoming the consequences of the pandemic.

183. As the start of the COVID-19 pandemic coincided with the start of the implementation of the amended Law on Local Self-Government Financing, the actual impact of the pandemic on local public finances cannot be accurately determined. The total revenue of local authorities in 2019 was around EUR 340 million, while in 2018 it had been around EUR 288 million. In 2020, the implementation of measures at the local level to combat the COVID 19 pandemic led to a decrease in the total revenue of municipalities (EUR 318 million), while revenues generated in 2021 returned to the level of 2019, i.e. EUR 342 million.

184. Regarding the role of local authorities in dealing with the effects of the climate crisis and possible measures taken at the central level to assist local authorities in mitigating climate change, a major problem is prior consultation and participation. At central level, legal framework and strategies are adopted without the participation of local representatives, so that local authorities are often unable to react appropriately and in time. For example, the preparation of the National Energy and Climate Plan, currently underway and to be completed by 2024, has for the time being occurred without representatives of the local authorities being involved, although such requests have been submitted to the line Ministry several times (according to the Union of Municipalities).

185. Thus, local authorities adopt plans and regulations in the area of climate policies within their competences. Local plans provide for measures and activities such as the protection of forest biodiversity, the prevention of floods and landslides, and measures to reduce the use of wood and coal during the heating season (some local authorities provide subsidies for the purchase of eco-biofuel, such as pellets and briquettes). To reduce electricity consumption, grants for citizens to purchase materials and adapt residential buildings with eco-efficient materials have been offered. In the last couple of years, Podgorica has adopted a strategy and local plans that set out various projects, such as “Podgorica on Two Wheels” which provides subsidies to the citizens for the purchase of bicycles. Also new buses have been bought and subsidies given for bus tickets to reduce congestion and CO2 emissions. “Micro 020” is the project to green and reforest parts of the capital city, which includes the creation of a cadastre of green spaces. There is also cooperation between the municipalities and the NGO sector dealing with climate change, and funding for their projects from the municipalities’ budgets.

186. In order to prevent and adapt to the impacts of climate change, local self-governments have started to prepare local Action Plans for sustainable energy and climate change. These Action Plans focus on climate change mitigation and adaptation measures. Tuzi elaborated the first plan, further plans are currently being prepared for Podgorica and the municipalities of Kolašin, Pljevlja and Tivat, with the support of the Union of Municipalities and the German Development Agency GIZ.

187. Local authorities participate in various ways in the fight against corruption. In accordance with the Law on Prevention of Corruption, municipalities adopt Action Plans for the fight against corruption. The central authorities occasionally include them in their activities. In the context of negotiation and preparation for EU accession, representatives of local authorities are members of the Working Group for Chapter 23 “Judiciary and Fundamental Rights”. In addition, a representative of the Union of Municipalities of Montenegro is a member of the National Anti-Corruption Council. The Law on Local Self-Government obliges mayors to adopt integrity plans, and to guarantee transparency in employment procedures (based on a merit system in assessing knowledge and skills based on written and oral tests, and/or structured interviews). The Law on Prevention of Conflict of Interest stipulates the obligation of local officials and other appointed persons to submit data on income and assets.

188. The consequences of the war in Ukraine are above all reflected in the economy, with rising energy prices, food, reduced economic activity regarding Ukraine and Russia, but also in companies in Europe connected with these countries. The impact also concerns the financial sector, refugee influx and others. Montenegro introduced a Temporary Protection (TP) scheme, offering all persons from Ukraine the ability to apply for a renewable one-year period. They are entitled to adequate accommodation, support and means of living, health care, access to primary and secondary education, information about rights and obligations, labour market access, and family reunification. Since February 2022, more than 100.000 Ukrainian nationals have entered Montenegro. According to the Montenegrin Ministry of Interior, around 8.000 persons have applied for temporary protection in Montenegro and some 30.000 refugees from Ukraine have registered some form of residence in Montenegro which together represents over 5% of the population.

189. Regarding non-discrimination, gender equality and/or minority rights at local level, the Law on Local Self-Government provides that local authorities shall ensure conditions for the protection and promotion of minority rights and gender equality in accordance with the Constitution, the law and ratified international treaties (Article 11 Law on LSG). Specific laws precisely regulate these matters (e.g. Law on Election of Councillors and Members of Parliament with regard to the representation of women on election ballots and the like). Municipalities adopt local resolutions and action plans based on which activities are implemented to achieve a higher level of gender equality. Some municipalities also issue a public call to support female entrepreneurship. An Ombudsperson with a wide mandate can be approached with individual complaints.

190. As far as minority rights are concerned, several municipalities employ a certain number of members of the Roma population in the local administration. Targeted capacity building for the Roma and Egyptian community would contribute to their greater active participation in deciding their future and social status by building a partnership with national and local institutions and non-governmental organisations. The municipality of Ulcinj (76% of Albanians) appears as a “shining example” of living-together for Montenegro and the whole Balkan region. Official acts and the municipality’s website are trilingual (Montenegrin, Albanian and English), bilingualism vis-à-vis citizens is an obligation for the executive and there is simultaneous translation in the meetings of the municipal council.

5. CONCLUSIONS

191. Compared to the findings in the previous report, which observed a general trend towards decentralisation, the rapporteurs rather noted during the present monitoring visit a development in the opposite direction. The Union of Municipalities claims that Recommendation 379/2015 has been implemented only in two recommendations, which is a further indicator for the worsening of the situation compared to 2015. The rapporteurs note three areas, where shortcomings in the implementation of the Charter, and by consequence, violations of the rights to local self-government are particularly strong: article 3 (substantial share of public affairs); article 4 (scope of local self-government, including consultation); article 9 (sustainable financial resources).

192. With the reform of the Law on Spatial Planning (2017), the right to issue building and occupancy permits has been taken away from municipalities, their capacity of urban planning strongly restricted, and all inspections are taken over by the State. Municipalities are essentially stripped off their planning and control powers. No general planning documents are adopted at State level, which means that currently the planning documents in the country are more than 10 years old and that the local planning process is blocked. As the State does not have the capacity to cope with all planning documents, approvals and inspections, the result is that economic development has stalled, and illegal construction increased in many municipalities. The rapporteurs are concerned about this centralisation of essential elements for shaping the future of local communities. Thus, they recommend giving planning competencies back to the municipalities to enable them to play a central role in these important decisions. They also suggest encouraging intermunicipal cooperation where municipalities face difficulties in meeting technical and staff requirements.

193. Also, the consultation mechanisms need to be improved. Mandatory participation of local self-government representatives in the drafting process of all regulations and plans that directly affect them need to become the rule, also in practice, e.g. through the establishment of permanent working bodies at the level of ministries for examining the proposals. Differentiated representation appears necessary due to the often-different problems in the northern, central, and southern regions which call for specific, tailor-made solutions.

194. Over the past 10 years, many revenue sources have been taken away from municipalities, such as fees for billboard-advertising, for the maintenance of roads, for telecom infrastructure as well as for electricity distribution (stations, poles etc.). Justified with the promotion of economic development, this centralisation has not been compensated. On the contrary, it appears that further obligations have been added to the tasks of municipalities, such as the need to have audit services (with 3 employees) and a chief city architect as well as to organize protection and rescue services. In many cases, the delegation of tasks has not been accompanied by corresponding resources for their implementation. This is to be qualified as a violation of the principles of connectivity, consultation, and compensation. The “Europe Now”-programme with the increase of salaries of public employees has put further financial strains on municipalities. And the exemption of salaries under EUR 700 from income tax has drastically reduced

resources (in many municipalities) as their share in the revenue from income tax has been equally affected by that measure. The lack of financial resources of municipalities commensurate with their competences has already been a concern in the previous Congress Recommendation 379 (2015) which should be implemented by guaranteeing municipalities sustainable and certain financial revenues.

195. Between 2017 and 2020 major legislative changes have been adopted in the direction of centralisation: the above Law on Spatial Planning; the property law with the loss of many rights to dispose of local property (due to its transfer to the State or the need for consent); the introduction of central management of the coast by a public company, without providing for compensatory measures for municipalities which have to manage the important increase of people in summer. Over the last years, the balance of decision-making power in matters related to local affairs appears to have been significantly shifted in favour of the central government.

196. The phenomenon of urbanisation or “Podgorica-sation”, with ca. 50% of the country’s population living in and around the capital, certainly has a strong impact on regional development. It needs to be seriously considered when deciding on the future balances between central and local authorities. Small municipalities need to be(come) sustainable and able to provide quality services for their citizens.

197. After a long period of relative political instability, time may now be ripe for reconsidering these issues, starting from financial autonomy of municipalities, their competences, and a greater emphasis on the Rule of Law in the relations between the central government and municipalities (i.e. respect of consultation procedures). The current preparation of a thorough functional analysis provides data and insights on which the debate can and should be based. Any public debate and procedures for further reforms should prominently include municipalities and the Union of Municipalities. Subsidiarity as a principle, can provide useful guidance for the substance of matters in that debate.

APPENDIX – Programme of the Congress monitoring visit to Montenegro

PROGRAMME

CONGRESS MONITORING VISIT TO MONTENEGRO
Podgorica, Cetinje, *Bar, Ulcinj*
(3-5 October 2023)

Congress delegation:

Rapporteurs:

Mr Cemal BAŞ	Rapporteur on local democracy Chamber of local authorities, EPP/CCE[14] Member of the Monitoring Committee Municipal Councillor, Keçioren Türkiye
	Mr Sören SCHUMACHER Rapporteur on regional democracy Chamber of Regions, SOC/G/PD[15] Member of the Monitoring Committee Member of the Hamburgische Bürgerschaft Germany

Congress secretariat:

Ms Svitlana PEREVERTEN	Co-Secretary to the Monitoring Committee

Expert:

Mr Jens WOELK	Member of the Group of Independent Experts on the European Charter of Local Self-Government (Germany)

Interpreters:

Ms Jelena PRALAS
Ms Sanja RAŠOVIĆ

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

Tuesday, 3 October 2023
Podgorica

CONSTITUTIONAL COURT

- **Mr Budimir ŠĆEPANOVIĆ**, President
- **Ms Dragana ĐURANOVIĆ**, Judge

- **Ms Biljana DAMJANOVIĆ**, Secretary General

JOINT MEETING WITH MEMBERS OF THE NATIONAL DELEGATION OF MONTENEGRO, NATIONAL ASSOCIATION AND EXPERT

- **NATIONAL DELEGATION TO THE CONGRESS**

  - **Mr Petar SMOLOVIĆ**, Head of the delegation, Mayor of Bijelo Polje
  - **Mr Vladimir JOKIC**, Deputy Head of the delegation, Mayor of Kotor
  - **Mr Samir AGOVIĆ**, Mayor of Petnjica
  - **Mr Stevan KATIĆ**, Mayor of Herceg Novi
  - **Ms Tanja STAJOVIĆ**, Mayor of Golubovci

- **UNION OF MUNICIPALITIES OF MONTENEGRO**

  - **Ms Mišela MANOJLOVIĆ**, Secretary General

- **EXPERT**

  - **Ms Hana SARKINOVIĆ-KOESE,** Member of the Group of Independent Experts of the Congress (GIE), International University of Sarajevo

PODGORICA CITY

- **Dr Jelena BOROVINIĆ BOJOVIĆ,** President, Podgorica City Assembly

- **Ms Maja VULAŠ,** Public relations consultant, Podgorica City Assembly
- **Ms Sanja JAREDIĆ**, Media adviser, Podgorica City

PARLIAMENT

- **Mr Aleksandar KLARIĆ,** Secretary General of the Parliament of Montenegro
- **Ms Jovana KOVAČEVIĆ**, Head of the Secretary General's Office
- **Ms Slavica MIRKOVIĆ**, Secretary of the Committee on Political System, Judiciary and Administration
- **Ms Ivana TATAR**, Adviser, Committee on Political System, Judiciary and Administration
- **Ms Maja ILIĆ**, Adviser, Committee on Political System, Judiciary and Administration

OMBUDSMAN

- **Mr Siniša BJEKOVIĆ**, Protector of Human Rights and Freedoms of Montenegro
- **Ms Nerma DOBARDŽIĆ KURTI**, Deputy Ombudsman

Wednesday, 4 October 2023
Podgorica, Cetinje

MINISTRY OF PUBLIC ADMINISTRATION

- **Mr Dragiša JANJUŠEVIĆ**, State Secretary
- **Ms Nina BLAŽIĆ**, Head of the Unit for Implementation of the Principles of Good Public Administration, Analytics and Reporting,
- **Ms Milena POPOVIĆ**, Independent adviser II in the Directorate for strategic planning in public administration, international cooperation, and IPA funds

MINISTRY OF FINANCE

- **Mr Aleksandar DAMJANOVIĆ**, Minister
- **Mr Agron IBRAHIMI**, State Secretary

- **Mr Bojan PAUNOVIĆ**, Director General of the State Budget Directorate
- **Ms Indira LEKIĆ**, Head of the Directorate for Local Self-Government
- **Ms Gordana RADOVIĆ**, Adviser, Directorate for Local Self-Government

STATE AUDIT INSTITUTION

- **Mr Zoran JELIĆ**, Member of the Senate, responsible for municipalities
- **Mr Vladan PEROVIĆ**, Head of the sector V

CETINJE

- **Mr Marko BRNOVIĆ**, Deputy Mayor
- **Ms Ana NOVOVIĆ**, Deputy Mayor

- **Mr Savo BOROZAN**, Secretary of the Secretariat for Local Self-Government and Social Activities
- **Ms Sanja PEJOVIĆ**, Mayor's adviser for Public Relations
- **Ms Mirjana MARTINOVIĆ,** Adviser for normative-legal affairs in the Assembly Service

Thursday, 5 October 2023
Bar, Ulcinj

BAR

- **Mr Branislav NENEZIĆ**, President of the Municipal Assembly

- **Ms Andjela VUJOVIĆ**, Secretary of the Municipal Assembly

ULCINJ

- **Mr Omer BARJAKTARI,** Mayor

- **Mr Ardijan MAVRIQ,** President of the Municipal Assembly